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EU Conditionality and Environmental Policy in South-eastern Europe

Abstract. European Union engagement in South-eastern Europe (SEE) attempts to control the negative consequences of the collapse of the old communist regimes. These 'soft security' concerns include justice and home affairs, environment, and energy. Through the transfer of policies and regulations, and by norm diffusion, the EU is able to operate beyond the borders of its formal, legal authority. In managing its perceived vulnerability, the EU imposes strict conditionality on countries in SEE. As enlargement stalls, and conditionality tightens, the expansion of EU governance sees curtailment of the possibilities of democratic engagement with the institutional structures of the EU. From an environmental perspective, EU engagement brings distinctive advantages: legislation has become more comprehensive, investment in environmental infrastructure has increased, and administrative structures have been modernised and devolved. This partly compensates for the lack of domestic interest in the environment. However, EU investment drives intensification and modernisation that brings new environmental pressures. In addition, while it promotes new styles of governance at home, the EU may help replicate traditional patterns of societal complacency in SEE, rather than promoting the civil society engagement needed to promote sustainable development.

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Introduction

This paper examines the environmental dimension of the European Union's (EU) role in South-eastern Europe (SEE), taken to include Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Greece, Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Moldova, Montenegro, Romania, Serbia, Slovenia, and Turkey. However, the boundaries of SEE can vary greatly, depending on the political, economic, historical, cultural, and geographic lens adopted. Using a policy lens shows, for example, that Cyprus, Kosovo, and Turkey are not party to the important EU-led SEE Programme, discussed below. The SEE 2007-2013 Programme included 16 countries, eight of which are EU member states, six are candidate and potential candidates, and two are

countries participating in the European Neighbourhood Policy.¹ Each receives funding from different instruments: European Regional Development Fund, Instrument for Pre-Accession Assistance (IPA) and European Neighbourhood, and Partnership Instrument (ENPI).² An institutional lens highlights other boundaries, as Greece is a long-standing EU member and the years 2004 to 2013 saw a Central and Eastern Europe enlargement that brought Slovenia and Cyprus into the EU, followed by the attainment of membership by Bulgaria, Romania, and subsequently Croatia. In the meantime, Albania, Montenegro, Serbia, the Former Yugoslavia Republic of Macedonia, and Turkey remain EU candidate countries, and the potential candidate country list includes Bosnia and Herzegovina as well as Kosovo. However, others, especially the former Soviet states that lie further east, are seen as 'near neighbours', with their membership not a necessary outcome of the expansion of EU interest.³ Moldova, for example, is considered under the ENPI mentioned above, the framework instrument for implementing the European Neighbourhood Policy. While these 'near neighbours' have the prospect of closer economic cooperation with the EU, in particular through trade, they are offered relationships with the EU that fall short of membership.

The expansion of the EU sphere of influence in SEE, including engagement that may not necessarily result in EU membership, forms the focus of this paper. It explores the significance of EU governance, as it relates to institutional processes of norm diffusion and policy transfer. The empirical focus is on how this external governance plays out in the environmental policy arena. In SEE, the institutional and administrative capacity of national and local governments in the field of environmental policy is weak. The region is plagued by the legacy of years of unchecked pollution, resulting in several environmental problems, including urban air pollution, poor water quality, insufficient protection of biodiversity, inadequate waste management, alongside several pollution 'hot spots'.⁴ A decade of regional conflicts, combined with decaying

¹ South East Europe Transnational Cooperation Programme, Balkan-Mediterranean Programme (2014-2020), http://www.southeast-europe.net/en/about_see/balkanmediterranean/index. All internet references were accessed on 2 October 2015.

² Cf. the South East Europe Transnational Cooperation Programme's website, <http://www.southeast-europe.net/en/>.

³ Karen E. Smith, The EU and Central and Eastern Europe. The Absence of Interregionalism, *European Integration* 27, No. 3 (2005), 347-364.

⁴ Frank Carter / David Turnock, eds, *Environmental Problems of East Central Europe*, London, New York 2002 (2nd ed); Susan Baker, *Environmental Governance and EU Enlargement*, in: *Central and South-Eastern Europe 2011*, London 2010 (10th ed) (The Europa Regional Surveys of the World).

industrial systems, has left the environment of the region in a state of serious neglect.

While the EU has had considerable influence across the region, transition has been a complex process that has seen other external influences in operation.⁵ Furthermore, transition is also 'path dependent', involving a complex reworking at the domestic level of social, political and economic relations constructed under previous regimes,⁶ matters that also have to be taken into account in my analysis. This is against a backdrop of awareness that the region is characterised by states that are in the midst of serious debates over their national identities and the internal structure of the states, while still seeking to address the consequences of substantial violence and repressive authoritarian regimes that occurred in the post-communist period.⁷

Geopolitical Interests of the EU

EU engagement can be seen as an attempt to control the negative consequences of the political and economic transformation of Eastern Europe following the collapse of the old communist regime.⁸ These concerns have been consolidated as 'soft security' issues, which include matters of justice and home affairs, environment and energy.⁹ In this context, EU involvement can be seen as an attempt to expand, in the face of these potential risks, the EU zone of peace and security eastward.¹⁰ This is largely undertaken through the eastwards extension of EU regulatory and governance regimes.

⁵ Susan Baker, *Environmental Governance and EU Enlargement. Developments in New Member States, the Western Balkans and the Near Neighbours*, in: *Central and South-Eastern Europe 2012*, London 2011 (11th ed) (The Europa Regional Surveys of the World).

⁶ Adrian Smith/John Pickles, *Theorising Transition and the Political Economy of Transformation*, in: John Pickles/Adrian Smith, eds, *Theorising Transition. The Political Economy of Post-Communist Transformations*, London 1998, 1-25.

⁷ Paula M. Pickering, *The Constraints on European Institutions' Conditionality in the Western Balkans*, *Europe-Asia Studies* 63, No. 10 (2011), 1939-1944, 1939-40.

⁸ Susan Baker, *Environmental Governance. EU Influence beyond Its Borders*, in: *Central and South-Eastern Europe 2013*, London 2012 (12th ed) (The Europa Regional Surveys of the World); Commission of the European Communities (CEC), *Communication on the Development of Energy Policy for the Enlarged European Union, Its Neighbours and Partner Countries*, COM (2003) 252 final, Brussels 2003; CEC, *Enlargement Strategy Paper*, COM (2005) 561 final, Brussels 2005.

⁹ Sandra Lavenex, *EU External Governance in 'Wider Europe'*, *Journal of European Public Policy* 11, No. 4 (2004), 680-700.

¹⁰ Gorazd Meško/Dejana Dimitrijević/Charles B. Fields, eds, *Understanding and Managing Threats to the Environment in South Eastern Europe*, Dordrecht 2011 (NATO Science for Peace and Security Series C: Environmental Security).

It is in the European interest that countries on our borders are well governed. Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe. The integration of acceding states increases our security but also brings the EU closer to troubled areas. Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations. The importance of this is best illustrated by the Balkans.¹¹

In the environmental arena, the collapse of the old regimes highlighted the EU's perceived vulnerability in relation to nuclear risk, transboundary pollution, security of energy supply, moving more recently to concerns about water management and climate change. Through institutional processes of norm diffusion and policy transfer, the Commission of the European Communities (the Commission) aims to ensure that 'EU legislation will become the principal and most effective means of international law making for most countries of the region', with the EU becoming 'increasingly the principal driving and coordinating force in the normative field for environmental improvement and sustainable development in Europe'.¹²

Establishing a zone of peace and security harks back to the founding principles of the EU, laid down in the immediate post-war period. This 'peaceful cooperation' is based on the achievement of regional economic integration through the expansion of the market economy and the acceptance of a common set of values, such as democracy, human rights, and the rule of law.¹³ Enlargement, the Association politics and the European Neighbourhood policy, all discussed below, can be seen as an attempt to expand this neo-functional model eastwards.

The enlargements that took place from 2004 to 2013 offered a very direct and encompassing way for the EU to address its soft security concerns. It also ensured that EU-led reforms, including at the institutional level, became 'locked in' domestically, and thus protected against changes arising within

¹¹ Council of the European Union, A Secure Europe in a Better World. European Security Strategy, CL03-380EN, Brussels, 12 December 2003, <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

¹² CEC, Communication on Pan-European Environmental Cooperation after the 2003 Kiev Conference, COM (2003) 62 final, Brussels 2003, 14-15.

¹³ Ian Manners, Normative Power Europe. A Contradiction in Terms?, *Journal of Common Market Studies* 40, No. 2 (2002), 235-258.

domestic, electoral politics in transition countries.¹⁴ However, as enlargement fatigue grips existing member states,¹⁵ combined with growing concerns about the absorptive capacity of its institutions, the EU is faced increasingly with the task of defining its relations with its neighbours, some which may not be offered the prospect of EU membership, but which still play a crucial role in the maintenance of security and stability in Europe. Thus, while the EU accepted Croatia as a member state in 2013, this can only serve to highlight the difference between Croatia and the other western Balkan countries.

Institutionalising Relationships

Stabilisation and Association Process

EU engagement in SEE deepened following the signature of the General Framework Agreement for Peace in Bosnia and Herzegovina in 1995, known as the Dayton agreement. Following the conflict in Kosovo, in 1999 the EU launched the Stability Pact for SEE and in 2000 established the Stabilisation and Association Process (SAP) for the Western Balkans. Five Western Balkan countries were deemed 'potential candidates' for the EU, a significant move in that prior to the launch of the SAP, EU enlargement plans made scant mention of the countries in the region.¹⁶ The Thessaloniki Summit 2003 was dedicated to EU-Western Balkans relations, and resulted in the Thessaloniki Agenda for the Western Balkans. Moving towards European integration reaffirmed the prospect of eventual EU membership, a prospect regarded as a powerful incentive promoting stability in the region, clearly stating that the 'future of the Balkans is within the European Union'.¹⁷

The SAP provides the framework for EU negotiations with the Western Balkans. It has three aims: stabilizing countries and ensuring transition to a market economy; promoting regional cooperation; and providing for eventual

¹⁴ Ulrich Sedelmeier, Is Europeanisation through Conditionality Sustainable? Lock-in of Institutional Change after EU Accession, *West European Politics* 35, No. 1 (2012), 20-38.

¹⁵ Sandra Lavenex / Frank Schimmelfennig, EU Rules beyond EU Borders. Theorizing External Governance in European Politics, *Journal of European Public Policy* 16, No. 6 (2009), 791-812; Pickering, The Constraints on European Institutions' Conditionality.

¹⁶ David Pinnemore, Stabilisation and Association Agreements. Europe Agreements of the Western Balkans?, *European Foreign Affairs Review* 8 (2003), 77-103, 98.

¹⁷ CEC, EU-Western Balkans Summit Thessaloniki, press release 10229/03, C/03/163, Thessaloniki, 21 June 2003, http://europa.eu/rapid/press-release_PRES-03-163_en.htm.

membership of the EU.¹⁸ The link between political stability and economic development is clearly stated. The process is designed as a 'road map' to help them, on an individual basis, build their capacity to adopt and implement EU law, as well as to reach European and international standards, including in relation to environmental matters. Once they have achieved what the EU deems as sufficient political and economic reform and administrative capacity, then a formal contractual Stabilisation and Association Agreement (SAA) is signed. This reflects the EU's previous experience of Association Agreements with the accession states from Eastern Europe. The SAA with the FYROM came into force in 2004 and with Croatia in 2005. Bosnia and Herzegovina and Serbia each signed an SAA in 2008. While Croatia joined the EU in 2013, the FYROM has still to move towards a second stage of SAA, and there has been no progress in Bosnia and Herzegovina since the October 2010 elections. Albania's SAA entered into force in 2009 and Montenegro's in 2010. In 2011, the Commission recommended that Serbia be granted candidate country status, on the understanding that Serbia implements in good faith the agreements reached to date with Kosovo.¹⁹ The Commission has also a framework agreement allowing Kosovo to participate in EU programmes.²⁰

The SAA is designed to help each country progress at its own pace towards greater European integration. An Agreement sets out rights and obligations, prioritises the reforms needed, details alignment with EU standards, and monitors their implementation through benchmarks. Environmental standards relate to EU priorities such as integrated water and flood management, prevention of environmental risks, transboundary cooperation in management of natural assets and protected areas, waste management, and energy efficiency. Agreements come with strict conditionality clauses.²¹

Known as the Copenhagen Criteria, conditionality clauses include demonstrating the ability to implement a trade and cooperation agreement and

¹⁸ See CEC, *The Western Balkans on the Road to the EU. Consolidating Stability and Raising Prosperity*, COM (2006) 27, Brussels, 27 January 2006, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:r12650>.

¹⁹ CEC, *Commission Opinion on Serbia's Application for Membership of the European Union*, COM(2011) 668 final, Brussels, 20 October 2011, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf.

²⁰ CEC, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final, Brussels, 12 October 2011, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/strategy_paper_2011_en.pdf.

²¹ David Phinnemore, *Stabilisation and Association Agreements. European Agreements of the Western Balkans?*, *European Foreign Affairs Review* 8 (2003), 77-103, 88.

meet political standards, including respect for democratic principles, human rights, and the rule of law. Conditionality focuses on two main arenas of reforms. The first, democratic conditionality, relates to the adoption of the political principles of the EU, the norms of human rights and of liberal democracy. The second type, *acquis* conditionality involves the transposition of the body of EU legislation, codes and practices, known as the *acquis communautaire*, eastwards.²² While *acquis* conditionality initially dealt with regulatory alignment with the EU internal market, over time, the focus widened to other policy areas. Attention further shifted from a narrow preoccupation with the legal transposition of rules and regulations to a broader set of requirements around implementation capacity.²³ As a result, effort was concentrated on the establishment of institutional and administrative arrangements, monitoring capabilities and the devolution of implementation tasks downwards to the subnational level,²⁴ which in turn requires major restructuring of domestic centre/local relations. Regional cooperation, promoting good neighbourly relations, is seen as an important conditionality principle for closer institutional affiliation with the EU.²⁵

Conditionality also includes the operation of more diffuse influences, such as persuasion and learning, in which EU actors socialise Eastern European actors rather than coerce them. Twinning is a good example of this more diffuse form. The leading EU environmental states (Denmark, the Netherlands, and Sweden) have been particularly active in twinning projects aligned with the IPA and ENPI programmes. Twinning involves the sharing of good practices developed within the EU member states with public administrations in transition countries. It has been used by leader environmental states to promote the eastward transfer of environmental best practice, procedures, and expertise. It is hoped that through such 'soft' mechanisms eastern bureaucrats will 'internalise' EU norms and practices. This form of conditionality has

²² See Susan Baker, *Environmental Governance and EU Enlargement. Developments in New Member States, the Western Balkans and the Near Neighbours*, in: *Central and SouthEastern Europe 2010*, London 2009 (9th ed.) (The Europa Regional Surveys of the World); and Susan Baker, *Environmental Governance. EU Influence beyond Its Borders*, in: *Central and South-Eastern Europe 2013*, London 2012 (12th ed.), for details on how these played out in different policy arenas and across different countries.

²³ Frank Schimmelfennig/Ulrich Sedelmeier, *Governance by Conditionality. EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, *Journal of European Public Policy* 11, No. 4 (2004), 661-679.

²⁴ Ian Bache, *Europeanization and Multi-Level Governance. EU Cohesion Policy and PreAccession Aid in Southeast Europe*, *Southeast European and Black Sea Studies* 10, No. 1 (2010), 1-12, DOI: 10.1080/14683851003606739.

²⁵ CEC, *A Secure Europe in a Better World*.

become increasingly prevalent in some of the eastern and southern neighbours that lack membership prospects.²⁶ It plays an important role in norm diffusion around the EU's rim.

For its part, the EU offers compliant countries a mixture of trade concessions, economic and financial assistance, and assistance for reconstruction, development, and stabilisation. EU financial assistance, especially the Instrument for Pre-accession Assistance (IPA), targets the priorities set out in the partnerships arrangements.²⁷ The IPA covers both the candidate and potential candidate countries and is administered through the EU's Western Balkans Investment Framework.²⁸ The EU invokes programme and project conditionality through freezing financial flows if a country fails to meet objectives.²⁹ However, in addition to IPA funding, regions receive funding through EU Regional Policy, with the Territorial Cooperation Objective of the EU's cohesion policy supporting cooperation along the internal borders of the EU, while the European Neighbourhood and Partnership instrument supports cooperation between EU regions and regions of the EU's external neighbours. This cooperation focuses on several key areas, including the environment and economic growth.³⁰

However, over time, the Commission has come to believe that SAAs could prove an alternative to the European Agreements that in the case of central Europe lead to EU membership. It now promotes institutionalised regional cooperation short of EU enlargement. This process has been referred to as the 'extraterritorialisation' of the EU.³¹ Extra-territorialisation, occurring through the 'template' agreements, involves counties implementing EU driven political, economic and institutional reform, including aligning legislation with

²⁶ Tanja Börzel / Yasemin Pamuk, Pathologies of Europeanisation. Fighting Corruption in the Southern Caucasus, *West European Politics* 35, No. 1 (2012), 79-97.

²⁷ CEC, The European Commission and EU Policy towards South East Europe, Brussels 2009, <http://ec.europa.eu/enlargement/archives/seerecon/gen/ecrole.htm>; CEC, European Neighbourhood Policy and Enlargement Negotiations. Overview—Instrument for PreAccession Assistance, Brussels 2014, http://ec.europa.eu/enlargement/instruments/overview/index_en.htm.

²⁸ Western Balkans Investment Framework (WBIF), About WBIF, <https://www.wbif.eu/About%20WBIF>; and WBIF, Environment, <https://www.wbif.eu/Sectors/Environment>.

²⁹ William Bartlett, Regional Integration and Free-Trade Agreements in the Balkans. Opportunities, Obstacles, and Policy Issues, *Economic Change and Restructuring* 42 (2009), 25-46.

³⁰ European Union Interact, European Territorial Cooperation, 1 October 2013, http://www.interact-eu.net/etc_2014/european_territorial_cooperation/486/14849.

³¹ Lavenex, EU External Governance in 'Wider Europe'.

the EU *acquis*.³² Viewed in this light, SAAs allow the EU to extend its regulatory reach to address areas where it perceives itself to be vulnerable. However, as conditionality became increasingly de-coupled from membership, the EU began to operate what became known as 'policy conditionality'. This is where it offers intermediate benefits associated with compliance, such as market access or the liberalisation of visa regimes.³³ Policy conditionality is often supported by technical and financial assistance from the EU. Introducing a narrower policy focus has allowed conditionality to remain credible at the domestic level, by offering tangible, and often domestically popular rewards, such as the lifting of restrictions on travel visas.³⁴ In the context of this reshaping of the EU's relations with SEE countries, in 2008 the Stability Pact for SEE was replaced by the Regional Cooperation Council (RCC).

Re-Thinking Regional Cooperation

Unlike previous top-down, EU-led arrangements, the RCC is promoted as a regionally owned and led framework. Its key role is 'to generate and coordinate developmental projects of a wider, regional character and to create an appropriate political climate susceptible to their implementation'.³⁵ However, it still focuses on regional cooperation in SEE in the context of EU integration.³⁶ This generates mixed messages, and could serve to widen the gap between membership aspirations of SEE countries and EU responses.

The SEE 2020 strategy is the key policy document to emerge to date from the RCC. The strategy aims to create jobs and prosperity in a European perspective for the Western Balkans.³⁷ It has five pillars: Smart Growth, emphasising education, innovation, research, and development; Sustainable Growth, focusing on economic sustainability through enterprise, exports, energy efficiency, and the development of integrated transport networks; Inclusive

³² CEC, Commission Communication on Wider Europe-Neighbourhood. A New Framework for Relations with our Eastern and Southern Neighbours, COM (2003), 104 final, Brussels, 11 March 2003, 10, http://eeas.europa.eu/enp/pdf/pdf/com03_104_en.pdf.

³³ Florian Trauner, From Membership Conditionality to Policy Conditionality. EU External Governance in South Eastern Europe, *Journal of European Public Policy* 16, No. 5 (2009), 774-790.

³⁴ Ulrich Sedelmeier, The EU and Democratization in Central and Southeastern Europe since 1989, in: Sabrina P. Ramet, ed, *Central and Southeastern European Politics since 1989*, Cambridge 2010, 519-535.

³⁵ Regional Cooperation Council (RCC), Overview, <http://www.rcc.int/pages/6/2/overview>.

³⁶ RCC, Overview.

³⁷ RCC, South East European 2020 Strategy. Jobs and Prosperity in a European Perspective, November 2013, <http://www.rcc.int/files/user/docs/reports/SEE2020-Strategy.pdf>.

Growth, supporting employment, social inclusion, good health, and well-being; Integrated Growth, promoting closer regional integration in terms of trade and investment; and Governance for Growth, including developing effective public services and fighting against corruption.³⁸

Infrastructure and Environment form part of the Sustainable Growth pillar of the Strategy.³⁹ It includes measures to reduce energy intensity, support the modernisation of transportation, increase resource efficiency, and improve environmental management. These aim to boost growth and build a strong, diversified, and competitive economic base in the region. At the same time, the aim is to ensure that countries become more sustainable, and more resource efficient, with improvement in overall transport efficiency, that facilitates competitiveness in industries based on wood, biodiversity and food processing, as well as related industries, which constitutes a future regional competitive advantage.⁴⁰

The EU closely monitors the progress of SEE 2020, including through annual progress reports. The strategy is also aligned with the IPA mentioned above, and there are clear links between the measures proposed and the relevant chapter of the EU *acquis*. This serves to highlight the influence that the EU is having on the shape of key policy developments, while at the same time making us mindful of the uncertainties surrounding that relationship.

The strategy is heavily influenced by the EU's Europe 2020 Strategy,⁴¹ both in terms of acceptance of growth-orientated development as their overriding principle and in relation to specific issues addressed. Both strategies make environmental considerations subservient to economic goals, rather than seeing them as ends in themselves. This ecological modernisation perspective perceives growth as the precondition for environmental and social progress. This assumption is at odds with the adoption of an integrative approach to ecology, economy and society and the related rejection of traditional growth-

³⁸ RCC, South East European 2020 Strategy. Jobs and Prosperity; see also Börzel / Pamuk, Pathologies of Europeanisation.

³⁹ RCC, South East European 2020 Strategy. Infrastructure and Environment, <http://www.rcc.int/pages/69/infrastructure-and-environment>.

⁴⁰ RCC, South East European 2020 Strategy. Infrastructure and Environment.

⁴¹ CEC, EUROPE 2020. A Strategy for Smart, Sustainable and Inclusive Growth, COM(2010) 2020 final, Brussels 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

oriented development that form the backbone of the principles of sustainable development, and as is written into the EU treaty.⁴²

The EU has long since given mixed messages about the type of economic development it supports in transition countries.⁴³ EU funding instruments are a prime source of such policy inconsistency. The now superseded Special Accession Programme for Agriculture and Rural Development (SAPARD) funded the extension of the Common Agricultural Policy to the east. It attracted criticism for promoting intensive agriculture and displacing the environmental advantages associated with low-intensity farm-management practices.⁴⁴ Similarly, ISPA has been criticised for its failure to safeguard environmental criteria. The fund prioritised large-scale sewage and wastewater treatment projects, rather than the low technology, low-cost biological treatment that is more suitable for the plethora of small, rural communities in the region.⁴⁵

So far, this paper has addressed EU engagement in SEE, in particular through the imposition of conditionality. Attention has been given to the shifting context of conditionality as, over time, benefits of compliance changed from the original assurance of EU membership to the offer of more intermediate, policy focused rewards. This generates uncertainty as to the ultimate outcomes of compliance, while also highlighting the dominant role that the EU plays in shaping these outcomes. Attention has also been given to the multiple, and often contradictory nature of EU aims and objectives for the region, especially the gap between its economic policies and its sustainable development commitments. However, this still leaves the question: what roles do states in SEE play in shaping the EU relations with the region, or to put matters another way, why do they comply with EU conditionality?

Why Comply?

⁴² Susan Baker, *European Union Environmental Policy*, in: *The European Union Encyclopaedia and Directory 2015*, London 2014 (2nd ed.).

⁴³ Susan Baker, *Environmental Governance. EU Influence beyond Its Borders*, in: *Central and South-Eastern Europe 2013*, London 2012 (12th ed.).

⁴⁴ CEE Bankwatch Network/Friends of the Earth Europe (FoEE), *Billions for Sustainability? The Use of EU Pre-Accession Funds and Their Environmental and Social Implications*, Brussels, October 2000, <http://bankwatch.org/documents/BillionsforSustainability.pdf>.

⁴⁵ Susan Baker, *Environmental Governance and EU Enlargement*, in: *Central and SouthEastern Europe 2011*, London 2010 (10th ed.).

Domestic compliance with EU conditionality is conceptualised in two ways. The first, called the external incentives model, is based on the argument that actors engage in rational cost-benefit calculations. In this, beneficiaries weight up the external incentives provided by the EU to comply with its conditions.⁴⁶ Material cost-benefit calculations take account of access to markets, economic development from foreign direct investment and budgetary transfers. The strong hand of the EU also provides an important way for governments to legitimise difficult and potentially unpopular political choices at home. The influence of the EU also depends on a favourable constellation of domestic factors, including whether compliance suits the preferences of key actors, especially from the business sector.⁴⁷ For some, closer ties with the EU are also part of their aspiration to 'the return to Europe' and their desire to cast off an 'eastern' identity. Having, ultimately, a voice in EU decision-making also provides a strong instrumental argument in support of a country's compliance strategy. For those without prospects of EU membership, benefits, including support in attracting foreign direct investment, can help to solve a particular problem or can help promote competitive advantage more generally.⁴⁸ Host countries are also more likely to comply when the EU lays down clear and targeted actions aimed at particular sectors.⁴⁹ In addition, the chance of compliance is greater the more binding the rules laid down by the EU are.⁵⁰

The second way in which compliance is conceptualised, the constructivist approach, argues that social learning drives compliance, and that different actors are motivated to comply by internalised identities, values, and norms.⁵¹ In this model, reforms are driven by normative changes brought about through

⁴⁶ Trauner, *From Membership Conditionality to Policy Conditionality*, 776.

⁴⁷ Esther Ademmer / Tanja Börzel, *Migration, Energy and Good Governance in the EU's Eastern Neighbourhood*, *Europe-Asia Studies* 65, No. 4 (2013), 581-608; Liliana B. Andonova, *Transnational Politics of the Environment. EU Integration and Environmental Policy in Eastern Europe*, Cambridge/MA. 2004; Julia Langbein / Tanja Börzel, *Introduction. Explaining Policy Change in the European Union's Eastern Neighbourhood*, *Europe-Asia Studies* 65, No. 4 (2013), 571-580; Ulrich Sedelmeier, *Enlargement. Constituent Policy and Tool for External Governance*, in: Helen Wallace / Mark A. Pollack / Alasdair R. Young, eds, *Policy-Making in the European Union*, Oxford 2015 (7th ed), 407-435.

⁴⁸ For further details see Tanja Börzel / Thomas Risse, *When Europeanisation Meets Diffusion. Exploring New Territory*, *West European Politics* 35, No. 1 (2012), 192-207.

⁴⁹ Wade Jacoby, *The Enlargement of the European Union and NATO. Ordering from the Menu in Central Europe*, Cambridge 2004.

⁵⁰ Lavenex / Schimmelfennig, *EU Rules Beyond EU Borders*.

⁵¹ Trauner, *From Membership Conditionality to Policy Conditionality*, 777.

socialisation of actors,⁵² such as is mentioned above in the case of twinning. The International Commission for the Protection of the Danube River (ICPDR) also provides an interesting example, including in its use of a network of expert groups.⁵³

The external incentive model is seen as having the most explanatory power in interpreting the transfer and adoption of EU rules by countries including those in SEE. However, while there is merit to this rationalist account, which focuses on the material, distributional consequences of compliance, it ignores a crucial aspect of EU engagement. The use of conditionality has never been based on the exercise of political or economic equality. The scope for 'outsiders' to influence the content of the conditionality clauses remains severely limited, because EU conditionality starts from predetermined, non-negotiable, formal rules decided in advance by the member states.⁵⁴ In this context, rule transfer eastwards and southwards is characterised by a top-down process, as detailed and monitored by the Commission. In addition, while both east and west are interdependent, the interdependency is highly asymmetrical, balanced in favour of the EU.⁵⁵ Thus we see considerable attention paid by the EU to issues of 'soft security' that threaten the EU internally, especially justice and home affairs, trafficking and smuggling, public order, judicial reform, external border control and border security, and transboundary pollution. These issues remain central in financial and other assistance programmes.⁵⁶ Migration and border security, and environment policies are all under strong adaptation pressure from the EU.⁵⁷ In addition, the countries of SEE are only of marginal importance to the EU economy, while they will benefit much more strongly

⁵² Pickering, *The Constraints on European Institutions' Conditionality, 1943*; see also Frank Schimmelfennig, *Enlargement and the Promotion of Liberal Norms in Eastern Europe*, in: Joaquín Roy / Roberto Domínguez, eds, *Towards the Completion of Europe. Analysis and Perspectives of the New European Union Enlargement*, Miami/FL, 29-38.

⁵³ International Commission for the Protection of the Danube River (ICPDR), *Expert Groups*, <https://www.icpdr.org/main/icpdr/expert-groups>.

⁵⁴ Schimmelfennig / Sedelmeier, *Governance by Conditionality*; Frank Schimmelfennig / Ulrich Sedelmeier, eds, *The Europeanization of Central and Eastern Europe*, Ithaca/NY 2005.

⁵⁵ Schimmelfennig / Sedelmeier, *Governance by Conditionality*, 665.

⁵⁶ Trauner, *From Membership Conditionality to Policy Conditionality*.

⁵⁷ Andrew Geddes / Charles Lees / Andrew Taylor, *The European Union and South East Europe. The Dynamics of Europeanization*, New York 2013.

from formal, economic, and market ties with the EU, far more so than any benefits that will potentially accrue to existing member states. This gives the EU an upper hand in leveraging conditionality.

At the same time, the effectiveness of EU conditionality in driving reforms depends on maintaining the belief that these countries have a genuine chance of eventually securing EU membership. EU policy for the Western Balkans has also to demonstrate its power of transformation in a region where states are weak and societies divided. There are large differences between the countries in terms of their readiness for eventual EU membership. These differences notwithstanding, nearly all of them are poorer than the member states that acceded in 2004. In addition, the area suffers from several environmental problems, including poor water management, growing problems of pollution, including in cities, poor management of hazardous and radioactive waste, illegal dumping, and deepening threats to biodiversity. The ability of the EU to establish institutional order in its neighbourhood without at the same time expanding its membership is therefore not guaranteed. This order has been shown to be more sectorally fragmented and differentiated and less Europeanised than the order projected through enlargement.⁵³ The questionable promise of membership and uncertain time-horizon limits the impact of conditionality, despite the offer of 'intermediary' rewards as a counter-balancing measure. EU policy thus creates uncertainty in the region. This uncertainty can be clearly seen in relation to environmental policy.

The Environmental Policy Arena

The *acquis communautaire* contains an impressive body of legal acts covering an array of environmental matters, from water and air quality, to waste management, nature protection, industrial pollution, risk management, chemicals, and noise; legislation that exists mostly in the form of directives. Making the adoption of the environmental *acquis* a conditionality clause gives the EU an important way in which it can exercise its influence over environmental governance in the region.⁵⁴ This is particularly the case given the differences between the EU environmental *acquis* and the pre-existing environmental legislation in the former communist states. The *acquis* has a wider range, bringing many new areas of consumption and production activity

⁵³ Lavenex / Schimmelfennig, *EU Rules Beyond EU Borders*, 808.

⁵⁴ JoAnn Carmin / Stacy VanDeveer, eds, *EU Enlargement and the Environment. Institutional Change and Environmental Policy in Central and Eastern Europe*, London 2005; Christoph Knill / Jale Tosun, *Hierarchy, Networks, or Markets. How Does the EU Shape Environmental Policy Adoptions Within and Beyond Its Borders?*, *Journal of European Public Policy* 16, No. 6 (2009), 873-894.

under its regulatory reach. It adopts a different regulatory approach, in particular in relation to integrated pollution prevention and control. It deals not just with environmental processes but also environmentally related product standards. The EU uses a wider range of implementation tools, including voluntary agreements, and requires new monitoring and reporting systems and standards. It is also supported by 'horizontal' regulations, that cut across different areas rather than merely dealing with a specific sector, and which are often more procedural. Conditionality also sees countries clarifying plans for strengthening implementation capacity within environmental inspectorates and among local authorities.⁵⁵

At times, the conditionality clauses has run against national wishes. Bulgaria, for example, long resisted the closure of units of the unsafe Kozloduy nuclear plant. However, it was forced to shift its stance to start accession talks with Brussels, given EU warnings that it must agree to the closure of units of the reactors if it wants to accede to the Union.⁵⁶ However, the decision has always been unpopular domestically.

One route through which the EU has exercised its influence is through promoting and funding regional cooperation to address transboundary pollution and the management of shared, natural resources, such as rivers. The EU has become increasingly active in international fora around the Baltic, Mediterranean, and Black seas as well as in conventions and protocols under the auspices of the UN Economic Commission for Europe.⁵⁷ The European Commission works hard to ensure the treaties that stem from these conventions harmonise with EU law and policy. The EU Strategy for the Danube Region (EUSDR), for example, a macro-regional strategy adopted by the European Commission in 2010, includes several SEE countries and is strongly influenced by the Europe 2020 strategy. This includes a focus on ensuring competitiveness in the region through improving mobility and intermodality of inland waterways.⁵⁸ Fora of regional environmental cooperation thus act as a vehicle for policy transfer and norm diffusion from the EU to states

⁵⁵ Susan Baker, 'The Environmental Dimensions of Transition, in: Central and South-Eastern Europe 2006, London 2005 (5th ed.).

⁵⁶ Albena Shkodrova, Nuclear Row Threatens Bulgaria's EU Plans, Institute for War and Peace Reporting (IWPR), Global Voices Caucasus, 21 February 2005, http://www.iwpr.net/?p=bcr&s=f&o=156799&apc_state=henibcr2004.

⁵⁷ Susan Baker, Environmental Governance. EU Influence beyond its Borders, in: Central and South-Eastern Europe 2013, London 2012 (12th ed.).

⁵⁸ European Union Strategy for the Danube Region (EUSDR), One Strategy – 11 Priorities, <http://www.danube-region.eu/about/priorities>.

around its perimeter.⁵⁹ The adoption of the EU Marine Strategy in 2007 enhanced the EU's drive to ensure legislative harmonisation among its neighbours, as is also the case with the implementation of measures within the Danube River Management Plan.⁶⁰ An excellent example can be seen when the Commission sponsored an international conference, convened in February 2006 by Ukraine, with Romania and Moldova, under the auspices of the Danube Commission. The conference resulted in agreement to implement a river basin management plan for the Danube Delta based on the EU Water Framework Directive.⁶¹

An integral part of the use of conditionality is the production of regular reports by the Commission, which list chapter by chapter how well each country is doing in relation to the transposition of the *acquis* and in terms of the provision and extension of supporting institutional and administrative capacity. In relation to environmental matters, these would typically include the identification of institutional weaknesses, leading to requirements for administrative and institutional reform, including the establishment of separate Ministries of the Environment, a national EPA and of consultative fora as well as the upgrading of the capacity of sub-national government and of the environmental inspectorates. Legislative gaps, often in relation to what are known as investment intensive environmental directives, are regularly reported.⁶² These reports typically lead to a listing of policy priorities that have to be met, sometimes within the year. In turn, the regular reports are used by the Council to inform their decision as to whether to admit a country to further stages in the accession process.

This system of careful monitoring and regular shaming led to the identification of environmental 'leaders' and 'laggards' and the ranking of countries, including the candidates, in relation to each other. Conditionality therefore played a particularly blunt role:

⁵⁹ Smith, *The EU and Central and Eastern Europe*.

⁶⁰ International Commission for the Protection of the Danube River (ICPDR), *Danube River Basin District Management Plan*, IC/151), Vienna, 14 December 2009, <http://www.icpdr.org/main/publications/tor-workplans>.

⁶¹ The Ramsar Convention on Wetlands, *Cooperation on Sustainable Development of the Danube Delta*. International Conference on the Conservation and Sustainable Development of the Danube Delta, February 2006, http://ramsar.rgis.ch/cda/en/ramsar-news-archives-2006cooperation-on/main/ramsar/1-26-45-49%5E18953_4000_0__.

⁶² Susan Baker, *The Environmental Dimensions of Transition*, in: *Central and South-Eastern Europe 2006*, London 2005 (5th edition).

Its main value is thus as a shock tactic, to embarrass applicant governments into making dramatic changes owing to the domestic repercussions of failing to meet a major foreign policy goal. This results in 'shaming' whereby governments are embarrassed into complying with EU requirements [...].⁶³

Yet, the reports always remained vague in their details, typically using expressions like 'improvements have to be made', or 'greater efforts' are needed in particular, named areas. They rarely provide specifications, such as quantified targets or identify particular procedures for achieving conditionality compliance. This gives the EU a distinctive advantage: it allows it to maintain control over the ultimate outcome of conditionality compliance, such that the ultimate prize, EU membership, can be retained as a political choice and not the inevitable outcome of a technical process. In addition, it allows the EU to distinguish between fast and slow reformers, such that in the past Bulgaria and Romania had to wait until 2001 and 2002 respectively to begin negotiations and membership was delayed until 2007.⁶⁴ Conditionality clauses allow the EU to play a gate-keeping role and to retain control over access to negotiations, to set the timetable for how fast or slow a country could progress along the various stages of its relationship with the EU, and ultimately to set the limits of the access process. As such, this reveals how conditionality is a political tool, involving the exercise of power, and not a technical process resulting in a predetermined outcome.

⁶³ Heather Grabbe, How Does Europeanisation Affect CEE Governance? Conditionality, Diffusion, and Diversity, *Journal of European Public Policy* 8, No. 6 (2001), 1013-1031, 1021.

⁶⁴ CEC, Bulgaria 2005 Comprehensive Monitoring Report, COM(2005) 534 final, Brussels, 25 October 2005, http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1352_cmr_master_bg_college_en.pdf; and CEC, Developing Capacity in Implementation and Enforcement through the AC IMPEL Network Institutional Review – Romania 05/05 (European

Commission Directorate General Environment); Commission of the European Communities, Communication from the Commission, Comprehensive Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania, COM/2005/0534 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0534>.

⁷⁰ Peter Pavlínek / John Pickles, Environmental Pasts / Environmental Futures in Post-Socialist Europe, *Environmental Politics* 13, No. 3 (2004), 237-265; Susan Baker, Environmental Governance. EU Influence beyond its Borders, in: Central and South-Eastern Europe 2013, London 2012 (12th edition).

⁷¹ Regional Environmental Network for Accession (RENA), Working Group 4 - Environmental Compliance and Enforcement Network for Accession, <http://www.renanetwork.org/wgroup/wgroups/4.html>.

Environmental conditionality brings distinctive advantages: environmental legislation has become more comprehensive; there has been an increase in investments in environmental infrastructure; and administrative structures have been modernised and devolved, resulting in increased implementation capacity.⁷⁰ However, states have also encountered major challenges in implementing the environmental *acquis*, owing to the breadth and complexity of the legislation and policies involved and their high financial costs. The EU Water Framework Directive, for example, as mentioned above, is investment intensive and very difficult to implement as it requires considerable expertise, is cross sectoral, and often requires good transboundary cooperation. To ensure implementation, the EU has tended to focus on tangible expressions of capacity within the system of public administration, such as the purchasing of equipment or the establishment of enforcement and monitoring procedures.⁷¹ This focus on the bureaucratic dimension has tended to displace concern with achieving good environmental outcomes. This brings attention to matters in relation to how conditionality is governed.

Whither Democratic Governance?

In discussing extra-territorialisation, it is useful to distinguish between the internal dimensions and external dimensions of EU governance. Internal governance refers to the creation of rules and their implementation within the EU, while the latter refers to the transfer of these rules and their adoption by non-member states.

In relation to the internal dimensions of governance, the EU has been variously described as a system of multi-level governance, that is, a system of overlapping competencies and actor engagements among multiple levels of governments⁶⁵ and as multi-centred, that is, with competing and overlapping EU institutions, a lack of clear central authority operating within an array of complex networks.⁶⁶ It is increasingly seen as a system promoting new governance, particularly network governance. Here, governance is seen to be more about bargaining between different actors, across different territorial levels of government, and between the public and private sectors, than about the automatic implementation of commands from the centre. In this model of governance, policy transfer, lesson learning, including the use of the 'open'

⁶⁵ Liesbet Hooghe, *The European Commission and the Integration of Europe. Images of Governance*, Cambridge 2001.

⁶⁶ Beater Kohler-Koch/Rainer Eising, eds, *The Transformation of Governance in the European Union*, London 1999.

method of coordination, are supposed to encourage experimental learning and deliberative problem solving across the EU, rather than enforced convergence from the top.

In contrast, if we look at how the EU is transferring its rules to the east, then claims that the EU promotes new governance are weakened. EU policy style towards potential candidates and its near neighbours indicates that EU governance is still largely about securing compliance with EU laws and regulations, formal and structured decision-making, greater convergence and standardisation.⁶⁷ In addition, EU regulation is highly prescriptive. This style mirrors EU engagement with central Europe in the period leading up to and during the 2004-2013 enlargements:

The EU not only told Eastern European applicants what they should do—in terms of, say, new legislation or administrative reform—but also sent representatives to specific ministries to make sure that the changes were being made as prescribed through the ‘twinning’ programme. The whole process of adjustment was carefully monitored. The champions and laggards among the applicant countries were identified at regular review sessions. [...] Those states that failed to meet the EU’s conditions were kept at bay through trade quotas and tariffs and the Schengen regime.⁶⁸

The way in which the EU managed the accession process, and continues to structure its spheres of influence in SEE, leaves little space for the flexibility, tolerance and voluntarism that are seen as the hallmarks of new governance. EU relations to the east and south are more akin to ‘old’ governance, as evident by the highly asymmetrical relation between insiders and outsiders, the imposition of predetermined rules, the focus on the participation of bureaucratic actors, and use of top-down communication structures.⁷⁶

In the pre-accession process, aspiring applicants had to adopt the *acquis*, but good behaviour and compliance could lead to eventual EU membership and ultimately to a say in shaping future rules and decisions. Thus, the prospects for democratic engagement with the institutions and policymaking process of the EU remained intact. However, where there is no prospect of EU membership, such democratisation options are not available.⁶⁹ The outcome

⁶⁷ Jan Zielonka, Plurilateral Governance in the Enlarged European Union, *Journal of Common Market Studies* 45, No. 1 (2007), 187-209, 188.

⁶⁸ Zielonka, Plurilateral Governance in the Enlarged European Union, 196. ⁷⁶ Schimmelfennig / Sedelmeier, *Governance by Conditionality*, 675.

⁶⁹ Lavenex, *EU External Governance in ‘Wider Europe’*, 694.

may well be 'ever greater disassociation between authoritative allocation, functional competencies and territorial constituencies'.⁷⁰

Concern that rules transfer will remain an entirely asymmetrical process is expressed alongside other concerns about the impact of the EU on the development of domestic civil society, including at the organisational level.⁷¹ There is also a sense in which EU engagement empowers actors within government, especially given the institutional focus, rather than within civil society.⁷² In addition, the EU exercises strong influence over environmental NGOs in the regions. It sets a significant proportion of their agendas and shapes the means and conditions of activism itself. Some have argued that EU influence on NGOs in the region has served to restrict their agenda, sever contact with the grass roots, and reduce their engagement in local activism.⁷³

The limited role played by environmental NGOs reflects the EU style of interest mediation. Like other Directorates-General, the Environment Directorate-General favours centralised policy-making, seeking input largely from technical and scientific advisers. In addition, the Commission has developed semi-clientelistic relationships with industry and business interests. The fact that many countries in the region themselves favour narrow, technical and scientific approaches towards environmental policy will only increase this tendency to enhance 'Eurocratic' policy-making.⁸² Countries in SEE tend to have strong, centralised state structures and a weak civil society, features that promote clientelistic relations. In this context, there is a real danger that the gap between EU environmental policy and the concerns of citizens will widen further.

We argue that negotiations between bureaucrats do not necessarily lead to environmental improvement, as is evident by the continued environmental deterioration that is occurring in the region and, equally significantly, within the EU itself. Thus, while the system of environmental governance has improved, it is unlikely that these positive benefits will counterbalance the negative environmental consequences of EU driven economic restructuring and modernisation processes. These processes have threatened biodiversity,

⁷⁰ Zielonka, *Plurilateral Governance in the Enlarged European Union*, 201.

⁷¹ Langbein / Börzel, Introduction. *Explaining Policy Change*.

⁷² See Börzel / Risse, *When Europeanisation meets Diffusion*.

⁷³ Adam Fagan, *Taking Stock of Civil Society Development in Post-Communist Europe. Evidence from the Czech Republic*, *Democratisation* 12, No. 4 (2005), 528-47.

⁸² Zielonka, *Plurilateral Governance in the Enlarged European Union*.

tipped the modal split in transport towards private car use and brought destruction to the more environmentally favourable traditional agricultural practices of the region. This contradictory outcome lends strength to the argument that the EU primarily acts as a regulatory agent, promoting stronger environmental management, while downplaying engagement with the transformative requirement embedded in the commitment to promote sustainable development. While strengthened environmental regulation and administrative capacity will enhance society's ability to address the negative environmental consequences of economic activity, it will not compensate for growth orientated economic development strategies, nor will it encourage society to find new ways to engage with the more fundamental, transformative task of reconstructing a new relationship between the economy, ecology and society. The EU governance style, by giving preference to technical experts and administrative procedures, may in fact replicate traditional patterns of societal complacency, rather than promote civil society engagement in the promotion of sustainable futures.

EU influence is not evenly felt, however, and, as Jacobs has argued, influence clearly depends on how well entrenched domestic structures are, and the strength of domestic politics and social opposition to institutional transformation.⁷⁴ Indeed, there are plenty of examples of the limits of EU's influence, including on Belarus, in Slovakia under the government of Vladimir Mečiar, when the EU was forced to exclude Slovakia from opening accession negotiations in 1998, or in Croatia under Tudjman during the 1990s.⁷⁵

Conclusion

EU policy towards SEE involves conditionality, a bargaining strategy involving reinforcement by reward. Rewards vary, ranging from financial and technical assistance through to the establishment of institutional ties. Institutional ties can themselves range from trade and cooperation agreements to full membership of the EU.

Enlargement is one of the EU's most powerful policy tools. It has enabled the EU to help stabilise Central and Southeastern Europe and consolidate its transition to democracy and neoliberal, market economies. The adoption of *acquis* conditionality gives the EU a particularly important means of exercising its influence. Environmental legislation has become more comprehensive, new investments have been achieved, and administrative structures have been

⁷⁴ Jacoby, *The Enlargement of the European Union and NATO*.

⁷⁵ Sedelmeier, *The EU and democratization in Central and Southeastern Europe since 1989*.

modernised and devolved. The *acquis* ties countries into an environmental regulatory, monitoring, and reporting regime that has partly compensated for the lack of domestic interest in the environment. Nevertheless, the danger exists that the EU style of interest mediation, which gives preference to technical experts and administrative procedures, may replicate traditional patterns of societal complacency, rather than promoting the development of civil society engagement. Equally problematically, EU driven economic restructuring and modernisation processes have contributed to a rise of consumer culture and the propagation of new sources of pollution and waste.

Tying an increasing number of its neighbours into an environmental regulatory, monitoring and reporting regime helps the EU to manage its perceived vulnerability in relation to several 'soft security' issues. It is through rule expansion, norm diffusion and the transfer of policies and regulations that the EU is able to operate beyond the borders of its formal, legal authority. The gradual extension of EU governance beyond the circle of member states is blurring the borders of the EU, helping it to manage its perceived vulnerability in relation to its 'soft security' issues. However, the expansion of the EU's governance regime is matched by a curtailment of the possibilities of democratic engagement with the institutional structures of the EU.⁷⁶ The emergence of these 'patterns of differentiated integration' has profound consequences for the democratisation of transition processes in SEE.

There is a strong sense in which transition has been shaped by the desire on behalf of Eastern European states to strengthen their links with the EU and reap what they perceive as the positive benefits of such a liaison. However, given the asymmetrical relationship that exists between the EU and the eastern and southern countries, this focus on the material, distributional consequences of enlargement for individual member state actors is rather narrow. It ignores the high volume and intrusiveness of the rules attached to that relationship, which has allowed the EU an unprecedented influence on the restructuring of domestic institutions and the entire range of public policies across the region.⁷⁷ This influence has spread from ECE to SEE and increasingly to the so-called 'near neighbours'.

EU actions to the east and the south can be seen as a further example of the EU acting as a civilian power. This is the exercise of soft power by the EU,

⁷⁶ Lavenex, *EU External Governance in 'Wider Europe'*, 695.

⁷⁷ Schimmelfennig / Sedelmeier, *Governance by Conditionality*.

through political, economic, and normative means.⁷⁸ This understanding of the EU as a normative power has grown in popularity. However, the requirement to adopt the *acquis* and the use of conditionality goes beyond the voluntarism implicit in the notion of civilian power. This is particularly the case when they are applied to third countries, which lack the prospect of EU membership. Here the attempt to extend the EU's legal and regulatory boundary is not simply a benevolent projection of acquired civilian virtues but 'a strategic attempt to gain control over policy development through external governance'.⁷⁹

Despite having developed a wide range of mechanisms to structure the transition process, including conditionality, the EU cannot precisely target complex changes in institutional frameworks within the transition states. In addition, I have only looked at the role of top-down, elite driven processes in shaping transition, but am mindful of the role that citizens and NGOs play, and how citizen engagement and activism also play a role in shaping the outcomes of conditionality.⁸⁰

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⁷⁸ Manners, *Normative Power Europe*; Sonia Lucarelli/Ian Manners, eds, *Values and Principles in European Union Foreign Policy*, London 2006.

⁷⁹ Lavenex, 'EU external governance in 'wider Europe'', 685.

⁸⁰ Cf., for example, Adam Fagan, *EU Conditionality and Governance in Bosnia and Hercegovina. Environmental Regulation of the Trans-European Road Network*, *Europe-Asia Studies* 63, No. 10 (2011), 1889-1909.