Looking Back at Ten Years of EU Minority Conditionality vis-à-vis Central and Eastern European Candidate States

I. Introduction

The issue of minority protection has acquired an important role in the EU's external relations after the end of the Cold War. This development started in 1991, when the Declaration on Human Rights adopted at the Luxembourg European Council dedicated a whole paragraph to minority protection, and the guidelines for the recognition of new states after the break-up of Yugoslavia required “guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE”. Subsequently, references to minority protection were included in the Europe Agreements with Central and Eastern European countries (CEECs), the Stability Pacts for Eastern and South Eastern Europe, and most significantly the political accession criteria spelled out at the Copenhagen European Council in 1993 required applicant states to guarantee the “respect for and protection of minorities”. Since the start of accession negotiations in 1997, the European Commission has continuously monitored the performance of CEECs wishing to become EU members with regard to their treatment of minorities. Now, after ten new members acceded to

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2 Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union”, 16 December 1991, EC Bull. 1991/12, 119. The declaration followed the recommendations of the so-called ‘Badinter Arbitration Commission’, which was set up by the EC to develop legal guidelines to deal with the situation arising from the dissolution of Yugoslavia.

3 European Council, Copenhagen, 21-22 June 1993, Presidency Conclusions, SN 180/93.
the Union in May 2004, it is time to review the successes and shortcomings of EU conditionality in the field of minority protection.4

The most often cited problem in the EU’s use of conditionality in the field of minority protection is the setting of ‘double standards’. This problem arises because the external use of minority protection as a membership condition did not follow the establishment of an internal EU minority standard. The EU has neither developed special minority rights within the _acquis communautaire_, nor do the member states subscribe to a single European standard.5 Among the political accession criteria, “the insistence on genuine minority protection is clearly the odd one out. Respect for democracy, the rule of law and human rights have been recognised as fundamental values of the European Union’s internal development and for the purpose of its enlargement, whereas minority protection is only mentioned in the latter context.”6

Although the EU has in recent years tentatively addressed minority issues within the _acquis_, this has been exclusively through the concept of non-discrimination. There remains therefore a conceptual discrepancy between the internal non-discrimination based approach and the external promotion of special minority rights beyond (and in addition to) this standard. Moreover, the EU applied differentiated pressure across applicants, dependent on whether minority protection was regarded problematic and security relevant in the particular case. This is an indication that the EU’s focus on minorities “reflects pragmatic concerns for internal and external stability”7 rather than a principled concern for minority rights as such.8

The widely acknowledged phenomenon of double standards has nonetheless led to different conclusions within different strands of research. Political scientists studying the impact of conditionality conclude that, despite the lack of legitimacy in the field of minority rights, the EU has still been largely successful in inducing legislative and policy change in candidate countries by linking specific demands with the membership perspective. Lawyers and political philosophers, on the other hand, complain that the

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4 As this article is concerned with the impact of EU conditionality on CEECs, it includes states from this region which have applied for membership and participated in accession negotiations, i.e. the new member states Poland, Hungary, the Czech Republic, Slovakia, Lithuania, Estonia, Latvia and Slovenia as well as Romania and Bulgaria, who have not yet joined the Union. Conversely, Malta, Cyprus and Turkey, as well as Balkan countries that have not started accession negotiations so far are excluded.


6 De Witte, “Politics Versus Law …”, 4.

7 Pentassuglia, “The EU and the Protection of Minorities …”, 22.