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# Bringing Europe to the Western Balkans: The Europeanisation of Croatia and Serbia Compared

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# **Bringing Europe to the Western Balkans: The Europeanisation of Croatia and Serbia Compared**

**Mark Heemskerk**

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## About the Author

Mark Heemskerk is a Dutch alumnus from the College of Europe (2018-2019), where he graduated as the EU International Relations and Diplomacy Studies laureate of his promotion. Before working as a Blue Book trainee at the Russia division of the European External Action Service, he worked as an Ambassador for the Netherlands Institute in St. Petersburg. He furthermore holds an MSc in Public Administration from Leiden University, and a BA in International Relations and International Organisation from the University of Groningen. His key areas of research are the EU's relations with Russia, the European Neighbourhood Policy and the EU's enlargement policy. This paper is based on his Master's thesis at the College of Europe (Manuel Marín Promotion).

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## Abstract

This paper uses Europeanisation theory to explain why, through the enlargement policy of the European Union (EU), Croatia converged more successfully with the EU's *acquis* than Serbia. It assesses two policy areas (compliance with the International Criminal Tribunal of the Former Yugoslavia and the Third Energy Package), considering three theoretical models (external incentives model, social learning model and lesson-drawing model) on three analytical levels (domestic, EU, and regional level). On all analytical levels, the dynamics of Serbia's and Croatia's Europeanisation processes best accord with the external incentives model: domestic elites weigh and act upon the costs and benefits of the EU's demanded reforms. These are affected by third state interference and the EU's enlargement strategies. The domestic level further provides evidence for the social learning model: the EU's conduct affects the candidate states' Europeanisation through discursive inclusion and exclusion. The paper finds no evidence for the lesson-drawing model: enlargement policy remains an EU-driven process. Croatia converged easier than Serbia to the EU *acquis* as it faced less political constraints domestically, is less prone to regional power interference, and was subjected to a more consistent enlargement strategy by the EU.

## Introduction: Bringing Europe to the Western Balkans

On 24 March 2020, the General Affairs Council of the European Union (EU) gave the green light for opening accession negotiations with Albania and North Macedonia. Although receiving only limited media attention due to the mounting COVID-19 crisis, this decision constituted a monumental step in the Western Balkan's gradual integration as (potential) candidates for EU membership.<sup>1</sup> As a region composed of young democracies, many amongst the Western Balkan countries still face considerable problems with their public administration and the reliability of their state structures. Over the course of the last two decades, the EU has taken up this concern and has sought to go beyond simply expanding its membership. Rather, it has sought to engage in a process of 'member state building' – Europeanising the Western Balkan states to strengthen their statehood and integrate them into the European family of states.<sup>2</sup>

Throughout this process some states have been more successful than others. Croatia, traditionally seen as the region's frontrunner, managed to converge to most of the so-called Copenhagen criteria relatively quickly.<sup>3</sup> It dealt well with the enhanced conditionality of the new Stabilisation and Association Agreements (SAA), and progressed steadily through the different stages of the accession process.<sup>4</sup> Croatia formally applied for EU membership in 2003, it was granted candidate status in 2004 and accession negotiations opened in 2005. These negotiations were finalised in 2011, leading to Croatia's accession to the EU in 2013.<sup>5</sup> For the Republic of Serbia the story of EU accession looks quite different. Although Serbia began the path towards EU membership in roughly the same period as Croatia, its route has remained full of obstacles. Serbia only signed its SAA in 2008, which did not enter into force until 2013.<sup>6</sup> Serbia was declared an EU candidate state in 2012 and opened its accession

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<sup>1</sup> Council of the European Union, "Enlargement and Stabilisation and Association Process – the Republic of North Macedonia and the Republic of Albania - Council conclusions", retrieved 12 June 2020, <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>.

<sup>2</sup> S. Keil and Z. Arkan, "Introduction: European Union Foreign Policy in the Western Balkans", in S. Keil and Z. Arkan (eds.), *The EU and Member State Building: European Foreign Policy in the Western Balkans*, Abingdon, Routledge, 2015, pp. 6-7.

<sup>3</sup> M. Vlašić Feketija and A. Łazowski, "The Seventh EU Enlargement and Beyond: Pre-Accession Policy vis-a-vis the Western Balkans Revisited", *CYELP*, vol. 10, 2014, pp. 2-3.

<sup>4</sup> *Ibid.*, pp. 20-26.

<sup>5</sup> European Commission, "European Neighbourhood Policy and Enlargement Negotiations - Croatia", retrieved 18 March 2019, [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/croatia\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/croatia_en).

<sup>6</sup> European Commission, "EU and Serbia: enhanced cooperation rules enter into force", retrieved 18 August 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_13\\_805](https://ec.europa.eu/commission/presscorner/detail/en/IP_13_805).

negotiations with the EU in 2014.<sup>7</sup> These negotiations are now stuck without much prospect for the near future.<sup>8</sup> Various political actors have pronounced their worries regarding Serbia's inability to decisively choose a European future due to the pronounced Russian and Chinese influence within their economic and political system.<sup>9</sup>

This paper examines the observed difference in Croatia's and Serbia's Europeanisation processes. Why has Croatia been better able to converge to the EU's *acquis* than Serbia? The paper compares their processes at the hand of two policy areas that formed considerable obstacles to both Serbia's and Croatia's Europeanisation, as those may be used best to see why some states overcome their obstacles and others do not. First, the countries' compliance with the International Criminal Tribunal of the Former Yugoslavia (ICTY) is assessed. Compliance with the ICTY, as part of the EU's transitional justice policy towards the region, was an important condition to ensure the candidate countries' commitment to converge towards the EU's political values and principles.<sup>10</sup> The second policy area looked at is the EU's Third Energy Package, that Croatia adopted, but is still heavily resisted by Serbia. As the EU's enlargement policy towards the region remains high on the agenda for the EU,<sup>11</sup> an in-depth assessment of what factors make Europeanisation in the region succeed or fail is crucial.

This paper finds that the effect of domestic, EU and regional level factors on the Europeanisation process of the two candidate member states is best understood through the external incentives model. This means that domestic political actors weigh the costs of complying with the EU's demands for reforms against its benefits, acting only when the latter outweigh the former. EU and regional factors alter the balance within this cost-benefit analysis. On the domestic level, the social learning model of

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<sup>7</sup> European Commission, "European Neighbourhood Policy And Enlargement Negotiations – Serbia", 31 January 2018, retrieved 22 March 2019, [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en).

<sup>8</sup> M. Karnitschnig, "Mercon's Balkan breakdown", *Politico EU*, 3 May 2019, retrieved 3 May 2019, <https://www.politico.eu/article/merkel-macron-balkans-serbia-kosovo>.

<sup>9</sup> A. Caso, "The Next Enlargement Wave: Serbia caught between Russia and Europe", *MyCountryEurope*, 7 November 2018, retrieved 20 March 2019, <https://mycountryeurope.com/politics/next-enlargement-wave-serbia-russia-eu>.

<sup>10</sup> I. Rangelov, "EU Conditionality and Transitional Justice in the Former Yugoslavia", *CYELP*, vol. 2, 2006.

<sup>11</sup> U. Von der Leyen, "Statement by President von der Leyen at the joint press conference with President Michel and Andrej Plenković, Prime Minister of Croatia, following the EU-Western Balkans Zagreb Summit", *European Commission*, 6 May 2020, retrieved 14 June 2020, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_825](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_825).

Europeanisation provides some additional insights, factoring in a rhetoric of identity that constitutes a sense of belonging with, or separation from, Europe. Croatia has been better able to converge to the EU's *acquis* than Serbia due to several factors. Compared to Serbia, Croatia is (1) characterised by a less constrained domestic political arena, (2) is less dependent on regional powers interfering in its politics and economics, and (3) benefited from a more consistent enlargement strategy followed by the EU than the one used towards Serbia. The lesson-drawing model to Europeanisation fails to contribute to any explanation for the observed difference between Croatia and Serbia. The policy transfer of EU *acquis* to candidate member states proves to be an EU-driven process with candidate states taking up a more reactive role.

The paper is structured in five sections. The first part sets out the analytical framework in which the theoretical and methodological choices of the paper are outlined. The second section deals with the first case study, Croatia's and Serbia's compliance with the ICTY. The third section looks at the second case study, the candidate states' adoption of the Third Energy Package. The fourth section analyses the evidence provided by the cases in light of the paper's theoretical framework. Finally, in the conclusion the insights of the paper are outlined and summarised.

### **Theoretical framework**

Europeanisation theory is by origin an integration theory explaining the deepening of EU integration within and between different member states. It comprises intergovernmentalism and supranationalism, factoring in the influence of domestic actors to explain the interactions between the EU and member states' domestic policy, polity and politics.<sup>12</sup> It relies on insights from liberal intergovernmentalism, (2) multilevel management systems and (3) transformation of governance theory, each establishing different theoretical 'waves' in the literature.<sup>13</sup> The liberal intergovernmentalism wave explains EU integration as a 'bottom-up' process where domestic concerns come to dominate the EU's integrative trajectory. It looks at the struggle between domestic actors, and at how member states elevate their domestic

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<sup>12</sup> C. Radaelli, "Europeanization: Solution or Problem", in M. Cini and A.K. Bourne (eds.), *European Union Studies*, New York, Palgrave MacMillan, 2006, p. 58.

<sup>13</sup> K. Wach, "Conceptualizing Europeanization: Theoretical Approaches and Research Designs", in P. Stanek and K. Wach (eds.), *Europeanization Processes from the Meso-economic Perspective: Industries and Policies*, Krakow, Cracow University of Economics, 2015, pp. 12-13.

interests to the European level to shape the EU's development accordingly.<sup>14</sup> In contrast, the wave in Europeanisation theory relying on multi-level governance theory is seen as the 'top-down' wave. This wave views European integration as a tool for domestic actors to alter domestic institutional arrangements, justifying these changes by referring to Brussels.<sup>15</sup> Top-down Europeanisation therefore explains domestic changes in policy, polity or politics using integration at a European level as a starting point.<sup>16</sup> The third wave in Europeanisation theory is a 'circular approach', following the concept of a "transformation of governance".<sup>17</sup> It combines bottom-up and top-down insights to argue that EU integration has brought about a total overhaul of the *functioning* of governance, rather than a shift of power between *different levels* of governance.<sup>18</sup> Bottom-up and top-down processes feeding back into each other have led to a development in which domestic and international actors try to give direction to the perpetual cycle of reinforcement between the different levels.<sup>19</sup> Taking these waves into account, Claudio Radaelli defined Europeanisation as a set of "processes of construction, diffusion and, institutionalisation of formal and informal rules, procedures, policy paradigms, styles and 'ways of doing things'. It also consists of shared beliefs and norms that are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic [...] discourse, political structures, and public policies".<sup>20</sup>

Over time, the explanatory power of Europeanisation theory expanded beyond the 'deepening' dimension of integration into the 'widening' dimension. The convergence of the regulatory frameworks of candidate states towards European norms was conceptualised as a top-down process of Europeanisation wherein the domestic politics, policy and polity of the candidate states were reconfigured to fit EU standards.<sup>21</sup> Europeanisation theory in the widening sense thus concerns the process

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<sup>14</sup> A. Moravcsik, "Why the European Community Strengthens the State: Domestic Politics and International Cooperation", *Working Papers*, no. 53, Centre for European Studies, Harvard University, 1994, p. 63; K.E. Howell, "Developing Conceptualisations of Europeanisation: A Study of Financial Services", *Politics*, vol. 24, no. 1, 2004, pp. 20-25.

<sup>15</sup> W. Sandholtz, "Membership Matters: Limits of the Functional Approach to European Institutions", *Journal of Common Market Studies*, vol. 34, no. 3, 1996, pp. 403-430.

<sup>16</sup> Wach, *op.cit.*, p. 14.

<sup>17</sup> B. Kohler-Koch, "Catching up with change: The transformation of governance in the European Union", *Journal of European Public Policy*, vol. 3, no. 3, 1996, pp. 359-380.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*; Wach, *op.cit.*, p. 15.

<sup>20</sup> Radaelli, *op.cit.*, p. 59.

<sup>21</sup> e.g. G. Noutcheva and M. Emerson, "Europeanisation as a Gravity Model of Democratisation", *Working Document*, no. 214, Brussels, Centre for European Policy Studies (CEPS), 2004.

of policy transfer, with candidate states adopting EU policy to become their own. This paper draws on this approach, looking at Serbia and Croatia's unidirectional convergence to the EU's *acquis* as a requirement for EU membership.

To do so, the paper uses a set of explanatory mechanisms as possible explanations for the motivation of candidate states to participate in policy transfer. In their book *The Europeanization of Central and Eastern Europe* Frank Schimmelfennig and Ulrich Sedelmeier set out three explanatory models, outlining the mechanisms that determine the success of policy transfer in different states.<sup>22</sup> These three models differ in their specific logic of rule adoption (logic of consequences and logic of appropriateness), and in which actor they see as the principal actor in the adoption process (EU-driven process or candidate state-driven process), as set out in Table 1.

Table 1: Theoretical mechanisms of Europeanisation

Principal actor in rule adoption process	Logic of rule adoption	
	<i>Logic of consequences</i>	<i>Logic of appropriateness</i>
<i>EU-driven</i>	external incentives model	social learning model
<i>Candidate state-driven</i>	lesson-drawing model	

Source: Schimmelfennig and Sedelmeier, *op.cit.*

#### *The external incentives model*

The external incentives model follows an EU-driven explanation based on the logic of consequences, and therefore sees Europeanisation as a process dependent on the rational, interest-based decisions of actors that bargain through the exchange of threats and promises.<sup>23</sup> The outcome of the bargaining process is dependent on the relative bargaining power of the involved actors, which is again determined by the comparative information and resource asymmetries as well as on the parties respective alternatives to the standing agreement.<sup>24</sup>

<sup>22</sup> F. Schimmelfennig and U. Sedelmeier, "Introduction: Conceptualizing the Europeanization of Central and Eastern Europe", in F. Schimmelfennig and U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe*, London, Cornell University Press, 2005, p. 8.

<sup>23</sup> J.G. March and J.P. Olsen, "The Institutional Dynamics of International Political Orders", *International Organization*, vol. 52, no. 4, 1998, p. 949.

<sup>24</sup> Schimmelfennig and Sedelmeier, *op.cit.*, pp. 10-12.

Following the external incentives model policy transfer is EU-driven as the EU uses conditionality to leverage the reward of EU membership for reforms in the candidate state. Policy transfer, following this logic, only occurs if the rewards offered by the EU outweigh the adoption costs for the candidate state.<sup>25</sup> Conditionality is therefore an essential vehicle for Europeanisation within the external incentives model. It allows the EU to “upset the candidate state’s domestic equilibrium by introducing additional incentives for compliance with EU rules into the game”.<sup>26</sup> It can do so top-down, directly pushing the candidate state’s government to reform, or bottom-up through supporting pro-European forces within the political landscape of the candidate state.<sup>27</sup> The effectiveness of such conditionality depends on (1) the determinacy that the candidate state will receive the rewards promised by the EU, as more certainty increases the willingness to converge, (2) the speed and size of the promised rewards, as those determine the attractiveness of the reward, (3) the credibility of the EU’s offer, as a lack of credibility undermines the EU’s offer, and (4) the presence of veto players and the level of adoption costs the candidate state faces, as a higher degree of adoption costs and a larger number of veto players involved make a candidate state less inclined to reform.<sup>28</sup>

### *The social learning model*

The second model is the social learning model, which, like the external incentive model, perceives Europeanisation as an EU-driven process, but it departs from the logic of appropriateness. Whereas the logic of consequences centres around the rational assessment of the consequences of one’s actions, the logic of appropriateness stipulates that actions are motivated by a sense of identity and norms. It assesses situations from ethical considerations, virtues and aspired goals in conformity with the actor’s self-understanding.<sup>29</sup>

The social learning model thus follows the core assumptions of social constructivism, conceptualising the EU as an international community with a specific identity and with its own norms and values. Following this model, the Europeanisation of candidate states depends on whether they consider the identity the EU conveys as appropriate

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<sup>25</sup> S. Lavenex and F. Schimmelfennig, “EU Democracy Promotion in the Neighbourhood: From Leverage to Governance?”, *Democratization*, vol. 18, no. 4, 2011, pp. 892-894.

<sup>26</sup> Schimmelfennig and Sedelmeier, *op.cit.*, p. 11.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, pp. 12-17.

<sup>29</sup> March and Olsen, *op.cit.*, p. 951.

for their own self-perception.<sup>30</sup> This identity can be used strategically. During the Central and Eastern European Countries' (CEECs) round of enlargement the EU built an identity of responsibility towards these states, to prevent further instability in the region after the Soviet Union's collapse. This significantly aided the CEECs' accession process, as it made them fit easier in the framework the EU provided.<sup>31</sup> The Europeanisation of candidate states is thus dependent on (1) the perceived legitimacy of EU rules and processes, (2) the identity of candidate states, and (3) the domestic resonance of the EU's norms in candidate states.<sup>32</sup>

### *The lesson-drawing model*

The lesson-drawing model can be based on both logics of rule adoption but differs from the other models as it sees Europeanisation as a candidate state-driven process. Policy transfer then is a voluntary process led by the candidate state's policy makers and society to draw lessons from the EU's experiences.<sup>33</sup> Domestic dissatisfaction with the *status quo* creates pressure on the candidate state's political elites to reform. These elites then look at the EU's way of doing things to respond to these demands.<sup>34</sup> Following this model, policy transfer thus takes place when domestic political elites believe EU rules and policies are suitable to solve a domestic problem. The model is driven by the perceived degree of societal policy dissatisfaction; that is, when the perception exists that domestic policies and rules are failing as a consequence of changes in circumstances or in political values in society or politics.<sup>35</sup> In this model, EU-centred epistemic communities introduce EU rules and policies as a solution to domestic problems.<sup>36</sup> The model furthermore considers the 'transferability' of rules as suitable solutions to the given domestic problem. This depends on whether the EU's rules and policies are in line with the institutions and traditions of governance of the candidate state, on whether the solution resonates with the domestic audience of the candidate state and on its technical viability.<sup>37</sup>

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<sup>30</sup> Schimmelfennig and Sedelmeier, *op.cit.*, p. 18.

<sup>31</sup> U. Sedelmeier, "Eastern enlargement: Risk, rationality and role-compliance", in F. Schimmelfennig and U. Sedelmeier (eds.) *The Politics of European Union Enlargement*, Abingdon: Routledge, 2005, p. 135.

<sup>32</sup> Schimmelfennig and Sedelmeier, *op.cit.*, pp. 18-20.

<sup>33</sup> *Ibid.*, p. 20.

<sup>34</sup> *Ibid.*, p. 21.

<sup>35</sup> *Ibid.*, p. 22.

<sup>36</sup> *Ibid.*, p. 23.

<sup>37</sup> *Ibid.*, pp. 23-24.

### Comparative case studies

This paper follows a 'most similar' case study design.<sup>38</sup> A logic of inductive reasoning is applied to two cases that are similar in many respects but differ in outcome. The cases are compared step by step to determine the explanatory variables to which the observed difference in outcome can be attributed.<sup>39</sup> Croatia and Serbia have been selected as cases as their outcomes strongly differ, with Croatia's Europeanisation process leading to successful reform and eventual EU membership,<sup>40</sup> and Serbia's process being characterised by stalled reforms and stranded membership negotiations.<sup>41</sup> This while both Serbia and Croatia are successor states to the Yugoslavian state,<sup>42</sup> and both states experienced a troublesome transition to a market-based economy.<sup>43</sup> The policy areas that are used to compare these two cases were consciously chosen, as these policy areas formed considerable obstacles to the Europeanisation of both states. Compliance with the ICTY was the last hurdle for Croatia's EU membership prospective,<sup>44</sup> and the adoption of the Third Energy Package is one of Serbia's biggest hurdles to comply with the EU's *acquis*.<sup>45</sup>

The dependent variable of policy transfer is operationalised following the approach used by Laure Delcour in her analysis of the Europeanisation in the EU's Eastern neighbourhood. She conceptualises policy transfer as the "domestic legal, institutional and policy sectoral change in response to EU demands",<sup>46</sup> and relies on Lavenex and Schimmelfennig's distinction between 'rule selection', 'rule adoption' and 'rule implementation'.<sup>47</sup> Rule selection refers to the degree to which candidate or

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<sup>38</sup> D. Toshkov, "Comparative Designs", in D. Toshkov, *Research Design in Political Science*, London, Macmillan Education, 2016, pp. 267-268.

<sup>39</sup> *Ibid.*

<sup>40</sup> M.P. Boduszynski, "The trials and triumphs of Europeanization in Croatia", in A. Elbasani (ed.), *European Integration and Transformation in the Western Balkans*, Abingdon, Routledge, 2013, pp. 39-40.

<sup>41</sup> J. Subotić, "Explaining Difficult States: The Problems of Europeanization in Serbia", *East European Politics and Societies*, vol. 24, no. 4, 2010, pp. 595-616.

<sup>42</sup> D. Jovic, "Croatia and the European Union: A long-delayed journey", *Journal of Southern Europe and the Balkans*, vol. 8, no. 1, 2006, p. 88.

<sup>43</sup> *Ibid.*

<sup>44</sup> Jovic, "Croatia and the European Union", *op.cit.*, p. 88.

<sup>45</sup> "Serbia cannot continue EU accession talks until energy related issues are resolved", *Serbia Energy.eu*, 5 April 2018, retrieved 4 April 2019, <https://serbia-energy.eu/serbia-cannot-continue-eu-accession-talks-energy-related-issues-resolved>.

<sup>46</sup> L. Delcour, "Theoretical Framework", in L. Delcour, *The EU and Russia in Their 'Contested Neighbourhood': Multiple External Influences, Policy Transfer and Domestic Change*, Abingdon, Routledge, 2017, p. 19.

<sup>47</sup> *Ibid.*, p. 20.

neighbourhood countries regard the EU's rules and policy as a 'normative reference point'.<sup>48</sup> Rule adoption refers to the transposition of EU rules into the domestic legal system, hence, the passing of a bill that translates the EU rule into domestic law.<sup>49</sup> Finally, the concept of rule implementation refers to the extent to which candidate states enforce these rules in practice.<sup>50</sup>

The explanatory variables are grouped into three levels that jointly determine the success of the Europeanisation: (1) domestic level factors, (2) EU-level factors and (3) regional level factors.<sup>51</sup> The domestic level concerns the candidate state's societal and political aspirations, interests and institutional arrangements such as the presence of veto players.<sup>52</sup> EU-level factors look at the conditionality employed by the EU, the demands made and the rewards offered to the candidate state.<sup>53</sup> Finally, the regional level looks at the interdependencies that exist between the candidate state and third actors.<sup>54</sup> In the case of the Western Balkans, especially Russia is important in this regard, due to its special cultural, geopolitical and economic interests.<sup>55</sup>

### **Compliance with the ICTY**

The ICTY was established on 25 May 1993 to ensure the prosecution of war crimes committed during the various wars that were waged after the disintegration of former Yugoslavia in 1991.<sup>56</sup> Although Serbia and Croatia had signed a ceasefire agreement in September 1991, hostilities continued well beyond that point. The concerns about the continued violence between Croatia and Serbia and the war crimes and ethnic cleansings perpetrated in Bosnia and Herzegovina prompted the EU and the United Nations (UN) to promote full cooperation with the ICTY in the Western Balkans.<sup>57</sup>

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<sup>48</sup> S. Lavenex and F. Schimmelfennig, "EU rules beyond EU borders: Theorizing external governance in European Politics", *Journal of European Public Policy*, vol. 16, no. 6, pp. 800-801.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Delcour, *op.cit.*, pp. 21-26.

<sup>52</sup> *Ibid.*, p. 21.

<sup>53</sup> *Ibid.*, p. 23.

<sup>54</sup> *Ibid.*, pp. 24-25.

<sup>55</sup> M. Mulalic and M. Karic, "The Western Balkans Geopolitics and Russian Energy Politics", *Epiphany: Journal of Transdisciplinary Studies*, vol. 7, no. 1, 2014, pp. 92-96.

<sup>56</sup> V. Pavlaković "Better the Grave than a Slave: Croatia and the International Criminal Tribunal for the former Yugoslavia", in S. Ramet, C. Konrad and R. Lukic (eds.), *Croatia since Independence: War, Politics, Society, Foreign Relations*, Munich, R. Oldenburg Verlag, 2008, p. 449.

<sup>57</sup> L. Barria and S. Roper, "How effective are international criminal tribunals? An analysis of the ICTY and the ICTR", *The International Journal of Human Rights*, vol. 9, no. 3, pp. 353-354.

Although the ICTY itself is, strictly seen, not an EU policy, cooperation with the Tribunal is for several reasons a policy transfer. The EU followed a stringent approach towards the Western Balkans to ensure their compliance with the ICTY. The EU stipulated full cooperation with the ICTY as an essential precondition for the opening of accession negotiations with the former Yugoslavian states, describing it as a *conditio sine qua non*.<sup>58</sup> The EU even went as far as to integrate the cooperation with the ICTY explicitly in the SAAs with the Western Balkan countries and to add it to the Copenhagen criteria 'where applicable' in 2005.<sup>59</sup> The EU's prioritisation of this issue relates to the normative role that the EU took upon itself regarding the Yugoslav wars. The EU hoped that the ICTY could reinforce the rule of law in the Western Balkans, as well as marginalise ethnic nationalism within the region.<sup>60</sup> It is the EU's values, such as international and transitional justice, the respect for human rights, a commitment to democracy and the rule of law that guided the EU's enlargement policy towards the Western Balkans in this respect. Compliance with the ICTY formed the means to consolidate these principles within the candidate states' political systems and societies.<sup>61</sup> Accordingly, the EU volunteered as a monitoring actor for compliance with the ICTY<sup>62</sup> and applied its conditionality strictly in this domain.<sup>63</sup>

### *Croatia's compliance with the ICTY*

Ever since Croatia's independence in 1991, the country was led by its authoritarian president and leader of the nationalist HDZ party, Franjo Tudjman. He had led the country through the Yugoslav wars of 1991-1995, promoting Croatian nationalism and regional power in the Balkans. His presidency meant a Croatian age of isolationism, as Tudjman was highly suspicious of the EU's intentions towards Croatia.<sup>64</sup> Croatia coming to terms with the ideological legacy of Tudjman after his death in 1999, meant a country that constantly went back and forth on its willingness to cooperate with the ICTY. When the UN Security Council proposed the establishment of the ICTY in February

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<sup>58</sup> A.J. Perkovic. "National Heroes vs. EU Benefits: Croatia and the EU Conditionality", *CEU Political Science Journal*, vol. 8, no. 2, 2013, p. 183.

<sup>59</sup> E. Gateva, "EU Conditionality in the Context of the South-Eastern Enlargements", in E. Gateva, *European Union Enlargement Conditionality*, New York, Palgrave MacMillan, 2015, pp. 127-129.

<sup>60</sup> Rangelov, *op.cit.*, p. 371.

<sup>61</sup> J. Mäki, "EU Enlargement Politics: Explaining the Development of Political Conditionality of 'Full Cooperation with the ICTY' towards Western Balkans", *Politička misao: časopis za politologiju*, vol. 45, no. 5, 2008, pp. 48-53.

<sup>62</sup> *Ibid.*, p. 54.

<sup>63</sup> Rangelov, *op.cit.*, p. 366.

<sup>64</sup> Jovic, "Croatia and the European Union", *op.cit.*, pp. 88-89.

1991, Croatia was one of its strongest proponents.<sup>65</sup> On 16 April 1996, the Croatian Parliament – the Sabor – even established the ICTY’s jurisdiction as constitutional law.<sup>66</sup> Croatia’s swift rule adoption of ICTY compliance, however, only took place as the Tudjman regime expected the ICTY to exclusively prosecute Serbian nationals, not Croatians. When Tudjman realised this was not the case, the Sabor soon declared the first law void and stated that Croatia fought a ‘defensive war’ and that war crimes committed by Croatian nationals fell outside of the ICTY’s jurisdiction.<sup>67</sup> Complying with the ICTY would force Croatia to make an exception from its policy of non-extradition, which in the eyes of many Croats challenged the country’s newly won independence. The EU was seen as the personification of an arrogant, preachy, and unreliable West, aiming to undermine Croatia’s independence.<sup>68</sup> Tudjman even prohibited all contact between members of the Croatian army and the ICTY.<sup>69</sup> Only when the UN Security Council and the EU threatened to sanction the Tudjman regime if it refused to comply with the demands of the tribunal, Tudjman allowed for the extradition of the first twelve indicted.<sup>70</sup> In October 2000, shortly after Tudjman’s death, the Sabor passed the ‘declaration on the Homeland War’ which legally established that in 1991-1995 Croatia had fought a war of self-defence against Yugoslavia. Therefore, it claimed, Croatia had solely been a victim of the war with Yugoslavia and the Croatian soldiers involved could never be suspected of war crimes.<sup>71</sup> The myth of the Homeland War seriously affected the Croatian media’s and society’s understanding of the ICTY and EU.<sup>72</sup> The ICTY and the EU were seen as attacking Croatia’s statehood, which obstructed their efforts to ensure Croatia’s cooperation with the ICTY.<sup>73</sup>

Only with the coming to power of the new Social Democratic President, Ivica Račan, in 2000, Croatia reoriented its foreign policy. The newly elected leader of the Croatian Social Democratic Party (SDP) believed that closer relations with the EU would consolidate Croatia’s status as a sovereign European state and considered ICTY

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<sup>65</sup> Barria and Roper, *op.cit.*, p. 354.

<sup>66</sup> Pavlaković, *op.cit.*, p. 452.

<sup>67</sup> *Ibid.*

<sup>68</sup> Jovic, “Croatia and the European Union”, *op.cit.*, pp. 87-90.

<sup>69</sup> Pavlaković, *op.cit.*, p. 453.

<sup>70</sup> *Ibid.*; Jovic, “Croatia and the European Union”, *op.cit.*, p. 93.

<sup>71</sup> D. Saxon, “Exporting Justice: Perceptions of the ICTY Among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia”, *Journal of Human Rights*, vol. 4, no. 4, 2005, pp. 564-565.

<sup>72</sup> A. Ljubojevic, “What’s the Story? Transitional Justice and the Creation of Historical Narratives in Croatia and Serbia”, *Politička misao*, vol. 49, no. 5, 2012, pp. 58-64.

<sup>73</sup> D. Jovic, “Croatia after Tudjman: The ICTY and Issues of Transitional Justice”, *Chaillot Paper*, vol. 116, 2009, p. 15.

compliance as necessary.<sup>74</sup> The Racan government revoked the laws codifying the Homeland War myth and excluding Croatian nationals from the ICTY's jurisdiction. Additionally, it passed a law legally establishing full compliance with the ICTY as a Croatian obligation, leading to Croatia's final rule selection and adoption of ICTY compliance.<sup>75</sup> In 2001 the SDP government signed Croatia's SAA.<sup>76</sup> Herein, full compliance with the ICTY was established as an essential condition for further integration.<sup>77</sup> The implementation of this commitment, however, proved to be much more complicated than expected. The SDP government received many more indictments from the ICTY than the Tudjman regime before it. The SDP, wishing to comply with the EU's conditionality, sought to accommodate the ICTY as much as possible. Public opposition grew so fierce against the extradition of 'Croatia's heroes' that Racan faced large-scale protests and even opposition within its own cabinet.<sup>78</sup> To prevent losing his majority, Racan became less cooperative with the ICTY.<sup>79</sup> When the HDZ began using the indictments of the popular former generals Ante Gotovina and Janko Bobetko as a rallying point for the upcoming elections,<sup>80</sup> Racan felt he needed to disregard the ICTY's demands and allowed Gotovina to escape from the country without any resistance and Bobetko to die of old age without standing trial.<sup>81</sup> During the following elections, the HDZ managed to capitalise on the societal discontent with Racan's government over the indictments of Gotovina and Bobetko. Promoting itself as the "opponent of the 'devaluation of the Homeland War'"<sup>82</sup>, the HDZ's new leader, Ivo Sanader, heavily criticised the SDP for extraditing Croatian soldiers to The Hague. The HDZ won 43% of the vote, enough to overtake the SDP as biggest party. The EU and ICTY feared that the new HDZ government would backtrack on the progress made by the SDP and refuse further cooperation with the ICTY. Surprising everyone, Sanader however formed a coalition government with a Serbian minority party, abolished the anti-ICTY rhetoric and marginalised former Tudjmanists

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<sup>74</sup>Jovic, "Croatia and the European Union", *op.cit.*, p. 86.

<sup>75</sup> Pavlaković, *op.cit.*, p. 455.

<sup>76</sup> Jovic, "Croatia and the European Union", *op.cit.*, p. 95.

<sup>77</sup> Council of the European Union, "The Stabilisation and Association Agreement with Croatia will enter into force on 1st February 2005", 16049/04 final, Brussels, 21 December 2004, retrieved 22 April 2019, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/83239.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/83239.pdf).

<sup>78</sup> Pavlaković, *op.cit.*, p. 455.

<sup>79</sup> *Ibid.*, p. 456.

<sup>80</sup>Jovic, "Croatia and the European Union", *op.cit.*, p. 96.

<sup>81</sup> Pavlaković, *op.cit.*, pp. 456-458.; Jovic, "Croatia and the European Union", *op.cit.*, p. 96.

<sup>82</sup> Jovic, "Croatia after Tudjman", *op.cit.*, p.16; Jovic, "Croatia and the European Union", *op.cit.*, p.98.

within his party.<sup>83</sup> The HDZ reformed itself as a centre-right pro-EU party, completely changing the dynamics of Croatian politics. An informal 'Pact for Europe' formed between the government and the opposition, who agreed that EU accession was to be Croatia's foremost political priority and that compliance with the ICTY was necessary to attain that goal.<sup>84</sup>

By the time that Croatia applied for EU membership in 2003, its political landscape had become less focused on the Gotovina case, and HDZ's government enjoyed strong support while arguing in favour of compliance with the ICTY.<sup>85</sup> Nevertheless, Sanader refused to address the indictment of Gotovina, who, despite the EU's conditionality, remained at large.<sup>86</sup> The European Commission noted Croatia's progress in its published opinion on Croatia's bid for EU membership, although admitting more progress needed to be made.<sup>87</sup> The opening of negotiations for Croatia's accession were accordingly set to start on 17 March 2005, on the condition that Croatia would continue to comply.<sup>88</sup>

While the Croatian authorities claimed not to know where Gotovina was, a chain of scandals revealed that the Croatian intelligence service that was tasked with localising Gotovina, was instead collecting evidence to dispute Gotovina's indictment; and that Gotovina was still receiving his pension payments and had unhindered access to his Croatia bank accounts.<sup>89</sup>

Sanader promised the EU's High Representative, Javier Solana, that Croatia would take all appropriate measures to bring Gotovina to justice. The European Commission had, however, lost its patience and in its 2005 negotiation framework it declared Croatia was no longer in compliance with the ICTY. This conclusion was supported by the ICTY itself.<sup>90</sup> On 16 March 2005, one day before accession negotiations would be opened, the European Council stated in its Council Conclusions that the EU would refrain from doing so until Croatia was fully cooperating with the ICTY.<sup>91</sup> Responding to

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<sup>83</sup> *Ibid.*

<sup>84</sup> Jovic, "Croatia and the European Union", *op.cit.*, p. 94.

<sup>85</sup> Pavlaković, *op.cit.*, p. 462; Jovic, "Croatia and the European Union", *op.cit.*, p. 100.

<sup>86</sup> Mäki, *op.cit.*, pp. 63-64.

<sup>87</sup> European Commission, "Opinion on Croatia's Application for Membership of the European Union", COM(2004) 257 final, Brussels, 20 April 2004, pp. 30, 119.

<sup>88</sup> Perkovic, *op.cit.*, pp. 184-185

<sup>89</sup> Pavlaković, *op.cit.*, p. 463.

<sup>90</sup> Perkovic, *op.cit.*, pp. 184-185.

<sup>91</sup> Council of the European Union, "Council conclusions on Croatia", 16 March 2005, retrieved 12 April 2019, <http://www.eu2005.lu/en/actualites/conseil/2005/03/16conclusionscagre/croatia.pdf>.

this strong display of EU conditionality, the Senader government increased its information sharing practices with the ICTY. In October 2005, the ICTY's Chief Prosecutor Carla Del Ponte declared that Croatia was finally fully complying with the ICTY, after which the EU opened Croatia's accession negotiations. In December 2005, Ante Gotovina was arrested and extradited to the ICTY in The Hague, signifying Croatia's final rule implementation of ICTY compliance.<sup>92</sup>

### *Serbia's compliance with the ICTY*

In January 2001 Serbia's former authoritarian president, Slobodan Milosevic, was overtaken in elections by the Democratic Opposition of Serbia coalition (DOS).<sup>93</sup> Although the new DOS-led government proved more open to reforms, populist rhetoric from parties such as the Serbian Radical Party (SRS) constrained the political momentum for reforms.<sup>94</sup> This in turn affected Serbia's ability to comply with the ICTY. Milosevic had rallied against the Tribunal, as negative sentiments towards the ICTY remained largely predominant in Serbian society.<sup>95</sup> The new government was internally heavily divided over the issue. While the new Prime Minister Zoran Djindjic wished to increase Serbia's cooperation with the ICTY, many of his ministers felt threatened by the idea of cooperating with the ICTY due to the possibility of personal implication.<sup>96</sup> The cabinet split over the question of a 'hard' transition or a 'soft' transition to liberal democracy in Serbia, with the ICTY as a symbolic element to this political demarcation.<sup>97</sup> Furthermore, during its rule the Milosevic regime had recruited various figures from the criminal underworld to serve in important public or private positions. These Milosevic cronies now fought the ICTY's requested arrest of Milosevic to avoid being exposed.<sup>98</sup> It was only after the US and the EU had threatened economic sanctions that Milosevic was arrested in 2001, prompting mass protests

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<sup>92</sup> Rangelov, *op.cit.*, p. 367.

<sup>93</sup> M. Pawelec and S. Grimm, "Does National Identity Matter? Political Conditionality and the Crucial Case of Serbia's (Non-)Co-operation with the ICTY", *Journal of Common Market Studies*, vol. 52, no. 6, 2014, p. 1295.

<sup>94</sup> M. Spoerri and A. Freyberg-Inan, "From prosecution to persecution: perceptions of the International Criminal Tribunal for the former Yugoslavia (ICTY) in Serbian domestic politics", *Journal of International Relations and Development*, vol. 11, 2008, p. 357.

<sup>95</sup> Pawelec and Grimm, *op.cit.*, p. 1295.

<sup>96</sup> *Ibid.*, p. 1296.

<sup>97</sup> E. Gordy, "Serbia After Djindjic - War Crimes, Organized Crime, and Trust in Public Institutions", *Problems of Post-Communism*, vol. 51, no. 3, 2004, pp. 12-13.

<sup>98</sup> S.P. Ramet, "Croatia and Serbia since 1991: An Assessment of Their Similarities and Differences", *Journal of Communist Studies and Transition Politics*, vol. 27, no. 2, pp. 268-269.

against the regime in power.<sup>99</sup> On 12 March 2003, tensions came to a climax as Prime Minister Djindjic was killed by a sniper while on his way to the office. The incident highlighted just how deeply the criminal world had established itself in the political landscape of Serbia.<sup>100</sup>

The subsequent presidential and parliamentary elections in November and December 2003 further consolidated Serbia's non-compliance with the ICTY. Closely before the vote, the ICTY indicted four former generals that had served under Milosevic, turning the issue into a central theme of the elections.<sup>101</sup> The ICTY had become an enormously unpopular institution right before the elections, leading most parties, including the DOS, to run on an anti-ICTY platform. The most outspoken critic of the ICTY remained the SRS, which won the elections in a landslide, accumulating over 46% of the votes.<sup>102</sup> As the SRS, however, failed to form a coalition government, the chance was given to the Democratic Party of Serbia (DPS), led by Vojislav Koštunica.<sup>103</sup> Leading a minority government dependent on the support of the Serbian Socialist party (SSP), Koštunica opened a new chapter in Serbia's relationship with the ICTY. Koštunica struggled to balance the wishes of the pro-cooperation forces of his own coalition with the anti-ICTY sentiments of the Socialist Party.<sup>104</sup> He was therefore regularly pressured to ignore indictments from the ICTY to keep his government afloat.<sup>105</sup> To increase the incentive for Serbia to cooperate with the ICTY, the EU's External Relations Commissioner, Chris Patten, made the EU's SAA feasibility study on Serbia dependent on its ICTY-compliance.<sup>106</sup> Compliance became a hard condition for Serbia to attain its SAA, and was expected to cultivate goodwill from the EU in the negotiations on the future of Kosovo and Montenegro.<sup>107</sup> Koštunica therefore called on the indicted generals to 'surrender voluntarily'.<sup>108</sup> Consequently, even though Serbia was not yet declared to be in full cooperation with the ICTY, the EU published its feasibility study and opened SAA negotiations with Serbia.<sup>109</sup>

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<sup>99</sup> Pawelec and Grimm, *op.cit.*, p. 1296.

<sup>100</sup> Gordy, *op.cit.*, p. 10.

<sup>101</sup> N.M. Rajkovic, "The Limits of Consequentialism: ICTY Conditionality and (Non)Compliance in Post-Milosevic Serbia", *Review of European and Russian Affairs*, vol. 4, no. 1, p. 18.

<sup>102</sup> *Ibid.*, pp. 19-20.

<sup>103</sup> *Ibid.*

<sup>104</sup> M. Holliday, "Serbia and the ICTY: Paying the Price", *Transitions Online*, 27 January 2005, retrieved 22 April 2019, <https://www.ceeol.com/search/article-detail?id=212216>.

<sup>105</sup> Rajkovic, *op.cit.*, p. 21.

<sup>106</sup> *Ibid.*, p.22.

<sup>107</sup> Subotić, *op.cit.*, pp. 602-603.

<sup>108</sup> Rajkovic, *op.cit.*, pp. 22-23.

<sup>109</sup> Pawelec and Grimm, *op.cit.*, p. 1298.

The pragmatic decision to cooperate with the ICTY was badly received by the Serbian public. The Koštunica government tried to spin the extradition of the generals as “the sacrifice of brave victims of an unjust international system, doing their patriotic duty to help Serbia’s rehabilitation with the international community”.<sup>110</sup> This approach backfired when ‘the butcher of Srebrenica’, Ratko Mladic, refused to surrender voluntarily. While the EU would suspend SAA negotiations if Mladic was not extradited, the SRS and SSP were frantic supporters of Mladic and threatened to drop their support for the coalition if the government would arrest him.<sup>111</sup> The only thing Koštunica could do was promising better compliance in the future, without taking any concrete actions at that moment.<sup>112</sup>

Serbia’s pathway to association with the EU remained stuck in this impasse, until on 17 February 2007 the EU suddenly walked back on its hard line. The EU declared it was willing to reopen the SAA negotiations, in the hope of gaining Serbia’s goodwill to find a peaceful compromise on the issue of Kosovo’s status. Quickly thereafter Serbia signed its SAA with the EU even though Mladic still was at large.<sup>113</sup> Some member states disputed this decision and refused to ratify the SAA until Mladic was extradited to the ICTY. Most adamant in this position were the Dutch, who held up firm opposition against Serbia’s SAA in the next one and a half year.<sup>114</sup> Another reason for the EU’s changed approach was that it hoped to sway the Serbian parliamentary elections of that year in favour of more pro-EU parties. The elections, however, resulted in such a division of seats that the Democratic Party of Boris Tadić could not reach a majority in parliament with its priorly envisioned coalition. He needed the support of one more party, leading the Serbian Socialist Party, that still vigorously opposed cooperation with the ICTY, to become the kingmakers in the new coalition.<sup>115</sup> The problem was that although politically Serbia went back and forth on the issue, Serbian society had only hardened in its opposition against the ICTY and still supported Mladic. Similarly, although EU membership was supported amongst Serbian politicians, only a very small number of them also supported European values and ideals. The Serbian leadership handled compliance with the ICTY with a pragmatic attitude, only moving towards it

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<sup>110</sup> Rajkovic, *op.cit.*, p. 25.

<sup>111</sup> *Ibid.*, p. 26.

<sup>112</sup> *Ibid.*, pp. 27-28.

<sup>113</sup> Subotic, *op.cit.*, pp. 607-608.

<sup>114</sup> B. Stahl, “Perverted Conditionality: The Stabilisation and Association Agreement between the European Union and Serbia”, *European Foreign Affairs Review*, vol. 16, pp. 481-482.

<sup>115</sup> *Ibid.*, p. 607.

when there were clear political benefits of doing so.<sup>116</sup> Serbia's willingness to acquiesce with the EU's demands was further complicated by the Kosovar unilateral declaration of independence in February 2008.<sup>117</sup>

As the Dutch and Belgians doubled down on their opposition and the Serbs refused to give in, the SAA negotiations were, again, put on hold.<sup>118</sup> The former conceded a year later, after High Representative Javier Solana had extensively lobbied The Hague and Brussels to soothe their concerns. At the same time, the ICTY declared Serbia was in (partial) 'cooperation'<sup>119</sup> with the international tribunal. Serbia's SAA was therefore ratified in 2009 and Serbia applied for EU membership in 2010.<sup>120</sup> While the Commission wished to push for a 'fast-track' for Serbian membership to the EU, the Netherlands reacted sceptically to the prospect of paving the way for Serbian membership to the EU as long as no *full* compliance with the ICTY was guaranteed. On 2 June 2011, Serbia arrested Mladic and Goran Hadzic, the last two indicted individuals by the ICTY, demanding the EU to grant Serbia candidate status in return.<sup>121</sup> The ICTY declared that as of July 2011 all fugitive Serbians had been extradited to the ICTY, meaning Serbia was now finally in full compliance.<sup>122</sup> Although Serbia thus eventually implemented the EU's rule of compliance with the ICTY, it never went through the process of rule selection or adoption.

The second case study is the policy transfer of the Third Energy Package into Croatian and Serbian law.

### The Third Energy Package

The Third Energy Package is a set of two directives and three regulations, put into place by the EU to strengthen the functioning of the common energy market.<sup>123</sup> It builds upon the legal framework provided by the First Energy Package of 1996 and expands

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<sup>116</sup> Pawelec and Grimm, *op.cit.*, pp. 1299-1300.

<sup>117</sup> Stahl, *op.cit.*, p. 482.

<sup>118</sup> *Ibid.*

<sup>119</sup> n.b. not full cooperation.

<sup>120</sup> Stahl, *op.cit.*, p. 482.

<sup>121</sup> *Ibid.*, p. 484.

<sup>122</sup> ICTY, "The Fugitives", The United Nations International Criminal Tribunal for the Former Yugoslavia, retrieved 25 April 2019, <http://www.icty.org/en/about/office-of-the-prosecutor/the-fugitives>.

<sup>123</sup> D2009/72/EC (common rules for the internal market in electricity), D2009/73/EC (common rules for the internal market in natural gas), R713/2009 (establishing an Agency for the Cooperation of Energy Regulators), R714/2009 (conditions for access to the network for cross-border exchanges in electricity), R715/2009 (conditions for access to the natural gas transmission networks).

on the Second Energy Package of 2003, that places member states under more stringent obligations to unbundle their gas and electricity industries and to stimulate competition in energy generation and supply.<sup>124</sup> The Third Energy Package established rules in five areas: (1) the further unbundling of energy suppliers in both the gas and electricity markets; (2) a strengthening of the independence of energy market regulators; (3) the establishment of the EU Agency for the Cooperation of Energy Regulators (ACER); (4) increased cooperation between European Transmission System Operators (TSOs); and (5) enhanced transparency of retail markets.<sup>125</sup> With these measures the EU aims to make its common energy market better adapted to consumer demands. It keeps prices and competition in the energy market fair, assures the EU's security of supply and stimulates the use of renewable energy sources. Especially the vertical unbundling of energy markets forms an essential element of the package. The functional unbundling of upstream and downstream infrastructure (or alternatively the unbundling of ownership over such infrastructure) is a 'make or break' step in the development of fair competition within the EU's energy market as it is essential to prevent monopolistic competition from taking over the market.<sup>126</sup> Russia heavily opposes the unbundling regime, as it perceives to be specifically targeted by the legislation, and it complicates its geopolitical and economic interests.<sup>127</sup>

### *Croatia's compliance with the Third Energy Package*

Croatia's policy transfer of the Third Energy Package only gained momentum after the death of Franjo Tudjman and the following marginalisation of his cronies. As discussed before, Tudjman had sought to isolate Croatia from the EU's influence and had rejected legal approximation with the EU. The convergence of beliefs regarding the European future of Croatia between the SPD government and the HDZ consequently allowed faster progress in Croatia's approximation with the EU *acquis* also in the domain of energy.<sup>128</sup> In this renewed political landscape, Croatia was much more open to reforms liberalising its economy. The signing of Croatia's SAA in 2001 further

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<sup>124</sup> N. Vlahinic, "Energy Market Reforms in Croatia: Challenges and Perspectives", *Economy & Business*, vol. 8, 2014, pp. 113-115.

<sup>125</sup> J. Dutton, "EU Energy Policy and the Third Energy Package", *UKERC EPG Working Paper*, vol. 1505, 2015, p. 10.

<sup>126</sup> EKONERG, "Harmonization of the Croatian Energy Sector and Energy Legislation with the Third Energy Package of the European Union Energy Regulations", *Consortium for Study Preparation*, p. 3.

<sup>127</sup> T. Romanova, "Is Russian Energy Policy Towards the EU Only About Geopolitics? The Case of the Third Energy Package", *Geopolitics*, vol. 21, no. 4, p. 863.

<sup>128</sup> Jovic, "Croatia and the European Union", *op.cit.*, p. 86.

confirmed this ambition and gave Croatia a prospect on EU membership in return.<sup>129</sup> As Croatia's adoption of the EU's First Energy Package was a part of the ambitions set out in the SAA, this moment proved Croatia's commitment to legal harmonisation in the energy sector.<sup>130</sup> The EU demanded considerable reforms from Croatia, including increased efforts to combat corruption in the civil service and in public procurement.<sup>131</sup> Despite continued scepticism towards the benefits of these reforms among Croatia's ruling elites, international pressure led to the adoption of five laws transposing the First Energy Package into Croatian law.<sup>132</sup> Croatia accepted the basic principles of the EU's energy market, such as market and price transparency, the freedom of energy exchange, and the opening up of free trade in electricity and gas.<sup>133</sup> The transposition of the First Energy Package, although implemented improperly,<sup>134</sup> formed the legal point of departure for further energy market reforms in Croatia and effectively meant its rule selection of EU energy market legislation.

Croatia transposed the Second Energy Package through multiple acts regulating its gas and electricity market in 2004. The application of these laws yielded varying results in both sectors. While Croatia's gas market was unbundled to such a degree that it even satisfied elements of the Third Energy Package, its electricity market saw little reform in practice.<sup>135</sup> This correlates with the fact that although until 2012 Croatia produced 70% of the gas needed for domestic consumption, it remained dependent on interconnections with its neighbours for its security of supply of electricity.<sup>136</sup> Croatia set up the Croatian Energy Regulatory Agency (CERA), creating an independent regulatory agency for its energy market – although in practice still linked to the government.<sup>137</sup>

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<sup>129</sup> *Ibid.*, p. 95.

<sup>130</sup> A. Boromisa, "Energy in the European Union and Croatia", in K. Ott (ed.), *Croatian Accession to the European Union Vol. 1: Economic and Legal Challenges*, Zagreb, Institute of Public Finance, 2003, p. 186.

<sup>131</sup> G. Kuris, "Cleaning House: Croatia Mops up High-Level Corruption, 2005–2012", *Innovations for Successful Societies*, 2013, pp. 1-20.

<sup>132</sup> C. Grayhow, "Croatia", in A. Karatnycky, A. Motyl and A. Schnitzer (eds.), *Nations in Transit 2002: Civil Society, Democracy and Markets in East Central Europe and the Newly Independent States*, Abingdon, Routledge, 2002, pp. 140-154.

<sup>133</sup> Boromisa, *op.cit.*, p. 196.

<sup>134</sup> *Ibid.*

<sup>135</sup> EKONERG, *op.cit.*, p. 4.

<sup>136</sup> European Commission, "Croatia", in European Commission, *Single market progress report 2014*, 2014, retrieved 25 March 2019, [https://ec.europa.eu/energy/sites/ener/files/documents/2014\\_countryreports\\_croatia.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2014_countryreports_croatia.pdf); "Croatia: Electricity imports dependency", *SEE Energy News*, 8 January 2015, retrieved 25 March 2019, <https://serbia-energy.eu/croatia-electricity-imports-dependency>.

<sup>137</sup> Vlahinic, *op.cit.*, p. 117.

As part of Croatia's bid to accede to the EU, the European Commission in 2007 assessed the state of the Croatian energy market in chapter 15 of its screening report for the opening of accession negotiations. Although Croatia was still not completely in line with the standards required for membership, the Commission concluded that the laws put in place were ambitious enough to ensure the strengthening of its oil stock reserves, and to open the path towards an unbundling of the HEP Holding Group, Croatia's monopolistic and fully state-owned electricity corporation.<sup>138</sup> The Commission was therefore satisfied with Croatia's overall progress<sup>139</sup> and opened negotiations on chapter 15 without opening benchmarks.<sup>140</sup> Croatia's extensive legal convergence to the European norm thus paid off, as Croatia was given the benefit of the doubt by the Commission over the progress it had already made.

Following the opening of negotiations in 2008, the Council published its conclusions on the fifth meeting of the Accession Conference with Croatia, setting out the closing benchmarks regarding chapter 15. These concerned standards for nuclear safety, the adoption of a new mining act, and legislation to comply with the EU's 2020 climate goals.<sup>141</sup> Most importantly, however, Croatia needed to "fully implement EU legislation concerning common rules for the internal market in electricity and natural gas and on conditions for access to the network for cross-border exchanges in electricity" to close chapter 15.<sup>142</sup> This position was further elaborated on by the Council in internal documents and meant that although Croatia was in compliance with the Second Energy Package, the Council considered it an essential criterion for Croatia to comply with the common energy market rules of the recent Third Energy Package, that would enter into force before Croatia's accession.<sup>143</sup> The Council therefore concluded that Croatia complied with the closing benchmarks it had set out for chapter 15, but that closing the chapter remained conditional on Croatia's full transposition of the Third Energy Package. This turned Croatia's adoption of the Third Energy Package into the ultimate condition for EU membership.<sup>144</sup> Croatia transposed the Third Energy Package

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<sup>138</sup> European Commission, "Screening report Croatia Chapter 15 – Energy", Final, Brussels, 29 March 2007, retrieved 5 April 2019, [https://www.esiweb.org/pdf/croatia\\_screening\\_report\\_15\\_hr\\_internet\\_en.pdf](https://www.esiweb.org/pdf/croatia_screening_report_15_hr_internet_en.pdf), p. 4.

<sup>139</sup> *Ibid.*, p. 10.

<sup>140</sup> *Ibid.*, pp. 10-11.

<sup>141</sup> Council of the European Union, "Fifth meeting of the Accession Conference at Deputy level with Croatia", 8633/08 final, Brussels, 21 April 2008, p. 2.

<sup>142</sup> *Ibid.*

<sup>143</sup> Council of the European Union, "Accession Negotiations with Croatia - Chapter 15: Energy Accession negotiations with Croatia," 12651/09, Brussels, 31 August 2009, p. 4.

<sup>144</sup> *Ibid.*, p. 4 ; Council of the European Union, "Eighth meeting of the Accession Conference at Deputy level with Croatia", 16796/09, Brussels, 27 November 2009, p. 2.

through several acts in 2012-2013. Amongst these acts, the Electricity Market Act and the Gas Market Act were the most important. The latter unbundled the HEP Group's transmission utilities from its generation utilities,<sup>145</sup> marking Croatia's full transposition of the Third Energy Package. Shortly thereafter, Croatia acceded to the EU as its 28<sup>th</sup> member state.<sup>146</sup>

Croatia's implementation of the Third Energy Package met no big problems. In the electricity sector Croatia promised in 2013 to unbundle the HEP Group's supply and transmission utilities in the next three years. By November 2016, it had functionally unbundled the HEP Group following the 2016 creation of HEP Elektra for energy supply and the 2013 creation of HEP Operator Prijenosnog Sustava for transmission operation.<sup>147</sup> In the gas sector, internal reforms allowed Croatia to restructure its market from a monopoly into an oligopoly with a shift in the ownership structure of the gas utilities of the HEP Group.<sup>148</sup> Also the role of CERA was considerably strengthened. CERA gave out significantly more licences in the supply and distribution sides of Croatia's gas sector to new actors that sought to compete with the HEP Group, showcasing its increased political independence.<sup>149</sup> Also in the domain of supply security, Croatia made considerable progress. In 2011 Croatia diversified its gas imports away from Russian gas, switching to supply from the Italian company ENI.<sup>150</sup> Additionally, when the Commission deemed Croatia's participation in the construction of the Russian South Stream Pipeline inconsistent with the Third Energy Package's unbundling regime, Croatia dropped the project and redirected its investments into Liquefied Natural Gas (LNG) infrastructure.<sup>151</sup> Croatia therefore managed to ensure rule implementation after its accession.

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<sup>145</sup> P. Santic, "Will new rules of the game improve competitiveness on the Croatian energy market?", *Schoenherr Roadmap2014*, 2014, retrieved 9 April 2019, [http://roadmap2014.schoenherr.eu/days-croatias-accession-eu-energy-review/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](http://roadmap2014.schoenherr.eu/days-croatias-accession-eu-energy-review/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original).

<sup>146</sup> CSM, "CMS Expert Guide to Electricity – Croatia", *CMS Legal Services*, 2015, p. 3.

<sup>147</sup> M. Garaca, "Croatian power utility HEP unbundles supply from distribution business", *SeeNews*, 9 November 2016, retrieved 11 April 2019, <https://seenews.com/news/croatian-power-utility-hep-unbundles-supply-from-distribution-business-546254>.

<sup>148</sup> A. Bajo, M. Primorac and D. Jurinec, "The Gas Sector in the Republic of Croatia - Liberalisation and Financial Operations", *Institute of Public Finance FISCUS*, no. 3, 2016, p. 2.

<sup>149</sup> Banjo *et. al.*, *op.cit.*, pp. 3-4.

<sup>150</sup> *Ibid.*, pp. 18-19.

<sup>151</sup> Blazevic, *op.cit.*, p. 2. ; T. Charlier, "Russia: Bypassing Croatia with the Southstream pipeline", *Stratfor Worldview*, 6 November 2012, retrieved 22 March 2019, <https://worldview.stratfor.com/article/russia-bypassing-croatia-south-stream-pipeline>.

### *Serbia's compliance with the Third Energy Package*

Serbia's process of rule selection, adoption and implementation of the Third Energy Package strongly contrasts with Croatia's. Already in 2006 Serbia committed itself to the active legal approximation with the EU in the energy sector through its accession to the EU's Energy Community.<sup>152</sup> Doing so, Serbia explicitly accepted the EU's *acquis* as the norm to converge to. Later Serbia did in fact undertake many of the legal measures to transpose the EU's rules and regulations of the First and Second Energy Packages. Between 2005 and 2010 Serbia adopted three energy strategies outlining plans for the adoption and implementation of the EU's First, Second and Third Energy Packages, with mixed results.<sup>153</sup> On the one hand, Serbia adopted the 2011 Energy Law, codifying a large part of the Third Energy Package. It strengthened the role and independence of the Energy Agency of the Republic of Serbia (AERS) and rewrote its unbundling regime. On the other hand, however, the Serbian government did very little to enforce these laws.<sup>154</sup> In the electricity sector, the two most important energy enterprises, EMS (Elektromreza Srbije) and EPS (Elektroprivreda Srbije), never saw any real unbundling.<sup>155</sup> In the gas sector, Serbia refused to release state ownership over the energy company 'Srbijagas' and also here did not implement the unbundling regime it had adopted.<sup>156</sup>

The European Commission therefore negatively assessed Serbia's legal approximation within the energy domain. In its 2014 screening report on the opening of negotiations on chapter 15, the Commission established that Serbia had shown "a general intention" to adopt and implement the EU's energy *acquis*, but that it would still require Serbia "considerable additional work" to ensure its compliance in this domain.<sup>157</sup> The EU therefore established multiple explicit benchmarks for opening chapter 15. Serbia had to increase its efforts in complying with the appropriate levels of oil stock reserves,

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<sup>152</sup> European Union, "Stabilization and Association Agreement Between the European Communities and Their Member States of the one Part, and the Republic of Serbia, of the Other Part", *Official Journal of the European Union*, L 278 final, Brussels, 18 October 2013, p. 103; The European Energy Community, "Action Plans, Reports and Statements – Serbia", *Energy Community*, retrieved 25 February 2019, <https://energy-community.org/implementation/Serbia/reporting.html>.

<sup>153</sup> European Bank for Reconstruction and Development, "Commercial laws of Serbia, An assessment by the EBRD", London, ERBD, 2014, p. 10.

<sup>154</sup> D.O. Reich, "European Energy Law and its Impact on Serbia: Progress, Perspectives and Possibilities", *Thermal Science*, vol. 16, no. 1, 2012, pp. 18-19.

<sup>155</sup> *Ibid.*, p. 19.

<sup>156</sup> *Ibid.*, p. 20.

<sup>157</sup> European Union, "Screening Report Serbia: Chapter 15 – Energy", MD 99/15 final, Brussels, 12 May 2015, p. 20.

needed to ensure the full unbundling of its gas sector and was to refrain from endeavours that would be in breach with the unbundling regime of the Third Energy Package.<sup>158</sup> The EU applied its conditionality more strictly in the case of Serbia than in Croatia. The Third Energy Package had been much newer when accession negotiations were opened with Croatia, than when Serbia was going through the same process.<sup>159</sup> Serbia was given until 1 January 2015 to implement the Third Energy Package, including its unbundling regime.<sup>160</sup> In 2014 it started to officially restructure its gas sector. In 2017 Serbia officially separated Srbijagas' assets for gas transport and for gas distribution into two separate companies. In practice, however, Srbijagas continued to operate as one company.<sup>161</sup>

As explained by EU officials in a series of interviews, Serbia's reluctance towards energy sector reform is best explained with the extensive influence of Russian actors and energy companies. This confronts Serbian officials with a clear dilemma. While the EU expects Serbia to reform its energy sector to make progress on its track towards EU membership, Serbia remains both politically and economically indebted to Russia, whom it cannot afford to alienate.<sup>162</sup> Russia's presence in Serbia's energy sector is very significant. In the gas sector, Gazprom owns large amounts of shares in Serbia's largest companies. It owns a controlling majority of shares over NIS, after it bought the Serbian gas enterprise in 2008 for one-third of its value as part of the energy agreement between the two states. This arrangement was allegedly a 'tit-for-tat bargain' for Russia's support to Serbia during the Kosovo crisis.<sup>163</sup> Gazprom also exercises strong influence over Srbijagas as long-term contracts between Srbijagas and Gazprom have indebted the former to such an extent that Gazprom could cut the gas supply at will.<sup>164</sup> This situation is the result of the creation of the joint-venture 'Yugorosgaz' between Srbijagas (25%) and Gazprom (75%). Gazprom sells its gas to Yugorosgaz, which then resells the gas to Srbijagas at a 4% premium. Srbijagas then sells the gas back to

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<sup>158</sup> *Ibid.*

<sup>159</sup> Interview with official 1, DG NEAR, European Commission, Brussels, 12 April 2019.

<sup>160</sup> EURactiv, "Gas Sector Serbia's Weak Point on EU Road", *EURactiv*, 27 January 2015, retrieved 3 April 2019, <https://www.euractiv.rs/english/8294-gas-sector-serbias-weak-point-on-eu-road>.

<sup>161</sup> *Ibid.*

<sup>162</sup> Interview with official 1, *op.cit.*

<sup>163</sup> *Ibid.*

<sup>164</sup> CSD, "Assessing Russia's Economic Footprint in Serbia", *Centre for the Study of Democracy Policy Brief*, no. 72, 2018, pp. 8-10.

Yugorosgaz, which distributes the gas in southern Serbia. This odd arrangement forms a major liability for Serbia as it had led to repeated extensive losses for Srbijagas.<sup>165</sup>

In the electricity sector, the presence of Russian interests is also very visible. EPS, responsible for the domestic electricity production, has held a monopoly since 1992 when the Republic of Serbia was founded.<sup>166</sup> As a powerful state utility, the EPS provided former political elites from the Socialist Party of Serbia (SPS) with a handy political tool.<sup>167</sup> The control over such utilities can provide considerable political clout as it allows political actors to threaten energy disruptions to gain leverage. Additionally, it provides politicians with an additional cashflow which can be misused for personal gain or for campaign financing.<sup>168</sup> The SPS used the EPS to strengthen its political cronies through state resources. Many of these cronies again maintain close relations with Gazprom.<sup>169</sup>

Russia's economic interference in Serbia's energy sector negatively affects the latter's ability to implement the Third Energy Package. In the gas sector, the Serbian government avoids implementing rules going against the interests of Gazprom.<sup>170</sup> Russia vocally supports Serbia in the Kosovo dispute, while also exercising significant control over the Serbian energy market. Russia is using its political leverage and economic weight in the energy sector to limit Serbia's Europeanisation.<sup>171</sup>

In the electricity sector, the SPS' cronies with a personal stake in keeping the *status quo* have entrenched themselves firmly as a political force in the EPS. They remain in a powerful position to oppose the Serbian government and their plans to unbundle the electricity sector, making progress excruciatingly difficult.<sup>172</sup> The final reason for the lack of progress is Serbia's scepticism towards the EU's commitment to Serbia's future membership. Serbia wishes for EU membership but is unwilling to take the hard steps and decisions that are needed to get there.<sup>173</sup> To implement the Third Energy Package Serbia would incur considerable political and economic costs from alienating Russia, and even then, Serbia's accession to the EU as a member state is not guaranteed.

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<sup>165</sup> *Ibid.*, p. 10.

<sup>166</sup> Shadow Governance Intel, "Can New Blood Shake Up Serbia's Power Industry?", *OilPrice*, 5 August 2017, retrieved 17 April 2019, <https://oilprice.com/Energy/Energy-General/Can-New-Blood-Shake-Up-Serbias-Power-Industry.html>.

<sup>167</sup> Shadow Governance, *op.cit.*

<sup>168</sup> Interview with official 2, DG NEAR, European Commission, Brussels, 12 April 2019.

<sup>169</sup> Shadow Governance *op.cit.*

<sup>170</sup> CSD, *op.cit.*, p. 17; Interview with official 2, *op.cit.*

<sup>171</sup> Interview with official 1, *op.cit.*

<sup>172</sup> Shadow Governance, *op.cit.*

<sup>173</sup> Interview with official 1, *op.cit.*

Therefore, Serbia prefers to wait as long as possible with implementing the Third Energy Package.<sup>174</sup> In 2018 the EU published a progress report on Serbia's efforts, stating little progress was observed.<sup>175</sup> The EU keeps demanding that Serbia unbundles its gas market enterprises, yet the process seems to be completely stuck on the Serbian side.

With the empirical evidence laid out, the next section will analyse the cases in light of the paper's theoretical framework to provide an explanation for the different paths along which Croatia and Serbia moved towards their Europeanisation.

## **Analysis: explaining the Europeanisation of Croatia and Serbia**

### *Compliance with the ICTY*

The candidate states' paths towards full compliance with the ICTY differ strongly from one another. Croatia was faster than Serbia, and unlike Serbia went through all the stages of Europeanisation (rule selection, adoption, and implementation). Croatian political elite openly took up cooperation with the ICTY as a serious policy target (rule selection), the Croatian Sabor codified cooperation with the ICTY as an obligation in national law (rule adoption) and Croatia extradited its indicted generals to the ICTY faster and with far less resistance than Serbia (rule implementation). Serbia, however, although it did eventually cooperate extraditing indicted individuals to the ICTY (rule implementation), never envisioned cooperation with the ICTY as a policy target for its own sake (rule selection), nor did it ever codify cooperation with ICTY as an obligation into national law (rule adoption).

This difference can be explained through several factors. On the domestic level, both states started out with a political and societal environment strongly opposing the ICTY, but the consensus in Croatia that eventually emerged between the HDZ and the SDP on the country's European future enabled Croatia to take concrete steps towards cooperating with the ICTY. This was especially visible during the arrest and the extradition of Ante Gotovina, which was first strongly opposed, but later condoned, as necessary. In Serbia, however, the continued political relevance of the SPS and its cronies' strong connection with the criminal underworld formed a big obstacle to Serbian compliance with the ICTY, as it remained an issue that most coalitions refused to address. In societal terms, Croatia made more progress in acknowledging the

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<sup>174</sup> Interview with official 2, *op.cit.*

<sup>175</sup> European Commission, "Serbia 2018 Report", SWD(2018) 152 final, 17 April 2018, pp. 67-68.

legitimacy of the ICTY than Serbia did, where the organisation was still seen as a foreign threat.

On the EU level, the EU's conditionality strategy remained much more consistent and effective in the case of Croatia than with Serbia. Negotiations on Croatia's SAA were only put on hold once and on clear conditions. Similarly, the decision to continue the negotiations was only taken after a statement of full compliance by the ICTY's prosecutor was issued. In Serbia's case, however, the EU acted inconsistently. The SAA negotiations were stopped when Serbia refused to comply, then were continued even though Serbia had not changed its behaviour, and then stopped again over member state concerns. This affected the EU's credibility in Serbia's eyes, and failed to provide Serbia with a clear and consistent path to accede to the EU as a member state.

Regional factors did not play a serious role in either of the states' processes. An exception here is the Kosovo issue, which severely shook up Serbia's relations with the EU, and negatively impacted the effectiveness of the EU's conditionality.

#### *Compliance with the Third Energy Package*

Regarding the policy transfer of the EU's Third Energy Package, the Europeanisation processes of Croatia and Serbia strongly differ. While in Croatia the change in political leadership led to the marginalisation of autocratic forces and a commitment to its 'European path of development', Serbia continues to struggle in its reforms for multiple reasons. Former cronies of the Serbian SPS still hold key functions in important veto points in the energy sector, interacting strongly with Russian investment and geopolitical interests, constraining Serbia's ability to implement the Third Energy Package. This highlights an interplay between domestic and regional factors affecting the height of adoption costs of the Third Energy Package. Whereas Croatia's marginalisation of Tudjman's cronies freed its hands to select, adopt and implement the EU's *acquis*, the personal and professional relations between Gazprom and SPS elites in Serbia's energy sector make it too costly for Serbia to effectively implement the Third Energy Package. Actively implementing the regime of the Third Energy Package would put into question Russia's support in the case of Kosovo, as Russia would fear to lose its foothold in the Serbian energy sector. This means Russia has strong leverage over Serbia to put off said implementation and a clear motive to do so. Additionally, the personal interests of Serbian SPS elites in veto positions within the industry would be harmed by the implementation of the Third Energy Package. To

maintain control over the sector and its cash flow, they use their influence to prevent the Third Energy Package's policies from being adopted and implemented.

On the EU level, the EU's usage of conditionality differed radically between the two countries. Where the EU applied conditionality in Croatia in a more phased, direct and consistent manner (i.e. making the accession of Croatia conditional on the adoption of the Third Energy Package), the EU took a harsher approach with Serbia. Serbia was expected to fully *implement* the Third Energy Package, even before chapter 15 would be opened. The EU thus offered clearer and more direct rewards for compliance demands to Croatia than it did to Serbia.

### *The mechanisms of Europeanisation*

On the domestic level, the external incentives model provides good insights. The most important difference between Serbia and Croatia is the degree to which the former political elites from the Yugoslav wars managed to retain political power over political veto points. The Croatian consensus on its European future only came about with the marginalisation of Tudjmanist political forces, which changed the country's political interests and led to a considerable lowering of the adoption costs of the reforms. In Serbia, however, adoption costs remained considerably higher as they were raised through the personal and partisan interests of former SPS cronies controlling these veto points. Since political elites that face high adoption costs from the convergence to European norms continue to hold considerable influence, the selecting, adopting and implementing of these rules has become considerably more difficult for Serbia than for Croatia.

Also, the social learning model provides a good tool to deduct certain mechanisms. Both in the case of Croatia and Serbia, the legacy of ethnic conflict formed a central obstacle for Europeanisation. The EU's focus on transitional justice, and its self-assumed role as guarantor of the work of the ICTY contributed to a discourse of belonging that conveys that, in order to be part of the European family of states, the candidate states need to resolve their ethnic conflicts and cooperate with the ICTY. In Croatia, the Homeland War myth and the deification of indicted generals formed a clear expression of the lingering sentiments of ethnic tension that find their basis in the ethnic conflicts of the Yugoslav wars. These sentiments were politically used by the HDZ to oppose compliance with the ICTY. The same applies to Serbia and the SPS. For Croatia, the EU's ICTY condition was perceived as an attack on the legitimacy of its newly

acquired statehood, and in Serbia it was perceived as a foreign attempt to further disintegrate Serbia and Montenegro. Due to the EU's framing of ICTY cooperation as a European value, cooperation with the ICTY collided with domestic elites' self-perception and their perceptions of their respective countries' statehoods. The rhetoric employed by the HDZ and SPS therefore undermined the EU's legitimacy and with it the effectiveness of its efforts to Europeanise the respective countries. Only when the HDZ started to emphasise Croatia's belonging to Europe, full cooperation with the ICTY became a permitted course of action in Croatia, unlike in Serbia.

On the EU level, the external incentives model provides a good explanation for the effectiveness of the EU's use of conditionality towards both candidate states. With Croatia the EU employed its conditionality at targeted moments in a consistent manner. It leveraged rewards for good behaviour mostly when Croatia faced a stalemate or risked sliding back on its progress. Conditionality was used as a last push to adopt or implement EU policy, offering tangible and direct rewards in return. The EU leveraged the opening of accession negotiations and final accession directly to corresponding reforms and followed up when the conditions were met. The gains for complying with the EU's demands in the case of Croatia were therefore large and were awarded directly after compliance. In the case of Serbia, however, conditionality was employed inconsistently and the rewards for compliance seldom outweighed its political and economic costs. Serbia would often have to give up considerable political and economic benefits for relatively small rewards, and as the EU repeatedly acted inconsistently, Serbia felt insecure to make such commitments as the EU's promises lacked credibility. The aspiring member states are weighing the benefits of complying with the EU's conditionality against the costs thereof, meaning that the more direct and sizable the pay-off is, the more effective conditionality is likely to be.

On the regional level, the different relations with Russia held by each candidate state have considerable effect on their Europeanisation. This is best explained through the external incentives model. While Croatia is relatively self-sufficient in its energy consumption and managed to limit Russian influence within the sector, it faced very little interference from third countries in its rule selection, adoption and implementation. Croatia even experienced pressure from third states to comply with the EU's demands in both policy areas, and thus experienced relatively low adoption costs and higher benefits in the form of international recognition. This is in sharp contrast to Serbia, where Russian state capture through energy dependency and

political influence constrain Serbia's ability to reform. Its adoption costs are severely raised by the political and economic costs that would come with alienating Russia. These costs outweigh the benefits that Serbia would gain from complying with the EU's demands. The interference of regional powers can therefore have a serious effect on the prospects of a candidate state's Europeanisation as it affects the balance of costs and benefits from adopting the EU's proposed reforms.

The social learning model provides very little explanation for the dynamics that were uncovered by the case studies. Rather than seeking to solve a concrete problem, drawing lessons from the experiences of the EU, Serbia and Croatia seem to pursue Europeanisation for the concrete benefits offered by the EU for doing so. Instead of complying with the ICTY to solve ethnic tensions within the Western Balkans, or implementing the Third Energy Package to solve unfair competition on own initiative, these instances of policy transfer were initiated by the EU rather than the candidate member states, regardless of their degree of success.

### **Conclusion: Europeanisation in the Western Balkans – success and failure**

This paper set out to investigate why Croatia has been better able to converge to the EU's *acquis* than Serbia. The findings presented by the paper's case studies outline a complex interplay between the domestic politics of the candidate state, its perceptions of identity, the EU's approach towards its enlargement policies, and the role of regional actors such as Russia. Altogether, the Europeanisation of Croatia and Serbia is driven by these dynamics in a fashion that corresponds to the external incentives model, supplemented with insights from the social learning model. Domestic political elites weigh the benefits that the compliance with the EU's conditionality offer to their personal interests and party affiliations, against the adoption costs that they themselves would incur. As the political elites of the former authoritarian regimes experience higher adoption costs, their control over important veto points negatively affects the country's ability to Europeanise.

The EU's construction of ICTY cooperation as a European value complicated the sense of belonging to Europe for domestic elites in the candidate states. Nationalist rhetoric used by these elites allows them to organise opposition to Europeanisation, building on pre-existing popular sentiments against foreign threats to the countries' statehood. This type of rhetoric works as a double-edged sword as it increases public opposition

on the one hand and at the same time provides anti-Europeanisation elites with more control to oppose Europeanisation.

Also the intervention of the EU through its employment of conditionality, and the interference of other regional powers have a clear effect on the Europeanisation of Serbia and Croatia. The more direct and sizable the rewards for compliance with EU rules offered by the EU, the higher the benefits attached to compliance with the EU's conditionality, and the more likely these benefits outweigh the adoption costs of following EU policy. The same can be said of third-party interests that can either elevate the costs of policy transfer or enhance the benefits of the compliance with the EU. In this larger equation, the EU remains the primary driving force behind the process of policy transfer, as is notably demonstrated by the absence of evidence for the lesson-drawing model. As candidate states, Serbia and Croatia were less inclined to proactively seek the adoption of EU rules to address domestic issues, largely putting the EU in the driver's seat of the enlargement process.

In Croatia, the domestic political elites and the Croatian society came to a consensus on the country's European future, the EU offered clear and sizable rewards for compliance, and there were no third-party interests that obstructed Croatia. As a result, Europeanisation in Croatia was successful. In Serbia, Europeanisation is failing as anti-Europeanisation elites remain in power, the EU fails to offer a clear and realistic perspective on EU membership and Russian interests dominate the Serbian economy and politics. Europeanisation in the Western Balkans is a difficult process, that depends on the willingness of the candidate state, and on the ability of the EU to sweeten the deal at the right moments. There thus lies a considerable responsibility with the EU in helping its candidate states to Europeanise, but the domestic factors and the place of the candidate state in the regional political scene must be right for the EU's efforts to fall on fertile soil.

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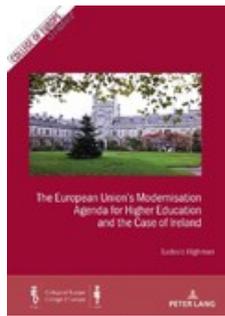
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