The EU’s External Governance

Article 49 of the Treaty on European Union states that “[a]ny European State which respects the values [...] and is committed to promoting them may apply to become a member of the Union”, without in fact clearly defining the borderlines of Europe. For a country undoubtedly within Europe, there is a uniform process on how to join the EU. After the application has been accepted by the Council of Ministers, the Council together with the European Commission open the negotiations and the candidate country has to transfer the acquis communautaire within set transition periods. When each of the 35 chapters has been closed, the Association Treaty is first signed and then ratified in each member state. In this setting, future membership is the incentive for countries to adopt the common rules and thus the driving force for “Europeanization”.

Where membership is not in realistic sight, different incentives have to be found to transfer the rules, norms and values of the EU beyond the member states and candidate countries. To conceptualise the expanding scope of EU rules beyond EU borders, Sandra Lavenex (2004) introduced the concept of “external governance” (see also: Schimmelfennig/Lavenex 2009: 791).26

Schimmelfennig and Lavenex (2009: 792) define external governance as follows:

“[External governance is] both an attempt at conceptualising important aspects of the EU’s international role and a step towards analysing forms of integration into the European system of rules that remain below the threshold of membership”.

The theory on external governance has been partly debated in International relations and comparative politics as well as in more recent approaches to EU external relations. However, the concept of external governance distinguishes from the abovementioned disciplines to the effect that it avoids projecting a unitary state actor model to the EU (see: Schimmelfennig/Lavenex 2009: 792). By using a more institutionalist view, it originates from the traditional foreign policy analysis (see: ibidem 792).

The concept appears to be manifold. In the case of the European Economic Area (EEA) or the European Neighbourhood Policy (ENP), EU external governance emerges in the form of overarching foreign policy initiatives (see: ibidem). The concept can also be embedded in cooperation agreements, as in the bilateral

26 In his work “Europeanization beyond Europe”, Frank Schimmelfennig in 2015 reviewed the literature on Europeanization and transferred the concept frequently used in the enlargement model to third countries that are no prospective EU member states. He concluded that without critical market dependence and supranational regulation, the EU institutions can only take the role of lesson-drawing agencies instead of having a “Europeanizing” impact (cf. ibidem: 25). The leverage on these countries is lower due to the more sectoral and inconsistent approach (cf. ibidem).
agreement with Switzerland, or in cooperation frameworks such as with North America (see: ibidem).

Furthermore, external governance can be present even without contractual relations and focus on the adoption of parts of the acquis in certain policy areas (cf. ibidem). It can occur spontaneously when the interdependence between the EU and the respective entity (for example a third country or international organization) is high and the adaption of certain EU standards is congruent with the interest of that entity (see: ibidem).

External governance can either be externally (EU) driven, or internally (domestically) driven (cf. e.g. Schimmelfennig and Sedelmeier 2004; 2005). March and Olsen (1989: 160-162) named these mechanisms “the logic of consequences” (externally driven) and „the logic of appropriateness” (domestically driven).

The “logic of consequences” describes the externally driven decision of a state to deepen relations with the EU on the basis of utility maximizing. The EU can offer external incentives such as sanctions or rewards. A country decides, based on the net benefits and the comprehensibility and trustworthiness of EU conditionality, whether it wants to (or feels forced to) deepen relations and adapt certain rules (cf. also Schimmelfennig 2015: 6-7).

The “logic of appropriateness” sees such a decision based on which kind of rules and norms the actor finds appropriate in a given situation. Whereas the incentive is internal, the EU can induce this logic by building upon social learning and best practices. In either of these cases, the hope for a more prosperous future lies behind the orientation towards the EU:

“Finally, [...] states turn to the EU as a result of dissatisfaction with the domestic status quo and adopt EU rules if they perceive them as solutions to their problems, either based on instrumental calculations or the appropriateness of the EU solutions” (Schimmelfennig 2015: 7).

Carrying the approach further, Thomas Diez, Stephan Stetter and Mathias Albert (2006: 572) analysed the transformative power of the EU integration in border conflicts and conceptualised four “pathways of EU impact”. They found that EU impact can either originate from concrete EU measures or the influence can be a result of integration processes and therefore be not directly exerted by EU actors (cf. ibidem: 571). Furthermore, the impact on concrete policies can be distinguished from the impact on wider social implications (see ibidem; see also Schimmelfennig 2015: 7).

The EU’s “carrot and stick” policy is an attempt by the EU to exert influence on specific targets. Diez et. et. al. (2006: 571) describe such an actor-driven impact that uses concrete measures on concrete policies as “compulsory” impact. Membership or membership negotiations is the EU’s “carrot” that tends to have the
biggest compulsory influence on a party that aspires for membership (cf. ibidem: 572).

EU incentives other than membership are much weaker. According to them, Association agreements27 above all lack the “symbolic importance” of being a full member (see ibidem: 572-573). The same holds true for (mostly financial) assistance and aid or free trade agreements the EU uses as carrots outside of its geographical scope, as “they are unlikely to be as sweet a carrot as membership” (cf. ibidem: 573). Simultaneously, the EU does not have many sticks outside its borders to offer. Besides the imposition of sanctions, the most important stick is the retraction of carrots (cf. ibidem).

With regards to the Eastern Neighbourhood Policy (ENP), Stefan Lehne (2014: 1) also critically assessed that the EU uses a methodology stemming from the enlargement experience which, however, neither awards those who strive for closer association with “the carrot of membership”, nor applies conditionality in a consistent and non-selective manner.

As a possible answer to these shortcomings, European reformists have discussed the concept of “associate membership” particularly harshly since the 2004 enlargement28. Such a new form of relations that conveys rights and obligations of full EU members in certain areas outside its borders might, of course, increase the EU’s leverage on states where traditional membership is beyond reach (cf. Hamilton/Meister 2016: 61).

Differentiated integration is a reality within the Union as well, one need only think of the Eurozone, the Schengen area, or the opt-out in certain policy areas of the Netherlands and the UK (cf. Hamilton/Meister 2016: 61). Brexit will soon create a new form of differentiation beyond a new border. Having this in mind, the consideration of associate membership could be defended as the advancement of a process already happening. Associate membership would transfer the concept of differentiated membership outside its borders, where differentiated relations already exist, and add the symbolic character of (some kind of) membership.

However, a new form of membership could only be introduced by a Treaty amendment, adopted by the Council or European Council by unanimity, with the consent of the European Parliament (cf. ibidem; cf. Duff 2013). Even though Duff and other proponents argue this would only need a minor amendment and the right political will (cf. ibidem), the political reality at present does not seem to make reforms appear possible anytime soon.

27 The EU-Georgian Association Agreement signed in 2014 will be discussed in the respective chapter.
Thus, the continuation of the current state of different integration and contractual relations without any new form of membership, as well as cross-cutting partnerships between the EU, individual member states and third countries or international organisations – as recommended in the European Neighbourhood Policy (ENP) review in 2015 – are more likely to stay and further evolve as basic modes of differentiation.

Outside its borders, the EU does not only strive to exercise impact on policies but also on society as a whole. Where the society is the target of actor-driven impact, Diez et. al (2005: 573) talk about “connective” impact. The empowerment of civil society and establishment of people-to-people contacts are key to the EU’s external actions. A connective impact can be reached by offering concrete (mainly financial) measures that enable the contact between conflict parties by supporting common activities (see ibidem: 573). Such contact can generate social networks across conflict parties and thus also trigger the constructive impact (see below) afterwards (cf. ibidem).

The EU can also have an indirect impact on the policy level in case of conflicts. Diez et al. (ibidem: 573) found cases when conflicting parties sought to tie their political agendas and positions to the EU. They call this form of impact on the policy level “enabling” impact, as it may enable the respective party to gain influence and to even justify desecuritization by pointing to EU integration and the use of the EU’s legal and normative framework (see ibidem: 573).

Indirect influence on society level is exercised to trigger change from the inside. The hypothesis that the constitution of new discursive frameworks may create (European) identities within conflict zones in a long-term process is called “constructive impact” (cf. ibidem: 574). Being the most indirect impact, it targets society and can – once successful – be the most promising manner of conflict transformation, eventually leading to the resolution of the conflict (cf. ibidem: 574). An economic version of this impact is the argument that integration leads to increased wealth and employment and consequently minimises the desire for conflict (cf. ibidem). Whether or not the EU’s engagement (possibly alongside Georgia’s westward orientation) might have a constructive impact on the reintegration of two breakaway territories Abkhazia and South Ossetia in Georgia will be discussed in the empirical part of this thesis.