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Conditionality as an Instrument of European Governance – Cases, Characteristics and Types

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Abstract

The principle of conditionality has evolved in the European Union from a European foreign policy tool to an instrument of European governance. European conditionality developed as a hard mode of soft governance. This article describes the different forms and cases of using conditionality in European policy so far. Based on this analysis, it elaborates characteristics and patterns of European conditionality policy and tries to distinguish different types of conditionality. This article thus tries to conceptualise the principle, takes a view on the effect and development of the principle in the European Union and finally tries to develop a typology of European conditionality.

Keywords: European conditionality; principle of conditionality; rule-of-law conditionality; typology of conditionality

Introduction

The principle of conditionality is by no means a recent policy concept (Babb and Carruthers, 2008; Rich, 2004). In particular, the International Monetary Fund (IMF) played a distinct role in developing this concept. The purpose of the so-called IMF conditionality was initially to give the IMF some form of assurance that its financial assistance will be used as successfully, efficiently and sustainably as possible and that the recipient can and will repay the loans granted (Beazer and Woo, 2016; Bird, 2009; Bird and Willett, 2004; Dreher, 2009). Then, at the beginning of the 1980s, the concept of conditionality experienced an increase in its political relevance in various contexts and applications and was associated with many goals, contents and functions (Koch, 2015). Today, it is used as an instrument of international trade and development policy (Koeberle, 2005), and almost every international trade agreement includes conditionalities, such as respect for general human rights, fundamental social rights or environmental and climate policy requirements (with further references in McKenzie and Meissner, 2017; Sippel and Neuhoﬀ, 2009).

In general, conditionality links the granting of certain benefits, especially financial aid, with the implementation of specific policies and reforms or the fulfilment of concrete conditions. The behaviour of the recipient of financial aid can be influenced by rewards or, conversely, by the full or partial withdrawal of aid, that is, by positive or negative conditionality. *Positive conditionality*, that is, an incentive-based policy, means that a reward is paid out if the recipient of the benefits meets the previously agreed conditionality target. *Negative or punitive conditionality* means that rewards are withheld or sanctions are imposed in case of non-compliance or non-achievement of the conditionality targets. The point in time at which the respective conditionality is applied also becomes a category of the concept. In the case of *ex ante conditionality*, certain conditions must be met before

a reward is provided or a sanction is applied. In the case of *ex post conditionality*, on the other hand, the lever is applied only after the recipient has decided to change or to stick to his policy. The concept of conditionality thus can refer to the outcome of policy decisions and specific adjustments; however, it can also refer to a policy process or even a particular reform strategy or programme itself (Koch, 2015). The concept presupposes a utilitarian rationality on the part of two independent political actors. When agreeing on conditionalities, the recipient of assistance weighs the economic and political costs of political change against the political or financial benefits of the promised aid.

The European Union (EU) adapted the principle of conditionality as a governance tool in different forms and areas of application. Starting as an instrument of its external trade relations and development policy, conditionality became a defining element of European enlargement policy. Today, the EU uses the principle also in its relations with its member states; the European funds and programmes became quite effective levers vis-à-vis the member states to combine political or economic adjustments. Conditionality developed into an effective and flexible instrument of European governance by using ‘carrots’ and ‘sticks’ to make soft governance harder (Corti and Vesan, 2023). The principle provides additional possibilities to consolidate – mainly preventively – the compliance of member states with European legislation and objectives. It can be adapted to specific conditions and requirements in member states concerned and is an instrument that can be handled in a differentiated and flexible manner. Moreover, European conditionality often comprises a comprehensive and continuous monitoring and control of the implementation of the respective conditions. European conditionality can thus be used as an option for harder enforcement of a soft obligation (Saurugger and Terpan, 2021). Today, it has evolved into a more process-oriented governance instrument for the relations between two equal partners – the EU and its institutions on the one hand and the member states on the other.

The specific design and forms of its application as an instrument of European governance require a framework for further research. The specific design and forms of its application as a link between European hard governance of regulation and enforcement on the one hand and soft governance as voluntary co-operation on the other hand and thus the framework for further research are still pending. Referring to a broad range of empirical studies on the different forms and applications of European conditionality, this article aims to capture and to conceptualise the principle itself, to differentiate the various forms of conditionality, to distinguish the objectives and functions and, thus, to develop a typology of European conditionality.

This article intends to contribute to three topics of research. First, it tries to highlight the similarities, regularities and patterns of European conditionality, and at the same time, it tries to clarify the specificities and different forms of application and objections. Second, it conceptualises the various forms of conditionality in European policy. It thus tries to create a systematic framework for comparison and a starting point for identifying changes in the use and new objectives and functions of conditionality in the EU. Finally, and on the basis of this proposal for a typology, subsequent research might elaborate also the long-term effects of conditionality on the development of European governance as a harder mode of soft governance (Knodt et al., 2020). Thus, this article tries to develop a heuristic framework for further empirical research on the forms and the implementation of conditionality in EU governance.

The following section describes and examines how the concept of conditionality has been used in the EU so far. The next section then elaborates different criteria and indicators of European conditionality and, based on this analysis, distinguishes types. The final section concludes and discusses the effect of the principle of conditionality on European policy.

I. Conditionality in the EU

The principle of conditionality became an increasingly important element of the EU's financial relations with its member states. Today, conditionality is an element of almost all European spending policies (Viță, 2017a); it has led to the formation of a 'permanent conditionality culture inside the EU' (Viță, 2017b, p. 120): starting with EU's enlargement policy, in Economic and Monetary Union, cohesion policy, and ending with the question of whether and how fundamental European values can be enforced in member states with the instrument of conditionality.

II. The Enlargement Conditionality

Enlargement or accession conditionality is often assessed as the most successful application of conditionality by the EU (Berkowitz et al., 2017; Schimmelfennig and Scholtz, 2010; Schimmelfennig and Sedelmeier, 2004; Sedelmeier, 2008, 2012). So far, however, it is primarily the long process of the EU's eastward enlargement from the early 1990s to the two-stage admission of the Central and Eastern European candidates in 2004/2007 that has been analysed with the concept of conditionality (Gateva, 2013, 2015). The earlier enlargement processes are not associated with this concept.¹

This conditionality of eastward enlargement had been a politically defined form of conditionality and thus adjustable according to political needs. The political and economic criteria of readiness for accession, the so-called Copenhagen accession criteria formulated by the Copenhagen European Council in 1993, meant for the candidates a comprehensive transformation of their political, economic, social and legal structures and systems. The EU and its member states became the target, the model and the yardstick for these transformation processes. Enlargement conditionalities inevitably had to remain relatively general, indeterminate and open to adjustments and interpretations. The EU dominated this multi-year evolutive political process, set the political goals and determined the conditions and also the pace of implementation.² For this purpose, the EU developed new co-ordination bodies and instruments with which it concretised its very general accession criteria and at the same time helped the candidates to adapt their policies, to fulfil the criteria and thus to come closer to membership (Gateva, 2015; Grabbe, 2006). During the accession negotiations, it then linked the opening or provisional closure of different negotiation chapters with specific conditionalities. In the course of a continuous

¹This is surprising insofar as the two-stage southern enlargement to incorporate first Greece in 1981 and then Spain and Portugal in 1986 was also characterised by a special form of conditionality. With the incentive of integration into the European Community and the prospect of extensive European financial aid, the three candidates reformed their political systems into stable democracies after the long years of military dictatorship.

²Grabbe (2002) identified a 'moving target problem': 'The conditions are not fixed and definite, and new conditions have been added and old ones redefined at the biannual summits of EU leaders' (p. 251). Hughes et al. (2004) spoke about the 'fluid nature of conditionality' (p. 523).

monitoring process, the developments in the candidate countries – progress, stagnation or even deterioration – had been monitored, analysed and regularly assessed in country reports. This conditionality seems to meet the needs of European politics and the management of an enlargement process and thus the safeguarding of the *acquis communautaire* (Grabbe, 2002). The conclusion of the enlargement conditionality, however, took place only at the very end of this long convergence and accession process. The EU successfully used its ‘power of ultimate agreement’ (Pridham, 2007, p. 453).

Conditionality in the framework of eastward enlargement, hence, had been an *ex ante* conditionality with conditions already imposed before the beginning of the accession negotiations. The final assessment and decision on the respective readiness for accession was the reward to the conditionality recipient for fulfilling the conditions (Schimmelfennig and Sedelmeier, 2004).³ Accession conditionality was by no means apolitical or objectively measurable – neither for the candidates nor for the EU and its member states. Nor was it a purely result-related but complex, interpretable and flexibly manageable process that was subject to constant adjustments and changes.

Accession to the EU, however, does not automatically mean accession to all areas of integration, like the Schengen area or the Eurozone. Membership in the Schengen co-operation is a sign of differentiated integration, but at the same time also a special form of European conditionality. The specific obligations and responsibilities of the Schengen co-operation, like the capacity to effectively control the external borders of the Schengen area, to participate in the Schengen Information System or to issue uniform Schengen visas, are preconditions for accession to the Schengen area. The post-accession Schengen conditionality was part of the accession treaties with Romania and Bulgaria and was subject to annual monitoring and review by the Commission and a final evaluation by member states. Hence, this Schengen conditionality is a particular form of accession conditionality that required the introduction of a special and long-term monitoring.

III. Conditionality on Economic and Monetary Union

The conditionality concept for the European Economic and Monetary Union is anchored in European primary law (Article 140 TFEU and the Protocol on the Convergence Criteria): EU member states must prove their lasting economic convergence in order to join the Eurozone. Thus, this conditionality is a specific form of accession conditionality with *ex ante* conditionalities. With the Stability and Growth Pact and the obligation of member states in Article 126 TFEU to avoid excessive deficits in their public budgets, as well as the Protocol on the Excessive Deficit Procedure, the convergence criteria became permanent. Furthermore, this conditionality was linked to sanctions: should a member state fail to reduce its excessive deficit, the Council can order further information and even impose fines (Article 126, para 11 TFEU). Membership in the Eurozone requires acceptance of and lasting compliance with fiscal policy requirements. Hence, after member states joined the Eurozone, the positive *ex ante* conditionality becomes a permanent punitive conditionality.

³The legally decisive decision about accession and hence about the fulfilment of enlargement conditionality is made unanimously by the Council according to Article 49 TEU. However, due to its history-making impact, the decisive political decision on enlargement was taken by the European Council in Copenhagen in December 2002.

During the sovereign debt crisis in the Eurozone from 2010 onwards, the EU and its member states as well as the European Central Bank (ECB), together with the IMF, launched extensive aid packages for member states, which were linked to a classic IMF conditionality (Bini Smaghi, 2015). In return for financial aid, the recipients had to commit themselves in memoranda of understanding to tough austerity programmes including far-reaching and painful reforms and, in particular, drastic cuts in their government spending as well as deep cuts in national social systems. In the course of the crisis, the ECB extended this conditionality and included Eurozone member states that had not received or requested financial aid. It even expected the opposition parties of the respective country to also abide by the agreements, and it pushed for the assumption of payment obligations of private banks and the compensation of private creditors (Woodruff, 2016, p. 100). Jacoby and Hopkin (2020) recognised an ‘implied conditionality’ (p. 1167).

Additionally, new monitoring and control mechanisms were created to ensure compliance with the original conditionality of the European treaties. By signing the so-called ‘Euro Plus Pact’ and the so-called ‘Fiscal Compact’, member states committed themselves to stable and sound budgetary policies and, if possible, to fixing national debt brakes in their national constitutions. With the new macroeconomic imbalance procedure and its scoreboard, new conditionality criteria and monitoring indicators were introduced into economic governance. This imbalance procedure is combined with the possibility of sanctions, that is, negative conditionality, and shall help the EU to identify risks of national fiscal policies at an early stage and thus contribute indirectly to the stability of the common currency. In addition, the Eurozone member states must submit their draft budgets in advance to the European Commission for review and comment. This does not give the European Commission the right to amend or modify the national budget drafts, and the member states do not necessarily have to implement the Commission’s recommendations for change. However, the Commission is given additional ways of influencing national fiscal policies with the help of a concretisation and significantly intensified monitoring of national fiscal policies.

Thus, new forms of permanent negative conditionality were introduced, and new institutions and instruments were created. Moreover, the EU extended the scope of its economic and monetary conditionality in two directions. First, it committed the member states, that is, not only those in the Eurozone, to stability-oriented national fiscal policies and growth-oriented economic policies. Second, it extended the scope of European conditionality to additional policies that might only indirectly affect European monetary policy and for whose regulation the EU has only limited competences. Finally, with the commitment in the Fiscal Compact to introduce national debt brakes, European conditionality was extended even to national constitutional systems.

IV. Economic Policy Co-ordination and the Concept of Conditionality

Since 2011, national fiscal policies and national economic, employment and social policies have been monitored and co-ordinated more intensively in an annual procedure under the administrative umbrella of the European Semester. With this preventive co-ordination and monitoring procedure, almost all policy areas that could influence the economies of the member states and thus indirectly affect the EU and the common currency are subjected to a prior check by the EU Commission. In addition, with the instrument of the

so-called country-specific recommendations, the Commission received another possibility of direct influence with which it can call on the member states to adapt and reform their respective policies.

Thus, with the European Semester, a special form of process-oriented implicit conditionality was created (Sacchi, 2015). Monitoring within the framework of the European Semester has become a continuous conditionality process without defining a fixed target or a final objective of conditionality. This conditionality is not limited to specific programmes or policies but developed into a permanent, cross-policy monitoring and governance mechanism – ‘governance by conditionality’ (di Mascio et al., 2020, p. 218).

V. Conditionality in European Spending Policies

The principle of conditionality always has been part of European spending policies, and almost all European funds are linked to European conditionality in one form or another. European spending conditionality combines the disbursement of EU funds with specific conditions in order to influence the behaviour or to enforce another policy in the recipient member states (Viță 2017a; Viță, 2018). The concept of this conditionality combines different levels of decision-making and responsibilities; it increasingly also pursues cross-policy and broader objectives. EU funding is becoming a financial lever to enforce political goals that go beyond the original funding objectives (Kölling, 2022). This ‘power of the purse’ (Heinemann, 2018; Molle, 2018, p. 174) is a special form of European ‘spending or budget conditionality’ (Schneemelcher and Haas, 2019).

In particular, European cohesion policy developed various forms of conditionality anchored in the specific EU regulations. The *ex ante* conditionality was designed to address institutional and administrative problems and weaknesses in funding regions before the disbursement of EU funds can start. In the funding period 2021–2027, this conditionality, now referred to as ‘enabling conditions’ (EU, 2021a, Article 15), ranges from conditions under public procurement law and state aid law to the application and implementation of the Charter of Fundamental Rights and the implementation of the UN Convention on the Protection of Persons with Disabilities. The *ex post* or performance conditionality is intended to strengthen the performance and result orientation of European structural funds and thus to improve the effectiveness and efficiency of European cohesion policy as a whole. The member states have to establish a performance framework with fixed and measurable output and result indicators (EU, 2021a). This conditionality contributes to a continuous measurement and evaluation of the overall performance.

Already in the funding period 2014–2021, the so-called macroeconomic conditionality linked compliance with the convergence criteria of the Stability and Growth Pact to the disbursement of European funding from the structural funds (Verhelst, 2012) and furthermore to the country-specific recommendations of the European Semester. These conditionalities were criticised as to be overly complex, too bureaucratic and ineffective (Bachtler and Mendez, 2020; Schneemelcher and Haas, 2019) or even as counterproductive with rather pro-cyclical effects (Bachtler and Ferry, 2015; Tokarski and Verhelst, 2011) and as punishment of regions (Jouen, 2015; Kölling, 2017). Now, the Commission can request a member state to revise and adapt its cohesion programmes if these contradict the objectives of European economic and employment policy co-ordination and the country-specific recommendations. Thus, the aim of this

conditionality is to significantly strengthen the obligation of member states to avoid excessive budgetary deficits as well as the procedures for economic and employment policy co-ordination. European structural funds serve as financial levers of a punitive conditionality; they developed to an effective and powerful instrument of European governance. By using this spending conditionality, the EU is able to commit the member states to European obligations and responsibilities, which go beyond the very purpose of funding. This conditionality, hence, combines two different policy areas that overlap but follow different objectives and political rationalities. With this conditionality, the European structural funds offer only ‘conditioned solidarity’ (Viță, 2017b, p. 119); Bachtler and Mendez (2020) identified an ‘institutionalisation of conditionality’ in European cohesion policy (p. 130).

VI. Conditionality in the Recovery and Resilience Facility (RRF)

The RRF to mitigate the economic and social consequences of the Covid-19 pandemic includes an additional mechanism of macroeconomic conditionality and a direct link to European economic and social policy objectives (EU, 2021b, Recital 4). The member states have to present national recovery and resilience plans that must be in line with the objectives and targets of the European Semester and implement the country-specific recommendations (Bokhorst and Corti, 2023; Corti and Vesan, 2023; Vanhercke and Verdun, 2022); at the same time, the plans must also take the EU’s energy and climate policy objectives into account. In addition, the RRF also includes a link with the rule-of-law conditionality to protect the EU budget (Article 8). The Commission continuously reviews and assesses the implementation of the national plans for compliance with these requirements and their relevance, effectiveness, efficiency and coherence. It may propose to the Council that no funds be disbursed to a member state if the national policies seem to be insufficient (Article 20).

Here, too, the concept of conditionality has linked different policy areas with different political goals and tasks and, in addition, created a comprehensive monitoring system. An end or target point of conditionality is hardly recognisable, but rather a continuous monitoring of national policies in return for the granting of European funds.

VII. The Rule-of-Law Conditionality

In 2018, the European Commission had proposed to introduce a ‘political conditionality’ for receiving European funding. The Commission argued that respect for the rule of law and the separation of powers; accountable, democratic and pluralistic legislation; an independent judiciary; and legal certainty were basic prerequisites for the protection of the EU’s financial interests (Kochenov, 2019; Łacny, 2021). Should these conditions be endangered in a member state, the Commission should be able to suspend the disbursement of European funding. With this design as a negative ex post conditionality, the rule-of-law conditionality had a preventive function of ensuring the observance of rule-of-law structures in member states as a precondition for protecting the European budget (Fisicaro, 2019; Rubio et al., 2023). Only in December 2020, after hard negotiations, could the European Council hammer out a political and procedural compromise

(Kölling, 2022; Łacny, 2021); the regulation entered into force on 1 January 2021 (EU, 2020).

Despite the special emphasis in the regulation that it only serves to protect the financial interests of the EU, the political function of the regulation is essentially to build an argumentative bridge between the disbursement of European funding and the commitment to common fundamental values of the EU, in particular the rule of law. This political conditionality is purely punitive and needs permanent monitoring. With this conditionality, domestic policy, normative and constitutional decisions and fundamental political values, which are constitutive for membership in the EU, become conditions for the disbursement of European funding.

VIII. Types of European Conditionality

To comprehend patterns of European conditionality, the cases presented shall be classified systematically and associated with distinctive types of European conditionality. This means, first, to list indicators in order to provide instruments for finding differences and similarities of European conditionality applied. Second, the decisive step to develop types of European conditionality is to classify European conditionality and to define categories with the help of these indicators.

The presented cases of application of the principle of conditionality in the EU revealed different forms of conditionality. European conditionality experienced a significant broadening of its scope as well as changes in its objectives and functions. The actors linked together can change between the various forms of European conditionality – different EU bodies can act as conditionality providers, that is, the Commission or the Council, and the addressees of conditionality also vary depending on the type – candidate countries, member states, regions or even private actors. For example, decisions of high politics, such as constitutional conditionality, will be decided at the level of the European Council, whilst regulative conditionality is part of European legislation and hence adopted by the respective European legislative bodies. The legal enshrinement of conditionality varies and ranges from implicit conditionality and European soft law to European legislation and anchoring in the European treaties. The application of European conditionality differs not only in *ex ante* or *ex post* decisions but also in the frequency – that is, a one-off decision to implement the conditionality agreement or a permanent compliance with predetermined conditions. This process type of a permanent conditionality has consequences for the design and the application of the principle, because it requires a continuous monitoring process with predetermined requirements, benchmarks and forms of implementation. Moreover, this process type of European conditionality changes the objectives and the function of conditionality.

The indicators to develop differences and similarities of the various types of European conditionality, hence, are based on empirical and logical derivations of the application, like the form and time, the frequency and the legal character and the decision-making. Thus, these characteristics of implementing the principle of conditionality in the EU can be listed together (see Table 1). This list might serve then as an instrument to distinguish and to elaborate indicators for the various modes of conditionality in the EU.

A typology should be attempted on the basis of these indicators. The aim is to classify and cluster the different forms of European conditionality, to identify characteristics of

Table 1: Indicators of European Conditionality.

Characteristics of conditionality	
Form of application	<ul style="list-style-type: none"> • Positive conditionality, that is, financial reward or political incentives • Negative (punitive) conditionality, that is, sanctions, freezing or withdrawal of funding or support
Time of application	<ul style="list-style-type: none"> • Ex ante, that is, the implementation of the agreed adjustment performance by the addressee of the conditionality prior to the granting of incentives or the enforcement of sanctions • Ex post, that is, a reward or sanction after implementation or non-implementation
Legal character and status of conditionality	<ul style="list-style-type: none"> • Enshrined in European treaties • Enshrined in EU secondary law (regulations or directives) • Implicit conditionality by political commitments
Frequency of application	<ul style="list-style-type: none"> • Singular and result-based application of conditionality • Multiple or periodic application and monitoring of conditionality • Continuous or permanent application and monitoring of conditionality
Decision-making level	<ul style="list-style-type: none"> • European Commission • Council of the European Union and European Parliament • European Council
Policy reach	<ul style="list-style-type: none"> • Conditionality related to one policy field • Cross-policy conditionality • Normative or constitutional conditionality

Abbreviation: EU, European Union.

specific forms of application and thus to elaborate ideal types. The principle of conditionality is always associated with an effective, efficient and, as far as possible, sustainable change for the addressee of conditionality. Thus, the typology should cover both actors involved, the provider and the recipient of European conditionality, and their interests and objectives in applying the principle of conditionality.

The proposed typology of European conditionality starts with two fundamental questions:

1. What should change as a consequence of applying the principle of conditionality? Two criteria of differentiation seem reasonable:

- a. The principle of conditionality is intended to change the political and economic structures in the conditionality recipient member state.
- b. The application of conditionality aims primarily to change the way of policy-making in the conditionality addressee.

2. Why European conditionality shall initiate this change or adaptation and what is the function of European conditionality? The two classical Weberian criteria can help here with the classification:

- a. If the application of conditionality primarily serves the purpose of changing policy-making and behaviour, then conditionality is primarily applied in a purpose-rational way.

b. If the conditionality principle is intended to change the normative or constitutional order, then conditionality is primarily applied in a value-rational way.

Both forms of action, according to Max Weber, are rational action; the difference between the two forms, however, is the ultimate objective of action. Whilst value-rational action involves acting according to self-formulated rules, purpose-rational action is always and primarily a utilitarian choice of means by weighing pros and cons. Certainly, a value-rational decision can also include purpose-rational cost–benefit considerations, but the core and the decisive rationality of this form of action will be about values. For example, this seems to be the case with the ideal type of enlargement conditionality. The final political decision in the European Council on the admission of candidate countries is value-rational. The EU certainly considers the pros and cons and weighs the costs and the benefits during every accession process. However, when hammering out the decisive decision at the end of any accession process, the European Council follows more closely its own demands and values and the impact on the European constitution fixed in the treaties.

The differentiation between purpose rationality and value rationality primarily aims at the provider of conditionality, because the decision of the conditionality recipient is in general purpose-rational – the purpose of the conditionality agreement is to receive the promised reward and to avoid the threatened sanction.

When we link the two categories in a matrix, four ideal types of European conditionality emerge (see Table 2):

1. ‘constitutional conditionality’ based on value-rational objectives by the conditionality provider combined with comprehensive adaptations of the constitutional principles in the recipient of European conditionality;
2. ‘normative conditionality’, which also includes value rationality of the conditionality provider but only structural reforms by the addressee of European conditionality;
3. ‘coercive conditionality’, which combines the objectives by the provider of European conditionality to enforce European legislation and rules with conditionality, that is, purpose rationality, with structural or fundamental reforms in the recipient of European conditionality; and
4. ‘regulative conditionality’, which also builds on purpose rationality of the conditionality provider that aims to enforce the conditionality recipient to comply with European legislation.

The empirical cases presented, which fit into this typology of abstract categories of ideal types of European conditionality, can help to better understand the specific types and to develop the main characteristics of the four types.

Constitutional Conditionality

The paramount element of this ideal type of European conditionality is the extraordinary importance of the transformation, reforms or adjustments for both the provider and the recipient of conditionality. This adaptation of constitutional or equivalent principles of the addressee of conditionality means a dominant value rationality by the conditionality

Table 2: Typology of European Conditionality.

	Provider of European conditionality	
	<i>Value-rational</i>	<i>Purpose-rational</i>
	Constitutional conditionality	Coercive conditionality
Recipient of European conditionality	<i>Change of structure</i> <ul style="list-style-type: none">• Positive conditionality• Ex ante conditionality• Singular application by decisive judgement• Enshrined in European treaties• Decision by European Council Case: Accession conditionality	<ul style="list-style-type: none">• Punitive conditionality• Implicit conditionality• Permanent and process-based application• Decision by legislative bodies (Council and European Parliament)• Conditionality monitoring by European Commission• Cross-policy conditionality Case: Economic policy co-ordination and European Semester
	<i>Change of policy</i> <ul style="list-style-type: none">• Punitive conditionality• Permanent and process-based application• Based in primary or secondary law• Political decision by the European Council• Cross-policy leverage of conditionality Case: Rule-of-law conditionality	<ul style="list-style-type: none">• Punitive conditionality• Permanent and process-based application• Based in primary or secondary law• Decision by legislative bodies (Council and European Parliament)• Conditionality monitoring by the European Commission• Lever for regulation in specific policy Case: Spending conditionality of European funds

provider that is generally implemented with one crucial decision on the fulfilment of these conditions. Moreover, due to its importance and consequences, this particular decision-making process will be enshrined in European primary law. The comprehensive scope of this conditionality – and thus its political, legal and institutional significance – makes it almost indispensable that the final political decision is taken by the European Council. Until this decision, constitutional conditionality is a process that can be designed flexibly and supplemented with additional conditions, incentives and assistance. As a positive conditionality, this type of conditionality is a reward for the implementation of political, legal and economic adjustments by the conditionality recipient. Constitutional conditionality is a form of ex ante conditionality; that is, the conditionality recipient will have to deliver in advance and to implement the expected constitutional or fundamental reforms with the prospect of a reward or aid from the conditionality provider.

Enlargement conditionality may be the oldest and best known case of this type of European conditionality. There, conditionality developed into a political instrument to measure and consolidate compliance with the political, normative and economic

principles as well as the structural and institutional order of the Union – in other words, to secure and to enforce the written and unwritten ‘club rules’. In this respect, conditionality is a political conditionality with constitutional effect and significance. It is enshrined in European primary law whilst the details of application of this type of constitutional conditionality are concretised in regular strategy papers and evaluation documents. It is a characteristic of enlargement conditionality that it is marked by a clear asymmetry of power between the two actors in the conditionality agreement. The same principle is applied by the EU for admission to the Schengen *acquis* and to the core of European integration, the accession to the Eurozone. In contrast to enlargement, which is formulated only in very general terms in European treaty law, the conditionalities for entry into the European Economic and Monetary Union are specifically listed in European primary law.

Normative Conditionality

Again, this type of European conditionality is based on value-rational objectives of the conditionality provider. However, the scope and depth of expected reforms and adjustments by the conditionality recipient do not reach constitutional issues. In contrast to constitutional conditionality, this type of normative conditionality is generally a type of negative or punitive conditionality, because the EU as a conditionality provider has a vital interest in enforcing and securing its norms and principles and can use conditionality leverage.

However, compliance or implementation of fundamental principles and European values is a permanent task stemming from European law. Therefore, evaluation of compliance with this conditionality and legally enshrined conditions is a permanent obligation for the EU as conditionality provider. If fundamental norms and values are affected and shall be enforced or secured, the EU can use European funds as a lever. The difference in respect to regulative conditionality, where also European funds can be used to enforce policy changes and reforms, however, is the value-rational objective and thus the function of this type of conditionality. The striking example for this type of European conditionality certainly is the rule-of-law conditionality. Because of the political relevance and importance for the normative coherence, the cohesion and the stability of the EU, this type of conditionality is also a mainly political instrument. Thus, normally, the European Council will have to decide on this type of conditionality. For example, the crucial political decisions on the concretisation and application of the rule-of-law conditionality had to be taken by the European Council, even though the formal legislative procedure on the regulation had already been completed in the ordinary procedure between the Council and the European Parliament.

Coercive Conditionality

This type of European conditionality combines purpose rationality of the conditionality provider with comprehensive policy reforms in the recipient member state of European conditionality. This coercive type of European conditionality links the financial leverage of European funds with political goals in other policies or with fundamental domestic policy decisions in member states. The threat of blocking, reducing or delaying the disbursement of European funding in the case of insufficient implementation of European rules or common objectives serves as punitive conditionality to force the member states to adapt.

Thus, this conditionality often has a preventive function and is more process oriented. The EU tries to influence national policies and steer them along a commonly agreed policy path. As there is no specific (target) point of compliance or implementation of the commitment, or a link to a concrete European funds or a funding period, this specific form of cross-policy conditionality can also be implemented neither *ex ante* nor *ex post* – rather, it must be implemented permanently. Consequently, this conditionality has to be monitored constantly and will then be sanctioned, but rarely rewarded. Hence, this type of conditionality developed into an instrument of permanent process control or policy monitoring (Bachtler and Ferry, 2015; Sacchi, 2015); it serves as a constant lever for influencing and steering policy-making in the member states. In return for granting European funds, the EU expects the implementation of measures and adjustments also in policies, in which it has only supplementary or subsidiary legislative and regulatory competences and thus limited legal sanction possibilities (Viță, 2017b). The European Commission has to implement this policy – and it uses this leverage conditionality often to expand its possibilities to influence national policies. The legal basis of this type of European conditionality is not always clear and depends on the specific case of application. The most striking case of this ideal type of European conditionality is the linking of European funds to the European Semester for economic policy co-ordination. This link of the structural funds to the European Semester is anchored in the respective regulations whilst some forms of implicit conditionality had been developed during the financial and debt crisis without any legal foundation (Jacoby and Hopkin, 2020).

Regulative Conditionality

Regulative conditionality combines the purpose rationality of the conditionality provider with changes and adjustments in policies of the recipient. This type basically acts as regulative, policy-field-specific conditionality. The rules to be observed are partly prescribed and anchored in primary or at least in secondary law. For example, the disbursement of European funding from the structural funds or via the Common Agricultural Policy (CAP) is always tied to conditions and specific objectives. Regulative conditionality then serves as an instrument to implement the respective programmes in the member states and their regions in an objective-oriented manner with the financial aid of European funds. At the same time, this form of European conditionality also expands the EU's (and especially the European Commission's) scope for action to monitor the proper implementation of European spending policies and the most efficient and effective use of European funding. Within this type of conditionality, new forms are increasingly developing in which European funds are linked to wider European objectives; for example, CAP funding is linked to European climate and environmental policy objectives. The 'enabling conditions', as conditions for the disbursement of European structural funds, also go beyond the narrow structural policy objectives. However, there is still a factual and functional connection between these new conditionalities and the objectives of the policy. The aim is recognisably to increase the effectiveness and efficiency of European funding programmes; no completely new or divergent objectives from other policies are to be pursued with the leverage of European funds. The long-term goal of this type of conditionality is to trigger lasting changes in the respective national policies by providing financial aid from the European budget.

The addressees of this conditionality are, by their very nature, the recipients of European funding in the member states; the institutions that monitor and decide on the implementation of the conditions, however, are EU institutions, that is, the European Commission and the legislative organs of the EU. Regulative conditionality is primarily a negative or punitive conditionality. The recipient of European funding is in principle entitled and eligible to receive funding from the EU budget. Only if the recipient does not implement or comply with the conditions could European funding be withheld. In this respect, the lever of European funding provides an additional instrument to the legal instruments to enforce compliance with European law. In order to be able to control and evaluate compliance with the conditions of European spending policies, additional monitoring processes, adapted indicators and regular reports are needed. For this permanent or regular monitoring of implementation, co-operation between the EU and the recipients of the conditioned funding is necessary: on the one hand, to agree on the criteria and indicators and, on the other hand, to jointly evaluate the collected data and measurements of the implementation of the funding programmes. Thus, this type of conditionality is long term, at least for one funding period, and adopted by secondary law in the ordinary legislative procedure.

Conclusion

Today, the principle of conditionality is an integral part of European governance. Conditionality is no longer linked to specific political decisions or measures to achieve previously defined conditions or goals. Rather, European conditionality developed into an instrument of permanent or at least long-term use and is increasingly used as cross-policy leverage. This governance by conditionality strengthens the co-operation between the EU and its member states, especially in those policies in which the EU has only subsidiary competences. The application of this European conditionality requires continuous monitoring and has a mainly preventive character as an instrument for compliance with European law and obligations. However, this prevention objective often requires political flexibility (Featherstone, 2016; Sacher, 2019). The European Commission, which is usually responsible for the application, tries to secure a certain room for manoeuvre and flexibility, especially in areas or cases of application on politically sensitive issues. This is all the more true if the Commission's only means to urge a member state to comply with commitments is by punitive conditionality.

However, the different types of conditionality in the EU certainly lead to differences in design and application and can influence the objectives, effects and even the potential for implementation and enforcement as well as the general character of the principle. Hence, developing a classification of different types of European conditionality could provide an impulse for further research on the application of the conditionality principle, which is required. In general, a typology is a framework of general and abstract ideal types that can reflect only a part of political reality. However, it can serve as a heuristic instrument to identify different forms of conditionality and thus to characterise the crucial features of implementation and application of conditionality. The typology presented must necessarily remain general and abstract in order to capture and categorise the different forms of European conditionality. If the specific use of the principle for European governance is to make soft governance a little harder step by step, that is, to serve as a bridge between

the two dichotomous forms of European governance, then the different types, forms and patterns of European conditionality need to be elaborated further and in more detail. The aim of this article is to submit a first proposal for a typology of the specific forms of European conditionality and thus to serve as starting point for further research and debate on this evolving instrument of European governance, since, finally, this European conditionality, especially the type of cross-policy leverage conditionality, might develop a “‘federalizing” force’ (Baraggia and Bonelli, 2022, p. 154) or become a constitutional moment (von Bogdandy et al., 2021).

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