

The Integration of the Council of Europe's Minority Rights into Eu Law

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Abstract

This piece explores the complexities of minority governance in Europe, particularly focusing on the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) and its interaction with European Union (EU) policies. It highlights the historical context of minority treatment, the limitations of existing scholarship in addressing the dynamic nature of minority identities, and the need for a more integrated analytical framework that considers legal, political, and social factors. The document outlines a four-layer architecture of governance, detailing how minority rights are shaped by soft law, potential EU legal integration, enlargement conditionality, and the socio-political realities that influence minority identity formation. Ultimately, it suggests that while the incorporation of FCNM principles into EU law could enhance coherence and predictability in minority governance, it may also reduce flexibility and adaptive capacity in addressing the diverse realities of minority groups across Europe.

1. Introduction

The historical experience of overnight being part of a multinational empire to becoming a nation due in large part to France's hegemonic design on Europe through appeal to the minor nations on Balkan, a rude awakening leading to the realisation of Napoleon's old dream of smashing Vienna, at which point no balancing power in the South Eastern Europe came about by the end of World War I hence to the opening of Europe to both Germany and Russia and the partition of Europe as well as to forced nationalisation projects and mistreatment of new minorities, forms the historical departure point for this article.

When visiting the Balkans during 2025 we stumbled upon a book in the library in the Tirana branch of the College of Europe describing the absence of leverage of the EU Commission during Enlargement negotiations due to the bifurcated nature of minority protection being under the remit of the Council of Europe and the often inferior public administrations of the candidate states in managing the convention into a daily power practice. Having presented EU Commissioner Kos with a policy memo with a concrete list of projects that the EU could feel empowered by, she came back to me relaying this was an idea she would look into. As a biographical note, I signal Bunica Julia hails from the Romanian minority in Vojvodina, whereas my mother on the paternal side formed part of the Danish speaking minority in the

Schleswig ecumene originating from the Netherlands from where the Martens migrated into the Danish ducheries. I breathe Europe today, yet being part of a minority is a layer in my ancestors' identity formation I partake in, I discovered. Hence this paper.

The Framework Convention for the Protection of National Minorities (FCNM) and the European Union minority rights framework both seek to protect human dignity, equality, and vulnerable groups. The FCNM is a specialised treaty specifically dedicated to the protection of national minorities in Europe. It entered into force in 1998 and is one of the central instruments of European minority-rights law.

The Convention promotes equality and non-discrimination by requiring states to foster effective equality for persons belonging to national minorities in political, economic, social, and cultural life. It also protects minority identity by recognizing the right of individuals to preserve and develop their language, religion, traditions, and cultural heritage.

The FCNM includes important linguistic protections. It encourages the use of minority languages in education, media, public administration, and interactions with public authorities where appropriate. In addition, it emphasizes participation in public life, requiring governments to create conditions that allow minorities

to take part effectively in public affairs and decision-making processes. Another core principle is protection against forced assimilation. States may not adopt policies intended to assimilate minorities against their will, and minority protections cannot be used to reduce existing human rights standards.

A distinctive feature of the FCNM is that it does not establish a universal definition of “national minority.” Instead, each ratifying state determines which groups are recognized under its domestic framework, although this discretion is subject to political and legal scrutiny through the Convention’s monitoring system. Implementation is supervised by the Advisory Committee on the Framework Convention for the Protection of National Minorities, an independent body of experts that reviews periodic state reports and issues recommendations. The Committee of Ministers of the Council of Europe subsequently adopts formal resolutions evaluating each country’s compliance.

This study argues that the transposition of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) into European Union law represents a critical evolution in the governance of minority rights. This transformation is essential for enhancing the coherence, enforceability, and effectiveness of minority rights protections across EU member states. By integrating the FCNM principles into binding EU legislation, the study posits that the EU can create a more unified and robust framework for minority rights that addresses existing gaps in compliance and implementation.

1.1. Literature Review: Council of Europe Minority Governance and Analytical Gaps

The scholarship on Council of Europe (CoE) minority governance—particularly around the Framework Convention for the Protection of National Minorities (FCNM)—has developed a substantial body of legal, institutional, and Europeanisation-focused analysis. However, while this literature offers strong doctrinal and policy insights, it remains limited in its capacity to theorise minority governance as a multi-layered, dynamically interacting system of norm production and translation. Across key contributions, a set of recurring theoretical and empirical gaps becomes visible, particularly regarding how minority categories are constructed, stabilised, and transformed across legal systems, policy frameworks, geopolitical contexts, and lived social realities.

Palermo and Sabanadze provide one of the most systematic accounts of minority governance in the post-enlargement European context, situating the FCNM within broader processes of Europeanisation and EU conditionality [1]. Their work demonstrates that minority protection operates through asymmetrical institutional layering, where formal legal commitments generate uneven implementation outcomes across states. The volume’s key strength lies in its emphasis on post-enlargement variation and the interaction between EU and CoE governance regimes. However, its analytical framework largely interprets variation as an outcome of domestic political conditions, administrative capacity, or state-specific trajectories. As a result, it does not fully conceptualise minority

governance as a recursive translation process operating across multiple institutional layers. In addition, it provides limited analytical coverage of post-migration minorities, urbanised forms of exclusion, and conflict-generated minority identities, thereby maintaining a relatively state-centric and territorially bounded understanding of minority formation.

Weller’s commentary on the FCNM remains the most authoritative doctrinal analysis of the Convention and its interpretive framework [2]. It offers a detailed article-by-article legal reading of the FCNM, supported by insights from Advisory Committee monitoring practice. The central contribution of this work is its clarification of the FCNM as a flexible but structured legal instrument, designed to accommodate diversity while maintaining normative coherence across member states. However, its analytical scope is primarily legal-dogmatic rather than socio-theoretical. It does not systematically engage with minority identity formation as a socially embedded or geopolitically mediated process, nor does it theorise how legal categories are transformed through interaction with policy implementation or lived experience. Consequently, it remains limited in explaining how minority categories shift across governance layers beyond formal legal interpretation.

Hofmann, writing within the European Yearbook of Minority Issues, advances the discussion by focusing on the scope and limits of minority rights protection within Europe’s hybrid legal order [3]. The analysis highlights the fragmented nature of enforcement and the difficulty of achieving consistent application across diverse national contexts. It is particularly valuable in identifying the hybrid nature of CoE governance, where soft-law mechanisms and monitoring procedures substitute for strong judicial enforcement. Nonetheless, the work remains primarily descriptive and institutional, lacking a unified explanatory model of why different minority categories are governed through structurally distinct regimes. It also underdevelops the role of geopolitical pressure and supranational coordination, thereby treating fragmentation as an observable outcome rather than a structurally generated feature of governance interaction.

Malloy provides a more explicitly political analysis of minority rights in post-enlargement Europe, framing minority governance as a technology of state-building, democratisation, and European integration [4]. His work importantly highlights the gap between formal legal commitments and substantive implementation, particularly in transitional political contexts. However, while offering a strong account of political instrumentalisation and implementation gaps, the analysis remains insufficiently differentiated across types of minority formation. It does not fully distinguish between territorial minorities, post-migration minorities, transnational linguistic communities, or securitised identity constructions. Moreover, it does not systematically integrate supranational governance entanglement—particularly the interaction between CoE standards and EU enlargement conditionality—into a unified analytical framework.

Across this literature, four interrelated gaps become evident. First, there is a theoretical limitation in how minority governance is conceptualised: existing approaches tend to frame it in terms of compliance, diffusion, or Europeanisation, rather than as a recursive system of norm translation across interacting institutional and social fields. Second, there is a categorical constraint in the dominant reliance on the concept of “national minority,” which inadequately captures mobility-based identities, intersectional exclusion, and urbanised racialised minority formations. Third, there is an institutional segmentation problem, as CoE and EU governance regimes are often analysed separately despite their increasing functional interdependence in enlargement and conditionality structures. Fourth, there is an empirical blind spot regarding geopolitical volatility, particularly conflict-generated minorities and the impact of security crises on the acceleration and distortion of enlargement governance.

Taken together, these limitations suggest the need for a more integrated analytical framework capable of capturing minority governance as a multi-layer translation system. Such a framework must account not only for legal interpretation and policy implementation, but also for the continuous reconstitution of minority categories through interaction across legal, political, geopolitical, and socio-structural domains.

2. Four-Layer Analytical Architecture of European Minority Governance Under Potential FCNM Transposition
2.1. Introduction: Conceptualising Multilayered Minority Governance in Europe

The governance of national minorities in Europe is best understood not as a singular legal regime but as a stratified institutional ecology in which norms are generated, interpreted, operationalised, and enforced across partially overlapping but functionally distinct layers of authority. The Framework Convention for the Protection of National Minorities (FCNM) of the Council of Europe occupies

a central but structurally ambiguous position within this ecology. It is simultaneously a foundational normative instrument and a paradigmatic example of “soft law constitutionalism,” wherein bindingness is replaced by interpretive authority, and enforcement is substituted by iterative monitoring and deliberative persuasion [5,6].

The analytical framework developed here conceptualises four interacting layers: (1) the normative layer of the FCNM as soft law; (2) a hypothetical EU legal-institutional layer involving transposition into binding Union law; (3) the enlargement conditionality layer through which minority governance is operationalised in accession politics; and (3a) a transformational sub-layer capturing the systemic reconfiguration of leverage mechanisms under conditions of legal codification. Collectively, these layers illustrate a transition from interpretive governance to rule-based administrative constitutionalism within the European legal space [7,8].

European minority governance functions not as a single regime but as a stratified institutional ecology in which norms are produced and enforced across overlapping layers. The FCNM occupies a central yet ambiguous position: a soft law constitutional instrument relying on monitoring and persuasion rather than coercion. As the document notes, the FCNM operates through “normativity without coercion,” using advisory opinions and reputational pressure instead of judicial enforcement. Its open textured principles enable contextual adaptation but also allow strategic, symbolic compliance. The Advisory Committee stabilises meaning through quasi jurisprudential interpretation, turning the FCNM into a reservoir of evolving norms rather than binding obligations.

2.2. Output Tool
➤ Normative Distortion Matrix

FCNM Principle	EU Legal Equivalent	Transformation Risk	Political Implication
Cultural autonomy	Anti-discrimination law	Depoliticization	Weak minority empowerment
Language protection	Cohesion policy tools	Fragmentation	Uneven enforcement

A hypothetical EU transposition of FCNM principles would transform this soft law regime into binding Union law subject to CJEU enforcement. This shift reflects the EU’s broader move toward juridification and regulatory constitutionalism. Codification would replace interpretive monitoring with indicators, audits, and infringement procedures, narrowing flexibility while increasing legal certainty. Because EU minority governance is currently fragmented across anti discrimination law, rule of law tools, and enlargement policy, FCNM transposition would consolidate these into a unified normative architecture.

Within enlargement conditionality, minority governance operates through asymmetric leverage: normative benchmarks, procedural sequencing, financial incentives, and acquis alignment. Chapters 23 and 24 serve as constitutional gateways linking minority protection to rule of law reforms. The effectiveness of this system depends on credible accession prospects; when these weaken, leverage declines and minority governance becomes geopolitical rather than purely legal.

If FCNM principles were codified into EU law, enlargement

conditionality would shift from interpretive assessment to threshold based compliance. Qualitative Commission judgments would be replaced by measurable indicators and semi automatic enforcement triggers, reducing political discretion and increasing procedural rigidity. This marks a transition from political to administrative constitutionalism.

➤ **Conditionality Ladder**

Level	Mechanism	Application in Enlargement
Soft monitoring	Reporting & benchmarking	early screening chapters
Structured dialogue	Peer review	negotiation chapters (23/24)
Financial conditionality	Funds suspension/reallocation	IPA III / cohesion alignment

➤ **Key Innovation**

Transform FCNM from:

- Council of Europe monitoring instrument
- into **EU accession “pre-legalization filter”**

The **socio political reality layer** reveals why harmonisation remains difficult. Legal categories such as “national minority” map unevenly onto diverse ethnopolitical formations: historic territorial minorities, post migration groups, borderland identities, conflict generated minorities, transnational linguistic communities, and urban racialised groups. These formations expose the limits of territorially anchored legal definitions and highlight intersectional, mobility based, and securitised forms of exclusion. This layer continuously destabilises upper governance layers by generating category fluidity that resists codification.

Systemically, integrating FCNM norms into EU law would shift authority toward centralised legal administrative institutions, reduce ambiguity, and further juridify enlargement. This reflects a broader movement from pluralist governance toward legal centralisation and rule based standardisation within the EU.

2.2. Transformational Potential

FCNM based EU regulation would shift enlargement conditionality from interpretive governance to threshold based compliance. Today, the Commission evaluates minority protection through qualitative, discretionary judgments. Codification would replace this with predefined indicators, turning minority governance into an audit style system governed by measurable thresholds. This aligns with global moves toward indicator based regulation, increasing predictability but flattening normative complexity. Enforcement would also change. Currently, the Commission exercises broad discretion in closing chapters, allowing political flexibility. A codified regime would introduce semi automatic enforcement triggers—funding suspension, delayed milestones, mandatory corrective plans—reducing political manoeuvre while strengthening legal certainty. This marks a shift from political constitutionalism to rule based administrative constitutionalism,

where procedural automation replaces discretionary judgment.

In the socio political layer, five minority formations expose why legal harmonisation remains difficult. Post migration minorities rely on residence and socio economic participation rather than historical claims, leading to systematic under recognition. Borderland hybrid identities resist fixed categorisation due to overlapping affiliations. Conflict generated minorities experience securitised, unstable identity reconstruction. Transnational linguistic communities challenge territorial assumptions of minority law. Urban minorities face socio economic and racialised exclusion that traditional ethnolinguistic frameworks fail to capture.

Across these configurations, the core problem is that dominant legal categories—especially “national minority”—cannot capture mobility based identities, intersectional exclusion, or securitised identity formation. In IGTm terms, the socio political layer continuously pushes instability upward, ensuring that EU legal and policy frameworks remain only partially able to codify the diversity of lived minority realities.

How much beer is there in German intelligence ? European Germans will become a nation by becoming Union citizen, while ethnic German will remain German, so long no state has not been invented by the Europeans.

2.3. Systemic Implications: Governance, Authority, and Legal Rationalisation

The combined effect of these transformations is a reconfiguration of European minority governance from a hybrid political-legal regime into a more integrated regulatory system. This would produce several systemic consequences.

First, authority would shift from plural interpretive bodies (Council of Europe monitoring structures, Commission assessment units, and political actors) toward centralised legal-administrative institutions. Second, ambiguity would be reduced, enhancing predictability but constraining adaptive governance. Third,

enlargement itself would become more juridified, moving closer to a compliance-based accession model rather than a politically negotiated process.

From a theoretical perspective, this transformation can be understood as a movement along the continuum between legal pluralism and legal centralization [9]. It also reflects broader EU integration dynamics, in which crisis-driven governance increasingly favours rule-based standardisation over negotiated flexibility [10].

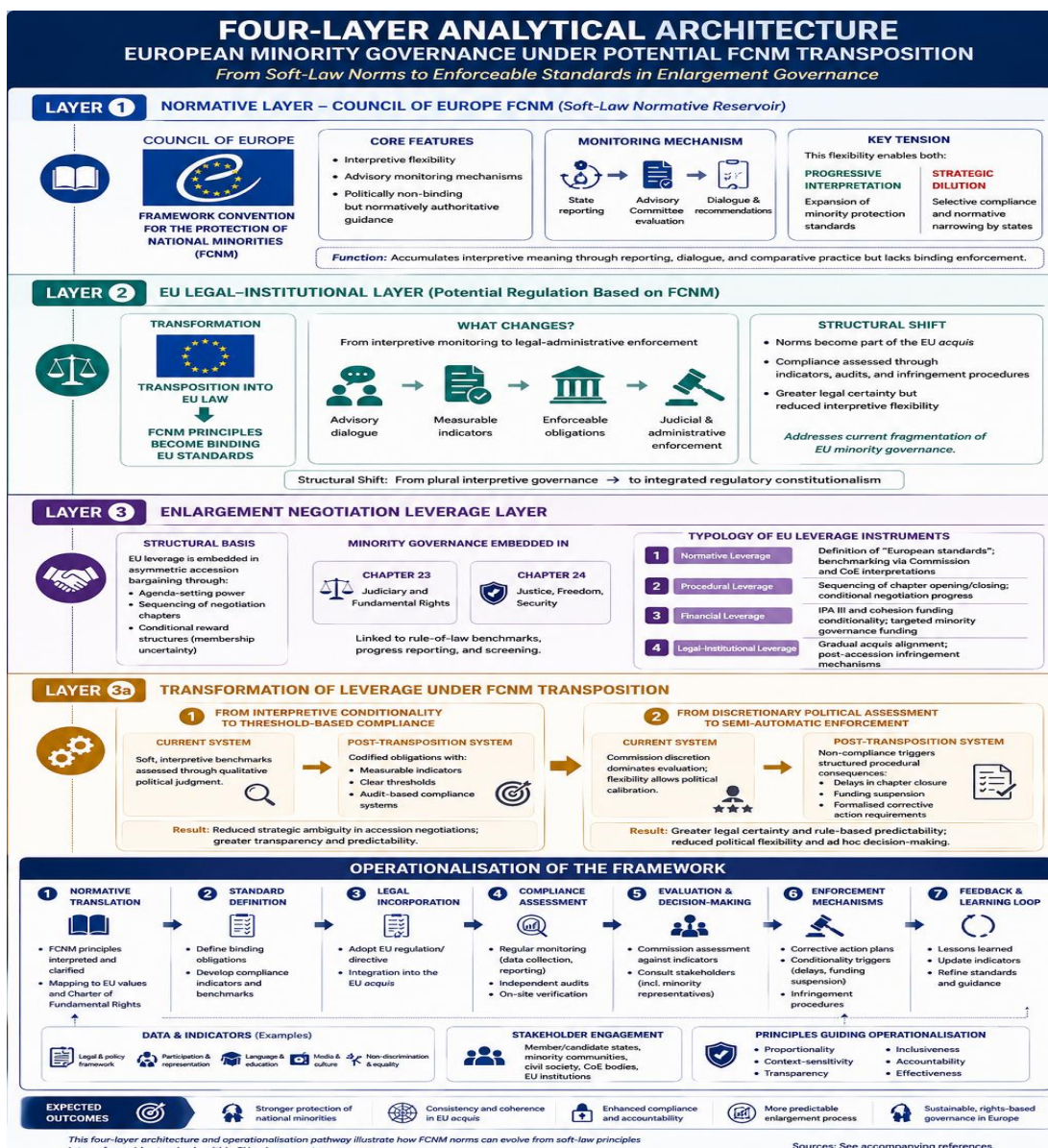
2.4. Summary

The four-layer architecture illustrates a potential structural evolution in European minority governance from soft-law normativity to hard-law regulatory constitutionalism. The FCNM currently operates as a flexible interpretive regime embedded in deliberative monitoring processes. Its hypothetical incorporation

into EU law would fundamentally alter this structure, transforming minority governance into a measurable, enforceable, and semi-automated regulatory system.

While such a transformation would enhance coherence and predictability, it would also reduce interpretive flexibility and political discretion. The enlargement process, in particular, would shift from a bargaining-based system to a compliance-based governance architecture. This tension between flexibility and formalisation lies at the heart of contemporary debates on European constitutional development.

Ultimately, the framework highlights a core paradox of European integration: the pursuit of legal certainty and normative coherence often generates institutional rigidity that may undermine the adaptive capacity of governance systems.



This framework conceptualises the transformation of minority-rights norms across four interconnected layers, tracing their movement from soft law to measurable compliance outcomes.

The first layer concerns the normative system of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM). Although the FCNM lacks binding enforcement power, it generates interpretive authority through monitoring practices. Advisory Committee opinions, state reporting cycles, and follow-up dialogues shape expectations of compliance by producing varying degrees of normative pressure and interpretive convergence across states.

The second layer captures the partial incorporation of these norms into EU legal and institutional structures. At this stage, FCNM principles may be reflected in national legislation, EU directives, or judicial reasoning. Their consolidation is further reinforced through institutional mechanisms such as the EU Charter of Fundamental Rights, the Court of Justice of the EU, and monitoring instruments linked to rule-of-law governance.

The third layer concerns enlargement conditionality, where minority-rights standards become embedded in accession negotiations. Through Chapter 23 and 24 benchmarks, the EU exercises leverage by linking progress to compliance with governance and rights-related criteria. This form of conditionality is strengthened when supported by financial instruments, particularly pre-accession assistance conditioned on reform implementation.

The fourth layer addresses the transformation of enforcement logic itself. As EU involvement deepens, evaluation processes may shift from flexible political discretion toward more structured and rule-based assessment. This can result in clearer benchmarks, more standardised reporting, and, in some cases, quasi-automatic compliance expectations.

Overall, the framework highlights a gradual but uneven process of norm transformation: FCNM soft law generates interpretive pressure, EU legal structures partially codify these standards, enlargement conditionality operationalises them through leverage, and institutionalisation progressively translates them into more measurable forms of compliance.

3. Intersections of Coe Minority Framework into EU Law

The Intersectional Governance Transposition Model (IGTM) treats minority categories not as fixed legal or sociological units but as effects generated through interaction across overlapping

governance domains. Legal systems, policy frameworks, geopolitical settings, and lived social realities function as interdependent fields where meaning is continually translated, re coded, and partially stabilised. "Minority status" emerges through movement across these registers rather than through simple legal designation.

Translation here is structural, not semantic. As categories circulate through legal systems, differing levels of rigidity and flexibility determine whether meaning is codified or adapted. Policy frameworks re embed categories within administrative logics that simplify or functionally redefine them. Geopolitical contexts refract categories through strategic pressures and asymmetries. In social realities, translation becomes experiential, shaping identity formation and everyday inclusion/exclusion.

Four variables structure these processes: legal rigidity versus interpretive flexibility; enforcement capacity; intersectional complexity; and geopolitical sensitivity. Together they produce regulated instability: categories persist because they are never fully stabilised in any single domain.

Within EU enlargement, this dynamic intensifies under the EU Negotiation Leverage Framework. Leverage is not mere external pressure but a structured asymmetry built into staged conditionality. Traditional enlargement relies on iterative bargaining, flexible interpretation, and politically contingent enforcement. Compliance is negotiated and variable.

When minority rights instruments such as the FCNM are operationalised within accession, the system shifts toward institutionalised compliance governance. Rule based thresholds replace open ended negotiation; indicators and reporting cycles reduce discretion; enforcement becomes more linear and predictable. Leverage moves from political elasticity to procedural embeddedness.

Integrated with the IGTM, this produces a higher order effect: minority categories are shaped not only by translation across governance domains but also by the increasing formalisation of EU leverage. As conditionality hardens, interpretive space narrows, yet intersectional and geopolitical pressures prevent full convergence. Stability arises through managed translation across increasingly formalised but still intersecting governance fields.

Analytical Dimension	EU (Supranational System)	Existing Member States	Candidate Countries
Legal Rigidity vs Interpretive Flexibility	High formal rigidity (acquis supremacy, CJEU authority), but strategic interpretive elasticity in implementation guidance and soft-law coordination	Medium rigidity: domestic constitutional filters shape EU law reception; selective interpretive adaptation across jurisdictions	High interpretive flexibility under accession pressure, but increasing rigidity as chapters close and acquis is locked in
Enforcement Capacity	Indirect but structurally strong via infringement, conditionality, financial instruments, and institutional gatekeeping	High internal enforcement capacity but uneven across sectors; enforcement often mediated by administrative quality and political will	Asymmetric and externally dependent; enforcement is “imported” through EU monitoring, reporting cycles, and accession benchmarks
Intersectional Complexity	Extremely high: multiple policy domains intersect (rights, security, market, migration), producing layered governance logics	High but domesticated: intersectional tensions resolved through national legal systems and constitutional balancing	High and destabilising: multiple simultaneous translations (EU law, domestic reform, geopolitical alignment, minority governance regimes)
Geopolitical Sensitivity	High external sensitivity; enlargement, migration, and neighbourhood policy heavily geopolitically framed	Medium-to-high depending on region; sensitivity increases at external borders and in minority/demography issues	Very high: accession path itself is geopolitically conditioned; minority governance often externally scrutinised and strategically framed

Minority Category Translation (IGTM Core Process)	Produces <i>standardised templates</i> of minority governance (rights frameworks, reporting structures, definitional harmonisation)	Produces <i>domesticated minorities</i> : categories stabilised within national constitutional-administrative traditions but adjusted to EU norms	Produces <i>transitional minorities</i> : categories in flux, repeatedly reclassified through accession benchmarks and external conditionality
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Table 1

Cross-System Interaction Logic (Key IGTM Dynamics)

EU ↔ Member States: Stabilised Transposition

Minority categories are translated into harmonised legal templates, but implementation diverges due to domestic constitutional traditions. The result is formal convergence combined with substantive variation. This constitutes the “stable but non-identical” layer of the system, where coherence is asserted at the level of EU law but differentiated at the level of national application.

EU ↔ Candidate Countries: Asymmetric Translation Field

Translation is structured primarily through accession conditionality, producing a one-directional governance dynamic. Minority categories become compliance objects within benchmarking and monitoring frameworks. As accession progresses, interpretive flexibility is progressively reduced, generating convergence pressure without full equivalence between legal form and institutional substance.

Member States ↔ Candidate Countries: Diffuse Norm Diffusion

Member states function as informal reference models for minority governance, but these models are themselves heterogeneous and sometimes inconsistent across jurisdictions. Candidate countries therefore receive plural and occasionally contradictory normative signals, resulting in fragmented mapping rather than linear alignment to a single coherent standard.

Triangular System Effect (EU + Member States + Candidates)

No singular or “pure” model of minority governance exists across the system. Instead, minority categories circulate through three interacting interpretive regimes that continuously reshape one another. This produces partial harmonisation at the EU level, domestic recalibration within Member States, and transitional instability within candidate countries, as each position occupies a different phase of translation intensity and institutional consolidation.

System-Level Outcome (IGTM Synthesis)

Across all intersections, minority categories are never transferred in stable or final form but are continuously re-encoded through varying configurations of legal rigidity, enforcement capacity,

intersectional complexity, and geopolitical sensitivity. This produces a structured asymmetry in which the EU projects formal coherence, Member States generate institutional variation through domestic adaptation, and candidate countries undergo compressed transformation under accession conditionality.

The system therefore does not converge toward a singular uniform model. Instead, it stabilises as a multi-layer translation field in which minority categories persist precisely because they are never fully fixed at any single level of governance, but remain continuously reconstituted through their movement across interacting institutional regimes.

3.1. From Conic to Cone

The Framework Convention for the Protection of National Minorities (FCNM) and the minority rights framework of the European Union are both grounded in the broader European commitment to human dignity, equality, democracy, and the protection of vulnerable groups. Despite these shared normative foundations, the two systems differ considerably in their legal structure, conceptual approach, scope of protection, and enforcement mechanisms. Whereas the FCNM constitutes a comprehensive and minority-specific legal instrument dedicated to the preservation and promotion of minority identities, the EU framework approaches minority protection indirectly through anti-discrimination law, fundamental rights guarantees, and rule-of-law mechanisms. A comparative analysis of the two systems reveals both significant areas of convergence and substantial structural divergences that continue to shape the fragmented nature of minority rights protection within Europe.

The FCNM, adopted under the auspices of the Council of Europe in 1995, represents the first legally binding multilateral treaty specifically devoted to the protection of national minorities in Europe. Its primary objective extends beyond the mere prohibition of discrimination and seeks to preserve the linguistic, cultural, ethnic, and religious identities of minority communities. The Convention therefore adopts a substantive equality approach, recognising that effective minority protection may require

positive state measures aimed at safeguarding minority identity, participation, and cultural continuity. In this regard, the FCNM acknowledges both the individual and collective dimensions of minority existence by protecting the rights of individuals to exercise their identity “in community with others.” Its provisions address matters such as minority language use, education, media representation, participation in public affairs, religious freedom, and protection against forced assimilation.

EU minority protection, by contrast, remains fragmented and indirect. The FCNM promotes substantive equality by recognising that minorities may require positive state measures for effective protection. EU law primarily focuses on formal equality and anti-discrimination principles.

The FCNM recognises both individual and collective dimensions of minority identity. EU law generally adopts an individualistic

rights-based approach. The FCNM explicitly protects minority languages, education rights, and cultural autonomy. EU law does not provide a comprehensive legal definition of “national minority. This absence of definition has created inconsistent levels of minority protection across Member States.

The FCNM relies primarily on political monitoring and supervision by the Council of Europe. EU law possesses stronger enforcement mechanisms through the European Commission and the Court of Justice of the European Union. Minority rights protection in the EU remains constitutionally limited because competences are not explicitly granted by the treaties. EU rule-of-law mechanisms address minority issues only indirectly through democratic governance concerns. The integration of FCNM principles into EU law could establish uniform minimum standards across Member States.

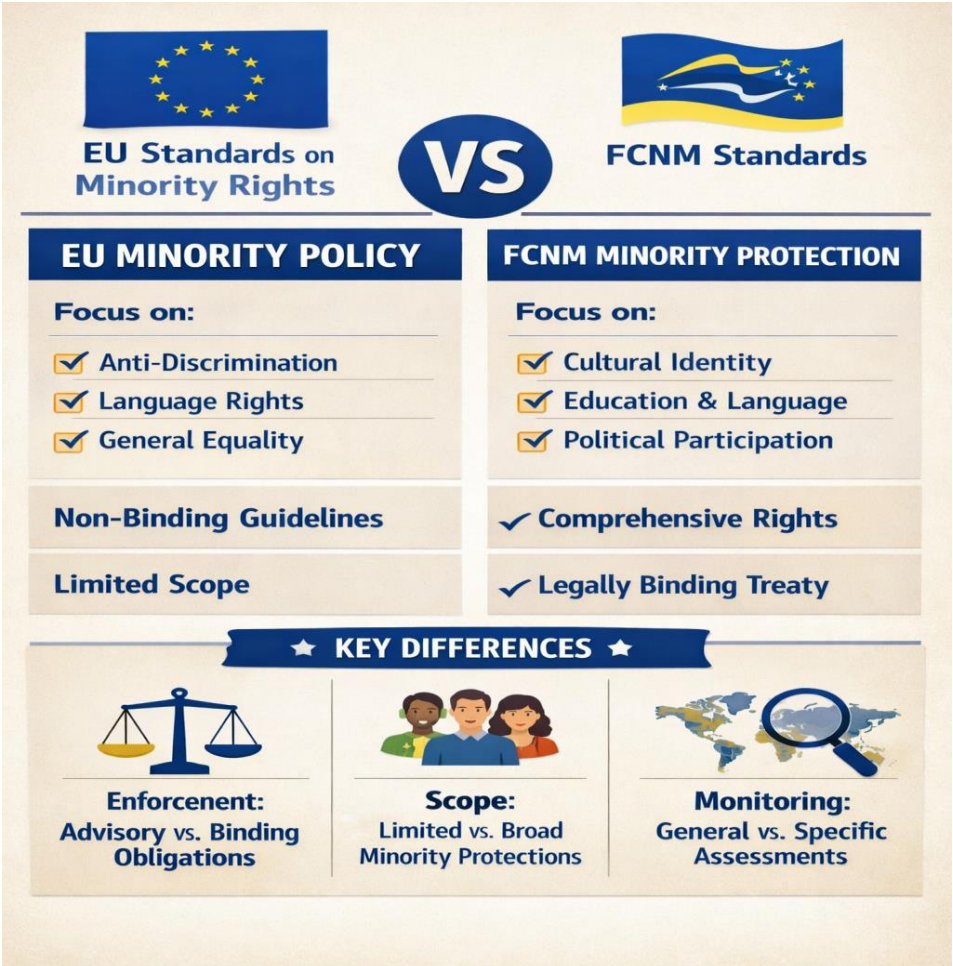


Figure 1

Such harmonisation could reduce disparities in minority protections throughout the Union. Incorporating FCNM principles could strengthen the protection of minority languages and cultural diversity. The transposition process could move EU minority

protection beyond a narrow anti-discrimination framework. FCNM integration could enhance substantive equality by requiring positive measures for disadvantaged minorities. The incorporation

of FCNM standards into EU law could improve legal certainty and coherence. Minority rights protections currently remain fragmented across multiple EU legal instruments. Integrating FCNM principles could consolidate these protections into a unified framework. EU judicial enforcement mechanisms could significantly strengthen compliance with minority rights obligations. Minority rights could become more closely connected to EU rule-of-law and democratic oversight mechanisms. The transposition process could reinforce cultural pluralism and democratic inclusion across Europe. Significant challenges remain, including concerns relating to sovereignty, subsidiarity, and constitutional identity. Nevertheless, integrating FCNM principles into EU law could create a more coherent, enforceable, and harmonised system of minority rights protection within the European Union.

Enforcement deficiencies constitute another major gap in the current system. Although EU law benefits from strong supranational enforcement mechanisms, minority rights themselves are not sufficiently embedded within binding EU obligations. Consequently, the EU's ability to intervene in cases of minority rights violations remains limited and politically sensitive. Existing rule-of-law mechanisms, such as Article 7 TEU procedures and the Rule of Law Conditionality Regulation, address minority-related concerns only indirectly within broader constitutional governance frameworks. In practice, this has often resulted in inconsistent responses to systemic discrimination and exclusion affecting minority communities. The transposition of FCNM principles into EU law could significantly strengthen enforcement by enabling minority rights protections to benefit from the EU's judicial and institutional mechanisms. Individuals and minority groups could potentially invoke these rights before national courts, while the European Commission could initiate infringement proceedings against Member States that fail to comply with agreed standards. The supervisory role of the Court of Justice of the European Union would further promote consistency and accountability across the Union.

Another important opportunity presented by the transposition process lies in strengthening the relationship between minority protection, democracy, and the rule of law. Minority rights violations are frequently linked to broader patterns of democratic backsliding, nationalism, intolerance, and restrictions on civil society. However, the current EU framework does not sufficiently integrate minority protection into its constitutional governance mechanisms. Incorporating FCNM principles into EU law could reinforce the understanding that minority rights are not peripheral social concerns but fundamental components of democratic pluralism and constitutional order. This integration could enable the EU to address minority rights violations more effectively within its broader rule-of-law agenda and strengthen the protection of vulnerable communities during periods of political instability.

The transposition process could also create opportunities for greater harmonisation and legal certainty across Member States. At present, the uneven implementation of minority protections

contributes to inconsistent standards and varying levels of legal security for minority communities throughout the EU. A unified framework based on FCNM principles could establish common minimum standards while still allowing Member States flexibility in implementation according to their constitutional traditions. Such harmonisation would improve predictability, enhance mutual trust among Member States, and reinforce the credibility of the EU's commitment to human rights and diversity.

Despite these opportunities, the process of integrating FCNM principles into EU law would face important legal and political challenges. Minority protection has traditionally been regarded as an area closely linked to national sovereignty and constitutional identity, and some Member States may resist further EU involvement in this field. Questions concerning subsidiarity, competence allocation, and the diversity of national minority models would therefore require careful consideration. Nonetheless, these challenges do not diminish the broader potential benefits of creating a more coherent and enforceable European framework for minority rights protection.

In conclusion, the current EU minority rights framework suffers from significant gaps, including the absence of a unified definition of minorities, limited protection of cultural and linguistic rights, fragmented legal structures, and insufficient enforcement mechanisms. The transposition of FCNM principles into EU law offers important opportunities to address these deficiencies by establishing clearer standards, strengthening substantive equality, improving legal coherence, and enhancing enforcement through existing EU institutional mechanisms. Such reforms could contribute to the development of a more comprehensive and harmonised system of minority rights protection capable of better safeguarding the diversity, dignity, and democratic participation of minority communities across the European Union.

4. Conditionality Restructuring Across Enlargement Phases

The enlargement process can be decomposed into three analytically distinct but empirically overlapping phases—pre-negotiation, negotiation, and post-accession—each of which reorganises the operation of conditionality in relation to minority governance. Within the IGT framework, these phases do not represent purely temporal steps but differentiated regimes of norm translation across legal systems, policy frameworks, geopolitical contexts, and lived social realities. This aligns with broader enlargement scholarship emphasising accession as a “transformative governance regime” rather than a linear compliance procedure [11].

In the pre-negotiation phase, the Framework Convention for the Protection of National Minorities (FCNM) becomes functionally reinterpreted as an implicit entry filter criterion, despite its formal anchoring in Council of Europe rather than EU law. This reflects the broader phenomenon of “external conditionality borrowing,” where EU accession logic absorbs parallel normative regimes [1,13]. FCNM compliance is therefore operationalised as a baseline harmonisation threshold prior to chapter opening, producing

early-stage convergence pressure without full accession leverage. In IGTM terms, this phase is characterised by high interpretive

compression, where minority categories are reduced to eligibility signals rather than fully elaborated governance objects.



Figure 2

During the negotiation phase, minority protection becomes embedded within a benchmarked governance architecture structured through accession chapters, Commission progress reports, and screening methodologies. This corresponds to what scholars describe as “rule-transfer conditionality,” where compliance is operationalised through measurable indicators and staged enforcement [14,15]. Legal rigidity increases significantly through *acquis* alignment requirements, while interpretive flexibility declines as evaluation becomes standardised. Enforcement capacity is structurally embedded via monitoring and reporting cycles, particularly through the European Commission’s annual enlargement reports [16]. Intersectional complexity intensifies as minority governance becomes entangled with judicial reform, anti-corruption measures, and administrative capacity benchmarks, producing what can be described as layered conditionality interdependence.

In the post-accession phase, conditionality is internalised within the EU legal order and transformed into ongoing compliance

governance. Minority standards become subject to infringement procedures, financial conditionality mechanisms, and judicial oversight through the Court of Justice of the European Union (CJEU). This reflects the broader logic of “post-accession compliance enforcement,” where integration does not end conditionality but relocates it within the internal constitutional structure of the Union [17,18]. Legal rigidity and enforcement capacity are both high in this phase, but implementation divergence persists due to domestic administrative variation across Member States, reinforcing the IGTM claim that translation effects continue beyond formal accession.

Across all phases, conditionality restructuring reveals a progressive intensification of governance translation: from eligibility filtering, to benchmarked compliance, to embedded legal enforcement. Yet this progression is non-linear, as institutional capacity and geopolitical sensitivity continually reintroduce variation into otherwise formalised structures.

4.2. Geopolitical stress and Leverage Volatility (Ukraine effect)

The geopolitical shock generated by Russia's invasion of Ukraine introduces a systemic disturbance into EU enlargement governance, producing what can be analytically described as "accelerated conditionality compression" [19]. Within IGTM terms, this functions as a multi-variable distortion affecting legal rigidity, enforcement capacity, and geopolitical sensitivity simultaneously.

First, acceleration pressure significantly reduces the temporal horizon for gradual compliance adaptation. Candidate countries—most notably Ukraine, Moldova, and Georgia—are subjected to compressed reform cycles in which institutional transformation must occur under conditions of ongoing conflict or heightened insecurity. This reduces the availability of iterative translation processes typically associated with EU accession governance [20]. The result is increased reliance on formal compliance indicators rather than deep administrative embedding.

Second, the security reframing of minority governance becomes more pronounced. Minority protection is increasingly interpreted through the lens of state stability, territorial integrity, and resilience against external interference. This reflects a broader securitisation trend in EU external governance identified in the literature on "security–norm nexus transformation" [21]. Within IGTM terms, geopolitical sensitivity becomes a dominant variable, reshaping how minority categories are interpreted across both EU institutions and candidate states.

Third, there is an increased risk of compliance dilution due to geopolitical urgency. As enlargement becomes strategically prioritised, enforcement rigor may soften in practice, even while formal benchmarks remain intact. This produces what has been described in enlargement literature as "credibility–urgency tension", where normative consistency is partially traded for geopolitical consolidation [22].

The interaction of these three distortions produces a structural tension between accelerated enlargement and normative governance coherence. The EU seeks rapid geopolitical stabilisation through enlargement, while simultaneously relying on minority governance frameworks that presuppose gradual institutional embedding and high enforcement consistency. The Ukraine effect thus destabilises the equilibrium of IGTM variables, increasing translation volatility across all governance layers.

It helps to separate three different questions: what the Russian-speaking population in Ukraine actually is, what minority protection law requires, and what expectations are realistic in a country at war with Russia.

The "Russophone minority" is not a clearly defined ethnic minority in most legal terms. Many Russian speakers in Ukraine are ethnically Ukrainian or come from mixed backgrounds, and language use does not automatically correspond to a separate national group. It is better understood as a linguistic community within Ukraine rather than a distinct political minority with

collective rights as a unit.

Ukraine's legal framework establishes Ukrainian as the state language, meaning it is required in public administration and most official spheres. At the same time, the constitution and related laws guarantee the free use, development, and protection of minority languages, including Russian, and protect individuals from language-based discrimination. In principle, this means people can speak Russian freely in private life, cultural expression is allowed, and some educational or cultural rights exist for minority languages, even though public institutions increasingly operate primarily in Ukrainian.

Since 2014, and especially after 2022, Ukraine has progressively strengthened the role of Ukrainian in public life. This includes expanding its use in education, administration, and media regulation, while reducing the official presence of Russian. These changes are closely tied to nation-building after independence and the security context of Russia's invasion, which has made language policy more politically sensitive.

In practical terms, the main expectation placed on Russian-speaking citizens is civic integration into a Ukrainian-speaking state framework. This means the ability to function in Ukrainian in public life—such as dealing with government services, schooling, and formal communication—while still allowing Russian to be used in private contexts. It does not require abandoning Russian as a home or cultural language, but it does involve adapting to Ukrainian as the shared public language of the state.

At the same time, minority protection still implies that Russian speakers retain cultural and linguistic freedom within legal limits. However, during wartime, language policy is also influenced by security concerns, and Russian is often treated as politically sensitive due to its association with the aggressor state.

It is unrealistic to expect Ukraine to restore Russian as a co-official state language nationwide, to maintain a fully bilingual state system across all institutions, or to treat Russian as entirely politically neutral in public life during the ongoing conflict. Likewise, expectations of language-based territorial autonomy are not part of Ukraine's current political direction.

Overall, the situation is best understood as a balance: Russian-speaking Ukrainians are not expected to lose their language or identity, but they are expected to operate within a Ukrainian-centered public state, where Ukrainian dominates official life while Russian remains protected mainly in cultural localised spheres.

5. Integrated Analytical Contribution

The framework produces three principal contributions to ethnopolitics and EU minority governance studies.

5.1. Theoretical Contribution

The IGTM reconceptualises minority governance as a recursive

system of norm production emerging from the entangled institutional architecture of the Council of Europe and the European Union under asymmetric enlargement conditions. This builds on scholarship on norm diffusion and Europeanisation but moves beyond unidirectional models of “upload/download” by emphasising co-constitutive translation processes [23,24]. Minority categories are not transmitted but continuously reconstituted through interaction across governance fields.

5.2. Empirical Contribution

The framework explains variation in FCNM implementation and minority governance outcomes through four interacting variables: legal transposition capacity, geopolitical context, institutional enforcement density, and intersectional complexity. This aligns with comparative Europeanisation research emphasising domestic mediation of EU norms, but extends it by modelling how variation emerges structurally through translation rather than deviation [25]. Differences in implementation are therefore analytically expected outcomes of heterogeneous translation environments rather than compliance failures.

5.3. Policy-Relevant Contribution

The IGTM provides a blueprint for potential reform of EU minority governance architecture, including the development of a more integrated regulatory framework that consolidates FCNM

standards within EU accession conditionality and post-accession enforcement mechanisms. This would involve recalibrated conditionality sequencing, improved alignment between Council of Europe and EU monitoring systems, and strengthened institutional coherence in enforcement practices. Such reforms respond to longstanding critiques of fragmentation in European minority governance regimes, while preserving context-sensitive flexibility within a unified translation architecture [3,4].

6. Implications for Eu Governance

The EU and the Council of Europe operate two parallel but interconnected governance systems for minority protection. On the EU side, policymaking runs from constitutional principles in primary law, through directives and sectoral acquis, into monitoring by DG JUST, DG HOME, and the Rule of Law Mechanism, and finally into external conditionality for candidate states and national level implementation.

The Council of Europe mirrors this with its own constitutional layer (ECHR, FCNM, Venice Commission), the FCNM Advisory Committee’s interpretive work, peer review and recommendations by the Committee of Ministers, accession and compliance benchmarks for member states, and national reporting structures.

In summary,

EU Policy-Making System	CoE Comparative Layer (Advisory & Diversity Committee)
Constitutional-Normative Core — EU Primary Law & CJEU jurisprudence	Convention Framework — ECHR, FCNM, Venice Commission opinions
Legislative-Operational Layer — Directives & sectoral acquis	Advisory Committee on FCNM — thematic opinions, country monitoring
Coordination & Monitoring Layer — DG JUST, DG HOME, FRA, Rule of Law Mechanism	CoE Secretariat & Committee of Ministers — peer review, recommendations
External Conditionality — Enlargement chapters, IPA, Neighbourhood Policy	Accession & Compliance Benchmarks — CoE membership standards
Member State Implementation Layer — equality bodies, constitutional courts	National Liaison Points — CoE reporting & minority protection
Socio-Political Reality Layer — minorities, hybrid identities, linguistic communities	Civil Society Interface — NGOs, minority councils, intercultural dialogue

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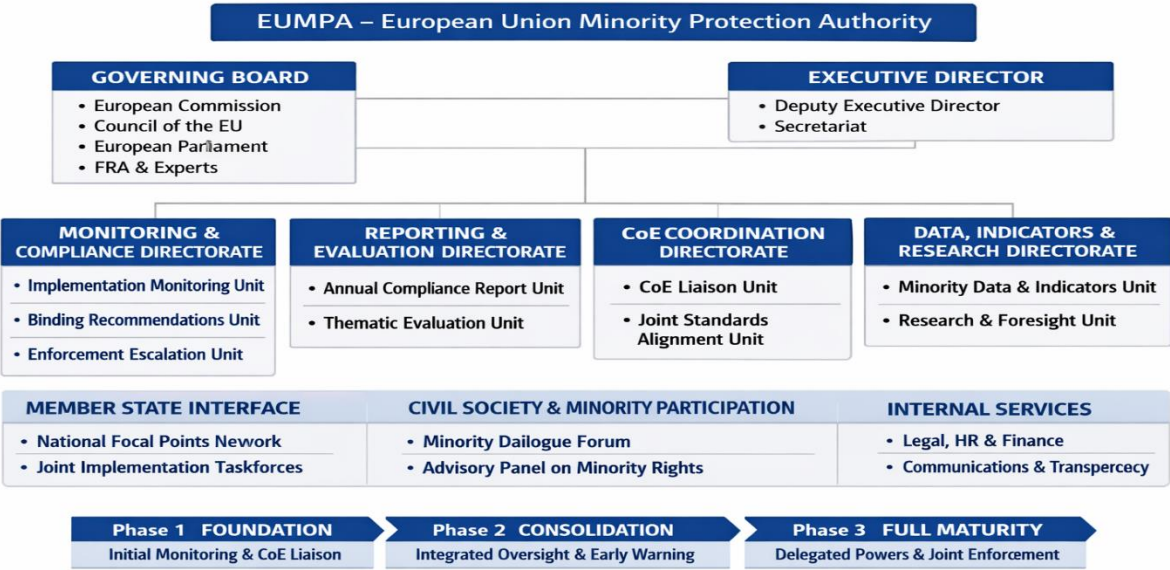
At the base of both systems lies the socio political reality of minorities and civil society, which feeds back into each governance layer. Together, the two regimes form a dual, partially overlapping architecture in which EU legalisation and CoE interpretive authority interact, reinforce, and sometimes diverge.

This makes the case for united Europe to opt for a strong institutional design that translates minority governance into a single integrated agency architecture. It reads as a quasi-autonomous EU body (EUMPA) that operationalises minority protection through structured monitoring, compliance, coordination, and knowledge production.

The most significant strength is the clear institutionalisation of what is otherwise a dispersed governance field. Minority protection is no longer treated as an abstract legal domain but as a consolidated administrative system with differentiated functional capacities. The governing board provides political steering and institutional legitimacy through representation of key EU institutions and expert bodies. The executive director and secretariat introduce operational autonomy, ensuring continuity and administrative coherence across policy cycles.

Internally, the structure demonstrates strong functional differentiation. The Monitoring and Compliance Directorate operationalises enforcement capacity through implementation tracking, binding recommendations, and escalation mechanisms. The Reporting and Evaluation Directorate introduces a structured epistemic layer, producing annual compliance assessments and thematic evaluations that stabilise comparability across Member States. The CoE Coordination Directorate functions as an external normative interface, embedding Council of Europe standards—particularly FCNM logic—into EU operational practice through liaison and standards alignment mechanisms. The Data, Indicators, and Research Directorate establishes the epistemic infrastructure of the system by defining minority categories, producing indicators, and conducting foresight analysis.

The inclusion of Member State interfaces and civil society participation mechanisms is particularly important, as it embeds the system within both administrative and societal feedback loops. National focal points and joint taskforces ensure vertical penetration into domestic governance systems, while minority dialogue forums and advisory panels introduce horizontal legitimacy channels that connect institutional governance with lived minority experience. Internal services such as legal, HR, finance, communications, and transparency functions complete the bureaucratic architecture, ensuring institutional self-maintenance and procedural accountability.



The phased development model introduces a clear temporal logic to institutional maturation. In the foundation phase, the system is primarily focused on monitoring and coordination with Council of Europe alignment. The consolidation phase introduces integrated oversight and early warning functions, increasing systemic responsiveness and inter-institutional coordination. The full maturity phase establishes delegated enforcement powers and joint compliance mechanisms, signalling a transition toward quasi-

executive governance capacity in the field of minority protection.

Analytically, the model successfully captures the transition from fragmented minority governance to an integrated institutional architecture. However, it also introduces an implicit tension between consolidation and pluralism. By centralising minority governance within a single authority structure, the model risks reducing the multi-layered translation dynamics that characterise

actual EU minority governance, where implementation is distributed across competing institutional levels and shaped by domestic legal and political variation.

A further structural tension arises in the relationship between the CoE coordination function and the internal EU legal order. While the model correctly embeds Council of Europe standards as an external normative input, it does not fully resolve the potential for interpretive divergence between FCNM-based soft law and EU legal enforcement mechanisms. Similarly, Member State interfaces are treated primarily as channels of implementation rather than as sites of resistance, reinterpretation, and constitutional friction, which are central to the actual operation of EU minority governance.

The data and indicators function also introduces a significant epistemic governance dimension. By defining minority categories through indicators and research frameworks, the system does not merely measure minority reality but actively constructs it. This transforms epistemic production into a site of governance authority, where classification becomes a form of regulatory power rather than neutral observation.

Overall, the model represents a strong institutionalisation of minority governance within the EU context. However, its analytical coherence depends on reconciling two competing logics: the drive toward centralised administrative integration and the inherently fragmented, multi-level, and translation-based nature of minority governance across Europe.

6.1. Ad Conclusionem

The IGTM (Intersectional Governance Translation Model) explains how minority categories are not static across EU regulation, but are continuously reconstituted through interactions between legal systems, policy frameworks, geopolitical contexts, and lived social realities. These domains do not operate in isolation; rather, they form intersecting regulatory fields in which meaning is constantly translated, adjusted, and partially stabilised.

Within this interactional space, minority categories shift depending on the balance between legal rigidity and interpretive flexibility. Where legal rules are rigid, translation tends to be constrained, producing formal alignment without full contextual adaptation. Where interpretive flexibility is higher, categories become more fluid, allowing for contextual adjustment but increasing variation across jurisdictions and policy arenas.

Enforcement capacity functions as a stabilising or distorting force within these interactions. Strong enforcement channels tend to compress variation across systems, while weaker enforcement allows divergence to persist and accumulate across intersecting domains. This directly affects how consistently minority categories are recognised and operationalised.

Intersectional complexity increases the density of these interactions, as multiple overlapping legal and policy logics must be translated

simultaneously. In highly complex configurations, coherence is not pre-given but emerges only through iterative negotiation across fields, often producing partial or layered alignments rather than uniform outcomes.

Geopolitical sensitivity further conditions these interactions by shaping which translations are politically permissible or strategically acceptable. In sensitive contexts, regulatory translation is not purely technical but filtered through external pressures, affecting how categories are stabilised or reframed across systems.

Overall, the IGTM describes a regulatory environment defined by continuous interaction rather than fixed hierarchy, where minority categories are produced and re-produced through ongoing translation across overlapping institutional and social fields. Coherence, where it emerges, is an outcome of these interactions rather than a pre-existing structural unity.

EU regulatory monism can be understood as the attempt to treat the legal order as a single coherent “universe,” where all regulatory domains ultimately derive from one underlying structure of authority and interpretation. In this sense, the Treaties, general principles, and Court of Justice jurisprudence function like the fundamental laws of a single cosmological framework, generating consistent patterns across otherwise diverse policy fields.

However, what appears in practice is closer to a set of intersecting “minority universes” or local interpretive spaces. Each regulatory field—environmental law, migration governance, data protection, competition policy—operates with its own internal rationality, temporal logic, and institutional dynamics. These can be thought of as partially autonomous sub-universes that do not fully collapse into a single coherent whole, even if they remain formally embedded within it.

From this perspective, EU governance is not experienced from the standpoint of a unified monistic “master universe,” but from within overlapping minority-aspects of that system. Each legal field sees only a partial projection of the whole, and coherence is something constructed retrospectively through interpretation rather than given in advance.

The tension, therefore, is not simply between unity and fragmentation, but between two ways of inhabiting the system: one that assumes a single underlying normative universe, and another that experiences reality as a plurality of coexisting interpretive universes that only partially align. EU regulatory monism is the doctrinal claim that these differences are merely projections of one structure, while actual governance often feels like movement across multiple semi-independent worlds that resist full unification.

In that sense, “remaining in the minority universe aspect” captures the lived condition of EU law: coherence is always asserted, but plurality is always experienced.

Taken together, these interlocking tensions point to a deeper constitutional and political ambivalence within the EU project, where integration is not governed by a single coherent logic but by the continuous management of competing rationalities that are often only partially reconcilable.

First, the contrast between soft-law interpretive flexibility and hard-law enforcement rigidity reflects not merely a legal dualism, but a functional necessity embedded in the EU's multi-level architecture. Flexibility allows for contextual adaptation, incremental alignment, and politically viable compromise across heterogeneous member and candidate states. Yet this same openness risks interpretive fragmentation, where normativity becomes contingent and unevenly applied. Hard-law enforcement, by contrast, restores predictability and uniformity, but can appear overly technocratic or detached from domestic political realities, especially in enlargement contexts where legal transposition does not automatically translate into institutional consolidation.

Second, enlargement leverage versus internal legal coherence exposes a structural asymmetry in the EU's external projection of norms. Enlargement functions as a transformative instrument, extending *acquis* conditionality as a disciplining framework for reform. However, the more the EU externalises its legal order, the more it must contend with feedback effects that challenge internal consistency—particularly when differentiated integration, opt-outs, or variable geometry within the Union itself complicate the claim to a singular normative baseline.

Third, the tension between normative ambition and administrative capacity highlights a persistent implementation gap. The EU's regulatory imagination is expansive, often oriented toward rule-export, governance upgrading, and value diffusion. Yet institutional capacity—both at supranational and national levels—remains uneven, producing a governance asymmetry in which formal compliance may mask substantive variation in enforcement, monitoring, and administrative embeddedness. This gap is not incidental but constitutive of a system that relies heavily on delegated governance and indirect enforcement chains.

Fourth, political discretion versus rule-based governance reflects an enduring struggle over legitimacy. Discretion enables responsiveness in crisis contexts and allows political institutions to navigate ambiguity where rigid rules would be maladaptive. However, it also raises concerns about arbitrariness, selective enforcement, and the politicisation of ostensibly legal processes. Rule-based governance, while foundational to EU legitimacy claims, can itself become rigidly formalistic, obscuring the inherently political nature of interpretation and implementation.

Finally, diversity recognition versus securitisation dynamics captures a shift in the normative framing of plurality. Diversity has long been a constitutive principle of EU integration, particularly in accommodating linguistic, cultural, and institutional variation. Yet contemporary governance increasingly filters diversity through risk-based logics—migration control, border governance, and

internal security—where difference is not only celebrated but also monitored, categorised, and potentially problematised. This securitised framing subtly transforms pluralism from a normative asset into a governance challenge.

Overall, these tensions are not anomalies but constitutive features of the EU's evolving polity. They signal a system that governs through managed contradiction: seeking coherence without uniformity, expansion without dilution, and authority without full centralisation. The result is not resolution but calibrated instability—an ongoing recalibration of legal, political, and administrative logics that sustains the Union's adaptability, even as it exposes its structural limits.

The “minority universe” approach in EU regulation can be understood as a conceptual attempt to explain how fragmented regulatory interpretations—initially existing as separate, partially incompatible “intersecting spaces”—gradually interact and stabilize into a more unified legal structure. At the outset, EU regulatory fields operate like multiple intersecting conics: distinct doctrinal domains (such as competition law, migration law, environmental regulation, and data protection) develop their own internal logics and interpretive trajectories, often functioning as semi-autonomous normative worlds.

Within this framework, the “minority universe” refers to the idea that coherence does not originate from a single dominant system imposed from above, but from within a plurality of weaker or marginal interpretive positions that interact over time. These minority positions, initially dispersed and non-dominant, begin to converge through jurisprudential interaction, administrative coordination, and cross-sector legal borrowing.

Over time, these interactions are imagined as producing a transition from fragmented intersections toward a unified “cone”: a single underlying regulatory structure that is increasingly recognised, stabilised, and ultimately “admired” in the sense that it is treated as normatively authoritative and broadly applicable across domains. In this sense, the cone is not given in advance but emerges as a retrospective rationalisation of convergence.

EU regulatory monism, in this reading, is the endpoint of that process: what begins as a plurality of minority interpretive universes gradually becomes consolidated into a dominant structural form. Yet the tension remains that this convergence is never complete—residual plurality continues to persist at the level of interpretation and implementation, meaning the cone is always an achieved claim rather than a fully closed reality [26-64].

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