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Conditional Changes: Europeanization in the Western Balkans and the Example of Media Freedom

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Abstract

This paper takes a broad view on the context of EU conditionality and, after presenting various challenges, narrows down its focus to provide evidence for the shortcomings concerning media freedom in the Western Balkans. That enlargement is not the linear, one-way process it was once believed to be – where countries gravitating towards an evident liberal democratic consensus through the pull of integration – is evident from cases reaching beyond the Western Balkans. While we will not try to establish any direct causal relationship between the shortcomings of EU conditionality and the democratic backlash in the Western Balkans in the past ten years, we do seek to demonstrate how conditionality is failing in a particular context, by providing an overview of what the essential conditions of successful norm promotion, credibility and, most importantly, consistency are, and illustrate how these are lacking in the case of media freedom conditionality.

This paper takes a broad view on the context of EU conditionality and, after presenting various challenges, narrows down its focus to provide evidence for the shortcomings concerning media freedom in the Western Balkans. The way in which the government in Serbia has been undermining media freedom and pluralism in recent years while formally complying with EU conditionality has been documented elsewhere (Huszka, 2017). The Serbian example also shows that despite all the criticism the EU raised in its progress reports and other accession documents, the country could record great progress on its accession path while backsliding on a key human rights condition, which reveals a glaring inconsistency in the EU's conditionality policy. Here the scope of our analysis is broadened to include other Western Balkan countries.

That enlargement is not the linear, one-way process it was once believed to be – with countries gravitating towards an apparent liberal democratic consensus through the pull of integration – is evident from cases reaching beyond the Western Balkans. The backlash in Hungary and Poland serve as reminders that many achievements can easily be reversed. Turkey provides another example that the enlargement path is no guarantee against the most severe diversion from democracy. These examples make it topical to assess what the realistic goals of EU conditionality are in the fields of democracy, human rights and the rule of law. The insights below apply regardless of whether we see the growing contestation of European integration after 2004 as a welcome politicization and democratization or a breakdown completed by the EU's inability to defend its core values or to prevent the first exit. Alarmist accounts should in fact embolden calls for effective conditionality.

While we will not try to establish any direct causal relationship between the shortcomings of EU conditionality and the democratic backlash in the Western Balkans in the past ten years, we do seek to demonstrate how conditionality is failing in a particular context, by providing an overview of what the essential conditions of successful norm promotion, credibility and, most importantly, consistency are, and illustrate how these are lacking in the case of media freedom conditionality. The present paper builds on a wide-scale research study with the participation of the authors (Fraczek, Huszka and Körtvélyesi, 2016) drawing on policy documents and interviews with stakeholders.

Conditionality and Consistency in the Enlargement Context

The core values of the EU as defined in Article 2 of the Treaty on European Union – like democracy, human rights and the rule of law[1] – are not simply value choices, they constitute the foundations of integration. As de Búrca has shown, the legal commitments to these in the EU's framework are but the return of the founding ideals and rationales. (de Búrca, 2011) Furthermore, these principles have become positive law in Member States, with consequences for political and constitutional expectations towards EU laws and institutions as well, making the observation of these

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[1] The full article reads: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

standards legally compelling. Meaningful European cooperation that seeks to create a common space and deep and stable integration with peaceful and institutionalized handling of conflicts cannot be maintained without basic guarantees for these values applying to all levels of decision-making. This includes internal and external policies, the European and the Member States levels, and the meeting point of all these: enlargement conditionality that seeks to make candidate states ready to take part in the integration. In this sense, pursuing these goals represents both a value-based commitment and an inherent interest, as noted more widely by Baehr and Castermans-Holleman: it is in the 'national interest of liberal democracies to export their norms and values, including human rights norms'. (Baehr and Castermans-Holleman, 2004: 2) Balfour also challenges the view that principles and interests can be presented in a clear-cut dichotomy. (Balfour, 2006: 115)

While enlargement has often been labelled as the most successful area of EU policies, critical voices are dominant in the literature. Considering the complexity and the difficulty of triggering domestic changes in the state of democracy, human rights, and the rule of law, it is easy to criticize the EU's actions and lack of actions. Most, if not all, studies in the field conclude that consistent application of conditionality is a key to successful promotion of the said values. We will first look at the complexity behind 'consistency' and the legitimate role for prioritization, providing a brief overview in a way that will allow us to revisit some of these specific sources of inconsistency in our case study. (For a more detailed overview of the types of inconsistencies, see Körtvélyesi, 2016.)

The variety of the institutions, bodies and actors including the level of the Member States can explain the type of inconsistency that is often described as the EU having 'too many voices'. Speaking with many voices is in fact a feature of a liberal democratic regime with various bodies controlling each other and ensuring representation at various levels. This is not to say that these voices cannot undermine each other where divergence is too high.[2] The Council and individual Member States, especially those that can weigh in heavily in relation to specific third countries, the Commission and the European Parliament are the most obvious players, while other institutions like the Court of Justice of the European Union also shape European foreign policy. EP resolutions are a common target of criticisms, sometimes including remarks about how they undermine consistency, but they can equally boost consistency by providing reminders about earlier commitments.[3] In the enlargement

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[2] The establishment of the European External Action Services under the Treaty of Lisbon in 2011, charged with assisting the High Representative of the Union for Foreign Affairs and Security Policy, was aimed at forging a foreign policy that is truly common, with the coordination of action at the international scene. In the human rights context, this will brought about the adoption of the EU Strategic Framework and Action Plan on Human Rights and Democracy in 2012 (Council of the European Union, 2012), the Action Plan itself seeing an update in 2015 (Council of the European Union, 2015). Indeed, the Action Plan serves as an important guideline for the everyday work within the EU's 'ministry of foreign affairs', the European External Action Service. (Interview with Riccardo Serri, Deputy Head of Division on Human Rights Strategy and Policy Implementation, European External Action Service. Brussels, 12 June 2014).

[3] The Parliament can also be seen as contributing to the welcome politicization of foreign policy, including non-traditional measures like political groups exerting influence on their members directly, in line with the commitments these parties and their members make in their work in EU institutions. It

context, some Member States or the Commission can send mixed messages about the feasibility of future accessions, thus putting accession perspective in question even for those EU candidates that are already negotiating their membership. It might be enough for one player to deviate from consistent conditionality to undermine credibility and effectiveness, even in the case of core human rights commitments. For instance, after sustained criticism in the Commission's progress reports about the media situation in Serbia, Johannes Hahn, EU Commissioner for European Neighbourhood Policy and Enlargement, undermined EU and domestic NGO efforts by questioning claims about violations of press freedom and self-censorship in a public statement (BIRN, 2015).

The EU is often criticized, and in most cases rightly, for the inconsistency between internal and external policies which is an aspect specifically addressed by the EU (Council of the European Union, 2016). This is not so much of a problem where higher standards apply to Member States. Joining the EU means that the full scope of the acquis applies, which is not the case with non-members. However, where conditions are set for third countries, usually in the context of enlargement, that Member States governments themselves do not observe or are not even bound by, this can undermine the legitimacy and effectiveness of EU pressure. The fact that the EU's leverage is lower once states have joined the EU is partly linked to the lack of institutional guarantees for post-accession compliance. Thus, references to the decreased leverage are not so much an excuse than an argument for institutional reform.

While the EU Strategic Framework mentions, in its opening paragraph, 'respect for human rights, democracy and the rule of law' as principles that 'underpin all aspects of the internal and external policies of the European Union', candidate states were faced with demands – taking up international minority rights obligations (see Sasse, 2008: 847) or cutting back government influence on the media – that some states that were already members clearly did not fulfil. (Take the example of the EU's loss of credibility due to its handling of those seeking asylum in its Member States.) While this has become a crucial element in the 'normative power' (Manners, 2002) the EU has, if any, towards candidate countries, our interest here lies in the internal consistency of conditionality. In the context of enlargement, governments will be hesitant to take up duties that were not demanded from other candidate countries. Accordingly, a more general version of this criticism is the double standard argument pointing out different treatment of different third countries, or 'double standards' in favour of countries that are important strategic or trade partners, for example (Khaliq, 2008: 452).

Probably the greatest challenge for consistency is to set and maintain priorities and to keep their consistency over time. While consistency can be mistaken for the failure to define priorities, the 'indivisibility' of human rights does not mean that the EU cannot and should not pick specific goals that it seeks to achieve with conditionality. Lucarelli and Manners contrast consistency and pragmatism (Lucarelli and Manners, 2006: 207–208). What some see as 'mismatch' or 'bifurcation'

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might be important to note in the enlargement context that European political parties include parties from non-EU member states, including EU candidates.

(Williams, 2004) can also be interpreted as a 'flexible adherence to principles'.[4] Equally pursuing all human rights goals all the time can result in poor impact, or none at all, while a selective application, reflecting a strategy with realistic targets and considering the possible range of domestic change, can still be consistent. Setting clear and transparent goals with consistent follow-up measures can be key to effective human rights promotion. Consistency might fail in the discrepancy between stated goals and the weights reflected in financial support. Earlier assessment of priorities as reflected in financial support for Serbia and Bosnia and Herzegovina showed only partial overlap with stated priorities, based on the Instrument for Pre-Accession Assistance (IPA). (E.g. asylum and human trafficking featured in IPA priorities, but not in enlargement strategies, while certain enlargement priority areas only showed up sporadically as financial support. See Fraczek, Huszka and Körtvélyesi, 2016: 54–58, 78–84, 134–138.)

Critiques of inconsistency often point out the gap between rhetoric and action. The EU can be voicing concerns and repeat commitments in public statements and still act in a manner that undermines its stated values. Without a strong commitment to observe and represent human rights standards, these can give way to other foreign or domestic policy interests, which makes value-based references mere 'window dressing' or 'luxury goods' (Jørgensen, 2006: 42). Consistency in practice requires the consistent use of instruments, linked to progress (or lack of progress or even backsliding). This in turn requires measurable targets and the prior communication of sanctions. The EU has an immense array of instruments at its disposal, quiet and public measures, formal and informal, diplomatic and economic actions, used unilaterally or through multilateral institutions etc. (For a detailed overview, see Fraczek et al., 2015: 71–109.) A common dilemma of conditionality concerning human rights and democracy is that measures like sanctions or financial benefits might end up benefitting a regime as opposed to domestic democratic forces. The right approach in such cases is the heavy reliance on what is usually termed targeted measures, most importantly direct support to civil society like the European Initiative for Democracy and Human Rights.

Conditionality might require harsh sanctions to indicate where standards cannot be relaxed for a would-be Member State. One of the greatest challenges to consistency is indeed the fear that this rigorousness backfires and places the perspective of membership too far away to work as an incentive. The lines of studies by Schimmelfennig, Sedelmeier and others (see e.g. Schimmelfennig and Scholtz, 2008) maintain that conditionality works where credible and realistic benefits (like membership, see Schimmelfennig et al., 2006: 260) are linked to low domestic adoption costs. It is a thin line that the EU can walk, and responding too readily to domestic political shifts by relaxing conditions might take away consistency and credibility. The constant challenge for conditionality is to stand its ground and become proactive instead of a series of mere reactions to domestic developments and scandals.

Consistency is key to effectiveness, but is not the sole contributing factor. Realistic prioritisation is equally important. Just like it is hard to measure domestic performance that should be the basis of applying differentiated measures vis-à-vis the

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[4] Balfour, 2006: 128, referring to Knud Erik Jørgensen; see also Jack Donnelly and Chris Brown, cited in Lucarelli and Manners, 2006: 213.

country in question, it is not easy to assess whether conditionality has been successful. Setting formal goals like the adoption of laws or creating various bodies and procedures might prove easy targets both from the side of compliance and that of measuring progress. Yet, these usually only lead to 'shallow' compliance, to domestic changes that are easy to revert. (See terms like 'shallow Europeanization', Goetz, 2005: 262; and 'Potemkin harmonization', Jacoby, 1999: 62-67, cited by Börzel, 2011: 9.) On the other hand, substantial changes, e.g. of social attitudes, might not be realistic policy goals. These are dilemmas that are at the heart of the type of conditionality issues we are assessing here.[5]

After the overview of conditionality challenges, we will now turn to the question of how domestic actors react to conditionality pressure, especially political decision-makers who lack commitment to democracy, human rights and the rule of law, or even consider these in many cases as detrimental to their goals of staying in power.

Challenges to Conditionality in the Western Balkans

The insights from the burgeoning literature on conditionality can be summarized in five points. Conditionality is more likely to succeed 'if membership criteria are clear, if the same criteria are applied equally to all applicants, if they are strictly but fairly monitored, if the findings are transparently communicated, and if there is no doubt that the reward will come once conditions are met' (…and sanctions where they are not), none of which currently holds (BiEPAG, 2017: 14). In addition to the external factors of credible, transparent, and consistent conditionality, domestic adoption costs play an important role (Schimmelfennig and Sedelmeier, 2004). In the Western Balkan context, the domestic political landscape is an important determinant. Measures required by conditionality in the field of human rights and democracy can be costly for rulers seeking to maintain power at all costs. Börzel confirms that, just like in the case of the Central and Eastern European enlargement round, successful conditionality 'depends on a credible accession prospective, non-prohibitive compliance costs and the existence of liberal reform coalitions' (Börzel, 2011: 14). Schimmelfennig, Engert and Knobel distinguish the liberal from the anti-liberal party constellation, and argue that in the latter case, marked by 'nationalism, communism, populism, and/or authoritarianism', 'the political costs of adaptation to the liberal community rules will be steadily high' (Schimmelfennig et al., 2006: 245–46). They conclude that it is only in the 'mixed constellation' where 'the membership promise [has] a strong impact on democratic consolidation' (Schimmelfennig et al., 2006: 246). While the description of the anti-liberal constellation unsurprisingly applies to the Balkan cases, this has received less attention so far. The literature has

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[5] For the sake of providing a complete picture of the types of inconsistency arguments, we should also mention a source of criticism that we will not deal with in this article, for it holds little water in the enlargement context: the equal concern for civil and political as well as social and economic rights. The universality and indivisibility of human rights is a principle that the EU stresses strongly, see, e.g. Art. 21-1 of the Treaty on European Union (TEU) citing the principle of 'the universality and indivisibility of human rights and fundamental freedoms' as guiding external action; and EU Strategic Framework, section 'Promoting the Universality of Human Rights', reaffirming the EU's 'commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural', specifically mentioning labour conventions (Council of the European Union, 2015: 9).

focussed more on the difficulty of complying with EU conditions[6] that touch upon statehood and national identity issues. These include the EU's expectations towards Serbia regarding Kosovo, or concerning ICTY cooperation, when persons regarded as war heroes must be extradited for criminal investigation and, ultimately, to the International Criminal Tribunal for the former Yugoslavia. While it seems logical to concentrate, in a post-conflict setting, on the impact this legacy has on compliance, we argue that sustainable transformation should also seek an understanding of how more 'mundane' features of post-communist societies, especially those related to the rule of law area, affect rule transfer.

Hungary that in 2006 looked like a solid case with virtual consensus on Western orientation, EU membership, and liberal democracy, might be a sign of caution for the less clear cases of Western Balkan candidate states, showing the limits of triggering change and lock-in from the outside. What Schimmelfennig et al., call 'international socialization efforts' led, in most cases, to reluctant compliance and not 'internalization or habitualization', and even where there was genuine change, it was more of a result of 'instrumentally rational behaviour under changed circumstances', i.e. conditionality pressure (Schimmelfennig et al., 2006: 257). As the conditionality pressure eases enormously after accession, under the present framework at least, the backlash that some countries witness, after and before accession, can easily fit this theory.[7] We should note, however, that the CEE and WB contexts differ in that rule transfer generally fails in the Western Balkans at an earlier stage than it did, e.g. in the case of Hungary. Namely, formal regulations like media laws in Serbia or anti-discrimination legislation in Bosnia are often not implemented in the first place and, as a result, there is not much to lock in for the future. In this sense, what could be labelled as 'backlash' in CEE countries is not so much a 'reversal' in the Western Balkan context as a road that has never been taken.

The particular challenge for conditionality in the Western Balkans is that the existence of an able central government that can meet conditionality goals cannot be assumed, and state-building in many cases runs parallel to democracy promotion. (Börzel, 2011) The EU, recognizing this, promotes both goals, which has the paradoxical consequence of further strengthening strong leaders that some describe as 'stabilitocracy' (Pavlović, 2016; BiEPAG, 2017). Even if there is a strict commitment to conditionality following standards of human rights, democracy and the rule of law, EU actions can strengthen autocratic leaders. Part of the reasons might lie in the heavily state-centred approach to conditionality, seeing reforms as mere 'box ticking'. (See, in the context of transitional justice and security, Bojicic-Dzelilovic et al., 2016). Serbia managed to meet the condition of ICTY cooperation without generally condemning war crimes, often celebrating convicted war criminals as heroes (Ristic, 2015). As conditionality rewards delivering on targets set by the EU, regardless of

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[6] Though by far not exclusively, see e.g. Noutcheva, 2012 and Noutcheva and Aydin-Düzgit, 2012 on rule of law reforms.
[7] Even if they, in the original formulation of the theory, did not see this as a likely development: countries like Hungary and Poland 'have become EU and NATO members already so that accession conditionality is not available anymore. However, the internal mechanisms of human rights monitoring and judicial enforcement of the Western international community (such as the CE's system of human rights protection) are likely to be sufficient to ensure continued respect for human rights and democratic norms (Schimmelfennig et al., 2006: 259.)

domestic support for reforms, leaders with autocratic tendencies can enjoy an advantage. As a recent report of the Balkans in Europe Policy Advisory Group argues, '[e]xternal efforts at resolving the open questions of statehood have also favoured heavy-handed fixers' (BiEPAG, 2017: 4). In addition to the Kosovo question, dealing with asylum seekers is also an issue that seems to be caught up in the game of exchanging security measures for democratic conditions.[8]

The fundamental flaw of this approach, regardless of whether it is a desired or only an eventual outcome of conditionality, is twofold. First, such a process will never lead to reliable members who share the common foundations of integration, and will become part of the problems, posing internal challenges to the working of the EU. Second, related to this, while the term 'stabilitocracy' suggests stability, it is akin to building on sand. As Erwan Fouéré notes in reaction to the European Commission's self-laudatory comments, 'if fundamental and systemic violations of the rule of law and the erosion of democratic standards are not effectively addressed, any stability achieved is not sustainable' (Fouéré, 2016: 2). (We will come back to the argument of sustainability later.)

Despite all the challenges, we do see change, and we witness cases where the standards set by the EU condition domestic political behaviour. Even leaders with autocratic inclinations are aware of red lines, and actively test the boundaries. Serbian President Vučić knows well that concessions on Kosovo are fundamental to progress on the path to membership, while he can also be sure that crackdown on opposition in various areas, from the media to civil society, will not provoke a strong response from EU officials. If the semblance of progress is maintained through acts like the protection of the pride parade, showing friendliness to asylum seekers, other, often fundamental challenges to democracy can be swept under the carpet.

To reiterate, conditionality needs clear and realistic targets that nevertheless have the ambition of a genuine transition to democracy with human rights and the rule of law. Key to this is a consistent application of conditionality, in all of the respects listed earlier, especially where additional challenges are present in the form of ongoing state-building and a challenging international context, the siren song of illiberal regimes. What adds to the complexity is that consistency is not a yes-or-no question, and it is often hard to tell whether we truly have it. What is easier to tell, however, is when we see a clear trend that violates even basic concepts of consistency. In the final section of this paper we will illustrate this with the EU's conditionality in the field which is key to building and maintaining democracy: media freedom.

Conditionality and Media Freedom in the Western Balkans

The role of independent media cannot be overestimated and no democracy, no genuine guarantees to human rights can exist without the check on power provided by free journalism. This is confirmed by various theoretical accounts of what democracy is (see Dahl, 2000; Habermas, 1984; or accounts of 'media democracy', often with

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[8] The problem is further exacerbated when EU measures not only reinforce leaders with dubious credentials as a side-effect but implicitly encourage human rights violations, based on a false dichotomy between security and liberty, like in the case of the treatment of asylum seekers.

critical overtones, see, e.g. Voltmer, 2013: 218), and also in practice, by the inclusion of the media landscape in assessing the fairness of elections and referenda. (See, most recently, on the Turkish referendum, OSCE, 2017.) There is a general sense that better overall media performance in a country relates to a better functioning democracy, a connection confirmed by comparative studies (Müller, 2014). Free media works as a crucial check on power, and a functioning democracy guaranteeing human rights and the rule of law are important to secure independent media. It is thus a crucial area for testing the impact of EU conditionality. How do we run this 'test', how should we measures 'success'? There are at least three variables in the equation: the *content* of conditionality on media freedom, the *instruments* that the EU used or can use, and the media landscape in Western Balkan countries (the *target*).

Despite the centrality of media freedom to many of the values (including freedom, democracy, human rights, and pluralism) central to the European Union (see Art. 2 TEU), the field remains largely national competence (but see the Audiovisual Media Services Directive). As is common with such areas, this creates problems for enlargement conditionality, which are further exacerbated by the variation in media regulation in EU Member States. Accordingly, no core acquis is available that could be transferred. A quick look at Enlargement Strategies and Country Reports, key instruments in the enlargement context, however, reveals a core agenda with elements like fighting intimidation and political pressure, easing (or eliminating) direct political influence on public broadcasting, the transparency of ownership and of state support to certain outlets, integrity and self-regulation, decriminalization of defamation, pluralism of the media, and diffusing an ethos of tolerance, with special regard to the representation of minorities.

The instruments available for the EU to exert pressure as part of its conditionality includes statements and criticism both informally (including by Member State politicians) and in formal documents adopted by various bodies, most importantly the enlargement strategies and country reports; targeted and non-targeted financial measures as part of CARDS (Community Assistance for Reconstruction, Development and Stabilization) and, from 2006, IPA (Pre-Accession Assistance Instrument) and, more directly in the context of human rights and democracy, EIDHR (European Instrument for Democracy and Human Rights); twinning, TAIEX workshops and trainings (Technical Assistance and Information Exchange Instrument) and other types of direct assistance; the adoption of formal steps towards accession like the Stability and Association Agreement (SAA), including tangible economic benefits like autonomous trade preferences (ATP); and visa liberalization. (For a broader overview see Fraczek et al., 2015: 71–161). All of these can be used to advance media freedom, not only as positive measures, but also as benefits conditioned on performance. Being conditioned should mean that they are in fact linked to fulfilling requirements set by the EU, postponed and, in some cases, revoked in case of non-compliance.

It follows that, for a consistent use of conditionality, monitoring state performance as well as a corresponding application of conditionality instruments are essential. Furthermore, as we have seen in the first part of the paper, consistency is not limited to the consistent use of instruments, but should also include consistency over time and across countries. Benchmarking state performance can be a tool that makes

consistency in these respects more likely. In the case of media freedom, this would require a systematic assessment of the state of the media, in a way that it is widely applied by experts. (See, e.g. Brogi and Dobrev, 2015: Annex 5 with the 'risk domains and indicators' developed for 'Monitoring Media Pluralism in Europe', a project financed by the European Commission.) Such a systematic monitoring would make it more likely that conditionality assessment registers problems like continued criminalization despite the formal move to decriminalize defamation (i.e. it is no longer punishable with imprisonment), as happened in the case of Serbian journalist Stefan Cvetković who was sentenced to 27 months of prison in a first instance ruling, at the initiative of government politicians, for unauthorized publication of documents (Reporters Without Borders, 2017). While broad monitoring of the field of media freedom might stop at acknowledging (formal) decriminalization, a more detailed benchmarking exercise would include data on criminal procedures against journalists, especially those ending in conviction and certainly those that involve imprisonment.

The Commission is apparently aware that benchmarking is an essential element of conditionality and, ultimately, of securing media freedom in candidate countries, as it published specific guidelines for media freedom conditionality (DG ELARG, 2014). These only work, however, if benchmarking is linked to actual measures, serving ultimately as true conditions of accession, i.e. 'that failure to meet them will be an obstacle to EU entry' (Dunham, 2014). This fails on various levels. While the 2015 Enlargement Strategy refers to the Guidelines in a footnote (European Commission, 2015: 26 fn. 7), the 2016 Strategy (European Commission, 2016) or the country reports[9] lack any reference to it. More crucially, enlargement conditionality is dominated by 'positive' conditionality that seems to exclude the possibility of adequate responses in the case of a serious backlash against media freedom. In the Western Balkans in the past 6-8 years, media freedom has been deteriorating across the region according to international media think tanks (see Charts 1-2-3). This includes EU candidates like Serbia and Montenegro that, despite their human rights performance, made great progress along their accession path in the same period. Thus, the rest of this article seeks to substantiate the claim that relying exclusively on positive measures fails as a consistent conditionality policy in the case of Western Balkan countries.

A well-informed observer of the region, Florian Bieber summarized the general media landscape three years ago:

> Only a few critical media of the nineties have survived the past decade. The economic crisis and the state as the most important advertiser [...] have resulted in a media landscape in the region in which critical voices hardly find a place. This is particularly pronounced in Montenegro, Macedonia and Bosnia. In Macedonia all important critical media, such as the private channel A1 have been forced to close [down] and only few journalists dare to openly criticize the government. In Montenegro, there [are often] attacks by 'unknown' perpetrators against independent media. [...] In the Republika Srpska [...], criticism is only aimed against the opposition, 'Sarajevo' and foreign powers. In

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[9] See the 2016 country reports on the 'Strategy and Reports' page of the Commission: https://ec.europa.eu/neighbourhood-enlargement/countries/package_en. Accessed: 21-06-2016.

Serbia, only a few media nowadays dare to openly criticize Vucic. (Bieber, 2014)

In a more detailed assessment, Tadić Mijović and Šajkaš (2016) show how the withdrawal of Western donors of independent media in the region after 2008 led to a tangible deterioration in media freedom in countries like Bosnia and Herzegovina, Serbia, and Montenegro. They report about parallel physical and legal attacks on journalists in Montenegro and government-orchestrated smear campaigns against investigative journalists in Serbia. In Bosnia and Herzegovina, government influence on the media in Republika Srpska remains decisive, and the financial basis of media in the Federation remains dependent on state or foreign support (Tadić Mijović and Šajkaš, 2016).

It is not the case that the EU is not aware of this backsliding. In its most recent enlargement strategy, the Commission describes its response to tangible problems in the region as follows:

> In the Western Balkans, undue political interference in the work of public broadcasters, untransparent public funding of media, and intimidation of journalists has continued. To address these issues, building on the Speak Up! conferences, the Commission will launch a new concept of 'media days' in the region, broadening the spectrum of media-related issues addressed beyond the freedom of expression as such, also to cover the functioning of media markets, competition distortions and related issues such as financing and advertising markets (European Commission, 2016: 4).

The strategy paper, immediately after noting the political interference and intimidation (not mentioning physical attacks in particular[10]), lists extremely soft measures: conferences and 'media days'. Human Rights Watch has criticized the EU's response to physical attacks on journalists, the failure to investigate these crimes and, in particular, the strategy for failing to include detailed recommendations (HRW, 2016). While expressing concern in a strategy paper is not the only tool, it is hard to see how the EU's motivation reflected therein will get anywhere close to persuading governing forces that they should make concessions even if that weakens their power and chances of re-election.

But is the situation in fact that bad that it warrants a more severe response from the EU? We can raise this question as government influence on media – if not directly, then through economic means – is present in many countries, and the phenomenon of fake news and direct and selective political attacks on media outlets seem to carry the day in more established democracies, most prominently in the US. We argue that the Western Balkan situation requires firm responses, even when assessed against the current international context. It would be impossible to provide an adequately detailed overview of the various media landscapes in Western Balkan countries. Yet, the evidence is so overwhelming that a limited overview, based on international rankings of overall performance concerning media freedom, will be

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[10] This comes up later, and only concerning Kosovo. (European Commission, 2016: 19)

enough to make our point. The point-based system has been widely criticized for oversimplification and inadequate cross-country comparison. What these scores and rankings do well, however, is registering longer trends. It is this latter that we seek to demonstrate: consistent backsliding should somehow result in policy responses, if enlargement is in fact conditional.

We provide a narrow overview in Chart 1, with Freedom House 'Freedom of the Press' values for non-EU Western Balkan countries. (For a more detailed comparison, see Charts 2 and 3 in the Annex, using two independent datasets, one based on values describing media freedom, by Freedom House, and one based on a – directly – relative value, country ranking, by Reporters Without Borders. There we included all Western Balkan countries on the integration path in the 2010s and a number of states that became members in the 2000s to show post-accession patterns as well.)
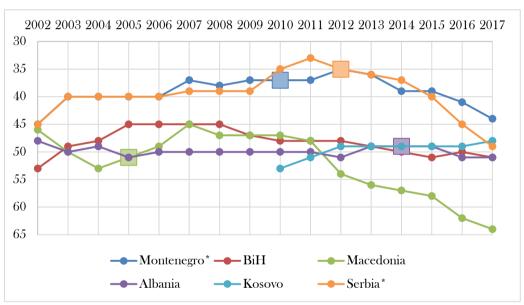
Chart 1. Freedom of the Press Values in Western Balkan non-EU Countries

Source: https://freedomhouse.org/report-types/freedom-press Accessed: 21-06-2017. *Notes: Lower values are better. Marking the date of granting candidate status with squares. Serbia / Montenegro: Yugoslavia in 2002 and 2003, Serbia and Montenegro in 2004-2006.*

What is immediately apparent from the charts is the general trend of decline in the second half of the examined period, a general deterioration even after Bieber's 2014 observation quoted earlier. This is in line with regional tendencies. (See Charts 2–3 in the Annex.) Four of the six countries have been granted candidate status, and all of them show a decline after that date. While Montenegro showed some progress before 2010, the year it became an official candidate country, it has turned to the worse considerably since, and the same applies to Serbia after 2012, with its media freedom performance peaking in 2011. Albania stagnates at low levels, with a slight decline after 2015 (having become a candidate in 2014). While it was possible to note

in 2011 that Macedonia was making progress, witnessing the freest elections in 2009 (Börzel, 2011: 12), in 2017 we can only note the incredible decline. Macedonian values are nothing short of worrying: with some progress after the country was granted candidate status, its performance has been in free fall since 2011, with a decline from 2007. The turn came after conditionality pressure faded, not, as in other cases, with accession, but with the Greek veto threat over the name dispute. The shift also shows the strength of the 'clientelistic structures' (for a demonstration in Macedonian politics and how these structures impede conditionality, see Giandomenico, 2012) that continue to dominate political life. On the other hand, the two non-candidate countries, Kosovo and Bosnia and Herzegovina, show no similar decline, with Kosovo actually making slow progress.

The cases of Bulgaria, Hungary and Poland (Charts 2–3) indicate that the post-accession period can also bring about considerable deterioration. This serves as a warning for one-off instruments of conditionality. Once visa liberalization, an important 'carrot' measure that the EU used for all countries in the region, happened, it is politically unfeasible to revert the change, and it is impossible to revoke membership after accession takes place.

The decline manifest from the charts could only happen if conditionality has not worked, and it is crucial to understand why. Part of the explanation lies in the reluctance to apply negative measures, i.e. sanctions, a term largely avoided by the EU. Seen against the background of alarming trends, the statement from Fouéré does not sound too harsh:

> The EU should use all the tools at its disposal, such as cutting off EU development and pre-accession assistance, or suspending scheduled meetings, to make it clear to recalcitrant governments that being a candidate to join the EU entails responsibilities and obligations that must be respected. (Fouéré, 2016: 4)

Allowing governments to avoid domestic costs of democracy conditionality like guarantees of media freedom means a direct violation of the said measures. When the EU does not send clear signals, including negative conditionality, in clear cases of consistent violation as evidenced by the indicators, that can translate to an invitation to violation, only by more refined measures short of direct formal assault. The EU communicates, through its actions, that it is unwilling to counter such moves and finds it uncomfortable to pressure these governments into compliance, which also leads to weakening domestic forces that could fight oppressive government measures. First, because EU support continues to work out in favour of domestic governments, and second, because softer measures like individual threats or financial-economic tricks to discipline or close down critical outlets makes it harder for domestic forces to build up and resist direct government influence.

In addition to the general unwillingness to sanction non-compliance, the 'content' of conditionality is also misplaced in many cases. The requirement to adopt formal measures like passing laws and setting up institutions create a seemingly win-win situation: it is easy for the EU to track such steps and relatively easy for governments to comply. What is losing out is the goal of norm promotion:

democratization. Easy-to-adopt measures are equally easy to revert. Formal reforms remain shallow and do not result in genuine transformation and sustainable reform.

Sustainability includes regard to the various contextual elements that strengthen and erode the independence, the plurality and the integrity of media outlets. Bajomi-Lázár argues that party politics have an important impact on media freedom and describes a regional tendency of undue government influence, or 'party colonization of the media' (Bajomi-Lázár, 2014). He argues that securing party influence makes sense not only as a tool to ensure control over media content, i.e. as a form of censorship, but it can also be important as a means of clientelism, maintaining oligarchic structures and corruption. We have seen earlier that clientelistic structures can play a crucial role in the functioning of democracy, which has an effect on the domestic media landscape as well. Podumljak provides a complex measurement tool that assesses how areas like employment rights, the work of self-regulatory bodies, the transparency of ownership, existing monopolistic structures, and the transparency of public media financing from the point of view of their (positive, neutral or negative) impact on clientelism in Western Balkan countries (Podumljak, 2016). Note that many of these goals were priorities set by the EU that have never been effectively implemented.

The focus on contextual determinants also hints at ways to achieve sustainable reform. Staying with the example of media freedom, the social and economic, legal and political, institutional and normative, domestic and international conditions can all play a role in securing media freedom in a country. Bajomi-Lázár identifies seven conditions of media freedom, and concludes that five of these are harder to change [attitudinal condition (citizens), professional condition (journalists), entrepreneurial condition (owners), economic condition (advertising revenue), external condition (including the EU)], while two can be especially important for short-term changes, the institutional framework of the media and politicians' behaviour towards media, adding that single-party governments are more likely to colonize.

While the goal of political domination might look simple, political influence of journalists can take many forms, including economic pressures, ownership and advertisement, silencing through revoking frequency usage, denying access for certain media outlets, administrative and criminal sanctions and threats, often through informal channels, secret service meddling etc. Pluralism is a delicate good that can be threatened and demolished by various types of evil, and those promoting media freedom should engage with threats on all of these fronts. These can include the condemnation, investigation, and sanctioning, by states, of physical attacks against journalists (HRW, 2015), ensuring the transparency of media ownership and state support (Valcke, 2014), and many more. To look more closely at one aspect, the structural reasons of party colonization are, according to Bajomi-Lázár, the following:

> one-party colonisation of the media is more likely to occur 1) under single-party governments; 2) under parties with highly centralised decision-making structures; 3) under unified parties with a high degree of party discipline; 4) under parties or governments with a strong ideological agenda; 5) under parties that try to gain popular support by means of denying opposition networks

access to resources; and 6) under charismatic leaders who are 7) personally intolerant of critical media. (Bajomi-Lázár, 2014: 233)

This confirms that conditionality that tries to separate media freedom from wider problems of democratic party competition fails to consider important elements of the equation. Important guarantees for media freedom fall outside the traditional scope of media conditionality and legal reform, and will include electoral laws, party funding rules, or even internal rules in parties (Bajomi-Lázár, 2014: 236). These findings suggest that factors in the penumbra of media regulation should be equally important in seeking, as part of enlargement conditionality, a sustainable framework guaranteeing media freedom, an idea currently not fully embraced by EU conditionality. What makes this endeavour (taking context into account) particularly challenging is that many elements, the electoral system in particular, fall outside the scope of conditionality. This is also the case with other elements of conditionality, e.g. with minority rights, that have particular importance in the Western Balkan region.

Here we conclude our overview of media freedom. The discussion on media freedom leads back to broader questions of promoting human rights and democracy through conditionality. We picked media freedom because this is a more focussed area of conditionality that is central to several elements of the Copenhagen criteria as well as of core EU values. Many other areas and even the overall performance as a democracy would reveal a similar trend. Our limited overview demonstrated how in the area of media freedom conditionality remains inconsistent, allowing domestic governments to crack down on critical voices in a systematic manner while securing the overall support of the Union with concessions elsewhere. The final section of the paper elaborates on why this is a fatal failure of EU conditionality.

Lessons and conclusions

Membership conditionality based on the Copenhagen criteria set high standards for a region where the more immediate goal has been to prevent the re-emergence of violent conflicts. If we measure European and other international engagement by this latter metric, it has been a relative success. This also makes it understandable how the dispute over Kosovo can trump all other conditionality topics in Serbia. From a narrower security perspective, this makes good sense. Yet, the commitment of the EU to the principles of democracy, human rights and the rule of law are not pure self-defeating idealism: they are the only sources of long-term stability in the region. Along the road, we find state-building and a political system that is able to adopt reforms and sustain them.

While it is possible to argue for the approach that, as Börzel et al., critically note, the EU puts stability over democratization (Börzel et al., 2011), without the deeper changes necessary for sustained democratization, enlargement will only contribute to the existing internal challenges of the European Union. Economides and Ker-Lindsay argue that even in the case of Serbia's compromising stance towards Kosovo, what we really witness is a series of pragmatic – even opportunist – concessions that remain far from normative adaptation, and it is hard to describe changes as 'Europeanization' (Economides and Ker-Linday, 2015: 1038). The Kosovo

question, where the Serbian leadership was clearly motivated by short-term goals, is an apt example for making concessions on a rational and instrumental grounds short of 'adaptive normative Europeanization'. Using EU funds while blaming unpopular measures, or even problems, on the EU has become a common practice among such 'instrumentalists'.

The wider problem is that short-term instrumental concessions seem to be the norm, not the exception, in domestic reactions to EU conditionality. Against this background, it is not so much the reversal but the lack of reversal that requires explanation. Turning conditionality into a real transforming force requires strong political will. Consistency also means commitment, and enlargement is getting less and less political attention. Where governments feel that there is hesitance from EU actors to follow-up, shame, and sanction, they can easily interpret this as encouragement, posing a danger to the entire project.

Schimmelfennig et al. ask the opposite question: would loosening conditionality have benefits, and respond in the negative:

> Abandoning the strictly rewards-based policy of political membership conditionality is unlikely to produce better results. Coercive policies such as in Bosnia and Kosovo have been useful in stopping violent ethnic cleansing but have not accelerated either democratic consolidation or Western integration. On the other hand, there is no evidence that looser political accession criteria and a policy of 'integration before consolidation' would help. (Schimmelfennig et al., 2006: 260)

One might ask if 'principled pragmatism' that appears in the updated Action Plan could lead to allegedly pragmatic concessions to the detriment of coherent goals. The term presents a tension that ideally triggers a delicate balancing exercise. Such balancing is often hard to be assessed from the outside. What looks like a betrayal of values might in fact be a result of legitimate prioritization and pragmatism, and sustained but rigid consistency might lead to no results with a focus lost in too much talk and too many 'key conditions'. What scholarship can do, however, is to assess the outcomes – conditionality is validated by results; and scholars can point to clear cases where concessions make conditionality practically disappear from certain areas. It is this latter that we documented in the case of media freedom. Asking for consistent conditionality, tracking domestic changes and designing policy responses accordingly is in fact not to ask for the impossible: detailed expert assessments of the various fields, especially of media landscapes, are widely available. EU bodies should make better use of field expertise in the ongoing assessment of fulfilling basic conditions and in responding to shortcomings.

Once the appeal and political force of integration provided support for reforms and shaped domestic political landscapes. Yet, this phenomenon was followed by a turn against the vision and values that the EU has been promoting, a 'de-Europeanization'. This is most palpable in Turkey (see a recent analysis in the context of media freedom, Yılmaz, 2016), but is also manifest within the EU, most prominently in Hungary. The Hungary and Poland problem exposes the EU to the charge of inconsistency (double standards) vis-à-vis Member States as opposed to

candidate countries. While the legal framework is indeed very different, it is harder to defend a position that allows the systemic curtailment of freedoms within the EU while setting them as conditions in neighbouring countries. Undermining conditionality is one weighty reason why EU institutions and other Member States should not become complicit by remaining passive when they face violations by fellow governments.

The political developments on both sides of the Atlantic do not weaken the argument for stronger and stricter democracy promotion in the Western Balkans, these events make the case stronger in fact. The backsliding that we saw in the case of media but that is part of a larger trend, combined with the shift in the international context, makes it increasingly dangerous to disregard challenges to democracy in the Western Balkans (Bieber and Kmezić, 2016: 11).

There is a very tangible risk, exemplified by recent Hungarian and Polish challenges, that conditionality does not lead to transformation, but allows the same actors to pursue the same policies they would anyway, except that they learn to play by the rules, on a formal level, thus gaining additional legitimacy from the EU. The backsliding to earlier levels questions if any achievement has been made with external support, and highlights the lesson that conditionality should only be seen as successful where subsequent changes – disappearance of conditionality pressures with, most importantly, accession, but also the fading of the membership perspective – do not lead to full reversal.

The experiences described above caution us that specific structural problems continue to exist and can easily undermine any progress in the field of democracy and core human rights. The scope of the problem suggests that conditionality might need to be sustained after accession, as happened in the case of Bulgaria and Romania, with the Cooperation and Verification Mechanism (Balfour and Stratulat, 2012: 2). This step would require rethinking the post-accession phase and make it a sustained transition instead of a one-off event. And yet, it would not go a long way in making sure that change is lasting.

Evidence shows how informal norms and networks can not only alter but completely overwrite formal structures. Kostovicova and Bojicic-Dzelilovic (2014) argue in the Bosnian context that 'informal power structures', contested statehood helps maintaining ethnic nationalism and 'allows ethnic elites to sustain the system of informal rule involving disregard for state-sanctioned rules and regulations' (Kostovicova and Bojicic-Dzelilovic, 2014: 206). The elite that realized how ethnic nationalism can help maintain its rule, even at the cost of wars (Gagnon, 2006) is now more than reluctant to switch paths, which is effectively blocking efforts to build a democratic system that, getting rid of 'wartime structures', works towards genuine public good instead of maintaining and reinforcing divisions. This constructivist explanation suggests that it is the material basis of these regimes that needs to be tackled in the first place and façade-like institutional measures do little or nothing to build long-term stability (Kostovicova and Bojicic-Dzelilovic, 2014: 207). The current situation in Macedonia serves as an ample reminder that the risks of fundamental destabilization are still very much present in the region.

Stability and human rights performance should not be seen as notions in tension. Strengthening democracy and respect for human rights, as exemplified in the

media context, can serve as long-term guarantors of stability. Shortcomings in these areas indicate that change is not sustainable. We have also seen that without democracy and human rights conditionality the political recognition and financial support from the EU can end up helping strong leaders with dubious credentials who are testing the boundaries and undermine core EU values in their countries. In the post-accession stage, this can be a result of the lack of conditionality instruments, while during enlargement, it might flow from an unwillingness to apply consistent conditionality. Yet, conditionality should mean that the relevant polices are in fact conditioned:

> Conditionality is only credible because the EU is willing to stop the process when a government is not making progress on crucial domestic reforms. For this reason, the enlargement process must sometimes come to a standstill for some candidates. (Vachudova, 2014: 134)

Regardless of whether the EU is willing to wholly embrace its position as a centre of gravity that transforms political processes in Central Eastern and South Eastern Europe, the effect is there. In fact, conditionality plays out in a context where the opposite of democracy promotion is happening with the influence of illiberal regional powers (Börzel, 2015). The Trump presidency or Russian involvement in general, or even actors like Saudi Arabia and China, have an influence on democratic as well as non-democratic countries.

Operationalization could happen through a more systematic review of progress after opening Chapters 23 and 24 in all Western Balkans countries (BiEPAG, 2017: 15). Consistency and persistence should mark this process, bearing in mind the risks involved. Persistence is necessary because deeper changes require time. 'Rhetorical entrapment, persuasion, and cognitive change require more time than behavioural adaptations stimulated by strong and credible incentives' (Schimmelfennig et al., 2006: 258). While the Council of Europe, and even more NATO and the EU have been in a position that they could build on the strong incentive of membership, this has allowed the negligence of genuine persuasion and social or 'cognitive' change, without which there can be no sustainable shift to the liberal democratic order, democracy with human rights and the rule of law, upon which further cooperation can reliably be built.

Building on domestic support is essential to achieve this. Recent demonstrations and popular sentiments from Turkey through Serbia and Romania to Hungary show that the abstract values enshrined in TEU Article 2, including democracy, human rights and the rule of law, have local supporters. To advance these goals – among others, through demanding concessions from those in power to the benefit of media freedom – is not only a legal duty for the EU: not pursuing them is to betray these people(s). Furthermore, giving up on core values risks that the integration project itself is hollowed out, a threat that points beyond the Western Balkans, but that has very tangible consequences in this region.

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Appendix

Chart 2. Freedom of the Press (Freedom House) values (lower is better) and Word Press Freedom Index (Reporters Without Borders) country ranking (lower is better) for selected countries, marking accession dates (●) and visa liberalization dates (●). Serbia / Montenegro: Yugoslavia in 2002 and, for FH, in 2003, Serbia and Montenegro in 2002/2003-2006. Kosovo: numbers for Yugoslavia / Serbia before 2010.
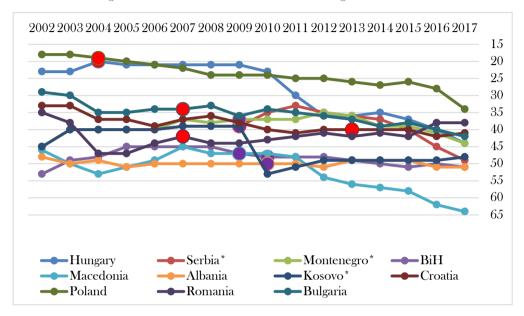

Chart 3. World Press Freedom Index 2011-2012 for both 2011 and 2012. Note especially the Western Balkan numbers for 2009 and 2010 as these years mark visa liberalization: 2009 for Macedonia, Montenegro and Serbian and 2010 for Bosnia and Albania. (Freedom House, 2017; Reporters Without Borders, 2017b)