

UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

Charles Nonne

**Bosnia and Herzegovina and the European Union:
the impact of Europeanisation on human rights**

**Bosna in Hercegovina ter Evropska unija:
vpliv evropeizacije na človekove pravice**

Magistrsko delo

Ljubljana, 2016

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Abstract: The transformative power of Europe takes on several dimensions. One of them is Europe's capacity to influence decision making and law processing in candidate countries such as countries of the Western Balkans. The European Union's (EU) enlargement policy has indeed been particularly criticised for its rigid requirements and the fact that it did not take into account social realities on the ground. In the scholarship, the main explanatory model for this change-inducing phenomenon is Europeanisation, a theoretical set of models whose borders still remain to be precisely defined. Its widest definition draws on the EU's power to create and induce rules, norms and behavior in countries that are not member states. The following research project studies this normative power in the EU's human rights policy. Its goal is to assess which factors affect the Europeanisation process and what their impact is. It uses the case of Bosnia and Herzegovina for that matter. The research is based on the external incentives model developed by Frank Schimmelfennig and Ulrich Sedelmeier, as it is the most used model and offers a wide explanatory power. This model contains four criteria upon which the target state's compliance hinges. In the case of Bosnia and Herzegovina, the thesis examines the situation of each of these criteria and studies whether these have a positive or a negative impact on compliance. As far as Europeanisation on human rights is concerned, this thesis concludes that the external incentives model is relevant though other models could complement it.

Keywords: Bosnia and Herzegovina, Europeanisation, Human rights, External incentives model, Western Balkans.

Bosna in Hercegovina ter Evropska unija: vpliv evropeizacije na človekove pravice

Povzetek: Preoblikovalna moč Evrope ima različne razsežnosti. Ena izmed njih je zmožnost Evropske unije (EU), da vpliva na sprejemanje odločitev in pripravo zakonodaje v državah kandidatkah, kot so na primer države Zahodnega Balkana. V tem kontekstu je bila evropska politika širitve zaradi strogih zahtev in dejstva, da ni vključevala lokalne družbene realnosti, tarča številnih kritik. Raziskave kažejo, da je evropeizacija glavni pojasnjevalni okvir za razlago tega fenomena. Evropeizacija je niz teoretičnih modelov, ki pa še niso točno definirani. Najširša opredelitev evropeizacije zajema moč EU, da določa pravila, norme in vedenje v državah, ki niso njene članice. Pričujoča magistrska naloga proučuje to normativno moč na primeru politike človekovih pravic. Njen cilj je opredeliti, kateri dejavniki vplivajo na proces evropeizacije in kakšne posledice prinašajo. V ta namen je uporabljen primer Bosne in Hercegovine (BiH). Večina raziskovalnega dela temelji na modelu zunanjih spodbud, ki sta ga zasnovala Frank Schimmelfennig in Ulrich Sedelmeier. Danes je to najpogosteje uporabljen model, saj ima najširšo pojasnjevalno moč. Model zajema štiri kriterije, od katerih je odvisna stopnja prilagajanja države. Na primeru BiH magistrska naloga proučuje razmere za vsakega od teh kriterijev in ugotavlja, ali imajo pozitiven ali negativen vpliv na prilagajanje. Kar se tiče vprašanja človekovih pravic, lahko s pomočjo te raziskave zaključimo, da je model zunanjih spodbud ustrezen, čeprav bi ga drugi modeli lahko dopolnili.

Ključne besede: Bosna in Hercegovina, evropeizacija, človekove pravice, model zunanjih spodbud, Zahodni Balkan.

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List of abbreviations

AI: Amnesty International

Art.: Article

BiH: Bosnia and Herzegovina, Bosnia-Herzegovina

CARDS: Community Assistance for Reconstruction Development and Stabilisation

CEC: Commission of the European Communities

CEE: Central and Eastern Europe

CoE: Council of Europe

DPA: Dayton Peace Accords

EC: European Commission

ECHR: Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR: European Court of Human Rights

EEC: European Economic Community

EP: European Parliament

EU: European Union

FYROM: Former Yugoslav Republic of Macedonia

GFA: General Framework Agreement for Peace in Bosnia and Herzegovina

HR: High Representative

IC: International community

IPA: Instrument for Pre-Accession Assistance

LGBT: Lesbian, Gay, Bisexual and Transgender

OSCE: Organisation for Security and Co-operation in Europe

para.: paragraph

PIC: Peace Implementation Council

RS: Republika Srpska

SAA: Stabilisation and Association Agreement

SAP: Stabilisation and Association Process

SEE: South-East Europe

SFRY: Socialist Federal Republic of Yugoslavia

UDHR: Universal Declaration of Human Rights

UK: United Kingdom

VPI BH: Vanjskopolitička inicijativa BH

1 Introduction

1.1 Background and purpose of research

The European integration of the Western Balkans is one of the main goals of the European Union (EU).¹ Following the 2004 and 2007 enlargements to Central and Eastern Europe (CEE) states, the EU's borders have expanded towards the Western Balkans, which became new potential candidates for accession alongside with Turkey. Today, the EU may be considered as “a polity in the making within an altered geopolitical environment, with its own conceptions of roles and responsibilities as well as perceptions of threat and interdependence” (Lavenex 2004, 684). In 1999, the Western Balkan countries were proposed to join the Stability Pact for South-Eastern Europe. One year later, a paragraph (para.) of the Feira European Council's conclusions opened up the possibility of an enlargement. It stated that “all the countries concerned are potential candidates for EU membership” (European Council 2000, para. 67; Radovanovic 2012, 210; Vachudova 2014, 126). In 2003, the European Council of Thessaloniki recognised Bosnia and Herzegovina (BiH) as a “potential candidate country” (EC 2009), following a long involvement since 1995. Subsequently, the EU's influence increased as the role of the rest of the International community (IC) in the state-building process decreased (Brljavac 2011a, 96). Today, the EU is one of the main donators of development aid to BiH (Tzifakis 2012, 136–137). In 2008, an Interim Agreement on trade and trade-related issues was signed between the EU and BiH (EC 2009). The promise of the accession to the EU was supposed to lead towards institutional and political reforms: the Copenhagen political criteria set “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” as necessary prerequisites to enter the EU (European Council 1993). I will base my research on the third of those political criteria, the respect of human rights, putting the emphasis on political and civil rights.

During the past fifteen years, a steady process has led the Western Balkan countries towards EU membership. The scholarship labelled it as ‘Europeanisation’ or ‘external Europeanisation’. One of its primary mechanisms is conditionality, a rationalist framework

¹ Western Balkan countries are here considered as the former Yugoslav Republics – in addition to the newly independent Kosovo and Albania – which are not yet members of the EU: BiH, the FYRM, Montenegro and Serbia.

based on the assumption that the benefits of compliance with EU norms are greater than its costs (Schimmelfennig 2004, 672). Schimmelfennig (2007, 127) defines conditionality as “a strategy of reinforcement used by international organizations and other international actors to bring about and stabilize political change at the state level”. By conditioning the accession of Western Balkan countries to the respect of political criteria, the EU directly promotes its values, seeks long-lasting stabilisation and development, and aims at potentially enlarging to post-conflict regions (Uğurlu 2013, 171–174). The Western Balkans’ European integration is also closely linked to “democratization and democratic consolidation” (Babić 2014, 87), two factors that the EU considers a political success.

Nowadays, BiH remains at the rear of the Balkan ‘regatta’ (Rory 2011, 57). Official documents underline the absence of improvements in this field. The public support for the integration process is constantly decreasing, though slightly (Turčilo 2013, 4). Europeanisation had been reassessed in November 2014, when the foreign ministers of Germany and the United Kingdom (UK) advocated a new approach of BiH, following the earlier proposal of the Croatian foreign minister. This new approach seeks to shift the EU’s priorities from institutional and political towards economic and social considerations (Hammond and Steinmeier 2014; Republic of Croatia 2014). This initiative would favour the acceleration of BiH’s path towards the EU over a long wait for institutional and political reforms (Denti 2015). The EU decided to adopt this position as its new official strategic line in its relations with BiH (Council of the EU 2014a). This recent ‘u-turn’ may show a failure of the previous processes to lead to concrete and sustainable changes. In a context of growing criticism regarding the EU’s requirements, some consider that the EU simply abandoned conditionality by undermining its credibility (Vogel 2015). Today, BiH’s Europeanisation has stalled and the incentives’ approach adopted by the EU does not appear to have succeeded (EC 2014b, 24–25). This assessment may apply to human rights in particular. Recent progress reports reveal disappointment as the ratification of new international instruments and the adoption of new laws did not lead to concrete improvements on the ground (EC 2013, 15–19; 2014a, 17–21). The Reasons of the European Court of Human Rights’ (ECtHR) decision in the *Sejdić and Finci* case, still not implemented in BiH, is another proof this stalemate (Sejdić and Finci 2009). Examining the methods and standards used so far by the EU in the area of human rights may explain a part of the problem (Anastasakis 2005, 84).

1.2 The research question and methodology

My research goal is to assess whether Europeanisation has changed the human rights situation on the ground, and which factors may have affected the process. One of the most relevant theorists in this field defined Europeanisation as “processes of (a) construction, (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ways of doing things and shared beliefs and norms” (Radaelli 2000, 3). These standards and norms are devised at the EU level before being “incorporated in the logic of domestic discourses, identities, political structures and public policies” (*ibid.*). This extensive definition not only subsumes the Europeanisation’s impact on the political system, but it also comprises its “normative aspects” (Babić 2014, 88). In the next chapters, I consider Europeanisation as a given on-going process, without questioning its existence or relevance, and I focus on the “diffusion” and the “institutionalisation” parts of the paradigm (*ibid.*). Hence, I base my research on a narrower part of Radaelli’s (2000, 3) definition, that I will limit to the scope of the “formal and informal rules” about human rights.

Olsen (2002, 923–924) details five subject matters that can be explained by Europeanisation theories: changes in the EU’s external boundaries, development of supranational institutions, penetration of national systems of governance, exportation of a form of political organisation and political unification. This study focuses on the first of these subject matters. For Schimmelfennig (2010, 3), “since the 1990s /.../ EU scholars have begun to look beyond the formal borders of the EU and study the impact of European governance on external actors”, as a result of market-widening phenomena and constant enlargement to Eastern Europe. For the intended case study, this requires analysing the EU’s competences and policy, the efficiency of mechanisms that are created to implement human rights in BiH, and the institutional and political factors of governance that are inherent to BiH. Hence the following research question: *which factors affect, and how do they do so, the Europeanisation process in the field of human rights?* This research question involves two types of variables – the dependent variable is the level of protection of human rights in BiH, whereas the independent variables are the policy of the EU regarding conditionality and BiH’s internal political and institutional structure. To identify the effects of the sole EU’s policies on the human rights situation in

BiH, I consider other actors – such as the Council of Europe (CoE), the ECtHR, or the Organisation for Security and Co-operation in Europe (OSCE) – as external factors.

This question raises some other issues that I will analyse throughout the research. First of all, the research will lead to assess the role of the EU in contributing to the current deadlock. The EU may not have enough power to provide the right incentives. Among the possible explanations, the Dayton Peace Accords (DPA) may impede any hope for a sustainable revision of the political and administrative institutions of BiH. More fundamentally, the main cause of the EU's failure may well lay in its standards. My research has, therefore, several secondary, underlying purposes. The first one is to assess the ability of the EU to foster sustainable reform and to determine whether the improvement of the human rights situation in BiH depends on the EU's action or not. The second is to determine if the EU's demands are not too high and strict to be met by the country. Another possible goal would be to analyse whether the population of BiH shares the same values, goals and expectations as the EU. As Subotic (2011, 327) considers, “domestic arguments and debates about Europe /are/ critical because they put those incentives in a domestic social context and /give/ them locally resonant meaning”. Further research could pave the way for a reworking of conditionality, that scholars often criticise as rigid and not inclusive (Anastasakis and Bechev 2003, 17–18).

1.3 The structure of the thesis

This research adopts a top-down research model, which “starts from the presence of integration, controls the level of fit/misfit of the EU-level policy /.../ and then explains the presence or absence of domestic change (Exadaktylos and Radaelli 2009, 510). I mainly focus on institutional factors related to the EU's policy in BiH. Several features can be underlined regarding BiH, such as a post-conflict situation and a continuous, “control-type” administration by the IC (van Willigen 2012, 432–433). Another feature is a financial and political support that is now mostly provided by the EU. Moreover, my research concentrates on the implementation of the EU's human rights policy during a period ranging from 2005 until nowadays. From 2005, the international – notably American – attention diminished, letting the EU grow in importance (Belloni 2009, 323). The negotiations on the Stabilisation and Association Agreement (SAA) were initiated that year, leading three years later to the signature of the Agreement (EC 2009). This period also includes all the IC-led negotiations to revise the Constitution, the first one dating back from 2006 (Bieber 2010). This brings me to

consider that 2005 is an adequate start. Finally, the scope of the human rights policy, as mentioned earlier, is limited as much as possible to the policies subsumed in the third Copenhagen political criteria, and relating to civil and political rights. However, the factors of reform within BiH may as well pertain to other types of rights, such as minority rights (Vasilev 2011, 58–59). An analysis of landmarks such as the Sejdić and Finci case and its consequences cannot be avoided in this context, although this thesis does not focus on it.

The second chapter analyses Europeanisation as a European integration theory and finds common patterns with other close concepts. It analyses to which extent this framework can apply to the case of Western Balkans and BiH. For this purpose, I mostly rely on a literature review. For this thesis analyses the effect of the EU's policy in the Western Balkans and BiH in particular, the review does not focus on 'why' the EU is engaging in external action, but 'how' it is engaging. Finally, I identify in the literature which model may contribute the best to exploring my research question and I choose the external incentives model as the most appropriate explanatory model.

The third chapter applies the Europeanisation theory in the field of human rights. Its goal is to determine the importance of human rights conditionality for Europeanisation. It considers the norms, rules and values that form the European standards on human rights. It also researches how these standards are used and implemented through conditionality. The fourth chapter applies these findings in the case of BiH. After briefly detailing the political and institutional structure of the country, as well as its specificities, it describes the external incentives model, its structures and BiH's human rights record. For these two chapters, a wide range of primary sources is used, as well as secondary sources. These chapters also try to isolate the view of policy-makers in this field through a detailed use of institutional documents. In the fifth chapter, I focus on the different internal institutional and political factors in the normal decision-making process that may disrupt BiH's Europeanisation and successively examine the four parameters of the external incentives model. After analysing the determinacy of the EU's conditionality in this area, I consider the EU's policy in BiH as regards its credibility, before looking into the internal institutional problems that hamper the effects of conditionality. A range of sources such as reports from local NGOs and institutional actors will be analysed at this point. The sixth and last chapter concludes, trying to define avenues for further research in the field, with an emphasis on the relevance of other theoretical frameworks or factors.

2 Europeanisation as a theory

This chapter reviews the existing Europeanisation literature from the early 2000s until today. Given practical constraints, this study can only analyse a sample of the rich theoretical and empirical ground into which the following developments delve. Thus, this chapter focuses on secondary sources that pertain to the ‘enlargement-linked’ Europeanisation. It sets aside in-depth developments concerning the link between member states and the EU, as well as developments that do not directly pertain to the EU. If required, though, findings from governance and normative power literature will be borrowed.

2.1 *Europeanisation as a European policy theory*

2.1.1 *The substance and the object of Europeanisation*

Europeanisation rose as an uncertain set of theories to explain the consequence of EU policies on member states, beyond traditional theories of European integration. Radaelli (2000, 3) underlines the uncertainty of this concept, claiming that “it has to be different and more selective than the notion of EU policy formation and European integration”. It truly originated when “the primary focus of EU research switched from the process of European integration, institution-building, and policy-making *at the EU level*, to the *impact* of all these factors on the member states” (Quaglia 2007, 408, emphasis in original). Radaelli (2004, 2) details the two possible understandings of Europeanisation, first as a broad background concept but not being possibly operationalized, second a systematised concept, looking mainly at the “domestic consequences of the process of European integration”. Europeanisation, in a way, describes the “so-called transformative power of Europe” (Barbulescu and Troncota 2013, 66). Nevertheless, this definition does not cover the whole range of phenomenon currently understood under the term ‘Europeanisation’. The notion of top-down impact is here too narrow and linear and Europeanisation merely “deals with how domestic change is processed” (*ibid.*, 4). Radaelli (2000, 1) warns of the risk of a “conceptual stretching”, thus keeping the range of this concept within the border of the EU. However, research on the EU’s influence outside its borders has gained a momentum since the beginning of the 2000s, as further developments will show.

The literature recognises the uncertain frontiers of Europeanisation as an analytical tool, but considers its different conceptions as complementary, for Europeanisation is an explanatory model rather than a sharply delimited theory. Olsen (2002, 923) argues that “different conceptions of Europeanization complement, rather than exclude, each other. They refer to different, but related, phenomena”. He adds that the development of Europeanisation theories may help to investigate and analyse a wider range of phenomena. As he sees it, one of the purposes for Europeanisation theorists is to construct “partial, middle-range theoretical approaches that emphasize domains of application or scope conditions, and that are empirically testable” (*ibid.*).

The logic of Europeanisation roots deeply in the notion of change. Europeanisation happens when “the EU becomes a cognitive and normative frame, and provides orientation to the logics of meaning and action” and “there is a process of change, either in response to EU pressure or as usage of Europe” (Radaelli 2004, 11). This process can be understood in different ways, for example as a process of governance, institutionalisation or discourse (*ibid.*, 6–7). The notion of institutionalisation may be an adequate basis for the purpose of the analysis as defined by Radaelli as “processes through which formal rules and informal ways of doing things are first discovered and experienced in the EU context and then institutionalised inside the logic of behaviour of domestic actors” (*ibid.*, 6). This model is based on a differentiation between the supranational and the national level, progressively solved by a change in the behaviour or the local agents (*ibid.*, 7).

The definition of the notion of governance is also broad enough to embrace a vast range of phenomena. This concept covers the idea of Europeanisation and reflects the attempts to depart from the traditional supranational institution-making process, as it is “a form of political organization which cannot be adequately described anymore by the concept of externally and internally sovereign states” (Lavenex 2004, 682). Radaelli (2004, 12–13) considers three main modes of governance that create internal change: bargaining based on rational calculation and anticipated reactions, hierarchy through adaptational pressure, and facilitated coordination. This logic of bargaining is especially crucial in the context of the enlargement policy and it is one of the modalities of the process of diffusion and institutionalisation of formal and informal rules presented in Radaelli’s (2000, 3) generic definition.

2.1.2 Main theoretical uncertainties

Much of the criticism affecting Europeanisation theories is that this process borrows several theoretical and ontological assumptions from other theories with equal explanatory power. Radaelli (2000, 6) considers that European integration “belongs to the ontological stage of research” while Europeanisation “is post-ontological, being concerned with what happens once EU institutions are in place and produce their effects”. Barbulescu and Troncota (2013, 66, emphasis in original) highlight that Europeanisation, “lying helplessly between the *signifier* and the *signified*”, is not a genuine theory. Quaglia (2007, 410) points to several risks affecting the development of this concept, among them the one of creating an *ad hoc* theory for phenomena that may be explained by classical rationales. Radaelli (2004, 5) goes further, considering that “Europeanisation is seen as ‘orchestration’ of existing concepts and theories, with major theoretical import from comparative politics and theoretical policy analysis”.

To that extent, Europeanisation only subsumes models belonging to other theories to explain new, original phenomena. These models described similar phenomena even before the Europeanisation theories developed. Such models are, among others, policy diffusion or convergence, policy learning, and lesson drawing (Lavenex and Uçarer 2004, 420). One important parallel should be done with the theory of international socialisation; here, the socialisation theoretical model may be put to contribution with an explanatory power in some cases covered by the concept of Europeanisation. For example, Radaelli (2004, 10) emphasises that “Europeanisation does not require the formulation of EU policies, but processes of socialisation are not a sufficient condition for Europeanisation”. Regarding the EU’s relations with candidate and neighbourhood countries, Schimmelfennig (2010, 9) treats socialisation as a modality of Europeanisation, not exclusive to others such as conditionality, through which the EU tries “to disseminate European governance by persuading outside actors of the ideas and norms behind them”.

Quaglia (2007, 410) points to several risks of the Europeanisation theories. One of them is the lack of coherence or systematic dealing with subject matter by many theories. Another is the risk to create *ad hoc* theories for phenomena that may be explained by classical rationales. Moreover, Europeanisation as an independent variable may have a negligible impact. Europeanisation should then be linked with pre-existing theories. As Radaelli (2000, 27,

emphasis in original) points it out, “if it does not confine itself to *sui generis* speculations and *ad-hoc* theorization, research on Europeanization has considerable potential for our understanding of the evolution of state structures and public policy”.

As a result, the elaboration of Europeanisation-specific theoretical models should first be dictated by models that pertain to other theories. Radaelli (2004, 15) adds that “Europeanisation is compatible with the different angles suggested by the disciplines of politics and international relations /.../ it does not need to create its own *ad hoc* theoretical models”. To a certain extent, this may facilitate the overcoming of the ambiguity deriving from the uncertain scope of Europeanisation; as Olsen (2002, 943) argues,

Research on European transformations need not be hampered by competing definitions as long as their meaning, the phenomena in focus, the simplifying assumption behind the definitions, the models of change and the theoretical challenges involved, are clarified and kept separate. Europeanization may, however, turn out to be less useful as an explanatory concept than as an attention-directing device and a starting point for further exploration.

Radaelli (2004, 15) highlights the fact that the measurement and limitation of the notion of impact, at the heart of the Europeanisation rationale, is still a difficulty. In particular, he underlines a clear difference between Europeanisation and the concept of convergence. Contrary to Europeanisation, the latter concept does not refer a top-down process and usually leads to ‘unified convergence’ between entities. On the contrary, Europeanisation not always leads to such a convergence and if convergence takes place, it rather takes place in a “clustered” form (*ibid.*, 14). This lack of uniformity in the phenomenon of Europeanisation may also lead to a difficulty to “generalise across policy areas” and to the multiplication of individual case studies (*ibid.*, 14–15). This difficulty may be of tremendous significance while observing the EU’s external policy towards candidates with different characteristics.

2.2 The external dimension of Europeanisation

2.2.1 New attempts at theorising Europeanisation beyond the European Union’s borders

Until the mid-2000s, the Europeanisation literature has mainly put the focus on the mechanisms of Europeanisation and their ability to produce “substantive change” in the

member states, with the pitfalls of its mechanisms yet remaining to analyse (Radaelli 2004, 16). Lavenex and Uçarer (2004, 418–419) considered the external effects of Europeanisation on non-member states a “hitherto poorly understood aspect of European integration”, mainly focusing on the effect of the EU competitiveness policy and single market on non-member states. Quaglia and others (2007, 406) define four perspectives of Europeanisation: a top-down approach centring on the impact of the EU on its member states; a bottom-up top-down approach looking into the creation of institutions and policy-making at the supranational level, then its “reverberation back into the domestic area”; a horizontal approach looking at the change occurring from country to country; and a “institution-building and policy-making at the EU level” approach. The following developments will use the first top-down approach: the relationship between potential candidates and the EU, mostly asymmetrical, may not be analysed with bottom-up explanatory models that are only relevant for member states (*ibid.*, 416).

Lavenex (2004, 695) starts her analysis of the EU’s external actions with a wider definition, claiming that Europeanisation consists in “the external projection of internal solutions”. Radovanovik (2012, 208) defines it as a “process of systemic transformation and structural accommodation based on a set of special requirements for full EU membership”. Babić (2014, 93–94) presents Europeanisation outside of the EU’s borders as a “comprehensive process of state-building”, permanent and unfinished. This process aims at changing local societies and politics according to the EU standards of values through a series of interlinks between the EU and local actors. Lavenex (2004, 681) qualifies the EU’s action as “the external dimension of internal politics”. Drawing on the EU’s enlargement policy, Olsen (2002, 926, emphasis in original) considers Europe here as a “*geographical* concept”. He analyses the best way to research the EU expansion’s mechanism. On top of this, Europeanisation beyond the EU may be rooted in the EU polity’s desire to be surrounded by countries that share its norms and fundamental principles: enlargement may result in Europeanised non-member states that reflect the EU’s governance mode. It also could be explained by a wish to cooperate with countries with the same shared standards and values (Schimmelfennig 2010, 4).

However, the conceptual framework surrounding the EU’s enlargement policy is also unclear. These new waves of theorising “occur in a more diverse manner and include both formal obligations and informal dynamics” (Lavenex and Uçarer 2004, 419). Schimmelfennig (2010, 3) talks about a general model of “external governance”, through which the EU “projects its

model and rules of governance to the outside and /.../ contributes to the Europeanization of national and international governance beyond the borders of formal membership”. According to this model, the EU tries to export different concepts, such as regionalism, multilateralism, but also “democratic constitutionalism” (*ibid.*, 6). This latter concept is rooted in the fact that democracy and human rights are a pillar of its external action (*ibid.*, 6–7). Lavenex and Uçarer (2004, 419–420) rather present the external Europeanisation as a “policy transfer”, concerning general principles and institutional framework, initiated by coercion or the free will of the non-member states. As soon as 1973, Duchêne drew on the concept of “civilian power” of the EU, consisting of the projection of its internal values, especially through norms, but the scholarship barely applies this framework to Europeanisation, especially as regards conditionality, which include a more compulsory element (Lavenex 2004, 684). More fundamentally, the major distinction divides rationalist and social-constructivists scopes (Barbulescu and Troncota 2013, 67–68).

2.2.2 *Leading models of external Europeanisation*

Many models were developed to explain a same set of phenomena. Moravcsik and Vachudova (2003, 22–23) apply the bargaining theory to the policy of enlargement. The specificity of this theory is a considerable asymmetry: “bargaining demands by applicant countries for recognition of their particular circumstances were stripped away one by one until a deal was struck that disproportionately reflected the priorities of existing member states” (*ibid.*, 23). Bargaining gives a higher leverage to the EU in its relation with candidate countries, given that the process has an irreversible character. Babić (2014, 101) argues that “potential difficulties can only influence the speed but not the general course of this process”. Another part of the literature rather emphasise the changing nature of external Europeanisation, Anastasakis (2005, 78) presenting it as “a political system in the making that produces decisions and has an impact on domestic structures”. Some other authors develop identity-oriented narratives, considering that Europeanisation may be an idea, a tool for integrating individuals and political institutions into the EU. Babić (2014, 99) in particular defines the quality of the Europeanisation narrative as one of the parameters for its success: it may be efficient “only if it is not abstract and remote from the experiences of an ordinary man. It must be translated into a language understandable to everyone” (*ibid.*).

Improving the first mentioned bargaining theory, Schimmelfennig and Sedelmeier (2004, 671–672) develop a rationalist bargaining model that they call an “external incentives model”. They characterise this model by a search for the maximisation of utility by the involved actors. The applicants are attributed a set of rewards, and supposedly without coercion or support by the EU. In other words, a state will adopt an EU rule if the benefits of the rewards are higher than the costs of the adaptation (*ibid.*). They further develop two other models. First, the social learning model is derived from social constructivism and the logic of “appropriateness” (*ibid.*). It mainly depends on the evolution of the interests and identities of local actors (Barbulescu and Troncota 2013, 67–68). Second, the lesson-drawing model is domestically driven, and postulates that a state adopts EU rules “if it expects these rules to solve domestic policy problems effectively” (Schimmelfennig and Sedelmeier 2004, 675–676).

I intend to use further the rationalist, “actor-centred” (Barbulescu and Troncota 2013, 67–68) and conditionality-based perspective. To that purpose, the further developments will use Radovanovic’s (2012, 208) claim that two variables influence external Europeanisation: its proper mechanisms and the conditions specific to each state. I will successively examine those two variables.

2.2.3 External Europeanisation mechanisms

External Europeanisation mechanisms vary according to the status and local circumstances of the state with which the EU has a relationship. Babić (2014, 90) bases Europeanisation on several tools such as persuasion and socialisation. Olsen (2002, 927) presents the change here as “normatively driven” and mainly depending on a “quasi-mechanical” system of rule-following, potentially supported by a process of “arguing and persuading” when rule-following is not automatic. Grabbe (2001, 1020–1024) distinguishes five categories of mechanisms typically employed by the EU in its relationship with third countries: promising further stages of negotiations, monitoring, providing models, financial assistance and advice. For practical purposes, I am going to focus here on the most exhaustive and comprehensive typology of Europeanisation mechanisms. Regardless of other mechanisms of Europeanisation in non-member states, conditionality before accession is qualified by Quaglia and others (2007, 416) as the “core strategy of the EU”, which may greatly influence the will of countries to meet EU requirements (Börzel 2011, 12). Schimmelfennig (2007, 127) defines

it further as a “strategy of reinforcement used by international organizations and other international actors to bring about and stabilize political change at the state level”. At the end of a study of the different modalities of external governance, Schimmelfennig (2010, 12) adds that “the mechanism of Europeanization of candidate countries is predominantly conditionality”. As a result of the material limitations of the present work, the following developments will mainly deal with this mechanism.

The following developments analyse conditionality in comparison with other Europeanisation mechanisms. According to a typology proposed by Schimmelfennig (Table 1), the mechanisms of external Europeanisation may be distinguished first according to their nature (direct and indirect), second according to the logic that they respect, either a rationalist logic or consequences or the logic of appropriateness. For Olsen (2002, 928), the main issue about the mechanisms of Europeanisation is “to understand the relations and possible tensions between a logic of appropriateness and norm-driven behaviour and a logic of calculation and expected utility under varying circumstances”.

Table 2.1: Mechanisms and Conditions of Europeanisation

	Direct	Indirect
Logic of consequences	<i>Conditionality</i> (size and credibility of incentives, costs of compliance)	<i>Externalization</i> (market size, legalization and centralization of rules)
Logic of appropriateness	<i>Socialization</i> (noviceness and uncertainty; legitimacy, authority of the EU; Identification, resonance with EU; frequency and density of contacts)	<i>Imitation</i>

Source: Schimmelfennig (2010, 8).²

The following research focused exclusively on the logic of calculation, setting aside the logic of appropriateness. Here, conditionality is a direct and voluntary process. It is focused on the logic of consequences: “the EU takes a pro-active stance and intentionally seeks to disseminate its model and rules of governance beyond its borders /.../ and proceeds through the manipulation of incentives and the change of cost-benefit calculations in third countries” (Schimmelfennig 2010, 8). In most of the cases, the EU will use promises of an agreement and a further accession when conditions are met, instead of sanctioning the refractor states (Schimmelfennig 2010, 9), though this may also include a wider range of rewards, such as

² In this table, the conditions for Socialization and Imitation are the same.

social, financial, material or political, such as recognition, military protection, *etc.* (Schimmelfennig 2007, 127). In this bargaining logic, “it is also commonplace to observe that participants in the enlargement process are concerned with costs and benefits and that they bargain in the defence of self-interest and economic and security gains” (Olsen 2002, 928). According to this logic, “the applicants are forced into concessions precisely because the basic benefit offered to them—membership—is of such great value” (Moravcsik and Vachudova 2003, 25). The EU intervenes through three mechanisms if conditionality is not respected: direct intervention in the political process; direct support to individual parties, laws, actions or persons; and threats to block the enlargement process or to stop financial assistance (Keil 2013, 348).

Lavenex and Uçarer (2004, 432–433) claim that “two factors are likely to limit the impact of conditionality on the calculation of the costs of non-adaptation: the uncertain time frame within which adaptation will be rewarded, and the questionable credibility of an unclear promise for membership”. Another parameter is the degree of interdependence and respective institutional roles and capacities, “the basis for the EU’s responsibility to contribute to problem-solving in a given area and the condition for external action in this field” (Lavenex 2004, 681). Schimmelfennig (2007, 128) lists three core conditions for its effectiveness: the “size of international rewards /.../ the size of domestic adoption costs /and/ the credibility of political conditionality”; these and another one will be considered further for judging the effectiveness. Overall, conditionality remains a variable mechanism, as “the EU is trying to account for the specificities of the countries by adapting its criteria and conditions” (Anastasakis 2005, 83); this may explain that a variation in the size and credibility of incentives and the costs of compliance, the conditions detailed by Schimmelfennig, has a wide range of consequences in candidate countries.

2.2.4 The external incentives model

According to the external incentives model, “the behaviour of the actors in the socialization process corresponds to rationalist assumptions of egoism and instrumentalism” (Schimmelfennig 2000, 110), with the country complying “because they perceive it to be in their self-interest to do so” (Vasilev 2011, 53). Following the rationalist logic, this model “assumes strategic, instrumentally rational actors who seek to maximize their own power and welfare” by the postulate that “a government adopts EU rules if the benefits of EU rewards

exceed the domestic adoption costs (Schimmelfennig and Sedelmeier 2005, 9–12). As Trauner (2009, 777) claims, “theoretically informed research suggests that the external incentives model of governance has the strongest explanatory power in terms of interpreting successful adaptation and transfer of given EU rules”.

The external incentives model may be limited when trying to explain why there is a variance in the effectiveness of conditionality mechanisms between two countries or two regions such as CEE and SEE (Freyburg and Richter 2010, 266). Nonetheless, these alternatives and findings do not lead at all to reject the model in itself, but rather to analyse “which type and how to successfully use such incentives for Europeanizing the Western Balkan countries” (Jano 2008, 68).

Schimmelfennig and Sedelmeier (2004, 671–675) list four factors on which the degree of compliance of the target states rest: the determinacy of the conditions that the EU set; the importance of the leverage and its distance in time – the “size and speed of rewards” –; the credibility and certainty about the rewards and sanctions the EU gives; and the local situation in the number of “veto players” and “adoption costs”. Schimmelfennig (2012, 9) applied these criteria to the Western Balkans, considering that “democratic conditionality ahead of accession negotiations has worked best when countries had a credible promise of eventual membership and when the domestic power costs of adopting democratic and human rights norms were low, i.e., did not threaten regime survival”. The fifth chapter will analyse these four factors in the case of BiH. Beforehand, the following section questions the relevance of the Western Balkans as a research object.

2.3 The case of Western Balkans

2.3.1 Relevance of the region as a research object

Focusing on the Western Balkans is an adequate framework for further analysing the case of conditionality in BiH, as the EU applied the same was applied to this region. The EU has used here a rather different approach than for the CEE countries, deepening its conditionality process and widening the scope of its requirements. The necessary state-building ‘situation’ in some of those countries has also required a particular approach. Examining Western Balkans as a whole will permit to take some conclusions regarding BiH.

The Western Balkans may be a region with specific variables and parameters. Sebastian (2009, 342) presents the EU's enlargement to the Western Balkans as "fundamentally different from other accession experiences", such as the ones that took place in 2004 and 2007 with CEE countries. Particular regional challenges such as corruption, difficult economic transition, the weakness of the new states and in some cases, a lack of local structures render the path towards accession more difficult (Radovanovik 2012, 209). Other issues are directly related to their post-conflict situation, when on top of minority issues, they need to face issues such as the return of refugees or the cooperation with the ICTY (Roter and Bojinović Fenko 2005, 450). Here, the weakness of the states may be used by the EU to emphasise asymmetrical dependence. "Central authorities are so weak and local politics so overwhelming that it is practically impossible to make any decisions at a national level, let alone interact with external agents", which leads to a "patronizing nature of the process" (Anastasakis 2005, 81–82). These factors result in the fact that the Europeanisation of Western Balkans may be considered as a new conceptual framework, linking the enlargement policy and domestic efforts towards transition (Babić 2014, 89).

2.3.2 Europeanisation in the Western Balkan countries

Radovanovik (2012, 208–210) details three successive steps leading to the Europeanisation of the Western Balkans: a "last Balkanization" focusing on the state-building after the conflicts following the end of Yugoslavia; the "delay transition" with the need to establish a market-based economy and liberal democracy in the region; and the "pre-Europeanization", domestic transformations leading to accession negotiations. The term of "pre-Europeanization process" emphasises the fact that the current dynamics are the mere effect of the preparations for enlargement and not an achieved Europeanisation *per se* (*ibid.*). As a matter of fact, Western Balkan countries have known a later transition than the CEE, which avoided the possibility of 'regatta' integration (Jano 2008, 62). These conditions require a narrower analysis of the use of conditionality, as each country had a more individualised approach from the EU.

Moreover, the Europeanisation of Western Balkans may as such have been harder to develop than for Western Europe or even the CEE countries, following a relationship management that has been "much more interventionist and regulatory" (Chandler 2010, 77). While Schimmelfennig (2007, 130) mentions the 2004 process as relatively clear and meritocratic,

the process being described by Anastasakis (2005, 77) for the Western Balkans is “increasingly demanding, externally driven, and coercive process of domestic and regional change brought about by the EU”. The widening of the European agenda also reflects the increase in the length and the requirements of the *acquis communautaire* and conditionality (*ibid.*, 84; Vachudova 2014, 123).

2.3.3 Relevance of conditionality in the Western Balkans

Uğurlu (2013, 167) mentions a tighter, “stricter” or “rigorous” political conditionality. He even goes as far as to consider that the EU set itself the goal to “resolving the problems of the Western Balkan countries”, thus using conditionality as a major policy tool (*ibid.*, 173). The giving of such rewards may also depend on the EU’s subjective assessment, as was the case when ruling out Croatia from the 2004 enlargement, although other countries that did join the EU may not have fulfilled all the necessary criteria (Roter and Bojinović Fenko 2005, 448). Conditionality may also extend to other domains in which the EU has neither the competence nor common positions, such as the police reform in BiH (Keil 2013, 349). Caratan (2009, 171) adds that “in the countries that have emerged from the former Yugoslavia /.../ the European Union itself has imposed a third set of requirements: political stabilisation”. Keil (2013, 346) summarises the Western Balkans approach by “a process in which the EU supports the implementation of European standards (defined by the EU’s conditionality)” in the region.

Schimmelfennig (Table 2) describes external governance and Europeanisation as operating in concentric circles, with different mechanisms intervening in different countries, with various conditions and impact.

Table 2.2: Concentric Circles of External Governance³

	Contents	Mechanisms	Conditions	Impact
Quasi-members	<i>Market regulation</i>	<i>Conditionality and Externalization</i>	<i>Strong dependence</i>	<i>Strong, partial</i>
Candidate countries	<i>All</i>	<i>Conditionality</i>	<i>Strong dependence, strong incentives</i>	<i>Strong, general</i>
Neighbourhood countries	<i>All</i>	<i>Conditionality and Socialization</i>	<i>Medium dependence, weak incentives</i>	<i>Weak</i>

Source: Schimmelfennig (2010, 10).

In candidate or quasi-candidate countries that still have not started the accession negotiations, the main or unique mechanism of leverage for the EU is conditionality, which require a strong dependence and strong incentives. The case study will help to determine if BiH fulfils these conditions, and with which impact. What is at stake here is the difference in the degree of compliance by some states, as compared to others; in other words, the challenge here is to determine “why some identities and obligations are activated and others are not” (Olsen 2002, 927). An in-depth analysis of specific domestic situations may help to provide a better understanding of it. Schimmelfennig (2010, 19), explains the strong impact of the EU in candidate countries by the high degree of asymmetric interdependence with them, as well as the strong incentives the EU may use. The local response is here mostly shaped by the weakness of the countries. The local will is especially important in the process, for Europeanisation “often generates and reinforces domestic cleavages based on competing notions of reform, economic interest, and identity”, which may lead to resistance to external pressure such as, for example, divisive ethnic politics in BiH (*ibid.*, 85). To some extent, it hints at the hypothesis that conditionality may be one of the only effective mechanisms of Europeanisation when dealing with non-EU states.

The scholarship mostly understands Europeanisation as a transformative process. Studies use Europeanisation as an analytical design. It has fuelled many research projects on the EU’s enlargement policy, adding more traditional governance-related frames of analysis. Nevertheless, Europeanisation has several modalities, which are either rationalistic or social-

³ In this scheme, BiH may be considered as a candidate country, as the neighbourhood countries are not considered to be potential candidates for integration and are dealt with by the European neighbourhood policy (Schimmelfennig 2010, 13–14).

constructivist. The former is mainly laying on a bargaining model, itself based on conditionality. I will base my research on this rationalist framework as it probably has the best explanatory power and its mechanisms fit the situation of the Western Balkans and BiH in particular.

3 Europeanisation and human rights

According to Keil (2013, 345–346), “/t/he focus of EU integration in the Western Balkans /.../ lies on state-building to overcome the results” of the collapse of Yugoslavia. The EU’s paramount objective is to implement stability through active states. The process partly depends on democratization. The EU reiterated several times this insistence on the fulfilment of the political criteria. In 2003 the European Security Strategy insisted on the need for the Balkan governments to implement good governance and democracy as well as emphasising the importance of “establishing the rule of law and protecting human rights” (European Council 2003, 6 and 10). The present chapter analyses the significance of human rights in this process.

Demetropoulou (2002, 89) underlines two significant variables that impact the result of Europeanisation: its mechanisms and the specificity of the Balkans and each country. Lavenex and Uçarer (2004, 420) note that “studies on policy transfer distinguish between the transfer of general principles guiding the exercise of a policy /.../ and institutional transfer”. Anastasakis (2008, 367) develops this idea by explaining that political conditionality contains two main dimensions: a substantive one consisting of the standards and norms the EU wants to implement in the country, and an operational dimension subsuming the different means with which the EU will operate. I successfully analyse these two dimensions – the second one altogether with the analysis of the Western Balkans/BiH situation. In this latter subchapter, remarks for BiH can be linked with the global analysis of the situation in Western Balkans. The tools of Europeanisation – its values and mechanisms – are the same from one country to another as they are the mere “extension of virtually identical incentives for norm compliance” (Vasilev 2011, 51).

3.1 Human rights as a set of values, principles and standards – a substantive dimension

3.1.1 Human rights in the European Union’s competence

The EU’s concern for the human rights and democracy record of its members dates back from the first decades of the European Economic Community (EEC). The 1961 Birkelbach Report

on the perspective of the ECC's enlargements indicated the need to define political criteria for potential members. The report added that "the guarantee of the existence of /a/ democratic form of government, within a liberal political organisation, is a condition for membership" (Assemblée parlementaire européenne 1961, para. 25, translation by the author).

The Treaty of Amsterdam formally consecrated human rights and fundamental freedoms in the European foundations. Human rights were among other principles relating to democracy and the rule of law. The new provisions on a common foreign and security policy included them. In the meanwhile, the degree of protection of human rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe 1950) (ECHR) was elevated to the rank of constitutional principles (Treaty of Amsterdam 1998, 8; 10). In the current positive law, Article 6(1) of the Treaty on the EU (TEU 2012) states that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law". Article 49 states that the observance of these principles is a condition for joining the EU (*ibid.*). Other policies also refer to human rights, such as the need for an area of freedom, security and justice, which triggers "supranational accountability" (Lavenex 2004, 687). The Charter of Fundamental Rights of the EU is more detailed, for its Articles (Art.) are part of the EU's positive law since the adoption of the Lisbon Treaty in 2009 (Treaty of Lisbon 2009, Art. 1).

For Fenko and Urlić (2015, 109), this rise in the importance of human rights was "independent/.../ of the enlargement policy and also due to the fact that the transition of political system to achieve performance of democratic, stable institutions entails essential preconditions for successfully meeting other criteria". Moreover, it did not limit itself to the EU's enlargement policy, but also to relationships with other countries (Schimmelfennig 2012, 12). Uğurlu (2013, 167) underlines the importance of human rights as a "complementary element of /a/ European foreign policy objective". Keranen (2013, 365) even qualifies human rights as "the cornerstone of international statebuilding agendas in general".

Nonetheless, the EU did not extend its competence to human rights until the prospect of extending membership to CEE countries came to the fore. Then, the promotion of human rights has become one of the EU's priorities (Schimmelfennig 2012, 11; Conant 2014, 725). "Over the last ten years, conditionality has become even further qualified and specified". It has expanded, for example, to the legal framework of other organisations, such as decisions of

the ECtHR or reports of the Venice Commission (Keil 2013, 347). Veebel (2011, 3) adds to it by considering that “/w/hat had earlier been an overwhelmingly political process of pre-accession negotiations /.../ was gradually replaced with a technical system of conditions, measurable criteria and assessment”.

3.1.2 Human rights in the European Union's enlargement policy

Several hints were given regarding which countries could only join the EU if they respected a minimum threshold of human rights protection. The Commission interpreted the treaties in 1978 to consider that a state can only enter the EU if “its constitution guarantees /.../ the existence and continuance of a pluralistic democracy and /.../ effective protection of human rights” (Marktler 2006, 345). Schimmelfennig (2000, 119–120) points that “the belief in, and adherence to, liberal human rights are the fundamental beliefs and practices that constitute the /Western/ community”, as they are the base of a “common, liberal political culture”. These values, considered as common, help the EU to transmit its normative agenda and to create “political transformation” (Anastasakis 2008, 370). The EU in turn incorporated them into the peace-building model as well as the enlargement policies (Kappler and Richmond 2011, 262).

Human rights as preconditions for EU accession were formalised in the Copenhagen Criteria in 1993 when the EU braced itself to welcome post-socialist countries in the EU accession process (EC 2014c; Conant 2014, 713). The Copenhagen European Council conclusions state that “membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union” (European Council 1993, 13). It shall be mentioned for further analysis that on top of the three categories of criteria – political, economic, *acquis*-related –, the Union’s “ability to absorb new members” was also put on the agenda a fourth criterion during the Copenhagen European Council (*ibid.*). Thus, a part of the conditions for accession would not be dependent on the country’s deeds.

On top of this, the scope of the human rights conditionality has enlarged much beyond the 1993 Copenhagen criteria (Pridham 2007, 454). The first assessments of Western Balkan countries’ progress took place within the framework of the 1997 Regional Approach. In describing the different items included in the “human rights and rule of law” criteria, the EU

included the most commonly accepted political and civil rights (European Commission 1998, 5). Those comprise freedom of speech and media, the right of association, assembly, right to privacy, to property, freedom from inhuman or degrading treatment, and several measures pertaining to the right to appeal against administrative decisions, right to fair trial and equality before the law (Council of the EU 1997, Annex to Annex III; EC 1998, 5). The European Commission (EC) also adapted its policy to the evolutions of the scope of human rights. For example, in the field of group rights, the EC's most recent progress reports include a range of rights that became more topical. The most typical ones are the protection of the Roma population and the rights of the Lesbian, Gay, Bisexual and Transgender (LGBT) people (CEC 2007b; 2008, 19; 2009, 17; EC 2010a, 19). On top of traditional rights, hence, the EU's standards have expanded beyond their original acceptations to include more modern rights, even during the process of enlargement.

3.2 The operationalisation of human rights conditionality in the Western Balkans

These values and norms, though, are not only expected to be included in the external states' legal system, but also to trigger a particular conduct (Schimmelfennig 2000, 109–110). From this point of view, the focus of the EU on human rights and the Copenhagen political criteria is in itself a conditionality mechanism. The EU's soft power may be galvanised through its “stated commitment to certain normative principles /.../ which shows /.../ the incorporation of several international human rights conventions into the *acquis*, and in the monitoring of potential members' performance under the Copenhagen Criteria” (Nielsen 2013, 730).

3.2.1 Human rights conditionality

In the fields of human rights, Uğurlu (2013, 168–170) considers that it is unclear whether the original treaties contained the idea of conditionality, or even implicitly. He mentions that a “membership-human rights nexus” developed after the Copenhagen European Council (*ibid.*). The Amsterdam Council in 1997 then enshrined the enlargement, human rights-related criteria into the treaties (*ibid.*, 170). Nevertheless, conditionality has now become the primary vector of Europeanization: “the demands on democratic standards made by the Commission in Brussels have been significant in both opening negotiations and in securing membership at the final stage” (Pridham 2007, 446). Moreover, at the end of the pre-accession process, the start of negotiations is “explicitly dependent on meeting the democracy and human rights

conditions” (Grabbe 2001, 1020). Since human rights pertain to a core system of values and norms, this area is especially prominent during the pre-accession process, since the direct accession negotiations rather focus on the *acquis communautaire*. This political conditionality is then much different than the “*acquis*-related conditionality”, more relevant for candidate countries (Anastasakis 2008, 367).

The purpose of conditionality, in this situation, is to modify the local rules, procedures, institutions, etc., to make them “sustainable” and “viable” in implementing the *acquis*. Hence, the effort of the EU to create stable state structures in BiH and to create conditions in which human rights may be protected and promoted (Anastasakis 2008, 370–371). Nielsen (2013, 729) claims that “conditionality, whether positive or negative, and the sanctions implied, are, on a more rigorous understanding of power, clearly at the lower end of what can be termed hard power”. To implement it, the EU has developed adapted mechanisms, including in the field of human rights, that pertain to an “asymmetric relationship of imposition, pressure, control and, partly, threats” (Anastasakis 2008, 366).

The reasoning behind conditionality is that “new democracies seeking EU membership are the most likely to (1) adopt legally binding international human rights commitments and (2) improve practices” (Conant 2014, 714). As a result, conditionality is clearly oriented towards the improvement of behaviours, while many international conventions and treaties merely focus on the adoption of a legislative apparatus (*ibid.*, 715). In general, the Commission monitors “the applicants’ compliance with the Copenhagen criteria during the pre-accession phase”, in particular through yearly progress reports per candidate (Uğurlu 2013, 170). In this context, the assessments of the Commission are usually based on widely recognised and legitimate fundamental rights, as well as international agreements concerning human rights and the protection of minorities (Marktler, 2006, 352). The enlargement strategy papers give a useful insight into the EU’s conception of conditionality. The EC repeatedly emphasised that the applicants can join the EU only in the case in which they “met the criteria in full” and “fulfilled all the requirements”, although the EU must remain persuasive in the credibility of its political offer (CEC 2005, 2–3). Moreover, the EU keeps the right to suspend the progression of candidates and potential candidates in the case of a serious and repeated breach of the EU core principles or requirements. Such a breach may concern human rights as well. In some instances, the EU can even use the threat of exclusion or slowing down the process to foster change (*ibid.*, 3; Grabbe 2001, 1022). Until the most recent years, four main categories

of rights are examined in the human rights chapter: “Observance of international human rights law”; “civil and political rights”; economic and social rights”; and “respect for and protection of minorities and cultural rights” (EC 2010a).

3.2.2 The European Union’s policy in the Western Balkans

The EU has decided to be the chief actor in developing Western Balkans, as can be seen in the Stability Pact for South East Europe, launched in 1999. The SP includes much of the IC’s leading organisations. Through it, the EU proposes to play the “leading role”, albeit working closely with other organisations (European Council 1999). Adopted at the International Summit of Sarajevo in 1999, it also endeavoured to address areas such as human rights in the region (Elbasani 2008, 7). This mention leads to consider that the principal vector of EU in the Western Balkans is democratisation in a general meaning (Barbulescu and Troncota 2013, 70). Here, conditionality may be described as a “multi-purpose process of imposing standards and social values in shaping democratic reforms in the Western Balkans”, which requires examining these different purposes (Babić 2014, 94).

3.2.2.1 Two-fold approach

The Western Balkans is subject to two kinds of approaches, operationalized in a paralleled way: the EU policy uses a regional approach but also on more individual approaches according to which the countries may have different trajectories (Council of the EU 2004a, para. 39). This strategy was applied to conditionality as early as the 1997 Regional Approach (Council of the EU 1997, Annex III). To describe it, Elbasani (2008, 6) considers the EU’s approach as “comprising the application of conditionality, the use of various rewards and a common regional policy”.

The EU launched its collective approach in 1997 and named it the Regional Approach. It was aimed at all the South-East Europe (SEE) countries that did not have already an association agreement with the EU. It conditioned progress in bilateral relationships by political criteria, including human rights and the rule of law (Elbasani 2008, 6). Several years later, it materialised with the Stabilisation and Association Process (SAP). The process had the same conditions and rewards as the Regional Approach, but with the clear perspective of bringing the Western Balkans into the European bosom (CEC 2000, 2). The SAP leads to the adoption

of SAAs, which are, here as well, usually conditioned “with the fulfilment of stringiest political criteria” (Elbasani 2008, 10). The political conditionality also pertains to “extra” conditions, which makes the scope of the SAA conditionality much broader than the one of the CEE countries (*ibid.*, 10–11).

The “individualised approach” is developed through different mechanisms. In 2004, the EU established European partnerships with the view of assessing the countries’ progress in a detailed way and fixing short-term conditions and goals (Council of the EU 2004c). The EU adopts these documents annually to give clear indications for the shorter term (Elbasani 2008, 11). It would use them mostly as a “checklist”, evaluating progress in an individualised way (Council of the EU 2004c, para .5). The candidate states shall implement their human rights provisions in the short, medium and long-terms (Council of the EU 2008b). Progress reports also constitute a strong way of reporting and assessing conditionality (EC 2014, 3–4). In several situations, the European institutions consider the successful achievements of one country as a possible incentive, or “encouragement”, for other candidate or potential candidate countries to continue the reform process (Council of the EU 2004a, para. 39). From this point of view, a tool for conditionality is to use the better progress of other Western Balkan countries to foster emulation among the remaining potential candidate states.

3.2.2.2 Financial assistance and trade agreements

The EU transferred the mechanisms that were used for the CEE countries to the Western Balkan countries, considering their shared wish to enter the EU. It is deemed a sensible choice at the time of the first pre-accession assistance programmes (Bieber 2011, 1791). The first preferential trade agreements also included the political criteria (Elbasani 2008, 9). According to the regional approach of 1997, Western Balkan countries shall be included by the European Community’s trade measures, and only if they respected, among others, “fundamental principles of democracy and human rights” (EC 1998, 2). Respect for human rights, democracy and the rule of law also conditioned economic assistance under the former PHARE and OBNOVA programmes (Juncos 2005, 96). The respect of human rights is formally on the top of the priorities of the assistance.

Respect for human rights was one of the first requirements for a state to benefit from the Community Assistance for Reconstruction Development and Stabilisation (CARDS)

programme, as both an “essential element” and a precondition for allocating aid (Council of the EU 2000, Art. 5). From the beginnings, thus, assistance was linked to the political criteria, including human rights, and it was overall representative of a comprehensive conditionality (Elbasani 2008, 10). Assistance under the Instrument for Pre-Accession Assistance (IPA) programme, which replaced CARDS, is also supposed to support the respect of the political criteria. Among these criteria, the promotion and the protection of human rights are ahead of the list of areas supported by assistance, as well as fostering the civil society in promoting them. The Commission of the European Communities (CEC) supervises their progress. (Council of the EU 2006b, Art. 2; CEC 2007a, Art. 64.1). The regulation on assistance envisages the possibility to withdraw or suspend assistance, should a country fail to respect or to do sufficient progress regarding, among others, “human rights and minority rights and fundamental freedoms” (*ibid.*, Art. 21).

3.2.2.3 Tightening of the human rights conditions

In an assessment of the EU’s conditionality, Roter and Bojinović Fenko (2005, 453) consider that the Western Balkan countries “are monitored more closely, and that the same Copenhagen political criteria do appear to be applied more rigorously than they used to be”. Much of the scholarship agrees on this point, especially when compared with the conditions that the EU offered to the CEE countries (Elbasani 2008, 6–7). Elbasani (*ibid.*) describes the process as the operationalization “in great detail” of initially open conditions, the collective and individual parallel approaches multiplying the number of requirements towards the countries of the Western Balkans. In determining whether the stricter political conditionality led to more stringent human rights conditionality after 2004, Uğurlu (2013, 183–184) replies positively. He considers that the EU significantly tightened up the criteria, although it did not change them considerably.

The EU widened the scope of the human rights much beyond the sole scale of the political criteria, taking into consideration international and local contexts, as well as the experience of the Western Balkan countries (Anastasakis 2008, 367–368). Institutionally, more regionally-specific criteria were added on top of the four Copenhagen criteria types. The Zagreb Summit in 2000 added conditions such as cooperation with the ICTY, regional cooperation and fight against corruption and organised crime (Perrot 2010, 3). The first item was not relevant for CEE countries while the conditions for accession did not mention the second and third. In the

case of states such as BiH, another dimension is added to the conditionality approach, which is “state building /as a/ part of the enlargement process itself” (Chandler 2010, 77). Theoretically, this new dimension entails a greater need for leverage within the EU. To a certain extent, this is linked to the post-conflict nature of the state (Domm 2011, 54). As such, Bosnia is a particular case, as it is, according to Chandler (2007, 605), “the first genuine EU state where sovereignty has in effect been transferred to Brussels”.

The progress reports also can attest these phenomena. Their typology goes beyond the chapters of negotiations for accession. As a result, the part dedicated to the human rights and the protection of minorities is divided into three traditional categories: first, the “observance of international human rights law” and “civil and political rights”; second, “/e/conomic and social rights”; third, “minority rights, cultural rights and the protection of minorities” (CEC 2006b). These three categories are respectively linked to “first generation”, “second generation” and “third generation” rights (Szasz 1996, 308). Moreover, the priorities of the EU regarding human rights may vary from one year to another. For example, in the EU Annual Report on Human Rights and Democracy in the World in 2013, the Commission put an emphasis on three human rights: freedom of expression, the situation of the Roma, and the protection of the LGBTI community (Council of the EU 2014c, 154). Only one of them is an individual, political and civil right.

Conditionality in the Western Balkans then combines collective and individual approaches; through different incentives such as trade agreements, the conclusion of the SAA or the regular publication of progress reports and objective-oriented goals, the EU seeks to implement a widening scope of human rights that are region-specific, country-specific and time-specific.

4 The Europeanisation of human rights in Bosnia and Herzegovina

The EU endeavours to have an asymmetrical transformative power, as conditionality is “top-down, rather than two-way” (Aspridis and Petrelli 2012, 7). Knaus and Martin (2003, 61) consider that in BiH “outsiders actually *set* that agenda, *impose* it, and *punish with sanctions* those who refuse to implement it” (Knaus and Martin 2003, 61, emphasis in original). This chapter will analyse the local characteristics of BiH before seeing how the EU has adjusted its conditionality policy to the country, especially regarding human rights.

4.1 Political and institutional structure of the country

Börzel (2011, 10) considers the Western Balkan countries have a limited statehood, consisting mainly of a relatively weak state capacity. Limited statehood explains the non-effectiveness of “EU-induced reforms” since it creates a gap between formalistic changes and the absence of change (*ibid.*). She considers that “the different degrees of statehood correlate highly with the differential progress the Western Balkans have made” (Börzel 2011, 10). In the same vein, Bieber (2011, 1783–1784) calls Bosnia and similar states “minimalist states”, which “presuppose international state-building efforts and have become synonymous with the failure of domestic (or international) state building and /.../ coexist with a low level conflict.”

According to Anastasakis and Bechev (2003, 11), reforms need “reformist parties alternating in power” and a full consent regarding the Europeanisation project (Anastasakis and Bechev 2003, 11). Nevertheless, the public support towards the EU in BiH is variable through the years and differentiated from one entity from another; it seems to decrease as the political stalemate continues and to fluctuate according to the conjuncture (*ibid.*, 2000, 11 and 22–25; Gallup Balkan Monitor 2009, 5–6). However, the trust in government institutions is particularly weak (Freedom House 2015, 144).

According to Schimmelfennig (2007, 132), compliance may also be depending (for democratic consolidation) on the cost-benefit calculations of the parties in power, which leads to the importance of the “party constellations”. Not totally liberal, mixed constellations, makes compliance more difficult. Those constellations exist especially when “reform-adverse

nationalists and populists benefited from the failure of reform-oriented parties to provide for economic recovery or efficient governance”, and lead to “stop-and-go or up-and-down pattern” (*ibid.*, 134). Bosnia has such a mixed constellation. Its political structure is marked by what Dzihic and Wieser (2008, 88) call the “internalisation of the ethnic principle in the power politics and societal life in the country”. This phenomenon is due to the “overwhelming influence of ethno-nationalistic patterns of thought in the process of democratisation”. The problem is then lying in Dayton as a reference point, the rights of the dominant ethnic groups being prioritised (*ibid.*, 91–92).

In a speech given in 2008, the then High Representative (HR) Miroslav Lajčák evoked the Bosnian constitutional structure and nationalism as the two primary factors weakening the state in Bosnia and Herzegovina (Joseph and Hitchner 2008, 2). One of the main issues is the existence of the Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFA), the Constitution of BiH. It causes problems of governance, such as an inefficient state government, the separation between entities and constituent people (DPA 1995; Barbulescu and Troncota 2013). The fact that the IC has, here, a wide range of powers, may have helped foster bigger change. Nonetheless, the policy of “proactive reinforcement” that the IC tried to implement was not effective, due to the prevailing ethnonationalism and the persistence of “nationalist-authoritarian elites” in the state apparatus (Schimmelfennig 2000, 133). For most of them, each area in the country is dominated by the majority group, to the detriment of the two other constituent peoples as well as of the ‘others’ (Sarajlić 2010, 19). In particular, fewer rights are automatically linked to the people who do not belong to – or do not declare themselves as members of – the three minor ethnic groups (*ibid.*, 67). In the same way, the entity right to veto is considered as a “distinctively dysfunctional and disintegrative constitutional provision” (Kocjančič 2011, 74).

Recurrent institutional problems plague BiH. Among those, constitutional dispositions guarantee the entities “all governmental functions and powers” that are not expressly assigned to the central state or the cantons (Constitution of BiH, Article III.3.a). As a result, BiH is a “*sui generis* federation with extremely limited viability” (Kocjančič 2011, 71). Already in 2000, the CEC (2000, 4) listed the main problems as “the lack of consensus on a common statehood, general weakness of the institutions and an underdeveloped civil society”. In 2011, for example, it led to a fifteen-month delay before the new Council of Ministers could be established. In the first half of 2013, political blockage deprived many new-born babies of an

official identity, and of all the political and civil rights linked to citizenship, leading to a wave of protests (Štiks 2013). The EU was well aware of the risk that constitutional and legal complexity would cause a lack of compliance on the BiH's leaders' side (CEC 1999, 13).

4.2 Human rights conditionality in Bosnia and Herzegovina – external incentives and structures

4.2.1 The human rights protection in the national system of Bosnia and Herzegovina

As a matter of fact, human rights are a core of BiH's Constitution contained in the DPA (Ferizović, 3). Its Article II.2 states that “the rights and freedoms set forth in the European Convention and its Protocols apply directly and that they have “priority over all other law” (Constitution of BiH 1995, Art. II.2; Kocjančič 2011, 82). The Constitution also has a prescriptive content, as it orders the state to ensure “highest level of internationally recognized human rights and fundamental freedoms” (*ibid.*, Art. II.1.) as well as it consecrates the principle of non-discrimination (*ibid.*, Art. II.4; Brljavac 2011c, 66). Article X.2. prohibits amendments that “eliminate or diminish any of the rights and freedoms referred to in /the Constitution/” (Constitution of BiH 1995). Overall, the human rights that BiH's legal system protects originate from a patchwork of classic “post-World War II rights” (Szasz 1996, 314). Those rights pertain to the individual, and minority and collective rights that were directly inspired from the previous conflict's human rights violations (*ibid.*).

Nevertheless, many of these rules are foreign-produced as being the consequence of the DPA. As Paul Szasz (1996, 314) underlines, “none of these provisions originated in Bosnia itself as indigenous developments of its legal system, but were advanced by outsiders attempting to suggest constitutional and legal frameworks that the warring parties were unable to construct by agreements between themselves”. As the priorities and preferences of the EU do not reflect those of the local actors, this perception is only increased (Anastasakis and Bechev 2003, 16). From this point of view, Szasz (1996, 306) estimates that including the ECHR and its protocols in the constitutional provisions of Bosnia and Herzegovina, though BiH was not at that time a member of the CoE, “reflects the desire to fit Bosnia and Herzegovina closely into Europe”. This situation may lead to another issue of legitimacy and explain the difficulties of implementing it, although some parts of the elite may also have been “intrinsically motivated” to follow human rights conditionality (Pridham 2007).

4.2.2 The European Union's policy regarding human rights in Bosnia and Herzegovina

4.2.2.1 Main human rights provisions regarding Bosnia and Herzegovina

In the SAA, human rights are dealt with in the second Article of the first title, which states that they “shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement” (Council of the EU 2008c, Art. 2). It continues by proclaiming some principles, such as human rights, as “central to the Stabilisation and Association process” (*ibid.*, Art. 5)

Like the constitutional framework of BiH, the different trade agreements concluded between the EU and BiH mention most of the international conventions protecting human rights. The interim agreement contains a broad range of provisions that derive from several international conventions. It includes the Universal Declaration of Human Rights (UDHR), the ECHR, the Helsinki Final Act, the Charter of Paris for a New Europe, and even non-formalised norms such as “principles of international law” (Council of the EU 2008a, Art. 1).

Other institutions' jurisprudence or opinions can be taken into account by the EU in assessing the local situation. For example, the Venice Commission's works, as its opinion on the constitutional situation in BiH in March 2005 have an impact in human rights conditionality. The EC can use them as an additional incentive (Sebastian 2009, 342).

4.2.2.2 Priorities of the Commission

The Europeanisation process in BiH went through several stages, as the SAP implied first a process of political and security stabilisation, before launching an actual pre-accession process and the introduction of the EU values, norms and standards (Barbulescu and Troncota 2013, 70).

In an analysis of the role of the EU in the Western Balkan countries and in particular in Bosnia and Herzegovina after the first post-conflict phase, Juncos (2005, 93) underlined that “a clear message, and the necessary assistance to help with the implementation of the reforms

are expected from the EU”. In the case of BiH, the first tangible formalisation of the use of conditionality was contained in the 2003 feasibility study of the EC, assessing BiH’s ability to open negotiations on an SAA (EC 2003; Barbulescu and Troncota 2013, 79–80).

Over the past years, the IPA assistance mainly focused on children, the return of migrants, the inclusion and protection of minorities, especially Roma people, and the LGBTI population, as well as “re-integration of victims of torture and violence” (Council of the EU 2014c, 155). The modification of BiH’s Constitution to guarantee a higher level of human rights was also one of the EU’s priorities and remained at the top of the local and international agenda for many years (Sarajlić 2010, 19).

Most of the reforms that were asked so far from BiH pertain to the revision of the Constitution leading to its conformity with the ECHR, as the ECtHR decided in the *Sejdić and Finci* case (Kocjančič 2011, 81). The EU, in its progress reports, is greatly focused on changes in the Constitution or other legal texts and provides little evidence of the improvement or deterioration of the human rights situation in practice (Conant 2014, 715). Even for the year 2005, during the constitutional reform, Sebastian (2009, 348) underlines a “lack of a clear foundation in the accession criteria”. Political positions mainly concentrate on the need for BiH to focus on the implementation of the *Sejdić-Finci* through a constitutional reform while circumventing other individual political rights (EP 2013, para. 14).

Concerns for human rights are regularly recalled and usually comprise a comprehensive set of goals such as “a functional system of good governance, democratic development and economic prosperity and respect for human rights” (EP 2013, para. 7). Nevertheless, human rights seem to have receded in the EU’s priorities. The April 2014 Foreign Affairs Council’s conclusions lists some priority areas on which it “urges the BiH institutions and leadership to focus”, putting human rights at the very last position on this list (Council of the European Union 2014b, para. 4).

4.3 A failed Europeanisation?

4.3.1 Human rights record

After more than ten years, reports of the civil society, notably the Foreign Policy Initiative/*Vanjskopolitička inicijativa BH* (VPI BH), lament the absence of any progress and mention a “true lack of harmonisation of BiH with the Copenhagen criteria” (VPI BH 2011, 20). New pieces of legislation that the Parliament introduced risk violating human rights and fundamental freedoms (Civil Rights Defenders 2015). Among the most blatant difficulties, the Constitution of BiH is not consistent with the ECHR, which goes contrary to the first provisions of the SAA (VPI BH 2011, 94). Before the ECtHR’s decision, significant parts of the scholarship have highlighted the clear incompatibility between the DPA and the EU’s fundamental rights. The Venice Commission itself has made several proposals to change BiH’s constitutional system (European Commission for Democracy Through Law 2005; Brljavac 2011c, 69).

According to a rating made by Freedom House, the overall democratic situation of Bosnia and Herzegovina decreased during the researched period, especially as regards indicators that refer to human rights, such as ‘independent media’ and ‘judicial framework and independence’.

Table 4.1: Freedom’s House ‘Nations in Transit’ rating of BiH 2006–2015

Nations in Transit Ratings and Averaged Scores										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Electoral Process	3.00	3.00	3.00	3.00	3.25	3.25	3.25	3.25	3.25	3.25
Civil Society	3.75	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Independent Media	4.00	4.00	4.25	4.50	4.50	4.75	4.75	4.75	4.75	4.75
National Democratic Governance	4.75	4.75	5.00	5.00	5.25	5.25	5.50	5.50	5.75	5.75
Local Democratic Governance	4.75	4.75	4.75	4.75	4.75	4.75	4.75	4.75	4.75	4.75
Judicial Framework and Independence	4.00	4.00	4.00	4.00	4.00	4.25	4.25	4.25	4.25	4.50
Corruption	4.25	4.25	4.25	4.50	4.50	4.50	4.50	4.75	4.75	4.75
Democracy Score	4.07	4.04	4.11	4.18	4.25	4.32	4.36	4.39	4.43	4.46

Source: Freedom House (2015, 143).⁴

⁴ In this rating, 1 is the highest possible score and 7 is the lowest.

4.3.1.1 Political and civil rights and legislation record

As regards political rights, one of the most frequently violated rights is the freedom of information. Reports dating back from before the researched period state that “the independence of the media and freedom of expression are largely respected”, with the presence of regulatory authorities or self-regulation, and a limited political influence (CEC 2003, 13). After twelve years, Freedom House (2015, 145) underlined a surge in political pressure on the media, wiretapping of journalists, threats and physical violence, despite an appropriate legal framework. The main political parties control the media apparatus while the regulatory institutions remain relatively weak. Many appointments in the media depend on political or ethnic criteria, and self-censorship has developed, while hate speech remains topical (*ibid.*, 152–153; Civil Rights Defenders 2015). Amnesty International (2015, 80–82) (AI) states actual acts of torture and ill-treatment, especially of protestors, violence and intimidation of journalists, the lack of a clear regulation on legal aid, no real prosecution of war crimes of sexual violence. A series of abuses also takes place within the judiciary and the justice and penitential system and are not properly tackled, partly due to the stalemate caused by the nationalist main political actors (VPI BH 2011, 15; AI 2013, 41). Backlogs in the judicial system are many, prisons are overcrowded, and punished criminals may remain out of prison for a long time before detention. The impartiality of the judiciary is questionable, and people are sometimes not informed of their rights when arrested (Freedom House 2015, 155–157). The NGOs and LGBTI communities also are the object pressures that may degenerate into violence (Freedom House 2015, 152).

Some elements of the legislation remain unmodified despite constant warnings, for many years, the eleventh Article of the Republika Srpska’s (RS) Constitution legalises the death penalty as a capital punishment, which does not conform to the EU positive law and policy (CEC 2003, 12). For example, the 2003 Criminal Code has a too restricted definition of sexual violence, contrary to international standards; BiH did not amend it despite international pressure (AI 2013, 42). Some texts are out of date and comprise many shortcomings, such as the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) which was applied by BiH courts in some cases to judge war criminals (AI 2013, 42). The draft Law on Public Peace and Order filled in the Parliament of RS in 2015 contains dispositions that may

violate many international conventions to which BiH is a signatory country, regarding the freedom of speech (Human Rights Watch 2015).

4.3.1.2 Minority and group rights record

Some progress was made to enforce the right of BiH's constituent peoples, with new constitutional laws equalising the three peoples' status in the different entities and local governments and introducing "proportional representation in public bodies", though there were backlogs in the entities to implement the decision (CEC 2003, 12). In most the cases, however, the improvements were limited to these three peoples. Some localised progress took place regarding the 'others', but only in a limited scope, for example in the Sarajevo Canton, which decided to implement equality between the three constituent peoples and the "others" (Toè 2013). This results in repeated discrimination among minorities, for example in the school system (Freedom House 2015, 144).

4.3.1.3 Economic human rights record

An analysis from Ombudsman reports underlines that equality before the law, property and professional rights are the most frequently violated rights (BiH 2006, 40; CEC 2003, 12). Among the economic human rights record, many groups, considered as 'vulnerable', suffer from a lack of targeted measures, such as the Roma, disabled people, returnees that are in a state of poverty. These violations take place in a context of economic stagnation with limited prospects regarding the standard of living (UNDP in BiH 2013, 50).

4.3.2 Standstill of the European integration process

Domm (2011, 54) considers that "in strategic terms, Bosnia is an irritant rather than a threat to EU member states", with landmarks that sometimes took years to happen. Among other examples, the SAA process has already been delayed in the early 2000s due to the political and constitutional situation (CEC 2000, 4). In 2010, the Council of the EU reluctantly approved the new, visa-free travel regime, for citizens of BiH who have a biometric passport (Council of the EU 2010). The EU's commissioner for enlargement abandoned the last process of constitutional reform, before the beginning of the 'shift' in the EU's strategy towards economic and social issues was announced one month later (Freedom House 2015,

148). Attesting the lack of improvement, the EU restricted its IPA funds and limited to a period of three years – 2014–2017 – rather than the six years framework (Freedom House 2015, 148). The ECtHR has for six years called for a constitutional reform that BiH still did not launch (Aspridis and Petrelli 2012, 11).

For a large part, the EU waited for progressive and trans-ethnic coalitions to arrive in power in BiH for its conditionality to be the most effective, but this did not materialise (Perrot 2010, 9). For Schimmelfennig (2007, 139), “coercive policies such as in Bosnia /.../ have been useful to stop violent ethnic cleansing but have not accelerated either democratic consolidation or Western integration /... there is/ no evidence that looser political accession criteria /.../ would help” (*ibid.*, 139).

4.3.3 *Lack of compliance*

As Sebastian (2009, 348) underlines it, “the issue of constitutional reform in BiH suffered from flaws in the EU’s capacity to operationalize its Copenhagen criteria, principally the lack of foundations in EU law and the extensive diversity in EU practices on such highly political issues”. Dzihic and Wieser (2008, 83) describe the stalemate and lack of progress on the BiH’s side. They emphasise that “the volume of conditionality the country /BiH/ has been confronted with since 2005 /.../ and the inability of national political leaders to compromise on these reforms, constituted the main sources for despair” (Dzihic and Wieser 2008, 83).

They underline four types of challenges to democratic consolidation and Europeanisation: first, nationalism undermines democracy and stateness, which fuels the persistence of “reserved domains” (*ibid.*, 85). The second challenge is the socioeconomic polarisation of societies. Finally, Europe loses its “symbolic strength vis-à-vis nationalist discourses” and domestic topics also use Europe as a dividing line in domestic topics. The enlargement to twelve countries of the CEE created many expectations. However, these expectations were watered down and, as Babić (2014, 95) considers, “this situation contributes to the low level of accountability and creates a dangerous symbolic trend that can be understood as “Balkan-scepticism” that is backed by “Euro-scepticism”” (Babić 2014, 95).

In April 2014, the Council of the EU (2014b, para. 2) considered that “that the EU integration process in Bosnia and Herzegovina (BiH) has stalled due to the lack of political will on the

part of the BiH politicians and the continued use of divisive rhetoric”. Barbulescu and Troncota (2013, 84) claim that there is no “stable network of agents of change” that would have the will to implement new reforms. The conditionality mechanisms provide other answers. Vasilev (2011, 51) considers that conditionality “has coincided with a stark deterioration in ethnic relations and a virtual stagnation of reforms necessary to prepare the country for joining the EU”. Such an outcome is not necessarily the same in other Western Balkan countries despite the fact that the incentives are supposedly identical.

Vasilev (2011, 55) describes the impact of a consociational form of government on the effectiveness of conditionality by considering that “consensus politics, after all, is less a blueprint for policy content than it is a behavioural ethic for politicians to abide by”. This polity makes it more demanding for countries such as Bosnia, which do not only need to introduce “norm-confirming policies” (*ibid.*). As Brljavac (2011c, 70) resumes regarding the rights’ recipients, “democracy brought about collectivist doctrine rather than promotion of individual rights /.../ such political model is a kind of ethno-democracy or ethnocracy which vehemently violates the human rights and fundamental freedoms”. This “ethnocracy” is a direct consequence of the structure of the Dayton agreements, and which logic fosters the elevation of the rights of dominant ethnic groups rather than individual and other civil and political rights (*ibid.*). Barbulescu and Troncota (2013, 89) conclude that “as long as Dayton continues to be the reference point for democratization and Europeanization of the country by prioritizing the rights of the dominant ethnic group, rather than of the individual citizens, it will be impossible to move beyond the present situation and towards the EU”.

Freyburg and Richter (2010, 266) explain that “if the conditionality criteria pertain to an issue area perceived as problematic for national identity, a different line of reasoning will be triggered than in cases where the criteria are considered unproblematic”. Human rights undoubtedly belong to the category of “problematic for national identity” areas. For this reason, the reaction from the local governmental actors is very limited and does not show a full commitment to new reforms and change. The reply by local institutions is very short regarding civil and political rights and mostly pertain to formal or financial aspects of the protection, possibly regardless of the evolutions on the ground – they detail very localised measures, under the qualification “in progress” (BiH 2009, 8; BiH 2010b, 13).

As a result, it can be underlined that the Europeanisation process in the field of human rights, which was successful in other CEE and SEE countries, came to a stalemate in BiH. There has been a spate in the human rights violations, both regarding practices and legislation, and the conditionality did not work as political will was not sufficient to implement new reforms.

5 The external incentives model in Bosnia and Herzegovina

The four criteria listed by Schimmelfennig and Sedelmeier (2005, 10–17) – the determinacy of conditions, the “size and speed of rewards”, the credibility and certainty about the rewards and sanctions, and “veto players” and “adoption costs” – will be here tested in the case of BiH.

5.1 The European Union’s determinacy of human rights conditions

“Where accession is the main reward, the rules of assessment and the nature of relationship play the central role” (Veebel 2011, 7). The determinacy must affect the conditionality as well as the rules the EU seeks to implement. The further developments will then test Schimmelfennig and Sedelmeier’s determinacy hypothesis (2015, 13) according to which “the likelihood of rule adoption increases, if rules are set as conditions for rewards and the more determinate they are”. Schimmelfennig and Sedelmeier (2004, 672) not only underline the “informational value” of clear and strict conditions but also the impact it has on credibility. They divide determinacy into two criteria, “the clarity and formality of a rule”; the former referring to the “behavioural implications of a rule” and the latter appealing to its presence in the positive law, as well as its binding characteristic (Schimmelfennig and Sedelmeier 2005, 12).

5.1.1 Formality of the rule

The rules that the EU seeks to implement through conditionality have a clear formal basis which can be traced either in the progress reports or different EU enlargement strategy papers, such as the European partnerships. European partnerships provide the clearest objectives altogether with a list of clear conditions that the candidates should apply in the short and middle terms (Council of the EU 2004c, para. 5; 2004, 3 and 5; 2006a, 4 and 9; 2008b, 5 and 11).

The conditions put forward by the EU are mostly formal: with a clear emphasis on the formal indicators of democratization, these reforms do not directly deal with human rights protection

and do not resolve current conflicts taking place in Bosnia (Joseph and Hitchner 2008, 4; Conant 2014, 714). Most of them may put the focus on the harmonization of the Bosnian law with the *acquis*, which does not directly address the most topical issues (Kappler and Richmond 2011, 264). As Conant (2014, 725) points it, legislative acts and the adoption of laws only partly helps to improve the human rights situation, “although they do provide the legal hook on which civil society activists may litigate future cases and mobilize against abuse”. In the case of BiH, the reports assessing local progress focus on adopted laws and the existence of a legal basis for the protection of human rights, without a clear link to the need to implement existing EU rules (CEC 2006a, 2).

Despite this, the EU’s requirements remain rather vague, since it is “never explicitly defining democracy or explaining how norms might be realized” (Conant 2014, 715). The Copenhagen criteria are difficult to measure, and not discussed by any impartial and independent institution that would fix their scope and content (Veebel 2011, 4). The formalisation of the rules and conditions to be fulfilled by BiH is still incomplete; Brljavac (2011b, 13), underlines that “the EU states have not sent clear messages regarding their expectations from the Bosnian political elites”. More fundamentally, the EU may lack the capacity to precise its requests or the reforms or actions that are expected from the candidate states, the emphasis on local ownership hampering the determinacy of conditions (Sebastian 2011, 4).

The constitutional reform’s failure in 2006 illustrates the absence of credibility and determinacy in conditions since this process had “no specific conditions or rewards attached to it” (Sebastian 2009, 347). However, those findings still cannot lead to the conclusion that rules are sufficiently or insufficiently formalised, hence, the need to look further at the clarity of the conditions.

5.1.2 Clarity of the conditions

5.1.2.1 Clarity of the conditionality process

Inconsistency in the specification and enforcement of the requirements seems to be a recurrent problem in the EU-Western Balkans relationships (Vachudova 2014, 133). In an article about European governance in South-East Europe, Chandler (2010, 78) insists on the fact that “the incremental use of conditionalities is /.../ entirely political”. It depends on many factors that

do not relate to Europeanisation, such as ‘enlargement fatigue’, hostile member states, “broader policy concerns” and “specific views with regard to the perceived needs of state building in particular aspirant states” (*ibid.*). According to him, it “blurs the clarity of goals with a focus on the means” (*Ibid.*).

The method of assessment of the EC has been one of a “more flexible and semi-quantitative system” (Veebel 2011, 8). This system may be keener on having various interpretations and leads to “complete dependence on the EC’s opinion, while the Commission itself was one of the interested actors in the accession process” (*ibid.*). This partly qualitative side increases the risk of division or concurring conceptions of the political criteria among the different EU actors competent for this policy (Anastasakis 2008, 372). The power of interpretation of the EU has then increased due to this lack of specification, which makes the process more political than technical (Grabbe 2001, 1025; Caratan 2009, 172). Fenko and Urlić (2015, 110) call this an “ambiguity in setting, interpreting and measuring political criteria” which triggers political conditionality, “which lays exactly in the interpretation of the compliance with political accession criteria”. For example, when the EU allowed BiH to enter the visa-free regime, it did so without a clear assessment of BiH’s progress. It simply noted that BiH “made important progress and only a very limited number of benchmarks remain open”, it mainly followed a recommendation of the European Parliament (EP) (EC 2010b, 4).

This dependency leads to what Chandler (2010, 71) qualifies as the “post-liberal discourse of governance: external regulation without formal responsibility for governing and policy making in the region”. As Pridham (2007, 465) points it out, “the expansion of the conditionality agenda meant that it was less easy to control because its broader range of concerns was more open to different interpretations and perhaps more controversy”. The political nature of the compliance assessment, due to the general, interpretable conditions that give a great power to the EU is the first bias affecting the determinacy of conditions (Grabbe 2001, 1015). This “qualitative shift” contributes to the vagueness of the EU promises, especially regarding the fact that the rewarding partly depends on the EU’s innate ability to enlarge (Elbasani 2008, 16).

The criteria may as well change throughout the process though the candidate or potential candidate states accept them only once in the beginning (Veebel 2011, 19). Scholars have noted the possibility of differentiated approaches between the countries (Bojinović Fenko and

Urlić 2015, 130). The temporal variation also affects progress reports. They seem to go much beyond what the EU initially expected from the applicant countries. Moreover, the additional rising of “additional ‘non-criteria’ questions” and “sub-areas, have a questionable connection with the original criteria (Veebel 2011, 5 and 19).

5.1.2.2 Clarity of human rights conditions

The main factors impacting on clarity may be underlined here: the profusion of a wide and fertile conditionality that expands, as well as the EU’s degree of interpretation of the fulfilment by BiH of the given conditions (Elbasani 2008, 13; Quaglia *et al.* 2007, 416).

Overall, the state-building conditions that the EU imposed on Bosnia are not clearly listed (Bieber 2011, 1793). In particular, human rights norms are not described *per se* in the EU’s *acquis communautaire* and are in contradiction with the Europeanization’s tendency to implement high standards. This lack of expertise persists because areas pertaining to the political criteria “have been addressed only indirectly by the existing *acquis*” (Vachudova 2014). The link between compliance and the giving of rewards remains non-clarified, and it is hard to identify a connection between the fulfilling of a given human rights obligation and a given reward (Grabbe 2001, 1025).

The content of the progress reports may be vague or unclear, containing mere descriptions and general recommendations without a real in-depth analysis, coupled with genuine prescriptions (Grabbe 2001, 1022). The number of pages dedicated to the political criteria is scarce, especially in comparison with the assessment of the economic criteria or the adoption of the *acquis*. “The political analysis is often quite neutral, and it is sometimes impossible to say whether the developments observed in a particular country are positive or not” (Marktler 2006, 349). Although the content of the political criteria is a clear part of the core principles and values of the EU, they still lack of concrete operationalization and suffer a lack of “concrete guidance” (Woelk 2013, 475).

Moreover, some of the human rights conditions that the Commission asks from candidates and potential candidates are sometimes not respected by the member states themselves, which adopt wider policies with possibly lower standards (Pridham 2007, 450; Bieber 2011, 1795; Woelk 2013, 471). Moravcsik and Vachudova (2003, 24), emphasise the new trend that “the

EU compels new applicants to transpose and implement standards of internal democracy, state administration and detailed regulatory protection that the EU-15 have had a half century to accommodate”. In some cases, they went as far as implementing standards that “the EU-15 have never set for themselves” (*ibid.*). The gap in the political conditions that the EU expected from states such as Spain and Portugal, and the new, tighter conditions, may contribute to this lack of clarity (Chandler 2007, 597). According to a field study referenced by Turčilo (2013, 5), many respondents “believe that if the same pre-conditions would have been imposed on the current Member States, many of them would have not been able to fulfil them”. This belief explains the current concerns regarding the new approach giving more flexibility to the fulfilling of some criteria pertaining to democracy and constitutional reform (Domm 2011, 59).

As a result, one can say that despite a relatively established formality of required rules, their content is vague, broad and variable through time, which allows to consider that the determinacy of conditions is relatively small. Describing a hierarchical model of EU governance, Schimmelfennig and Lavenex (2009, 799) underline the contrast between the need for “network qualities” in extending governance in a country and “the size of incentives and the credibility of monitoring and sanctioning as conditions of rule expansion in the hierarchical context”. As the Europeanization model is based on a clear hierarchical model of rule harmonization with an inequality of the partners (*ibid.*, 800), credibility and the size and speed of rewards will be explored further.

5.2 Size and speed of rewards offered to Bosnia and Herzegovina for its human rights compliance

Bieber (2011, 1792) resolutely contests the applicability of the external incentives model to BiH: “the plethora of conditions, all connected to governance and rule of law, are all interlinked, yet distinct and evolving, reducing the incentives for compliance. Furthermore, they offer limited rewards”. On the contrary, such arguments would tend to prove that the criteria for rewards influence the degree of compliance in BiH. Schimmelfennig and Sedelmeier (2005, 13) consider that the promises made to a country shall be high enough and have enough impact while the reward shall be delivered in a sufficiently short delay to engender compliance.

5.2.1 Structure of the promises

Among the possible rewards, Schimmelfennig and Sedelmeier (2005, 13) list “trade and cooperation agreements, association agreements, pre-accession support, and inclusion in accession negotiations”. The EU, in fact, produced most of these rewards, as it did with the countries of the whole region.

As a general comment about the situation in South East Europe, Anastasakis and Bechev (2003, 16) underline that “the modest rewards attached to compliance threaten the shaky reform consensus”. The lack of commitment of the EU is a possible explanatory factor for this rewards-related issue. Anastasakis and Bechev (2003, 14) list four results of this lack of engagement: “a) the lack of a membership perspective; b) the lack of interim rewards tied to a structured and gradual prospect of accession; c) the prospect of diminishing funds for the region; and d) the diversion of international interest elsewhere”. Though the promise of enlargement is tangible, Woelk (2013, 474) considers that “Inevitably lesser engagement also has serious and negative consequences for the progress made by the (potential) candidates as reform efforts depend on incentives and realistic perspectives. The appeal of membership alone is simply not enough”.

However, it seems that the size of the rewards does not differ from other cases of successful accession to the EU.

5.2.2 Temporal distance to the payment of rewards

Barbulescu and Troncota (2013, 72) consider that an incentive policy will be only efficient if the benefits of compliance “seem realistically attainable”. In BiH’s case, many EU’s policy documents do not contain any clear estimation of the time when the potential candidate countries could move forward the candidate status (Elbasani 2008, 15). Demetropoulou (2002, 103) underlines the lack of “realistic conditions that can be fulfilled /and linked/ to visible inclusion”. Woelk (2013, 479) adds on this by considering that “rather than setting suggestive and symbolic dates for their accession, the States in the Western Balkans need a realistic time-frame based upon realistic expectations, on both sides.” In the frame of the

SAA, the rewards are supposed to be immediate, such as visa facilitation and liberalisation (Anastasakis 2008, 368–369).

Jano (2008, 66) underlines that “joining EU now stands as the only long-range vision for the Western Balkans”. “Now that Bosnians have been granted short-term visa-free access to Schengen countries, how many effective carrots can we identify anyway?” (Domm 2011, 65) The absence of real reward may leave no choice to the EU but to use sanctions, which it has not done so far (Brljavac 2011b, 11). In fact, in the years when the visa liberalization was about to be adopted, and the IPA agreement was signed, a decrease in the reform process has been noted (Barbulescu and Troncota 2013, 80–81). As for the final reward of accession, Anastasakis (2008, 369) consider that “the lukewarm promise of EU membership weaken/s/ the credibility of the strategy in the eyes of the local elites and the EU often appears non-committal, fearful, and uncertain about whether or not the Western Balkans belong to the European family”.

The promise of accession must also be tangible in the case in which the candidate meets the Copenhagen Criteria, as was underlined by candidate countries (Veebel 2011, 8). Nevertheless, following the European Council of Salonika in 2003, the EU has decided that the Western Balkans have the vocation to enter its rank, but without any clear timeframe (Caratan 2009, 172). Belloni (2009, 329) concludes that “meeting EU criteria might not be enough for accession, and the goal of EU membership has turned into a moving target”. A positive conditionality would go beyond a promise of accession but would also provide a “more detailed road map” and agenda for accession (Jano 2008, 67; Radovanovik 2012, 211–212). By its indecision, EU accession cannot be considered as a “virtual given”, which may create more doubts on the EU’s credibility and diminish the potential candidate states motivation (Pridham 2007, 455). Through the Stability Pact, for example, the EU affirmed that the EU membership would be a “perspective”, only if the concerned countries meet the Copenhagen criteria (European Council 1999); this shall not be considered as a clear promise of accession in the case in which the criteria are met. Although the EU meets the last criteria, i.e. the ability to absorb new members, the accession process could be stopped by individual countries. As Elbasani (2008, 7), underlines, “the most crucial difference between the EU parallel but distinctive strategies in WB and CEEC was that the former did not entail any explicit prospect of membership”.

A vicious circle may be identified here, as the inconsistency of the EU's promises and rewards and the lack of support leads to a relative disengagement of the EU and slows down the pace of the reforms, which in turn defer the time at which potential rewards could be given (Juncos 2005, 101). To conclude, the speed with which the EU awards its potential rewards seems to be the factor that reduces the likelihood of rule adoptions.

5.3 Credibility of threats and promises

Theoretically, the EU relies on conditionality and the alternation of rewards and sanctions “to shape ethnic relations /and/ to elicit desired policy and behavioural responses from ethnic leaders” (Vasilev 2011, 54). In this framework, Trauner (2009, 783) considers credibility as crucial for the effectiveness of conditionality: “the decisive EU leverage for triggering reform efforts was the direct conditionality principle linked to EU accession” (Trauner 2009, 783). Schimmelfennig (2007, 129) also emphasises its merits, as internal divisions within the EU might cast doubts on its real commitment. The CEC (2005) stressed in an enlargement strategy that “aspirant countries can best sustain public support for bold and often painful reforms when the EU supports them, works with them, and keeps its own promises.” As a matter of fact, it is the prospect of association and membership that triggered the effects of political conditionality (Belloni 2009, 319). A lack of trust in the EU's ability and desire to reward complying states may hamper human rights conditionality. For this reason, Europeanisation shall preserve a balance between the country's need for fast progress and the risk of imposing too loose terms (Joseph and Hitchner 2008, 5).

Schimmelfennig and Sedelmeier (2005, 14–16) list four factors that shall affect the credibility of conditionality and that will be analysed further: the “capabilities and costs” of the EU in giving or withdrawing the rewards; the “consistency” of the way it allocates the rewards; the “cross-conditionality” and the “asymmetries in information”. Credibility implies the steadiness in the conditions required from the applicants, but also a clear stance “about their tangible European perspective” (Aspridis and Petrelli 2012, 20). They consider from that point of view that the will of the EU “to move gradually towards a new enlargement process” must be felt as such by the applicants to comply (*ibid.*, 7). Credibility gives strength to the soft power of mechanisms such as conditionality (Nielsen 2013, 734). Schimmelfennig and Sedelmeier (2004, 674) highlight two main problems with consistency: the consistency of the “organisation's allocation of reward” and the “internal EU conflict about conditionality”.

Joseph and Hitchner (2008, 1) point that “other than fear of renewed conflict, the prospect of EU membership is the only overarching point of cohesion in a country still very much polarized by the legacy of war”. The EU is officially sticking to its conditionality policy, publicly claiming it will deal with each country accordingly with previously set criteria and conditions, the main message being that ultimate accession will be the outcome of some certain reforms (Juncos 2005, 93). Börzel (2011, 6–7) deems important the consistency in which the EU uses conditionality, for the “external push of the EU to comply”. Chivvis and Đogo (2010, 166) add that “/i/mposing /.../ strict conditionality, however, has been resisted in the past, and the EU sometimes has been inclined to bend the rules to speed Bosnia’s pace toward accession”. This other factor may have contributed to hampering the consistency and coherence of the EU’s conditions.

As regards sanctions, the EU’s capacity to punish BiH in the case of non-compliance is unsure. A candidate country will not suffer greater sanctions than the withdrawal of rewards if it does not comply with the conditions (Elbasani 2008, 12). The EU has not launched any sanctions towards BiH for not respecting elements of political conditionality, such as the constitutional reform (Brljavac 2011b, 11).

Difficulties in creating a “coherent long-term strategy vis-à-vis the region” also weaken the EU’s conditionality (Anastasakis and Bechev 2003, 4). Those difficulties are somehow reflected in the new German-British initiative. Schimmelfennig (2007, 140) mentions a “crisis of credibility” linked with inconsistency in the use of conditionality; this crisis is complemented by what Dzihic and Wieser (2008, 84) call an “enlargement fatigue” on the side of the EU, “reform fatigue” on the applicants or future candidates’ side. The oscillation between the original rigid approach, and a more flexible policy, may also contribute to this phenomenon. The institutional heritage of the GPA also contributed to this state, experimental and then requiring an adaptation of the EU’s policy (Anastasakis 2008, 373; Barbulescu and Troncota 2013, 69; 76). Anastasakis (2008, 366) details on the variability of political conditionality, sometimes “informed by pragmatic calculations” that sometimes may include the EU’s calculations of its interests. For this reason, the decision by the Council to let the SAA enter into force despite the backlog in BiH’s compliance may only strengthen this coherence issue (Council of the EU 2015, 5).

Finally, the credibility of the EU may be hurt by an inconsistency between the EU institutions, which may be in a rivalry relationship (Pridham 2007, 450). Sebastian (2009, 345–346) emphasises the role of the EU’s internal divisions, for example during the 2005-2006 negotiations cycles for a constitutional reform. The EU hesitates to integrate the SAP countries in the middle or long term, as this phenomenon is partly caused by disunity within the member states (Elbasani 2008, 14). Schimmelfennig (2004, 674) warns that “internal EU conflict about conditionality” could lead to further inconsistency and hamper the effect of conditionality. For example, the visa liberalization process saw a certain inconsistency between the EUSR, Member States and the Commission (Domm 2011, 59). Inconsistency also applies to other local institutions such as the Peace Implementation Council (PIC) (Tirak 2010, 9). Overall, some states may be characterised by a keener ‘enlargement fatigue’, which also prejudices the coherence of the EU policy (Bieber 2011, 1799).

Following a study of the consistency of EU political conditionality, Schimmelfennig (2012, 16) considers that the general conclusion of the literature on this point “is that it is negative”. Consequently, despite the EU’s capabilities to give a reward, the absence of clear asymmetry of information and no strong cross-conditionality, the credibility suffers from a blatant lack of consistency on the EU’s part. As Börzel (2011, 15) wonders, “why should /.../ countries engaged with the EU make any efforts to fulfil EU expectations for the respect of human rights /.../ if the EU is neither willing to reward those, who comply, nor is capable of punishing others, who do not?”

Beyond the issue of credibility, Brljavac (2011b, 9) associates the ineffectiveness of EU conditionality with the local issues that are unique to BiH. In particular, he mentions the “long-lasting political malaise”, which could not make the SAA a strong enough incentive (*ibid.*). The last subchapter further determines whether this deadlock in roots in the structure of veto players and adoption costs regarding human rights reforms or, in other words, in “Bosnia’s post Dayton institutional design” (Barbulescu and Troncota 2013, 85).

5.4 Local conditions – veto players and adoption costs

The Western Balkans reveal the role of the domestic configuration and local elites in the effectiveness of EU’s conditionality (Noutcheva 2009, 1075; Aspridis and Petrelli 2012, 8). For Noutcheva (*ibid.*), Europeanisation in BiH cannot be achieved only with local ownership

and marginalising the process' opponents. In this context, conditionality mechanisms "reproduce divisions within the domestic political space /.../ and further entrench political disagreements". Barbulescu and Troncota (2013, 73–74) highlight the importance of the local specificities for the success of Europeanisation: "at the centre of the research on the Europeanization of the WB one should put the interplay between external influence, domestic elites and domestic peculiarities of the institutional framework". Beyond rationalist parameters such as the credibility of the pre-accession process, they mostly link conditionality success to the "local political will" (*ibid.*, 72).

As Lavenex and Uçarer (2004, 424) point it, "we need to look beyond institutionalized links and questions of fit, and also consider the domestic patterns of interests in the third country", such as the interest constellations and "institutional conditions for change". They consider three sets of variables impacting the effectiveness of external Europeanisation in a country: "the form of institutional affiliation between the EU and the third country /.../ the degree of 'fit' or 'misfit' between EU policies and domestic arrangements in the third country /.../ and the strategy interplay of interest constellations within institutional framework of the third country" (*ibid.*, 423). The causes of non-compliance shall then be found in the internal structure of BiH while testing Schimmelfennig and Sedelmeier's (2005, 17) hypothesis that "the likelihood of rule adoption decrease with the number of veto players incurring net adoption costs /.../ from compliance".

5.4.1 Adoption costs

The scholarship has underlined the risk of a too-tight application of the Copenhagen criteria, thus potentially alienating EU's citizens as well as the applicants' citizens (Roter and Bojinović Fenko 2005, 453). Börzel (2011, 6–7) defines the compliance costs as "function of the misfit between EU requirements and domestic conditions". The idea of the costs was previously detailed by Schimmelfennig (2000, 127, emphasis in original) for CEE countries: "*the divergent enlargement patterns* are explained best by *varying cost factors* /.../ the more costly the membership /.../ the higher the standards these countries have to meet". Schimmelfennig and Sedelmeier (2005, 16) divide adoption costs between the costs "of foregoing alternative rewards offered by adopting /other/ rules" and "welfare or power costs for private and public actors". The further developments will consider here that the possible alternatives to adoption rules are inexistent, and only examine the latter costs.

5.4.1.1 Adoption costs for leaving the status quo

For Schimmelfennig (2010, 13), the adoption costs may be “prohibitive for regimes whose preservation of power depends on undemocratic institutions and practices.” Politically, the overwhelming effort that is needed to obtain a consensus for reform in the current political institutions renders the adoption costs very high (Ó Tuathail *et al.* 2006, 67). The main work of the EC in implementing conditionality goes through dialogue with the political elite. Despite the official stance of the country towards EU accession, the risk is higher of an opposition to change in the name of the *status quo* (Woelk 2013, 471). As Belloni (2009, 316) points out, the status of Bosnia, “run as a semi-protectorate”, fuelled this “intransigent attitude” of the leaders, that could then put the weight of the responsibility for the failure on the IC.

For example, Kocjančič (2011, 73) links the success of the implementation of the Copenhagen criteria with the reform of state institutions, such as an increase in the powers of the Bosnian House of Representatives and Council of Ministers. Schimmelfennig (2007, 130) also considers that rules affecting the structure of the state and the practices of power preservation have a very high power cost. He states that “governments value the security of their state, regime, and power higher than membership in even the most attractive regional organizations” (*ibid.*, 130).

From a certain point of view, the Europeanisation process consists in external pressure, which goes in opposition to the local ownership that the EU itself claims to try to implement. The local elites and reform actors would then perceive Europeanisation as a threat to their local ownership, based on the ethnic division of the power and the ethnicisation of all reform debates. This tension may lead to consider the implementation of reforms as formalised by the EU as a loss of power (Barbulescu and Troncota 2013, 90–91). From a governance perspective, van Willigen (2012, 445) underlines that an increase in the institutional independence may lead to the absence of substantial independence because of a lack of capacity. This lack of independence, in turn, raises the costs of adoption. This rise may explain why in some cases, EU’s assessments of the situation and prescriptions to resolve some problems were met with opposition or even outcry from the ethnic leaders. Since, the

accession rests upon the fulfilment of these prescriptions, the benefits did not exceed the adoption costs (Vasilev 2011, 59–60).

5.4.1.2 Adoption costs in the field of human rights

Börzel (2011, 9) draws an inverse causality link between the “democratic quality” of a state and the costs of adaptation, especially in “areas relevant to political power”, which are the most strongly linked to human rights. Human rights “are often perceived locally as externalized concepts though they are taken for granted within the bigger, donor-led peacebuilding projects”, which leads in turn to a perception that implementing them will result in power losses (Kappler and Richmond 2011, 266).

Most of the required reforms mainly refer to the constitutional process or to the competency of the state, which triggers an ethnonationalist system of veto players who as a result would favour the status quo. The main cost is the need to change the habits of exercising sovereign power according to the pre-existing formal and informal arrangements (Vasilev 2011, 360). For example, the Roma population suffers an especially controverted treatment (Brljavac 2011c, 61–63). For this same reason, granting social or political rights to those who are in the ‘others’ category entails high adoptions costs. Vachudova (2014, 133) adds that conditionality is more resisted in areas that imply the national identity of sovereignty, which may have been an obstacle in the Europeanization process, especially regarding human rights.

In short, the requirement according to which “the credible benefits /must/ exceed the expected costs of political adaptation” is not met here (Freyburg and Richter 2010, 266). The persistent application of high standards that the adoption costs largely offset led to a situation in which the EU might be “losing the state along the way” (Bieber 2011, 1800). These findings result in the conclusion that adoption costs are high in BiH, both due to the costs of leaving the status quo and the costs of implementing new rules in the field of human rights.

5.4.2 *Veto players*

5.4.2.1 Veto players in Bosnia and Herzegovina

The “veto-points” are a crucial factor to be taken into account as domestic actors may have a role in not only delaying the transition but also slowing down the EU-triggered reform process (Jano 2008, 64). Schimmelfennig and Sedelmeier (2005, 16) consider that compliance is lower with the number of veto players, whose consent is necessary for new changes. As seen earlier, these veto points are multiple in BiH and “undermine the legislative process and give ethnic groups an opportunity for institutional blockage” (Sebastian 2011, 2). They are, for most of them, rooted in the very institutional structure that was created by the GFA. The “vital interest veto”, used or threatened to be used, is a part of the constitutional framework of BiH (van Willigen 2012, 439). The Constitution gives this veto power to representatives of each three constituent peoples in several institutions, one of them being the three-headed BiH presidency (Brljavac 2011c, 67). They have resulted, for example, in the blockage of up to 47 % of the bills in one or the other of the two chambers of the Parliament in little more than one year (Bieber 2011, 1788).

As a result, most of the veto players are the political elites of the three constituent people that control most of the political apparatus. This fuels the ethnic domination of the governmental elite and the public sphere (Brljavac 2011c; Miholič 2013). They use the cumbersome institutional framework as a pretext to maintain and preserve the current status quo in many aspects of the legislation and consider this repartition of power and their self-determining stance as essential for their survival (Vasilev 2011, 360; Vachudova 2014, 131). As a result, their perspectives, positions and claims on European integration greatly differ and undermine the quality of the institutional policy-making process (Kappler and Richmond 2011, 264; Brljavac 2011b, 10).

5.4.2.2 Veto players in the field of human rights

As Chivvis and Đogo (2010, 110) emphasis, “the divisiveness and inherent competitiveness of the politics of each ethnic group encourages anyone seeking power within their group to

take maximalist positions when it comes to defending the interests of the group”. This tendency leads the country to a situation of “democracy and legitimacy deficit” hampering the ability of the candidate state to comply and reform itself (Barbulescu and Troncota 2013, 72).

The phenomenon of polarization that human rights reforms may trigger in this structure would inevitably lead to hindrances in the pre-accession sphere. One of the main features is the invocation of human rights by the same veto players who resist change and human rights conditionality from the EU. Therefore, they directly oppose the international state-building on human rights grounds, for example, the rights of the three constituent groups (Keranen 2013, 365).

In analysing the Europeanisation process in BiH, Aspridis and Petrelli (2012, 12) lament a “lack of shared vision by political leaders for the direction of the country” and stamp it as the main factor hampering the Europeanisation process. This situation reflects the veto players’ impact and allows considering that in BiH, the high number of veto players, in link with high adoption costs, have a negative impact on compliance behaviours.

In an assessment of EU’s transformative power, Börzel (2011, 13) considers that “Europeanization has remained largely shallow giving rise to formalistic, short-term and technocratic reforms rather than sustainable and transformative domestic change”. After a test of the external incentives model in the area of human rights, its four factors may indeed be considered as influencing the degree of local compliance in BiH in a negative way, thus diminishing the impact of Europeanisation. As Caratan (2009, 173) supposes, “stalling and postponing the admission until the countries in the region completely, without exception, meet all criteria, can only marginalise non-member states and provoke adverse responses”. This marginalisation resulted in a deadlock from which neither the EU nor BiH wishes to quit (Kappler and Richmond 2011, 262).

6 Conclusion

Europeanisation has been a growing concept since the beginning of the 2000s. It endeavours to analyse patterns of change in European matters. After some years, this framework has become relevant for phenomena outside European internal policies. The EU's main approach in the Western Balkans and BiH focuses on conditionality mechanisms. Yet, the EU's use of conditionality has been changing ever since the CEE's integration process. In this context, this research delves into the EU's policy in BiH. Its goals are to analyse BiH's level of compliance to EU rules and causes for compliance or non-compliance. The top-down external incentives model proves to be an adequate research framework which was already used in previous studies. It focuses on the nature of incentives, the costs of compliance and the local situation on the ground. The research ruled out other models inasmuch as they have less explanatory power. Furthermore, they are less focused on conditionality and its functioning.

Europeanisation framework is relevant in the field of human rights. The EU has coined human rights and the protection of minorities as one of the major goals of European integration. It is today a cornerstone of European values and a paramount aspect of the EU's enlargement policy. As a result, conditionality is one of the main tools with which the EU can implement rules and norms in candidate countries. In the case of Western Balkan countries, human rights conditionality did not only consist of implementing the *acquis*. This aspect of EU's enlargement policy also encompassed wider political criteria. In some cases, this resulted in a tightening of its demands towards individual countries. BiH is a relevant case in which the EU has overstepped its normal standards.

Most of the human rights' *acquis* that the EU required is already contained in the country's national system. This is the consequence of the DPA. As a result, EU's criteria focused on minority rights and the revision of the Constitution. Its criteria also encompass a range of specific political and civil rights. In spite of this high number of norms and rules, the human rights situation on the ground has not improved as in other Western Balkan countries. An analysis of the civil and political rights' record even highlighted a decrease in their protection. A lack of compliance on BiH's side explains this low record. In many items of literature, the

lack of political will to put new reforms in place is mentioned as the main explanation for this phenomenon.

Further research aimed at testing each of the four criteria of the external incentives model. These four criteria pertain to the determinacy of EU's conditions, the scale of rewards, the credibility of rewards and threats, and local actors and institutional contexts. The EU's conditions encompass many implicit rules and requirements. Moreover, the content of those demands are often vague and have a broad content. This shows that the EU's conditions do not have enough determinacy. Consequently, this criterion has a negative impact on compliance. The size and speed of rewards awarded to BiH is the second studied criterion. The EU's demands proved to be inconsistent and too low to foster compliance. The third criterion is the credibility of the EU's threats and promises. Inconsistency and internal conflicts within the EU seemed to undermine it. This had a negative effect on compliance. Finally, the specific political and constitutional structure of BiH created a high number of veto players. Moreover, because of the institutional framework of BiH, the adoption costs are very high. In the light of the research, local elites and decision-makers accept them only with reluctance.

These findings lead to conclude that in the case of BiH, all the four criteria have a negative impact on compliance. This negative impact also extends to the Europeanisation process in the field of human rights as a whole. It results in a decrease in the degree of compliance from the country and its decision-makers. This, as seen earlier, has isolated and marginalised BiH from other Western Balkan candidates.

The external incentives model provides a limited, if exhaustive, explanatory power. Opening the field of research could enlarge this explanatory power. In the case of BiH, testing new sets of rival or alternative hypotheses would help to confirm or disconfirm these first findings. Such research could use simple tools such as "mental counterfactuals" (Radaelli 2004, 15). Further research may conduct comparative analyses between different candidates or different groups of states. This may help to isolate the factor that contributes to non-compliance more than others. Delving into the social learning or the lesson-drawing models may extend initial answers. The two former models may also have an explanatory power where the latter is absent. Another field of research is the historical contexts of the CEE states and SEE states. This may explain the difference in the trajectories between both groups of states.

Some authors reckon that Europeanisation theories are very close to more classical theories (Quaglia 2007, 410). Subsequent research should then pay attention to the link between Europeanisation and pre-existing theories, such as identity theories. Institutional change may not only depend on the strength of the administration or the enforcement capabilities of the EU. It may also depend on meanings and the minds and values of the people. A reluctant population may be the first factor that diminishes the impact of Europeanisation. A population which refuses the penetration of Western European values may also contribute to a lack of compliance.

Finally, another alternative is to focus on the civil society and citizen's organisations. The aim of research in this field would be to contextualise the incentives policy. Most studies have been focusing on the incentives' effect on the local elites in power. Future research design should focus more on problems that matter for citizens and the local 'audience'. For decision-makers, this may improve the effectiveness of conditionality and foster support for reforms. The idea would be for the local populations to feel the direct need to integrate the EU.

These different suggestions for further research may be useful in order to ascertain the best use of incentives. The ultimate goal would be to find which incentives the EU can use with the highest impact on compliance, what is the most effective time scale and the most efficient operationalisation. As of today, the prospects for reform generated from the bottom in BiH are rather slim. The belief in and from the EU is not sufficient anymore to foster and sustain reform in BiH. Therefore, the IC may need to initiate the momentum itself. Policy papers may delve further into possible options for the EU. Moreover, the EU has now given way to a new conditionality strategy. Once data are available on the compliance of BiH to these rules, further investigation could assess the effect of this move. During the Feira European Council, the EU claimed its full commitment to enlarge to Eastern and East-Southern Europe. Research on the country's human rights situation proved the then optimism was not well-founded.

7 Povzetek v slovenskem jeziku – The summary in Slovene language

Od leta 1991 je eden glavnih ciljev Evropske unije (EU) vključiti države Srednje in Vzhodne Evrope. Že ob koncu konfliktov v nekdanji Jugoslaviji se je EU zavzela za trajno sodelovanje z državami Zahodnega Balkana, vključno z Bosno in Hercegovino (BiH). BiH je relevanten primer za raziskovanje, saj v njej prevladuje paradoks visoke ravni zahtev EU ter očitno nizke stopnje prilagajanja države normam in pričakovanjem EU ter zamrznitev procesa evropeizacije. Evropska politika se je več let osredotočala na politične in institucionalne reforme ter šele nedavno spremenila svoje standarde in se tako danes zavzema za spodbujanje ekonomskih in družbenih sprememb v državi. Čeprav so bile človekove pravice prioriteta evropske politike, BiH ni uspelo doseči evropskih standardov. To problematiko pričujoča magistrska naloga analizira s pomočjo iskanja odgovorov na naslednje vprašanje: kateri dejavniki vplivajo na proces evropeizacije na področju človekovih pravic in kako? Cilj raziskovanja je torej razumeti, kateri pogoji so odločilni za uspešno uveljavitev evropskih standardov izven evropskih meja.

Naloga je razdeljena na pet delov: drugo poglavje opredeli različne modele, ki jih koncept evropeizacije zajema, ter med drugim definira pojem evropeizacije in obravnava glavne teoretične negotovosti ter vlogo modela zunanjih spodbud.

Temu sledita analiza, v kakšni meri evropeizacija zadeva evropsko zunanjo politiko in politiko širitve, ter vprašanje primernosti regije Zahodnega Balkana za proučevanje v tem konceptualnem okviru. Tretje poglavje se osredotoča na evropeizacijo in človekove pravice. Najprej raziskuje vsebinsko razsežnost evropeizacije, ki ji sledi seznam človekovih pravic, vključenih v evropsko politiko širitve. Sledi opis načinov, s katerimi EU uveljavlja te pravice v kontekstu navedenih politik. V četrtem poglavju se naloga osredotoči na primer BiH, ki mu sledi razlaga, v kolikšni meri se državne institucije ravnajo v skladu z evropskimi pravili in smernicami. Po opisu politične in institucionalne strukture države ter varstva človekovih pravic na lokalni ravni v BiH se naloga osredotoči na specifične mehanizme, ki jih EU uporablja za uveljavitev svojih standardov. Na koncu sledi sklep s proučevanjem vprašanja, zakaj je evropeizacija v BiH dosegla mrtvo točko, tudi kar zadeva človekove pravice, saj njihova raven ostaja zelo nizka in se postopoma zmanjšuje.

Peto poglavje naloge opredeli vsakega od kriterijev uporabljenega modela in jih proučuje glede na evropske politike človekovih pravic v BiH. Rezultati med drugim kažejo, da so določenost zahtev, hitrost podelitve nagrad ter kredibilnost obljub in groženj nizke, kar bi lahko negativno vplivalo na prilagajanje. Poleg tega ima politična struktura BiH ključne akterje s pravico veta. Ker ustavni in pravni ustroj BiH ni v skladu s človekovimi pravicami, so torej stroški sprejetja normativov in standardov zelo visoki. Pogoji za uspešno prilagajanje države članice niso izpolnjeni, kar se ujema s prejšnjo ugotovitvijo, po kateri je stopnja skladnosti z evropskimi standardi v BiH zelo nizka, celo v primerjavi z drugimi državami Zahodnega Balkana. Ugotovitve raziskave torej kažejo, da ima model zunanjih spodbud, vsaj kar zadeva človekove pravice, v primeru BiH določeno razlagalno moč. Glede na rezultate študije štirih kriterijev bi bilo nujno poglobiti raziskovanje z drugimi modeli, kot na primer z modelom socialnega učenja. Druga možnost je vključitev več akterjev, ki jih raziskovalni modeli pogosto spregledajo, med drugim na primer vključitev civilne družbe in nevladnih organizacij.

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