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Countering the Rule of Law Backsliding in the Western Balkans

By Katrin Böttger, Dominic Maugeais
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Policy Recommendations

1. Rule of law and enlargement should be placed high on the agenda of the Conference on the Future of Europe.
2. The EU and its member states need to increase efforts to promote rule of law in the Western Balkans.
3. There is a need to pursue the renewal of transatlantic cooperation for countering the rule of law backsliding in the Western Balkans.

Abstract

Seventeen years after the big bang enlargement and with the start of the Conference on the Future of Europe (CoFoE), the European Union (EU) and the Western Balkan countries are faced with the challenge of a rule of law backsliding. The rule of law backsliding is not only posing a risk for the EU's internal democratic foundation but also contributes to the argumentation of a de facto hold on all future enlargements of the EU. This Policy Brief seeks to put forward three recommendations that take account of the current state of the EU, the rule of law situation and democratic backsliding of the pre-accession

countries in the Western Balkans. Firstly, rule of law and enlargement must be put high on the agenda of the Conference on the Future of Europe as it is also about the future of the Western Balkans. Secondly, the EU and its member states need to increase efforts to promote the rule of law in the Western Balkans and call democratic backsliding by its name, including more substantial political consequences, and thirdly, pursue the renewal of transatlantic cooperation for this purpose, viewing the increasingly competitive influence of anti-liberal actors in the region.



Countering the Rule of Law Backsliding in the Western Balkans

Introduction

Who could have imagined that only one and a half decades after the EU's big bang enlargement, two out of the ten new European Union (EU) member states would constitute the top two countries worldwide that have experienced the most rapid autocratic transition of the last decade (2010-2020).¹ The alarm bells are ringing, as these problematic 'frontrunners' are not only posing a risk for the EU's internal democratic foundation but also contribute, besides the need for an EU internal reform, to increased scepticism towards enlargement of the EU to the Western Balkans, as the candidate countries are seen as potential importers of rule of law problems. These days, the EU accession perspective of the Western Balkan countries and the EU's internal developments are as strongly tied together as they have ever been. This Policy Brief seeks to put forward three recommendations that take account of the current state of the EU, the rule of law situation and democratic backsliding of the pre-accession countries in the Western Balkans. Firstly, rule of law and enlargement must be placed high on the agenda of the Conference on the Future of Europe. Secondly, the EU and its member states need to increase efforts for the promotion of the rule of law in the Western Balkans, and thirdly, pursue the renewal of transatlantic cooperation for this purpose.

The Conference on the Future of Europe is also about the future of the Western Balkans

The Conference on the Future of Europe (CoFoE), which officially started on 9 May 2021 should be

used as an opportunity for putting the Western Balkan countries higher on the European Agenda for both the policy and the institutional level. Firstly, on the policy level it is important, that the CoFoE will be discussing the state of rule of law, which is crucial both for the EU-27 and for the accession countries in the Western Balkans. Without rule of law being guaranteed within the EU, those opposed to further enlargement will argue even more strongly that the EU does not have the capacity to absorb new potentially problematic members. This factor is particularly important in light of the public opinion in some of the bigger EU member states such as France, which opposes further enlargement i.a. due to the perceived lack of the rule of law both in newer member states and in the Western Balkans.² Secondly, by discussing the future of EU enlargement during the CoFoE, the EU's commitment to support the (potential) EU candidate countries' democratic and economic development would become more visible over the scheduled 12 months period. Thirdly, although it is a missed chance that the Western Balkan countries are not officially included in the CoFoE, the platform for civic participation (<https://futureu.europa.eu/>) offers citizens of the enlargement countries de facto an opportunity to contribute to the debate on an institutional level. Ongoing and future dialogue activities such as conducted by the Friedrich-Ebert-Stiftung (FES) or the European External Action Service (EEAS) can help in communicating this opportunity and include views from the Western Balkans civil society in the CoFoE.³ Beyond discussions during the CoFoE,

1) Nazifa Alizada, et.al. (2021): Autocratization Turns Viral. Democracy Report 2021. University of Gothenburg: V-Dem Institute, p. 19.

2) Christine Hübner et. al. (2021): It's the EU, not Western Balkan enlargement... French public opinion on EU membership of the Western Balkans, Open Society Foundation/djpart, p. 27.

3) See: Friedrich-Ebert-Stiftung (FES): The Conference on the Future of the EU - Shaping a Progressive Future for Europe (<https://brussels.fes.de/topics/future-of-europe>) and debates organised by the EU Delegations of the WB6 countries (1st on 2 July 2021 in the framework of the Prespa Forum Dialogue)



the EU and its member states should increase their efforts to work toward preventing further rule of law backsliding in the region.

Upgrading the EU's and member states' role in promoting the rule of law in the Western Balkans

By introducing a new Enlargement Methodology in 2020, the European Union aimed to revitalise the EU enlargement policy towards the Western Balkan countries, making it more credible and giving it a stronger political agenda. The goal was to create a more dynamic process, clustering the chapters of the *acquis communautaire* in the negotiation process and put the fundamentals, notably the rule of law and fundamental rights, in the centre of the process, including clear conditions and decisive measures that would sanction non-fulfilment.⁴ This revision process was kicked-off by the French President Emmanuel Macron who, in parallel, pursued a renewal of the French Strategy for the Western Balkans that put forward security and economic development as priority areas rather than the promotion of rule of law and fundamental rights.⁵ While a more proactive political involvement of all EU member states in the EU accession process could be valuable as it would highlight the commitment to the region, the political messages that are being sent to prevent a further democratic backsliding of the region are still to be substantiated. The EU member states as well as the European Union are too often still reluctant to call democratic backsliding by its name and, instead, publicly embrace minor reform steps as promising

signals. This however, does not change the overall reform direction of the so-called 'frontrunner countries' such as Serbia and Montenegro.

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The reform monitoring conducted by the European Commission in the field of rule of law and fundamental rights is still done in a primarily technical way, which is reflected in the reports on the EU enlargement. These reports highlight the concerns over the developments or lack of progress, but do not imply any substantial political consequences. As experts on the region highlight, there is a need for elaborating more on the rule of law development in the reports as well as the requirements for the EU candidate states to update their Actions Plans on a regular basis rendering them up to date living documents that reflect the realities on the ground more accurately.⁶

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While the progress of the Western Balkan 6 (WB6) countries is mixed⁷, it is especially worrisome that the 'frontrunners' in the process that are negotiating already with the EU (Montenegro and Serbia), have

that should take place in all Western Balkan countries and be discussed during the EU Western Balkans summit in Ljubljana on 6 October 2021.

4) European Commission (2020): A more credible, dynamic, predictable and political EU accession process - Commission lays out its proposals, Press release, 5 February 2020, Brussels, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_181

5) France's strategy for the Western Balkans (2019), <https://www.diplomatie.gouv.fr/en/country-files/europe/western-balkans-62918/>

6) Vedran Džihić, Marta Szpala, et al. (2021): Bringing citizens into the fold – Making EU enlargement work in the (post) Covid-19 world, Weimar Plus Working Group on the Western Balkans with contributions by Adnan Čerimagić, Valeska Esch, Natasha Wunsch and Tomasz Żornaczuk, April 2021, http://www.stiftung-genshagen.de/publikationen/publikation-detailansicht/2264a26a1f6091249620469085004461.html?tx_ttnews%5Btt_news%5D=2088

7) See EU Commissions's 2020 Enlargement Package and An Economic and Investment Plan for the Western Balkans, https://ec.europa.eu/neighbourhood-enlargement/countries/package_en



not implemented required substantial reforms in the rule of law chapters 23 and 24.

The European Parliament is outspoken on the lack of progress, calling for “urgent reforms in Serbia to progress with EU accession”, thus highlighting the fact that Serbia did not open any new chapters in 2020, which would be “a clear indicator of the country’s lack of progress in rule of law”.⁸

“A more political approach to the process of democratic backsliding in the region is therefore needed, similar to what is required within the European Union.”

The past six years have shown that approx. €700 million of EU bilateral assistance to the rule of law and fundamental rights support (representing 16% of the overall EU bilateral support) are not sufficient to ensure progress in the area of rule of law and fundamental rights protection in the (potential) EU candidate countries. One of the key problems are clientelist networks that maintain control over the rule of law institutions, unintended support of the EU conditionality process to the consolidation of these structures as well as the lack of a realistic accession perspective that would counterweight a possible power loss of the political elite.⁹ A more political approach to the process of democratic backsliding in the region is therefore needed, similar to what is required within the European Union. A lack of progress and the worsening public opinion within the EU member states towards the accession of the countries of the Western Balkans will otherwise render the process a dead end. Therefore, the following

recommendations as part of the more political approach to enlargement need to be considered: Firstly, EU member states should be more outspoken on the critical developments in the Western Balkan countries, which will increase the EU’s credibility as a promoter of democratic values in the eyes of the domestic population. Secondly, it should be considered to upgrade the EU’s monitoring role in the field of rule of law with specifically mandated missions, whose reports are published afterwards to provide the public a means of advocating for reforms. Thirdly, the EU should support the establishment of a so called rule of law constituency in the Western Balkan countries (meaning a broad electoral basis for rule of law and reform agents) by enhancing the communication and outreach work of civil society organisations, especially where media freedom has been limited in recent years.¹⁰ Finally, the EU member states must withdraw support provided via political party families for political parties in the Western Balkans that contribute to the establishment of autocratic structures. In its pursuit of the aforementioned goals, the EU should reaffirm and strengthen its partnership with the U.S. administration.

A renewed transatlantic approach to the Western Balkans democratic development

“It is crucial that the EU, in parallel to stepping up its own engagement, revitalises the transatlantic approach to fostering democratic development in the Western Balkans.”

The democratic backsliding in the Western Balkans is unfolding against the background of a growing global competition between liberal and autocratic countries, which has an impact on the reform processes and hence the accession perspective of the Western Balkan countries.

8) European Parliament Communiqué (2021): Parliament calls for urgent reforms in Serbia to progress with EU accession, Statement by Tanja Fajon Chair of the EP Delegation to the EU-Serbia Stabilisation and Association Parliamentary Committee (28 January 2021), <https://www.europarl.europa.eu/delegations/en/parliament-calls-for-urgent-reforms-in-s/product-details/20210128DPU28585>

9) See Solveig Richter & Natasha Wunsch (2020): Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans, *Journal of European Public Policy*, 27:1, 41-62.

10) Nedim Hovic (2020): The European Union’s Rule of Law Promotion in the Western Balkans: Building a Rule of Law Constituency, *Croatian Yearbook of European Law and Policy*, No 16, p. 197-223.



Therefore, it is crucial that the EU, in parallel to stepping up its own engagement, revitalises the transatlantic approach to fostering democratic development in the Western Balkans. The strengthening of the transatlantic partnership is needed in response to a more or less open coquetting of some Balkan countries to extend their political and economic ties with authoritarian countries such as China, Russia, Turkey and the United Arab Emirates. The new U.S. President Joe Biden is, from his previous role as Vice President under Barack Obama, familiar with the Balkans, and has been committed to reversing the policy of his predecessor Donald Trump. Biden has announced to convene an international Democracy Summit to be held 9-10 December 2021 and defined the fight against corruption as a core national security interest of the U.S. administration.¹¹ The EU and U.S. should therefore step up their coordination efforts and further support civil society organisations and also use political leverage on the political elite, including the freezing of assets that have been moved outside the region as has been initiated already with an executive order of President Biden.¹² Previous enlargement rounds have shown that only a transatlantic coordinated approach can safeguard the integrity of anti-corruption institutions from political interference, such as e.g. the case of the National Anti-corruption Directorate (DNA) in Romania. Furthermore, the EU and U.S. should jointly call out in cases civil society organisations and journalists are attacked for fulfilling their scrutiny work and press for a decrease of media concentration in the region. Promoting media pluralism is even more important in light of the presence of external actors such as China and Russia, who exploit the

situation to spread disinformation against the EU, often without sufficient counter-efforts from the side of the public institutions in the Western Balkans, as the COVID-19 pandemic has shown.

“The EU and U.S. should jointly call out in cases civil society organisations and journalists are attacked for fulfilling their scrutiny work and press for a decrease of media concentration in the region.”

Conclusion

For both the EU and the Western Balkans the year 2021 marks a juncture with the start of the CoFoE, as well as the hope for a first intergovernmental conference marking the long-awaited start of the EU accession negotiations with North Macedonia and Albania. In light of these events, the question arises of how the democratic and rule of law backsliding tendencies within the EU and the Western Balkans could be halted and reversed. This is why we argue in favour of setting the rule of law and enlargement policy high on the agenda of the CoFoE. The future of the EU and the threat posed by anti-democratic political actors in Europe is linked to the future of the Western Balkans. Without a strong voice, engagement and substantial political and financial consequences from the EU and its member states towards tendencies of democratic backsliding, internally as well as in its neighbourhood, the issue of democratic decline will not be solved.

11) Hugo Blewett-Mundy (2021): Can the EU work with Biden in the Balkans?, <https://globalriskinsights.com/2021/02/can-the-eu-work-with-biden-in-the-balkans/> (27. February 2021)

12) Anđela Šemić (2021): New Biden Executive Order to serve as a deterrent for Western Balkan political actors, European Western Balkans, 14.06. 2021, <https://europeanwesternbalkans.com/2021/06/14/new-biden-executive-order-to-serve-as-a-deterrent-for-western-balkan-political-actors/>



About the authors

Dr. Katrin Böttger is Director at the Institut für Europäische Politik (IEP) in Berlin with research focus on European Neighbourhood Policy, EU Enlargement, EU Central Asia Relations, the European Citizens' Initiative and Euroscepticism.

Contact: katrin.boettger@iep-berlin.de

Dominic Maugeais is Senior Project Manager and Advisor to the Directors for Capacity Development with a focus on Enlargement and Eastern Partnership countries.

Contact: dominic.maugeais@iep-berlin.de

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The Austrian Society for European Politics (Österreichische Gesellschaft für Europapolitik, ÖGfE) is a non-governmental and non-partisan platform mainly constituted by the Austrian Social Partners. We inform about European integration and stand for open dialogue about topical issues of European politics and policies and their relevance for Austria. ÖGfE has long-standing experience in promoting European debate and acts as a catalyst for disseminating information on European affairs.

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Austrian Society for European Politics (ÖGfE)
Rotenhausgasse 6/8-9
A-1090 Vienna, Austria

Secretary General: Paul Schmidt

Responsible: Susan Milford-Faber,
Vedran Džihic

Tel.: +43 1 533 4999

E-Mail: policybriefs@oegfe.at

Website: [ÖGfE Policy Briefs](https://www.oegfe.at/policy-briefs)

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