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Titel der Masterarbeit / Title of the Master's Thesis

**„Veto players and the shortcomings of the EU
conditionality mechanism; case of Bosnia and
Herzegovina“**

verfasst von / submitted by

Amela Brčanić

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

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Univ. - Prof. Dr. Patrick Müller, Privatdoc. M.A.

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Abstract

Considering the fast-growing research area of the EU conditionality mechanism as a highly successful tool in transition processes, this study seeks to understand the key factors that are influencing the application of the EU's conditionality mechanism as the main external incentive in Bosnia and Herzegovina. Veto players with their ability to block state processes and affect effectiveness of EU conditionality is identified as one of the main factors why Bosnia and Herzegovina is not advancing in the EU integration processes.

Therefore, this study will provide an in-depth qualitative analysis of the impact and limitations of the EU conditionality mechanism in Bosnia and Herzegovina caused by the veto players. It will lay out the most important domestic elements that are obstructing compliance with the EU conditions, but also point out steps taken by the EU towards Bosnia and Herzegovina.

In a conclusion, the study will attempt to provide an assessment of the efficiency of the EU conditionality mechanism and define major obstacles experienced so far, while providing some recommendations for improvement.

Key words: EU integration; EU conditionality; veto players; “vital national interest” veto; entity voting; Bosnia and Herzegovina

Abstrakt

Im Anbetracht des schnell wachsenden Forschungsfeldes des EU Konditionalitätsmechanismus als ein außerordentlich erfolgreiches Instrument in Transitionsprozessen zielt diese Studie darauf ab zu verstehen, welche Schlüsselfaktoren die Anwendung des EU Konditionalitätsmechanismus als hauptsächlichen externen Anreiz in Bosnien und Herzegowina beeinflussen. Die Vetoakteure mit ihrer Fähigkeit Staatsprozesse zu blockieren und die Effektivität der EU Konditionalität beeinflussen wird als einer der Hauptfaktoren für die Stagnierung Bosniens und Herzegowinas im EU Beitrittsprozess identifiziert.

Diese Studie bietet eine ausführliche qualitative Analyse über den Einfluss und die Einschränkungen der Vetoakteure auf den EU Konditionalitätsmechanismus in Bosnien und Herzegowina. Es werden die wichtigsten inländischen Elemente, welche die Einhaltung der EU Konditionen behindern, dargelegt, aber auch hervorgehoben, welche Schritte die EU auf Bosnien und Herzegowina zugemacht hat.

Zusammengefasst versucht diese Studie eine Beurteilung der Effizienz des EU Konditionalitätsmechanismus zu geben und zu definieren, welche erheblichen Hindernisse bis jetzt aufgekommen sind, sowie einige Empfehlungen für die Zukunft zu geben.

Schlüsselwörter: EU-Integration; EU-Konditionalität; Vetoakteure; „vitales nationales Interesse“ veto; Entitätsabstimmung; Bosnien und Herzegowina

Apstrakt

S obzirom na brzo rastuće područje istraživanja EU mehanizma uslovljavanja kao vrlo uspješnog alata u procesima tranzicije, ova studija nastoji razumjeti ključne faktore koji utječu na primjenu EU mehanizma uslovljavanja kao glavnog vanjskog poticaja u Bosni i Hercegovini. Kao jedan od glavnih faktora, zašto Bosna i Hercegovina ne napreduje u procesima EU integracija, identificirani su veto igrači sa svojom sposobnošću da blokiraju državne procese i utiču na efektivnost uslovljavanja EU.

Stoga će ova studija pružiti dubinsku kvalitativnu analizu uticaja i ograničenja EU mehanizma uslovljavanja u Bosni i Hercegovini uzrokovanih veto igračima. Predstavit će najvažnije lokalne elemente koji ometaju poštivanje uslova EU, ali i ukazati na korake koje je EU preduzela prema Bosni i Hercegovini.

U zaključku, studija će pokušati dati procjenu efikasnosti EU mehanizma uslovljavanja i definisati glavne prepreke koje su do sada naišle, uz pružanje nekih preporuka za poboljšanje.

Ključne riječi: EU integracije; EU uslovnost; veto igrači; veto „vitalni nacionalni interes“; entitetsko glasanje; Bosna i Hercegovina

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Chapter 1: Introduction

1.1 Background

The dissolution of former Yugoslavia in the 1990s brought a lot of disruption in post-Cold war Europe. New states, violent conflicts, and failure to react to casualties in Bosnia and Herzegovina at the door of the European Union (EU) pushed the EU into a more active role as a regional leader. After the end of conflicts in the Western Balkan region, the EU faced different challenges including the necessity to help democratic reforms, assist state-building, consolidate peace, and aid reconciliation. And up until today, the EU faces two conflicting interest-based situations where the security-based approach is focused on the accession of the Western Balkan states including Bosnia and Herzegovina for regional stability and democratization process based on strict conditionality which would cause much slower integration progress (Richter, 2012).

In the second half of the 90s, the EU went through a variety of programs and treaties to accommodate the post-conflict Western Balkans environment. From the Rayaumont Process in 1996 over the Stability Pact for Southeastern Europe (SP) and Stabilization and Association Process (SAA) in 1999 when the EU started of using elements of conditionality and later relied solely on the conditionality mechanism (Perry, 2015).

The EU conditionality mechanism as a main external incentive has managed to influence reform processes on various levels with a focus on regional stabilization, democratization, and state-building. The conditionality mechanism relies on sanctions and rewards that are affecting the way domestic governments in potential candidate states calculate cost and benefit relations. It is important to note that the conditionality mechanism has the ability to influence reforms only before the accession and that backslidings are possible which has been seen in cases of Central and East European (CEE) member states. For the conditionality mechanism, the credibility of the incentives and domestic costs are crucial for the success of the pre-accession and post-accession periods (Schimmelfennig/Sedelmeier, 2020).

In the Western Balkans, the conditionality mechanism faces some limitations because of the complex political and economic structures where sometimes conditionality seems insufficient in overcoming them (Knezević, 2009). The lack of consistency in the application of the conditionality mechanism and the lack of credibility that the EU will deliver the reward are undermining the effort that the EU is making.

The EU, as an actor, has been involved in the development of the Western Balkans and reform processes in an ethnically divided Bosnia and Herzegovina. One of the first big reform projects has been Constitutional and Police reform, which was heavily based on ethno-political grounds within two entities, ten cantons and Brčko District. The EU approached this situation with the goal to try to achieve political consensus among the divided ethnic elite using non-ethnic arguments. Unfortunately, because of insufficient experience in the area of policing, the EU conditions including exclusive state-level management, policing regions based on effectiveness not politics, and no politics in policing, were rejected by local politicians. The failed attempt to set the agenda on Police reform showed that the EU lacked credibility, and it was intensified when the EU backed down from the condition it made (Koneska, 2019).

Scholars very often debate about the true interest of the EU in the Western Balkans and if the interests are real or rather halfway in. On the one hand, scholars are arguing that if the EU would not want to offer enlargement to the Western Balkan states it would most likely ease up the pressure for reforms and cooperate more with power-holding elites. Because the reasons for the EU's continuous work in the Western Balkans are the possibility of geopolitical risks in the EU's backyard such as ethnic conflicts, economic collapse, and regional instability (Vachudova, 2014). But it is also clear that the EU learned from the 2004/2007 enlargement and applied learned lessons, most prominently that the leverage works only before the accession and that some areas need longer conditionality to be set for the membership. This has been especially visible with rule of law in Romania and Bulgaria (Zweers, et al., 2022). On the other hand, scholars are also pointing out that the EU conditionality approach, which has been marked as highly successful does not fully fit the preconditions that are preceding in the Western Balkans (Aybet/Bieber, 2011).

This study argues that among the most important reasons why the EU conditionality mechanism is less successful in Bosnia and Herzegovina is because of the ethnic political elite network that has created a very controlling status quo based on veto positions that are keeping the country in a stalemate. Unfortunately, because the Constitution of Bosnia and Herzegovina, as part of the Dayton Peace Agreement, is open for interpretation, the local political elite has been interpreting policies as such to fit their personal agendas. "Vital national interest" veto and "entity" veto that has been given to constituent peoples respectfully Bosniaks, Serbs, and Croats, have been used to block any procedures and reforms that one of the groups of people considers damaging to their ethnic interest. These

stalemate situations are possible in the Presidency, in both House of Peoples and the House of Representatives in the Parliamentary Assembly, and in both entity governments as well (Sahadžić, 2012).

Adoption of the Coordination mechanism for EU integration in 2016 and acceptance of the decision-making process which includes 14 veto players that come from the state, entity, cantonal, and district level enabled political actors that are working on cantonal policies to block state roads toward the EU integration at any point when they disagree. The EU gave legitimacy to the same people that are by default using the veto power to block reforms in the Parliamentary Assembly (Suljagić, 2018). This also means that the EU formally accepted and supported a dysfunctional system of coordination (Vogel, 2016).

1.2 Research question

The central research question of this study is how have domestic veto players in Bosnia and Herzegovina impacted the effectiveness of the EU conditionality, where the analysis is focusing on the democratic transition in post-conflict Bosnia and Herzegovina and processes that were initiated and supported by the EU. Essentially, this question entails investigating theories concerned with the EU integration processes in the Western Balkans and Bosnia and Herzegovina, the conditionality mechanism, as well as the growing literature focusing on the limitation of the EU external incentives mainly the EU conditionality mechanism. The reason for choosing Bosnia and Herzegovina as a case study is to contribute to the research on how veto players affect the application of the EU conditionality mechanism. Using a specific focus on veto players the study aims to prove the hypothesis that “The higher the number of veto players, the greater the scope of veto issues, and the weaker adjudications are the lower the likelihood of rule adoption”.

In order to reach the goal of the study, the research will first review the existing literature on the mentioned topic within both domestic and international academia. Second, in Chapter 3: Conceptual Framework and Research methods the study will analyze and explain the nature of the concepts of conditionality (incentives) and legitimacy (persuasion) of the EU and how it was/is used in the pre-accession and enlargement framework. Furthermore, the study will identify who are veto players and how do the veto players affect the adjudication processes. Next, Chapter 4: The EU Foreign Policy will introduce the background of the EU Foreign

policy framework and present the main findings of the pre-accession process in CEE which have been used as the prime example of the effectiveness of the EU conditionality mechanism. It will also touch upon the Western Balkans and Bosnia and Herzegovina developments during the 1990s and the role the EU played during that time, moving forward to the first steps of pre-accession. Next, Chapter 5: Historical background will introduce the complexity of the governing structure of Bosnia and Herzegovina including political and territorial organization, veto power and veto players, and a Constitution that is constructed to privilege certain constituent groups of people while discriminating against those not belonging to constituent peoples. Furthermore, in Chapter 6: Analysis the study will assess the effectiveness of the EU conditionality and its legitimacy in Bosnia and Herzegovina based on the assumption that the effectiveness of external governance is not only a question of conditionality and legitimacy but also depends on the capacity and willingness of third states to coordinate the implementation of EU demands. Within the capacity of third states, this study will keep in mind formal and informal institutions, political and structural state complexity including the domestic veto powers, and relationships of local actors together with their responses to the EU incentives policies. The study will also present one of the first attempts of the EU conditionality to ensure reforms in Bosnia and Herzegovina from 2006 respectively Constitutional and Police reform and explain why it failed. And analyze one of the latest attempts to ensure reforms, the case of the Coordination mechanism of the EU integration in Bosnia and Herzegovina that was adopted in 2016, and explain why it is dysfunctional. This study will be finished with conclusions and recommendations.

Chapter 2: Literature Review

The EU's transformative and/or normative power has been the topic of many studies and research since the 1990s. After the end of the Cold war and the first half of the 1990s, the EU focused mostly on trade and aid, then it coped with the first challenges of integrating newly independent states from Central and Eastern Europe. And in the second half of the 1990s, after a failure of dealing with violent conflict in former Yugoslavia, the EU took an even more active approach to secure regional stability, democratization, and leadership role.

The ability of the EU to influence domestic reforms has been observed through civilian and normative aspects. When focusing only on the civilian power of Europe, most scholars refer to Francois Duchene and his work from 1972 and 1973 when he characterized „the EU as a civilian power” in tune with „civilized politics” (Duchene 1973 in Manners, 2006). Later in 2002, Ian Manners introduced the idea of normative power (of) Europe (NPE) and defined it „as the ability to define what passes for 'normal' in world politics “adding that the EU is a “force for good” (Manners, 2002:253. For more, see Manners 2006; 2013.) Since the most successful mechanism used in the pre-accession European integration process is a conditionality mechanism based on conditions and rewards many authors are also questioning based on which criteria is EU a “force for good”? Is it only because of its transformative parameters based on universal norms and values such as democracy and respect for human rights or should the effectiveness of reforms on the ground and the ability of local actors be taken into consideration (Sjursen, 2006)? (For more see e.g., Raube/Torna, 2019; Knezović, 2009; Sjursen/Smith 2018; Schimmelfennig, 2010).

The conditionality mechanism uses incentives to assure that a target government does what is necessary to become a member of the EU. This mechanism is reinforced by the reward system and is supposed to achieve rule transfer and compliance with the target government. (See, e.g., Schimmelfennig/Sedelmeier 2004; 2020, Anastakis/Bechev 2003; Richter/Wunsch 2020). This study aims to contribute to the debate on the conditionality mechanism and will further develop the theoretical argument about the role of the veto players on the EU conditionality and its effectiveness.

The experience with CEE states has been seen as an effective way for a successful political and economic transformation. The success of the rule transfer was given to the external incentives’ mode based on rewards with a focus on the credibility of the EU to use the

conditionality mechanism to assure the adoption of reforms by domestic actors. (See, Sedelmeier, 2006, Richter/Wunsch, 2020, Sjursen/Smith, 2018).

Using the same approach, the EU has been trying to influence and transform policies in the Western Balkan region with a regional and individual approach. Unfortunately, issues in the Western Balkan states have been more challenging than those in CEE so the EU pre-accession period has been lasting much longer (with the exception of Croatia). On one hand, this is happening because of the internal structures and external mechanisms within the EU, and on the other hand because of the complexity of formal and informal structures within targeted governments of the Western Balkans (Zweers et al., 2022; Bieber, 2017).

Researching the case of Bosnia and Herzegovina, Srdjan Blagovićanin (2016) and Sandro Knezović (2009) point out that Bosnia and Herzegovina have been on the receiving end of two frameworks, the Common Foreign and Security Policy (CFSP), and enlargement policy. This also led to situations where the EU had to make exceptions in the process of democratization for the sake of security and stability (For more see, Blagovićanin/Divjak, 2015; Bojičić-Dželilović/Kostovicova/Randazzo, 2013; Richter, 2012; Noutcheva, 2009).

In the recent 2022 Clingendael report Wouter Zweers, et al. have explained how the EU unintentionally influenced ‘stabilitocracy’ (Bieber, 2018), a government formation where domestic actors pretend to be in favor of EU integration but rely on informal and corrupted formal institutions and relations to undermine democracy, justify their actions, and keep their ruling elite in power. Furthermore, the attention to the approach the EU is using was brought in the report as well, including a leader-based approach, focus on technical rather than political assistance, lack of clear rules and timelines, and failure to act upon backlash and unlawful behavior of local political elites. Recommendation for out-of-the-box thinking and breaking down the enlargement process into stages was seen as a way forward (Bieber, 2017; 2018, Blagovićanin 2016, Noutcheva 2016).

Academia has been following one of the first attempts at reform policy in Bosnia and Herzegovina, with research delving into the reasons why it failed (Koneska, 2019; ICC, 2002; Padarariu, 2014). One of the main reasons why Police reform remains an ‘unfinished business’ and why the EU failed to ensure the reforms is the complexity of veto powers in Bosnia and Herzegovina together with the EU's inconsistency in their demands (Padarariu, 2014:1; Koneska, 2019).

Over the years the reforms have been a slow process in Bosnia and Herzegovina, mainly because of the ethnic politics, veto players, and entity voting. Venice Commission already in 2005 pointed the Constitution of Bosnia and Herzegovina as discriminatory because of the focus on the rights and interests of three constituent peoples Bosniaks, Serbs, and Croats, and entity voting as a fundamental cause of state capture. Bahtić-Kunath (2011) writes about veto players using “entity” veto to “hijack” the parliament to prevent any processes that are possibly affecting their ethnic interests. Sahadžić (2014) also points out the abuse of the interpretations of the Dayton Agreement because there are no clear indications in which way these institutional gridlocks could be prevented.

Finally, one of the latest attempts to secure policy development is the Coordination mechanism that was adopted at the request of EU officials. Vogel (2018) describes the Coordination mechanism as another dysfunctional system that allows the blockade of all EU integration processes. Perry (2015) writes that instead of recognizing (and possibly supporting) the Delegation for the EU integration (DEI) for coordination and reform efforts that secured the signing of the Stabilization and Association Agreement and visa liberalization, the EU requested a new and different coordination mechanism. The new Coordination mechanism is based on a quorum of 14 members and the decision-making process on consensus (Odluka o sistemu koordinacije procesa evropskih integracija u BiH, "Službeni glasnik BiH", broj: 72/16, 35/18).

Chapter 3: Conceptual Framework and Research Methods

3.1 Theoretical framework

The theoretical framework first specifically gives an overview of the EU conditionality mechanism, together with an overview of the two EU distinctive analytical approaches: “rationalist institutionalism and sociological (or constructivist) institutionalism”. Rationalist institutionalism follows the ‘logic of consequences’ while sociological institutionalism follows a ‘logic of appropriateness’ (Sedelmeier, 2006:10). In this sense, the EU strategy follows conditionality based on clarity of demands, credibility, and power and reward asymmetry together with the domestic costs and capacity and/or socialization strategy that follows identification with the EU and legitimacy of the EU demands (Ibid.). Second, the study introduces the theory of veto players and the importance of their role in the decision-making processes. Veto players have the ability to block some or all of the state processes depending on the veto areas that they can use the veto power on. The influence of veto players and domestic costs are the most important aspects to analyze when researching the shortcoming of the EU conditionality mechanism in countries where the EU conditionality mechanism is not giving the expected results.

3.1.1 The EU conditionality mechanism

The EU external incentives based on the conditionality mechanism are presented by Schimmelfennig and Sedelmeier as “a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions” (Schimmelfennig/Sedelmeier, 2004:662). Conditionality is described as the most powerful EU instrument while dealing with the (potential) candidate states because of its multi-dimensional multi-purpose. “It is regional, sub-regional, bilateral and project-specific and relates to economic, political, social and security-related criteria” (Anastakis/Bechev, 2003:3).

Conditionality can also be observed as “processes of rationalization and socialization” which distinguish between cost-benefit analysis of the political elite which supports norms that will benefit their political interest and the manifestation of norms by local elites “in a way the external norms become ‘their’ norms”. Next, Aybet and Bieber (2011) add that the existing literature covers mainly ‘conventional’ conditionality which “identify processes of

conditionality ... by and large based on the case studies of the EU enlargement to Central and Eastern Europe” (2011:1911). This mainly means that the conditionality processes are dependent on the pre-existing conditions within the domestic structure where a domestic political elite has rational views of the political benefits in the adoption of norms and values.

The way the EU conditionality mechanism works is that the EU sets its norms and rules as conditions that candidate states need to fulfill to receive the reward. The rewards usually include financial and technical assistance to members (Schimmelfennig/Sedelmeier, 2020). Here it is essential to keep in mind that the bigger the reward is the more likely the conditionality will be successful.

Zhelyazkova, et al. write about four elements that directly affect the effectiveness of conditionality “1) the determinacy and consistency of EU conditions, 2) the credibility of accession, 3) the capacity of candidate states, and 4) domestic costs” (2019:36). Determinacy includes precision, obligation, and consistency which should enable the candidate country to know what they need to do, how relevant the demanded conditions are, and that all candidates are treated under the same requirements. Credibility has two aspects, one is that the candidate states need to be certain that they will receive the reward after meeting the demands, and second that they will only receive the reward after they fully meet the requirements (Sedelmeier, 2006). And finally, the capacity of the member country and the cost of implementation of conditions will determine whether the targeted government will meet the EU conditions. The first two mentioned elements are dependent on the EU's capacities while the last one depends on the domestic situation in the potential member state. It is important to note that there is no link or proof that the EU conditionality means successful rule transfer (Schimmelfennig/Sedelmeier, 2020).

Determinacy

The EU enlargement strategy towards the Western Balkans has significantly enhanced and strengthened the pre-accession requirements and processes, especially the Rule of law conditionality, which has stricter procedures and monitoring systems in comparison to CEE states (Zhelyazkova et al., 2019:24). The 2012 EU Enlargement Strategy Paper outlines, “strengthening the rule of law and democratic governance is central to the enlargement process [...] and the lessons learned from previous enlargements highlight the importance of

an increased focus on these areas and further improving the quality of the process” (Communication from the Commission to the European Parliament and the Council, 2012:2).

After the 2007 enlargement, the EU presented a few new principles that sought to strengthen EU enlargement policy and methodology. This “new approach” (Hillion, 2013:18) was based on three principles: “consolidating existing commitments towards states engaged in the process, applying fair and rigorous conditionality, and intensifying communication with the public on enlargement” (Communication from the Commission to the European Parliament and the Council 2006:3). The “new approach” also included benchmarks related to the key elements of the *acquis* chapter and they are focused especially on Chapter 23 ‘Judiciary and fundamental rights’ and Chapter 24 ‘Justice, freedom and security’. The important aspect of new mechanisms is that failure to reach set benchmarks may lead to the suspension of the negotiation process (Ibid, 2006). This stricter approach meant that at the initial opening stage of the negotiation candidate states must start with the most complicated reforms and keep them open during the entire negotiation process (Zhelyazkova, et al., 2019:24).

Additionally, a new monitoring system was introduced in which the EU member states are included in the approval and evaluation of the benchmarks. This proved to be used by some Member States as an opportunity to hold up the pace of the reforms, especially if they wanted to influence certain bilateral negotiations. One of the examples is Slovenia blocking the adoption of the Commission’s benchmark because of the border dispute with Croatia, and Greece blocking the opening of accession negotiations because of a name dispute with North Macedonia (Hillion, 2013:21-22). The increased levels of determinacy were expected to have a positive impact on compliance in the future pre-accession negotiation. (Zhelyazkova, et al., 2019).

Credibility

The EU is facing double-sided credibility issues facing a lack of internal support towards certain enlargement processes and external skepticism and doubt in new candidate states. Internally, the EU experienced several internal obstacles such as the French introduction of constitutional revisions of the obligation for a referendum on any further EU enlargement or the example of Dutch citizens' referendum rejection of the EU-Ukraine Association Agreement. Furthermore, the emergence of member-state veto players who can impose bilateral disputes on the enlargement process is increasing the uncertainty of the membership

perspective. Besides these challenges, the EU has been facing internally the Euro crisis, Brexit, the refugee crisis, and externally the Russia-Ukraine conflict (Zhelyazkova, et al., 2019:26).

Furthermore, the norms promoted also exposed inconsistency between what is expected from candidate states and members' obligations. This causes accusations of a double standard as the EU demands are much stricter with candidate states than with member states which also undermines the credibility of EU values which they advocate for. One of the examples is that the EU requires that the candidate state adopt protection of minority rights while member states have not accomplished their requirements and obligations (Nechev, 2013).

Domestic capacity & Domestic Adoption Costs

High domestic cost for a candidate state means that there are many sacrifices to be made to be able to reach all necessary requirements, and very often this results in more Eurosceptic parties in the government that are not in favor of EU membership. On the one hand, on the societal level, the state political parties are expected to be highly supportive of the EU accession and changed their programs to support this on a formal level as well. On the other hand, as the EU conditionality directly affects issues that are involving ethnic or national identity together with statehood compliance with the EU conditions became less acceptable. (Subotic, 2010; Schimmelfennig, 2008; Noutcheva, 2009; Zhelyazkova, et al., 2019).

Adoption costs in the candidate states challenge compliance with the EU conditions. Research has distinguished between governmental and social veto which happens in case the government wants to block or delay compliance or in case interest groups or movements threaten to disrupt the public order (Zhelyazkova et al., 2019).

3.1.2 Veto players

The term veto player signifies an actor that has the power to prevent certain or all decisions to be adopted. Veto players and their role in decision-making processes in different political systems have been the center of the research focus of George Tsebelis who analyzed veto players, their mutual relationship, and their impact on regime stability. For Tsebelis “a veto player is an individual or collective actor whose agreement is required for a policy decision” (1995:293). Two main veto player types have been identified as institutional or partisan veto

players. Institutional veto players are the ones that have formal veto power, while partisan veto players are those that have veto power through their parties, mainly in the parliament. There are other veto players such as powerful interest groups, the military, representatives of workers and business owners (over questions such as wages), courts, and referendums where people present the veto power (Tsebelis, 1995).

McEvoy treats veto players “as actors who have the capacity to block decisions in the name of group protection”. The veto players can be specified by the agreement and/or constitution which falls into the category of “predetermined groups”, or they can be based on electoral success and belong to “self-determined groups” (2012:259).

For McGarry and O’Leary veto players can be “corporate” and/or “liberal”. Corporate actors are predetermined with fixed criteria of group identity such as ethnicity or religion. While liberal actors are self-determined to “reward whatever salient political identities emerge in democratic elections, whether these are based on ethnic or religious groups, or on subgroup or transgroup identities” (2007:675). McEvoy agrees that the liberal approach is a better option, but also admits that “that might not always be possible” (2013:272).

Furthermore, Tsebelis's research proves that policy stability is directly affected by “the number of veto players, their incongruence (the difference in their political positions), and the internal cohesion of each one of them” (1995:293). Policy stability is directly proportional to the number of veto players, the more veto players there are the possibility to change the status quo is smaller. This is the same with the difference in the party-political positions, the more prominent the difference is the possibility of reaching a consensus is smaller. Internal party cohesion is reflected in the internal circle of decision-makers within the party, a bigger circle of decision-makers lowers the potential for policy change.

For the purpose of the analysis, Tsebelis takes certain concepts illustrating one level of a decision-making body that is deciding with three parties or three legislators where none has an absolute majority, and each legislator has their ‘ideal point’ (Ibid.,295). Because actors’ positions are not on the same level any legislative decisions can be defeated. The point(s) where actors are overlapping with their positions is the potential area for status quo change. Tsebelis (1995) writes about a couple of elements that are affecting these processes: more overlapping points in the actors’ positions can lead to the status quo change; if changing the status quo has transaction costs, the players will not undertake it if it leads to only small

change; if there are no transaction costs and players undertake the change, then the change will be a small-scale change.

Veto issues and additional veto points

Veto issues are defined as areas or issues that veto players can veto. These can be different decisions and legislations that the veto actors can block. McEvoy adds that there should be identified restrictions to the policy areas “that will be subject to veto rules to minimize dispute over the use of the procedure” (2013:260).

As an additional veto point, Scheckener gives an overview of the direct, indirect, and delaying veto power in the legislative process. The direct veto power enables actors to block each and any matter that they consider of crucial importance for the group that they are presenting. The indirect veto position enables actors to block political actions once “specific conditions have been met”. And lastly, delaying veto “aims at delaying a decision in order to reconsider the matter”. Scheckener concludes that indirect and delaying vetoes are preferable because they rely on formal procedures in contrast to direct vetoes (2002:221).

3.1.3 Veto players and the conditionality mechanism

As previously mentioned, one of the important elements, fully dependent on the domestic conditions and domestic actors, is the domestic costs of the proposed conditions. Both rationalization and socialization rely on the engagement of local elites, and both rely on rational elite “with a common vision for the country” (Aybert/Bieber, 2011:1916).

The study aims to prove the hypothesis “The higher the number of veto players, the greater the scope of veto issues, and the weaker adjudications are the lower the likelihood of rule adoption”. McEvoy identified veto players, veto issues, and the strength of adjudication mechanisms as the main elements of the veto mechanism (McEvoy, 2013).

First, considering that the EU conditions must be adopted by the government and political elite, the effectiveness of the conditionality mechanism and successfulness of the EU external incentives model are directly dependable on domestic political leaders and by default veto players. This is why Schummelfenning and Sedelmeier suggest that “the likelihood of rule adoption decreases with the number of veto players incurring net adoption costs (opportunity

costs, welfare and power losses) from compliance” (2006:26). Therefore “the difficulty for a significant change of the status quo ... increases in general with the number of veto players and with their distance” (Tsebelis, 2002:53). The number of veto players is significantly important for the case of Bosnia and Herzegovina as the number of veto actors that can use veto to fully block is, one member of the Presidency and/or five (of one ethnic group) in the House of Peoples that can use “vital national interest” veto, and 14 (of one ethnic group) in the House of Representatives that can use “entity” veto (both vetoes will be explained in detail in the Chapter: Historical Background) (Sahadžić, 2012). Not only can a number of people, from each constituent peoples, block processes by veto, but they can also simply not show up to participate in the institutions and in this way delay legislation from being made (McEvoy, 2012).

Furthermore, McEvoy's definition of veto players “as actors who have the capacity to block decisions in the name of group protection” fits into the context of the situation in Bosnia and Herzegovina, where McEvoy adds that it is particularly important that the veto power is not inflicted by the external power which is the case with Bosnia and Herzegovina (2012:259). Additionally, using McGarry and O’Leary’s definition of the corporate veto actors, which rely on a special status of a certain group, the study reflects on the ethnicity and use of veto power by ethnic groups in Bosnia and Herzegovina. This special status of certain groups defined as a constituent by the Dayton Agreement also brings discrimination to all others that do not belong to constituent peoples which are also proven by Sejdić and Finci judgment (ECHR, Case of Sejdić and Finci v. Bosnia and Herzegovina, 2009).

Second, occasionally veto issues or veto areas are not clearly defined and here McCulloh makes a distinction between restrictive and permissive vetoes. Restrictive veto rights “limit veto use to high-stakes issues of an ethnonational dimension, which are constitutionally delineated” while permissive vetoes “allow their use on all proposed legislation and are typically enacted through weighted or qualified majority voting rules” (McCulloh, 2017:741). This is an important veto aspect in Bosnia and Herzegovina as the veto areas are not identified within the Constitution so any issue identified by veto players as a “vital national interest” or entity interest can be vetoed. McCulloh and Zdeb also remind us that “a veto point can be allocated at multiple stages of the legislative process, including in the executive, the legislature, or both” (2022:430). In Bosnia and Herzegovina on a state level, veto points are allocated on both legislative and executive processes, while on the entity level it is only possible within legislative processes. This “enables the veto players to “hijack” the

parliament for their exclusionary ethnic interest and discourages cooperation and compromise between the veto players” (Bahtić-Kunrath, 2011:899).

Third, the strength of the adjudication procedures is the last dimension of the veto’s structure and can be absolute or suspensive (Lijphart 2008 in McCulloh/Zdeb, 2022:430). An absolute veto has the ability to fully “stop the proposed legislation from moving forward... and requires no justification for veto use”. And with a suspensive veto, “the vetoed legislation is sent for adjudication and parties must justify their veto use” (Ibid).

As the efficiency of the EU conditionality mechanism has been based on the successfulness of the CEE transition within the EU integration process, the complexity of the veto mechanism in Bosnia and Herzegovina shows that the same approach cannot be replicated in countries that do not have the same preconditions at the beginning of the EU integrations (Aybert/Bieber, 2011). The EU leader-oriented approach and inability to address backlash received from the local political elite strengthened the ethnonational positions in Bosnia and Herzegovina (Brljavac, 2020). As the EU has been experiencing veto blockades within the reform process it also lacked an adequate response which resulted in lowering its standards and accepting water-down versions of the required conditions (Sebastian, 2009). This, together with the failure to reward progress, cause the loss of credibility of the EU conditionality mechanism.

In the end, even though the political elite often seems EU supportive, they are implementing the needed reforms rather superficially and in favor of their own “political and electoral interest” (Zhelyazkova et al., 2019:30). Taking this into consideration it is safe to argue that the EU conditionality mechanism is only effective if it satisfies the interest of key veto players, hence the veto players can undermine the EU conditionality when their preferences are in conflicts with the conditions. This study will in the following work address the loss of the credibility of the EU conditional mechanism in relation to veto mechanisms in Bosnia and Herzegovina and analyze the EU response to the veto challenges.

3.2 Research Methods

This section provides an overview of how the information and data for this study were collected and analyzed in an effort to answer the main research question of how have domestic veto players in Bosnia and Herzegovina impacted the effectiveness of the EU

conditionality, where the analysis is focusing on the democratic transition in post-conflict Bosnia and Herzegovina and processes that were initiated and supported by the EU. The study was conducted by analyzing literature related to the EU external incentive and pre-accession processes, and integration processes in the Western Balkans and Bosnia and Herzegovina, specifically focusing on the role of veto players in rule adoption. A specific analysis of primary documents and policy reports was necessary in order to establish a specific conceptual framework for the examination of the interrelation between the EU's external incentives and the limited reform capacity in Bosnia and Herzegovina. Those documents included European Commission Reports and Commission staff working papers from 2011, 2015; European Court of Human Right verdicts from 2009, 2014, and 2016; International Crisis Group Reports 2005, 2011; state decisions published in "Službeni glasnik BiH" (Official Journal for publishing decisions and legislations, <http://www.sluzbenilist.ba/>); and other. Additionally, the study relied on secondary literature including books, journals, and articles written by both domestic and international scholars.

The conceptual framework is used as a base for the case study on the limitation of the EU conditionality mechanism in Bosnia and Herzegovina caused by the powerful veto powers. In order to contribute to this part of the research, the study follows a qualitative analysis approach that aims to explain what is observed in both, primary and secondary data, the EU and state documents, and other sources as a tool for addressing this research question. MacDonald and Headlam explain that qualitative methods “attempt to gain an understanding of the underlying reasons and motivations for actions. Qualitative methods provide insight into the setting of a problem, generating ideas and/or hypotheses” (2009:9). The aim of this study is to provide historical contextualization, interpretation, and detailed description of gathered data. This research method contains subjectivity and requires a smaller number of cases.

Next, the research will follow “an intensive study of a single case ... which draws on observational data and promises to shed light on a larger population of cases” (Gerring, 2017:28). A single-country study uses exclusively empirical data from one country and aims “for understanding politics in its local context”. Additionally, single-country research can “yield general theoretical insights with comparative implications” (Pepinsky, 2019:188). The goal of a case study is “partially to explain the case(s) under investigation and also, at the same time, to shed light on a larger class of cases. In order to qualify as a case study, it must be possible to put the study into a larger context” (Gerring, 2017:30).

Furthermore, one of the “main tasks of case study analysis is to generate as many testable implications of one’s hypothesis as possible in a given case”. The study is following plausibility probes “which are an intermediary step between hypothesis generation and hypothesis testing, and which include “illustrative” case studies” (Levy, 2008:3). The purpose of choosing Bosnia and Herzegovina for a single case study research is to focus on providing important evidence to contribute to the research of limitation of the EU external incentives. Specifically, the study will test a formal theory of the conditionality model with the integration of veto players and use the case of Bosnia and Herzegovina as an “illustrative” case to validate the veto player argument (Ibid.).

The study will identify key veto players and the scope of issue areas over which they have veto power within the political system of Bosnia and Herzegovina together with the impact that veto players have on rule adoption or lack of it. Even though veto power has been defined in 1995 within the Dayton Agreement, the study will illustrate the gradual change in usage of both “vital national interest” and “entity” veto following the failure of the Constitution and Police reform mediated by the EU and international mission (Belloni, 2009).

Chapter 4 The EU Foreign Policy

4.1 The Background

The last decade of the twentieth century brought many changes and new developments, from the end of the Cold war which also led to the unification of Germany to the dissolution of former Yugoslavia resulting in violent conflict within its former member states. This also caused many newly independent states in Central and Eastern Europe (CEE) to express their interest in joining the European Community/EU. All these events led to the discussion of creating the European security and defense identity together with a detailed system of integration, accession, and assistance programs. Already by the mid-90s, the EU provided a framework for cooperation with CEE states which focused on political dialogue, trade, and economic relations together with assistance for different programs (Bindi, 2012).

In 1993, the EU united common ideals and principles, and the Copenhagen European Council specified the criteria for potential and future candidates to fulfill if they want to join the EU. Those, so-called “Copenhagen criteria” included: “a working democratic system; the rule of law; respect for human rights and protection of minorities; functioning market economy; and ability to take on the obligations of membership” (European Commission: Accession Criteria). Later, in 1995, the Madrid European Council added another condition: “the implementation and adaptation to the *“acquis communautaire”* - “the entire body of legislation of the European Community and Union” (Bindi, 2012).

In the following years, CEE states will gradually start the negotiation process and become members in 2004 (the Check Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) and 2007 (Bulgaria and Romania). What is important to mention is that compliance with conditions is expected even when the state becomes a member of the EU, but backslidings are also expected. As the conditionality mechanism does not have the credibility to impose sanctions on member states, the governments can in a way return to illiberal practices. The best examples of such cases are Poland and Hungary where the EU is unable to redress the backslidings (Schimmelfennig/Sedelmeier, 2020).

The approach of the EU governance has an internal and external dimension. Internal governance is the one creating the rules while the external oversees the transfer of the rules. The external dimension itself also has two aspects, the first one focuses on what is exported while the second one is the mode of how the rule is transported (Schimmelfennig and Sedelmeier, 2004). Next, these two dimensions of governance also lead to the identification

and challenges of the internal and external legitimacy of the EU foreign policy. Internal legitimacy questions the body “on whose behalf the foreign policy is being executed” while external legitimacy questions if the foreign policy is acceptable to the states and people who are on the receiving end of those policies (Raube/Torna, 2019:2). Furthermore, Raube and Torna (2019) write about three types of challenges of internal and external legitimacy: input, throughput, and output. Previously scholars have focused mainly on output legitimacy to explain that the legitimacy of the EU foreign policy is based on deliveries of high demand and necessary norms and values and the capacity to deliver these. More recently, the attention shifted toward the internal and throughput legitimacy of the EU foreign policy. Internal legitimacy is focused on the “quality of the decision-making process” (Risse, 2006 in Raube and Torna, 2019:2). While throughput legitimacy analyzes the quality of the process (Schmidt, 2003 in Raube/Torna, 2019:2).

The main dominant model of external governance is the external incentives which use conditionality as a bargaining model where decisions are “driven by material and political self-interest and cost-benefit calculations” (Džankić, 2019:18). Furthermore, there are two alternative models of external governance: social learning and lesson drawing. The social learning model proposes that “a state adopts EU rules if it is persuaded of the appropriateness of EU rules”. And lesson drawing model suggests that “a state adopts EU rules if it expects these rules to solve domestic policy problems effectively” (Schimmelfennig/Sedelmeier, 2004:668).

And lastly, there are two contexts relevant to the EU's external governance based on the issue areas. Democratic conditionality “concerns the fundamental political principles of the EU, the norms of human rights and liberal democracy”. And “*aquis* conditionality concerns the specific rules of the *acquis communautaire*” (Schimmelfennig/Sedelmeier, 2004:669).

4.2 The EU Foreign policy in the CEE

When studying the EU conditionality most of the time scholars have observed the successful example of the “EU's transformative power” (Grabbe, 2006 in Noutcheva 2009:1065) and “normative power Europe” (Manners, 2005) influencing “profound domestic changes” (Noutcheva, 2009:1065) within CEE states. The effect of conditionality during the pre-accession period with CEE states has been very successful not only because of the

conditionality but because of their well-established institutional framework which was only upgraded during the process of integration. Next, the effectiveness has been based on the credibility of the incentives and low to moderate domestic costs together with pro-EU identity in the target country.

Most studies have shown that the EU incentives in the CEE enlargement process had a positive impact on the process of democratization and stabilization of both institutions and policies (See. Schimmelfenning, 2006, 2007, 2005; Grabbe, 2014; Vachudova, 2005). Later, the 2007 enlargement supported the position that the EU conditionality is effective before the accession as the absence of credibility against member states is disabling EU leverage (Vachudova 2009). Lessons learned, especially regarding the effectiveness of the EU conditionality, have shaped the EU enlargement strategy for the Western Balkans (Zhelyazkova et al., 2019). Unfortunately, the same approach in the Western Balkans has not given the expected results mainly because of the pre-accession conditions of the target states. Western Balkan states were rather post-conflict fragile states with weak economies and unstable national and institutional structures (Blagovčanin, 2016:11).

Literature on enlargement defines three areas in which the EU is focusing to improve developments with new aspiring members. The first one is the area of the market economy which includes setting up all regulatory frameworks and preparing for access to the single market. The second covers political and institutional reforms which are needed to strengthen democracy and rule of law. For this, the EU has been supporting states technically and financially. And third, the EU is helping the adoption of new social and political norms to ensure the normalization of the standards including higher transparency, accountability, and respect for human rights (Koneska, 2019:138-139). Additionally, constitutional reform and citizenship policy are part of the interest as well. Constitutional reform is part of Chapter 35 of the *acquis* in the Other issues and citizenship policy has been covered by the Council of Europe in the context of inclusion/exclusion and human rights (Džankić/Keil, 2019:183).

4.3 The EU Foreign policy in the Western Balkans

War in the former Yugoslavian region presented a big challenge for the EU and to stabilize the situation the EU turned to “political maneuvering, diplomatic pressure, and economic sanction” (Dover, 2005:303). Furthermore, the EU established a peace mission to monitor the

tensions but did not consider armed support. Even though the Common Foreign and Security Policy (CFSP) was established in 1993 within Maastricht Treaty the EU was not ready to deploy military assets to respond to the need of crisis. The EU has solely turned toward economic foreign policy tools and penalties as principal tools to use during the war in Bosnia and Herzegovina. Even after providing 14, 000 military personnel to the UN peace mission the approach to the crisis was driven by humanitarian purposes with a focus on the promotion of human rights (Dover, 2005:311). The way the EU handled the conflict in Bosnia and Herzegovina was described as a failure and showed that it was not ready to reach significant political importance without the capacity to ensure stability within Europe itself (Knezović, 2009).

Since the US was fully invested in the stabilization of the conflict, post-conflict security was expected to be the responsibility of the EU. In the beginning, the EU was narrowly focused on bilateral agreements with the states which proved insufficient for stabilization and economic development. At the end of 1996, Royaumont Process was initiated to “strengthen the democratic process, expand regional cooperation, settle minority issues, and guarantee the inviolability of frontiers” (Ehrhard, 1998:328). The process included the promotion of dialogue to boost democratization together with the creation of a modern structure for civil society development and NGO networks (Knezović, 2009). Next, the EU worked on organizing conferences, and ensuring funds and support for different projects. But even with all this, the lack of a mechanism that would ensure implementation lead to a change in the Regional Approach (Knezović, 2009).

The main idea of the Regional approach was to help the Western Balkans region to secure stable political and economic development and to develop a deeper relationship between the EU and Western Balkans states (Žarin, 2007). And the main goal of the EU in Southeast Europe included the “stimulation of political and economic reforms to ensure sustainable stability of the region, based on democratic values and fundamental freedoms” (Knezović, 2009:98).

Furthermore, the EU introduced monitoring of the regional cooperation with regular semi-annual reports on the mentioned democratic principles, “rule of law and respect for human rights, minority protection, economic reforms, and regional cooperation” (Knezović, 2009:98). In this approach, the EU already started using the principle of conditionality, but it was much less visible than in the new policies that will take over in the 1999 Stability Pact

for Southeastern Europe (SP) with a focus on regional cooperation and regional stability (Anastakis & Bechev, 2003) and Stabilization and Association Agreement (SAA) that was fixated on individual approach (Knezović, 2009).

For the prospect of accession to the EU, the main requirement is to fulfill Copenhagen criteria from 1993, and the Stabilization and Association Process (SAP) was launched in 1999 by the European Commission. A year later, in 2000, at the Zagreb Summit Western Balkan countries confirmed their commitment (Europa.ba, Stabilisation and Association Process). Besides the requirement of fulfilling the Copenhagen criteria, there was a specific additional condition: “full cooperation with the International Criminal Tribunal for the former Yugoslavia – ICTY – regional cooperation and good unneighborly relations between States and their neighbors” (Mirel, 2018:2). Later in 2003, at the Summit of Thessaloniki, the EU officially announced the membership prospects of the Western Balkan states (Ibid.).

The next step in the negotiation process was to reach the necessary reforms to be able to sign SAA. “The SAA is a tool that provides the formal mechanism and timelines of reforms that will bring BiH closer to EU standards”. The main elements of the SAA are focused on ways and mechanisms to implement the EU standard and norms from the democratization, rule of law, and respect for human rights, over the market economy and economic growth to improving the quality of life of citizens. (Europa.ba, Stabilisation and Association Process). It is important to note that even though SAA was signed by all countries, it took a long time for their ratification, and in the case of Bosnia and Herzegovina because of “discrimination in its electoral law” (Mirel, 2018:2) the SAA was ratified and entered into force only on June 1st, 2015 (European Commission, 2015).

Some other agreements were created and signed, covering areas of police work, justice, transport, and trade. Central European Free-Trade Agreement (CEFTA) was signed with Western Balkan states in 2007 which contributed to free trade between the countries. Next, in 2007, Regional Cooperation Council (RCC) took over the role of the SP and accounted for five Western Balkan states and five of their neighbors: Bulgaria, Greece, Moldova, Romania, and Turkey (Mirel, 2018:2).

The domestic capacity of Western Balkan states is also rather limited as these states are generally among the poorest and least developed in Europe. The economic growth is rather slow and accompanied by a high level of unemployment, an informal economy, mismanagement of the public sector, and slow liberalization of the market. Other problems

are high levels of corruption, political tensions, and ineffectiveness of law and reform enforcement together with the weakness of post-conflict societies due to the ethnicization of the state-level institutions (Aybet/Bieber, 2011).

Even though it has been obvious that Western Balkans candidate states need both financial and administrative assistance, in the 2016 Special report it was revealed that “the Commission did not apply conditionality sufficiently and relatively little of IPA I funding was provided in key areas of the rule of law, such as media freedom, public prosecution and the fight against corruption and organized crime” (European Court of Auditors 2016:6).

From the report during 2007-2013 from IPA funds, roughly €485 million was invested in projects regarding the ‘Rule of law’. For media freedom and civil society in the Western Balkans total allocation accounted only for 0.5%. Furthermore, small support has been given to the fight against corruption and organized crime 2%, and 1% for public prosecution services” (European Court of Auditors 2016:12-32).

The EU conditionality has been the focus of many research studies as a successful external incentives mechanism of the EU inducing the adoption of rules in different policy areas in the CEE candidate states who became members of the EU in 2004 and 2007. As the majority of the research has been focused on CEE states, it is uncertain to what extent the same approach can be applicable to the Western Balkans. Another interesting concept that brings considerable debate is the usage of the term “Europeanisation” which some describe as the “influence of the EU” or “domestic impact of the EU”. This brings a problematic aspect of using the word Europe for the EU processes (Sedelmeier, 2006:4).

Chapter 5: Historical background

5.1 Dayton and post-Dayton Bosnia and Herzegovina

Before diving into the analysis of the EU integration processes and effectivity of the conditionality mechanism in Bosnia and Herzegovina, it is important to set the base of the state structure based on the Dayton Peace Agreement in which Annex 4 is also the Constitution of Bosnia and Herzegovina. The beginning of the 1990s brought lots of tension in the Western Balkans as the dissolution of former Yugoslavia resulted in violent conflicts in former member states. The war in Bosnia and Herzegovina lasted for three years, from 1992 to 1995, and the end of the conflict was the result of mainly US mediation and the signing of the Dayton Agreement (Dover, 2005). The main goal of the agreement was to set up a power-sharing system to prevent interethnic tension and provide protection for ethnic groups (McEvoy, 2013). Dayton Agreement terminated the conflict and set up the conditions for the stabilization of the country. Among others, the Dayton Agreement included Agreement on Regional stabilization, Elections, and Constitution together with Agreements for Human rights and Civil implementation. Dayton Agreement also set up the political structure of Bosnia and Herzegovina with a clear border demarcation of the Federation of Bosnia and Herzegovina and Republika Srpska, and a description of shared and individual responsibilities.

For the purpose of this study, research will focus in more detail on three important elements connected directly to the Dayton Agreement/Constitution and why are they important in explaining the lack of progress made in Bosnia and Herzegovina. The first one is the political organization of the state structure, the second focuses on the ability to capture the state because of the veto opportunities, and the third one addresses the fundamental discrimination of all those that do not belong to constituent people.

5.1.1 Government structure of Bosnia and Herzegovina

The Dayton Agreement included the way the state government will be organized starting with a geographical organization with two entities Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) while the third unit Brčko District was established as a single administrative unit in March 2000 (Venice Commission 2005). Each entity and Brčko District have its own partial autonomy, Ministries, and individual Constitutions. FBiH is

further organized into ten cantons that have their own partial territorial autonomy, ministries, and individual Cantonal Constitutions.

Next, the political organization of the state includes a Presidency of three - one of each constitutive people Bosniak and Croat (elected in FBiH), and Serb (elected in RS). Next, the Parliamentary Assembly consists of two chambers: the House of People and the House of Representatives. The House of People has fifteen Delegates, with two-thirds from FBiH (five Bosniak and five Croat Delegates) and are chosen from the Parliamentary Assembly of FBiH and one-third from RS (five Serb Delegates) selected from the National Assembly of RS. For a quorum, there is a mandatory necessity of the presence of three from each group. The House of Representatives has forty-two Delegates out of which two-thirds are elected in FBiH (28 members) and one-third from RS (14 members). The majority of all members are needed for a quorum. And important to mention is the Council of Ministers (CoM) with the role to carry out the policies and decisions of Bosnia and Herzegovina. The Delegates for the CoM are to be chosen in the same manner as in other legislative institutions with two-thirds from the FBiH and one-third from RS (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 4).

Both entities themselves also have their own Parliament Assemblies with two houses in FBiH and one house in RS, with individual constitutions that are regulating the organizational structure within the entities. FBiH consists of the House of Representatives and House of People that are elected in FBiH. House of Representatives has 98 delegates and to the Federal Constitution has a minimum of four members of each constituent people, with no regulations about the inclusion of Others. Delegates are elected directly by the people from FBiH. House of People has 58 delegates with 17 delegates from each constituent group and 7 delegates belonging to the Other. The delegates are elected indirectly from cantonal assemblies, based on the national (ethnic) structure of the canton. So, from the bottom up, delegates on the cantonal level are chosen proportionally to the national structure of the canton, and then from those elected delegates certain percentage will be indirectly (within the parties) elected to the House of People to represent ethnic interest rather than cantonal (regional) interest (Sahadžić, 2012).

The National Assembly of RS has one house consisting of 83 delegates with a minimum of four representatives of each constituent people. Since 2002, RS Constitution also has a functioning Peoples Council of RS with 28 members, 8 from each constituent people and 4

belonging to Others. Representatives in the People Council are chosen by the delegates club from National Assembly. It is important to note that the Peoples Council of RS is not the upper house, nor does it have an equal decision-making impact, rather it has a noticeable role when one of the constituent people makes claim about a “vital national interest” threat (Sahadžić, 2012).

5.1.2 Veto players and entity voting

Tsebelis defines *veto players* as “individual or collective decision-makers whose agreement is required for the change of the status quo” (2000: 442). McEvoy's definition of veto players fits even better into the context of the situation in Bosnia and Herzegovina as she treats veto players “as actors who have the capacity to block decisions in the name of group protection”. The veto players can be specified by the agreement and/or constitution which falls into the category of “predetermined groups” or they can be based on electoral success and belong to “self-determined groups”. McEvoy also adds that it is particularly important that the veto power is not inflicted by the eternal power which is the case with Bosnia and Herzegovina (2012:259).

As Bosnia and Herzegovina's political and social system is constructed around belonging to one of the constituent peoples most of the political parties are based on ethnic affiliation. In the decades after the war, three prominent political parties representing each one of the ethnicities took the leading role: SDA – Bosniak party led by Sulejma Tihić in the first decade of the 2000s and Bakir Izetbegović, son of the first President of Bosnia and Herzegovina till today; HDZ – Croat party under the leadership of Dragan Čović; and SNSD – Serbs party led by Milorad Dodik. The most prominent political narrative used by each of the representatives is as follows: Dodik has been presenting secessionist ideas for twenty years already which is very often followed by obstruction of the state institutions with the aim of creating a dysfunctional environment to contrast RS organizational aspects. Most of the time SNSD representatives block reforms in the name of their “vital national interest” and to prevent the Bosniak power grab. Čović has been in support of the compromise while also implying the creation of a Croat third entity. Only recently, Čović has been more vocal about the creation of a third entity and had been advocating within the EU and the international community for its support (N1, 2022). And lastly, Bosniaks are rather divided with one part of the political elites calling for the abolishment of entities and the other part acknowledging

the entities as a permanent part of Bosnia and Herzegovina and calling for centralized reorganization (Crisis Group Europe, 2009).

In Bosnia and Herzegovina, this decentralized political system based on ethnicity has created multiple veto opportunities which have been blocking the process towards enlargement. The Dayton Agreement by default has given the veto power to the ethnic representatives in the Presidency and also in the Parliamentary Assembly as well. “Vital national interest” veto, introduced in the Dayton Agreement, together with the “entity” veto has become the main instrument for state capture in the years that followed.

In the Dayton Agreement, the ability to declare “vital national interest” has been given to the Presidency and the House of Peoples, and it can be declared by one of the three constituent people Bosniak, Croat, or Serb. After declaring that certain legislation is threatening “vital national interest” the decision will be referred to the National Assembly of the RS if a Serb member of the Presidency made the declaration, or to the House of Peoples of the Federation if the declaration was made by Bosniak or Croat member. If the declaration is confirmed on the entity level with a two-thirds vote, then the decision will not take place (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 4, Article 6).

The second “vital national interest” veto is enabled in the Parliamentary Assembly in the House of Peoples where the majority of each of the constituent groups can declare that a proposed decision is destructive of the “vital national interests”. In this case, the Joint Commission of three members is assembled, one from each constituent people, to resolve the issue. If the Commission is not able to come to a decision within five days, the matter will then be in the jurisdiction of the Constitutional Court (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 4, Article 6).

The entity voting is not a default veto opportunity but rather should represent territorial voting based on the geographical origin and should be advocating for the interest of the entity. In the case of the entity’s units within Bosnia and Herzegovina, the entity delegates are not representing territorial interest but the ethnic interest as entities are mainly comprised of ethnic groups. This further adds to the strong ethnic veto dimension. The territorial aspect is different within the two entities because in FBiH Croats and Bosniaks are part of the same entity which also means that they can “outvote each other”. This also puts RS in a superior position because it can “deploy entity-voting in all stages of law-making” (Bahtić-Kunrath, 2011:902). As previously mentioned, in the Parliamentary Assembly House of

Representatives third of each constituent group is needed for any legislation to pass the house. This rule of one-third is not fully elaborated in the Constitution as it does not specify if one-third of all delegates from both entities or it is one-third from the present delegates. This rule is locally interpreted as one-third of all delegates, which also means that in the House of Representatives ten delegates from one constituent group can block any progress and every legislation.

This also has another problematic dimension because in the Constitution itself it is not written what a “vital national interest” means or what issues/areas it covers which leaves the Constitutional Court of Bosnia and Herzegovina in a position where they have to adjust the way it measures the existence of the violation of “vital national interest” (Sahadžić, 2012). Often Constitutional Court uses Entity Constitutions where “vital national interests” are defined in a rather excessive way (Venice Commission, 2005).

Zahar (2005) further comments that “inclusive decision making, and mutual vetoes tend to carry with them the risk of ‘immobilism’ or state paralysis which can only be countered by the concerted action of responsible leaders willing to compromise in order to maintain stability”. And this is the case with Bosnia and Herzegovina where three ethnic groups have veto powers, especially because of the undefined vital national interest areas and open interpretation. The misuse of the vital national interest is backed up by the reality that the “elite intransigence or unwillingness to cooperate are more other than not the norm” (2005, 127-28).

In March 2005 European Commission for Democracy Through Law (Venice Commission) gave its opinion on the situation with Constitution in Bosnia and Herzegovina where they identified the veto system as especially problematic and in need of reform. The Commission confirmed that it is obvious that this “procedure entails a serious risk of blocking decision-making”. Even though the “vital national interest” veto was not used often in comparison to the “entity” veto, the Commission still considers that “due to the existence of the veto, a delegation taking a particularly intransigent position and refusing to compromise is in a strong position” (Venice Commission, 2005:9).

In 2009, a study made by Trnka, Simović, Miljko, et al. showed that between 1995 and mid-2008 “vital national interest” veto has been used only four times. In the mentioned period 529 legislations have been put on the table out of which 260 were adopted, and 269 were rejected. The high numbers of rejected legislation are followed by high usage of “entity” veto with a

total of 156 rejections. The “entity” veto appears to be the most efficient mechanism to block any decision-making process where the political elite doesn’t even have to go through all the procedures of applying a “vital national interest” veto. Next, the study also researched the “vital national interest” veto procedures on the entity levels and the results showed that entity levels are using “vital national interest” protection more often. In FBiH till 2011 protection of vital national interest has been set in motion eleven times, with a noticeable lack of any “vital national interest” procedure between 1999 and 2006. Eight vital national interest requests came from Croat delegates, one from Bosnian delegates, and one from both Bosniak and Croat delegates. Out of these, five cases have been sent to the Constitutional Court where four cases were rejected as the Court asserted that there has been no violation, and one has been asserted as a violation of Croat vital national interest. In the National Assembly of the RS, the “vital national interest” procedure has been set in motion 103 times during the period between 2003 and 2012. Bosniak delegates have set in motion 65 procedures, Croat delegates seven procedures, Serb delegates three procedures, and both Bosniak and Croat delegates together declared vital national interest in 10 cases. Out of all these procedures, 24 initiatives have been harmonized, for 15 procedures the vital national interest request has been withdrawn and nine procedures went back to the proposer. From 55 procedures that came to the Constitutional Court of the RS, 24 procedures have been declared as not acceptable, and out of 31 accepted requests 25 were rejected and for six the procedure has been suspended. These statistics show a disproportional number of requests for the protection of “vital national interest” between the FBiH (11) and the National Assembly of the RS (103) (Sahadžić, 2012:315-18).

Another case study was done by Bahtić-Kunrath (2011) where an analysis of the Parliamentary Assembly legislative outcomes for the period 2006-2010 was done specifically targeting how many times veto voting was used for EU and domestic legislation. During that period in the House of Representatives within 83 sessions 175 laws were adopted and 61 were rejected. In the second reading 36 laws were rejected and in total 204 were adopted. As the study shows there has been just a small percentage less EU-related legislation in comparison to domestic law proportion of approximately 46:54. Out of these “entity” voting made by RS delegates caused the failing of 50 laws, majority voting failed 39, and FBiH delegates blocked eight procedures with “entity” voting. Because major blocking of legislations was in the category of the Rule of Law, Bahtić-Kunrath summarizes that “RS “entity” voting turned out to be the main reason for failed EU related legislations”

(2011:907). In the period between 2007 and 2010, the House of Peoples held 49 sessions that resulted in 127 laws being passed and 24 rejected in the first reading and 168 passed while 7 more were rejected in the second reading. Again, in the House of Peoples, the RS delegates were the ones responsible for the rejection of 19 out of 31 failed legislations. Most of the rejected legislation was EU-relevant legislation. This for Bahtić-Kunrath is a clear indicator that the main restriction for “adopting or rejecting draft law is the protection of ethnic interest” (2011:911).

When in 2008 the Parliamentary Assembly of the Council of Europe recommended the abolition of entity voting Serb representatives strongly opposed the move. RS premier at that time Milorad Dodik said that the removal of the entity voting would never be agreed on as it would threaten the Dayton Agreement and cause disbalance within representation in Bosnia and Herzegovina. It is more than evident that the nationalist parties would not give up the powers that were given by the Dayton Agreement (McEvoy, 2012).

5.1.3 Constitutional discrimination and violation of Human Rights

As I have mentioned previously, the Dayton Peace Agreement set up the rules and regulations for government structure in Bosnia and Herzegovina. The main aspect of those rules and regulations has been the triangular decision-making processes of constituent people. The constituent people are Bosniaks, Croats, and Serbs. And as I wrote in previous chapters, the structure of the state institutions is constructed as such that the delegates and institutions “ensure representation of the constituent peoples” instead of representing citizens as such (Venice Commission, 2005:12).

In the Dayton Agreement, it is clearly defined that the candidates for the Presidency can be only Serb from RS and Bosniak and Croat from FBiH (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 4). Besides the complete exclusion of all other groups of people, this also means that Bosniaks and Croats living in RS cannot be candidates for the Presidency from that entity, nor can Serbs be a candidate from FBiH (Zahar, 2005:129). Furthermore, the delegates for the Parliament House of People are also selected based on their ethnicity, five for each constituent people leaving Others without representation (Sahadžić, 2012).

In 2009, the European Court for Human Rights (ECHR) ruled out the Constitution of Bosnia and Herzegovina as discriminatory because Dervo Sejdić and Jakob Finci of Roma and Jew origin could not stand in for the Presidency nor be part of the House of People as they are not part one of the constitutive people of Bosnia and Herzegovina. ECHR confirmed that Bosnia and Herzegovina, among many declarations, violated the International Convention on the Elimination of All Forms of Racial Discrimination that entered into force in 1993 where Bosnia and Herzegovina committed to eliminating racial discrimination. Next, Bosnia and Herzegovina also violated the International Covenant on Civil and Political Rights, adopted in 1992, where Bosnia and Herzegovina committed to ensuring the right and opportunity for every citizen to take part in public affairs, to vote, and to be elected (ECHR, Case of Sejdić and Finci v. Bosnia and Herzegovina, 2009). Other violations included are “Article 14 (prohibition of discrimination) taken together with Article 3 of Protocol No.1 (right to free elections) Violation of Article 1 of Protocol No.12 to the Convention (general prohibition of discrimination)” which Bosnia and Herzegovina signed in 2002 (ECHR, Bosnia and Herzegovina, 2009).

And this was not the only case, in 2014, Azra Zornić also won the case because she was denied standing for the Presidency and House of People because she declared herself as a citizen of Bosnia and Herzegovina. ECHR decided by six votes to one that “there has been a violation of Article 12 (prohibition of discrimination) in conjunction with Article 3 of Protocol No.1 (right to free elections) to the European Convention on Human Rights” (ECHR 217, 2014). In 2016, Bosniak Ilija Pilaz could not stand for the Presidency as he was a Bosniak living in RS (Toe, 2016). ECHR unanimously decided that Bosnia and Herzegovina violated “Article 1 of Protocol No.12 (general prohibition of discrimination) to the European Convention on Human Rights” (ECHR 198, 2016).

Becoming a member of the UN in 1992 Bosnia and Herzegovina committed to respecting equal rights and eliminating discrimination in all forms. Next, with membership in the CoE Bosnia and Herzegovina was reminded regularly that representation based on ethnicity is discriminatory and that the country is obligated to end this constitutional discrimination against Others. Further, by signing and ratifying the SAA agreement with the EU in 2008, Bosnia and Herzegovina committed itself to fulfil key priorities among which amending electoral legislation to ensure equal rights and full compliance with the European Convention on Human Rights (ECHR, Case of Sejdić and Finci v. Bosnia and Herzegovina, 2009).

Chapter 6: Analysis

6.1 Limitations and challenges of the EU conditionality mechanism in Bosnia and Herzegovina

Already at the beginning of this part of the study, it is important to emphasize that the EU has two framework approaches toward Bosnia and Herzegovina, the framework of the CFSP and enlargement policy. And as the EU uses both frameworks the “involvement in the region ... cannot be categorized under either foreign or enlargement policy” (Noutcheva, G. 2009:1066). This also makes it harder to analyze the impact the EU has on Bosnia and Herzegovina. Furthermore, because of the EU's double focus with the central point on security interest and secondary on the democratization interest, the conditionality had limited success and the EU “has been forced to prioritize security at the expense of democracy” (Zweers, W., Cretti, G. et al., 2022:23).

One of the reasons identified as to why the EU conditionality is having limited impact in Bosnia and Herzegovina is because of its ‘leader-oriented approach’ where the accession meetings and dialogues are set behind closed doors with presidents and representatives of political parties rather than within state institutions with the elected members of the parliament and civil society organization. In 2014, during the time of several citizen protests against the government, Florian Bieber mentioned in his interview how the EU and other international actors are the ones that keep giving legitimacy to ethnic political leaders with the constant attention that they give while negotiating. This way, Bieber continues, the EU representatives are undermining the legitimacy of institutions and elected representatives (Štavljanin, 2014). An event that has been at the center of public attention happened recently as well, in 2021 when the EU-US mediating delegation, with the presence of the High Representative (HR) Christian Schmidt, met with representatives of political parties in Neum to discuss reform of the election law. A couple of non-ethnically oriented political parties decided not to even take their participation because they perceived the situation as “do not touch RS and accept request from Dragan Čović” (Maksimović, 2022).

The second aspect is the approach to Bosnia and Herzegovina's democratic reforms which is “technical rather than political” as it cannot balance the interest of three ethnic groups and Others as well (Zweers, Cretti, et al. 2022:24). This is also related to the issues of nation-building and the legacy of ethnic conflict where the government is guided by the logic of appropriateness and not the logic of the consequences based on the conditionality set by the

EU (Richter, 2012). The EU is often ‘ethnicized’ as well – “used as a token in domestic inter-ethnic debates”, especially when some ethnic group considers that the EU is supporting their propositions (Koneska, 2019:136).

Furthermore, in the case of Bosnia and Herzegovina, when the government was conditioned to something that they considered a matter of identity or national interest, the EU found itself on the receiving end of the backlash which in most cases the EU failed to act upon. Already in 2006, after the EU and OHR imposition of the Police reform, the President of the government of RS Milorad Dodik showed resistance and insisted that Bosnia and Herzegovina do not need external meddling in domestic affairs (Voa News, 2006). And in 2021, Milorad Dodik, a member of the Presidency, threatened with separation of institutions and RS ever since OHR Valentin Inzko imposed the law against genocide denial and glorification of war criminals (AlJazeera, 2021). After being sanctioned by the US, a member of the Presidency Dodik made a statement that any EU sanction would automatically sign the independence of the RS (E.Ć, 2022).

Next, when negotiating with governments it is important to keep in mind that these governments are constrained by other domestic actors, interest groups, and veto players (Schimmelfennig, Sedelmeier, 2020). Vesna Bojicic-Dzelilovic, Denisa Kostovicova, and Elisa Randazzo insist that the EU has overlooked the network “among military, security-intelligence agents, political crime elements that developed under the cover of war ... with thickening webs of relations with official business, diasporas, non-governmental organizations, as well as local religious institutions – and how those structures have adapted since” (2016:13). This means that EU policies in support of private sector also “disproportionately benefited particular groups and interest operating through multiple informal networks which link political and economic actors inside of Bosnia and Herzegovina and transnationally” (Ibid, 2016:14). Richter and Wunch use the term ‘state capture’ to explain this situation when “state institutions and intermediary actors, such as political parties or parliaments, become hijacked or infiltrated by clientelist network who lent their informal ways of decision making a formal mantle” (2020:42).

For the mentioned reasons one can figure that those different domestic actors, using both formal and informal institutions, struggle over “decision-making power and influence in the country” (Ibid, 2020:46). This also fits with the Florian Bieber description of stabilitocracies in the Western Balkans, “stabilitocracies: governments that claim to secure stability, pretend

to espouse EU integration and rely on informal, clientelist structure, control of the media, and the regular production of crises to undermine democracy and the rule of law” (Bieber, 2018:176). Milada A. Vachudova agrees with this as she explains that “Bosnian elites believe they have learned to manipulate the EU to get around its requirements” (2014:134). Karčić (2021) also adds that as the membership became more of a distant prospect it affected the way Bosnian politicians are reacting to the EU rules. Because of the decline in the driving force of the reforms “Bosnian politicians are increasingly challenging EU positions, calling the EU’s bluff and walking away with no consequences”. Recently, in June 2022, party leaders met with EU representatives in Brussels and once again pledged to build a stable EU-oriented Bosnia with President Dodik promising to “preserve and build a peaceful, stable, sovereign and independent functioning European state of Bosnia and Herzegovina” (Kurtic, 2022a) even though in March 2022 delegates in the House of Peoples in the Parliamentary Assembly voted against the law reforms which are part of the 14 requirements to fulfill (Federalna.ba, 2022). This is another reality of Bosnia and Herzegovina, on one hand demanding the candidate status but on the other hand blocking any legislation reform.

Furthermore, Bosnia and Herzegovina and other Western Balkan states have been doubting the EU's credibility for different reasons. One of them is “failure to reward progress” specifically in the recent case of North Macedonia whose progress was blocked, even though it has fulfilled the requirement around democracy and rule of law, because of the name dispute with Greece (Zweers, W., et al., 2022:35). This aspect has another concerning dimension, as well as many academics and critics, are arguing that the Brussels is biased against Bosniaks, who are the majority of Bosnian population and Muslims. This argument would have been unheard of going 10 years back, but now it is bringing attention to the possibility of Brussel's anti-Muslim stand behind the slow progress of some of the Western Balkan states. Following the progress of North Macedonia and Albania with 36 percent and 59 percent of their population being Muslim, the possibility of an anti-Muslim stand in the EU integration process has brought many more Eurosceptics in recent years. In 2020, a survey by the Bosnian European Integration Office showed that 75 percent of respondents are in favor of joining the EU which is 10 percent less than six years ago when the percentage was 85 percent (Karčić, 2021).

In addition, the EU's internal support for Bosnia and Herzegovina is rather divided. Support of certain reforms, for example, Constitution reform, has been communicated rather informally, with Austrian Ambassador to Bosnia and Herzegovina Werner Almhofer,

claiming that the EU never conditioned Constitutional reform as a part of the package (Brljavac, 2011). While at the same time Croatia, as a neighbor state, has been heavily supporting and lobbying for Constitutional reform in favor of the better position of Croats living in Bosnia and Herzegovina (Kurtic, 2022b). The EU's influence weakened because of the lack of a clear timeline for the expected changes, insufficient clarity of the expected scope of rule of law changes, and inconsistency in enforcing the requirement for moving forward (Vachudova, 2014).

On top of this, the EU also does not have enough experience and/or expertise to use leverage to bolster the rule of law, how to fight corruption, and how to push forward constitutional and/or Police reform because some of these areas are addressed rather indirectly by the existing *acquis*. For these reasons, the EU started with “benchmarking” which has been present during the Croatian pre-accession period where the focus has been put on the most difficult chapters so they could get the most out of them (Vachudova, 2014).

For example, the EU's innovative approach to start negotiations with Chapter 23 ‘Judiciary and fundamental rights’, and Chapter 24 ‘Justice, freedom and security’ has confirmed the prominent place of the Rule of Law within the accession process. The intention was that this should give Western Balkan states a head start on the most difficult reforms that need to be done. The indicated approach is particularly important taking into consideration backsliding in terms of democracy and rule of law over the past decade (Freedom House, 2011).

Rule of law reform is directly connected with the capacity and willingness of the domestic political elites to promote changes in the government. This, as already mentioned, has been a more complicated area to work on as the political elite wants to continue holding control over the state for their private economic interests. This process is helped by the lack of EU accountability for the domestic political elites and possible backing down on the “rule of law conditionality for other interest, specifically stability in its mediate neighborhood” (Kmezić, 2019:90).

Because Bosniaks, Serbs, and Croats have established legal frameworks based on ethnicity and in territories that are under ethical control, the EU has had a rather limited impact on the efficient establishment of an independent judicial sector. This has been emphasized even more with Republika Srpska’s constant undermining of central state institutions. The influence over the judicial system holds the most importance as many of the political elites

have been accused of corruption and organized crime, and any reform that would jeopardize the control they have is automatically dismissed (Džankić, Keil, 2019:191).

Following the next three analyses, the study will give examples of all the noted limitations and challenges. First, it will analyze one of the first reforms demanded and mediated by the EU and that is the Constitution and Police reform, and second, it will analyze the functionality of one of the latest requests that were adopted which is the Coordination Mechanism. Both analyses will point out the shortcomings of the EU approach in Bosnia and Herzegovina.

6.2 Reforms and their successfulness

6.2.1 Constitutional Reform

Even though Constitutional Reform is not part of the general requirements of the EU, it is expected for states to adjust their constitution when needed for the purpose of joining the EU. In Bosnia and Herzegovina, the current constitution is recognized as not appropriate, and the EU has attempted to take steps towards the change of constitution, but it has shown little success so far as Bosniak, Serb and Croat leaders are focusing on different priorities (Džankić, Keil, 2019). The constitutional setup also obstructs the implementation of citizenship policies which are mainly implemented as soft norms through the Council of Europe (CoE). Sebastian (2007) claims that the Constitution of Bosnia and Herzegovina did not hold democratic legitimacy, to begin with, because it was adopted without citizens' consent, and it was not voted on in the Parliament.

Constitutional Reform came to the table of the EU pre-accession process in 2004, with the first attempt at reform being given in already in 2005-2006 in form of the April Package. The two major elements that dominated the reform narrative were, as mentioned above, veto power positions of the Parliament including both “vital national interests” and “entity” veto, and violation of the European Charter of Human right and discrimination of all those that are not part of the constituent peoples (Sebastian, 2007).

April Package, with the potential power to change the Constitution, was accepted by Serbs while it was rejected by Bosniaks and Croats, and also failed in the Parliament voting by two votes (Perry, 2015). Parties that rejected the suggested changes claimed that it was rather “failing to address some of the key issues preventing the state being fully functional” to

which members of the international agree but also insisted that it is “a first step in the right direction” because it would have shown political will (Sebastian, 2007:5). Because of the 2006 elections parties used the momentum of the failure of Constitutional Reform to get election points and the reform itself didn’t get the attention that it needed. Two more reforms followed both of which have been a failure, the Prud Process, and the Butmir Process in 2008-2009 (Ibid).

Next, as of 2015 Croat political elite has been actively working on creating an electoral unit that would enable only Croat people to vote for Croat representatives. Recently, in 2021 and the first half of 2022, Dragan Čović has been heavily advocating for this electoral change with the EU member states and representatives for the upcoming general elections in 2022, saying that if the changes in the electoral law are not implemented the elections should not happen (Radosavljevic, 2022). The main reason is that he claims that Bosniaks, having the right to vote for either Bosniak or Croat member of the Presidency, elected both Bosniak and Croat members of the Presidency, the emphasis being that a Croat member of the Presidency is a Croat but not a member of the HDZ. Of course, Croats have the same right, to vote for Bosniak or Croat members of the Presidency. Milorad Dodik has been supporting this creation of the third entity as it would contribute to the further breaking of Bosnia and Herzegovina (Hitchner, 2021).

For years there have been different processes, analyses, papers, reports, and recommendations made for Bosnia and Herzegovina regarding Constitution Reform as it has been described as “the only country in the world with a constitution that labels some of its citizens as “Others””. So far there have been three cases that have been ruled out by ECHR as a constitutional violation of citizens and human rights to run for public office, and Human Rights Watch estimated 400 000 citizens of Bosnia and Herzegovina (12% of the population) cannot run for Presidency or be elected for the Parliament Assembly’s House of Peoples because of “their religion, ethnicity, or where they live” (Human Rights Watch, 2019). When the US envoy on electoral reform in Bosnia and Herzegovina Mathew Palmer suggested that “ethnic prefixes” should be removed from the election process, Čović rejected the idea on the spot and said that this aspect should not be negotiated (Hina, 2021). Both, the EU and the US have been working on propositions for Constitutional Reform which have been showing no results so far, even though the majority of scholars and international institutions consider that time for Constitutional Reform is urgent as ever before.

6.2.2 Police reform

As it was mentioned earlier most of the legal frameworks and regulations have been created based on ethnicity and have been under ethnic and/or entity control. The post-Dayton structure of the police has a divided model where responsibilities were different in two entities. In FBiH, the police structure was formulated in a decentralized manner, from entity level to ten cantons where each canton has its own Ministry of Interior. Cantonal Ministries have their own autonomy under the Federation Ministry of Interior. In RS this is different as the police were formulated in a centralized manner with regional subdivisions and local police stations under the direct supervision of the RS Ministry of Interior. In 2000, the autonomous Brčko District also established its own police institution (Padarariu, 2014:18).

One of the first steps taken by the EU regarding the reforms in Bosnia and Herzegovina have been Police reform in 2004. This particular case has been challenging because of the ethnically divided situation in post-conflict Bosnia and Herzegovina. After the conflict, and before the EU pushed for Police reform, the International Police Task Force (IPTF) UN mission has been included only in the process of scanning the existing police forces in the search for war criminals and human rights abusers. The idea of Police reform was placed under the good governance idea and improvement of the rule of law by the European Commission (EC) in 2004 as one of the preconditions for Bosnia and Herzegovina to proceed with SAA negotiations (Koneska, 2019).

The three conditions set up by the EU were as followed: „(1) exclusive state-level competency on budgetary and legislative matters; (2) local policing regions designed on effectiveness criteria, not politics; and (3) no political interference in policing“ (OHR 2004, Koneska, 2019:143). While the EU has many clear templates regarding good governance work, there has never been a Police reform *acquis*, nor does the EU itself standardize police forces for each member state. Furthermore, the unified state-level policy does not fit within the economic or political criteria for accession and it is not part of the *acquis communautaire* (Aybet and Bieber, 2011:1912).

The idea of the EU was to keep the focus on the non-ethnic aspect of the Police reform and achieve political consensus among the ethnic political elites, and while Bosniak politicians were supporting the centralized model of Police reform, Croat and particularly Serb politicians rejected the proposal in favor of keeping police control on an entity and canton level (Koneska, 2019).

Already from the start, the conditions were rejected because of the inability to redesign local police areas which was mainly caused by a lack of EU legal experience with Police reform. This was, what caused the weakening of the EU's credibility in the process of policy-making (Vachudova, 2014). As a result, RS rejected three different versions of the reform proposal which again caused OHR and EU to go back and forth with the negotiation, lowering the demands, and „further undermining the seriousness of their own conditions“ (Koneska, 2019:144). It is important to emphasize that even though the Police reform was linked with SAA and EU, because of the lack of expertise, the reform was mainly coordinated by the OHR. This further affected the role of the EU in the reform process (Ayber/Bieber, 2011).

At the beginning of the process at the end of 2005, when the RS leadership committed to participate in the Police reform, the form has been reduced mainly because of the OHR pressure. In 2006, after the new High Representative Cristian Schwarz-Schilling took over Paddy Ashdown's position, Police reform was not taking the interest of domestic politics because of general elections and debate on constitutional reform.

In 2007, under the new High Representative Miroslav Lajčák, another agreement failed because Bosniak leader Haris Silajdžić refused to have the name of the entity on the uniforms in RS. Additionally, the leader of RS Dodik, as mentioned earlier opposed processes that would transfer any control from the RS to the state level, while at the same time Silajdžić advocates the abolition of the entities entirely, which furthermore affected the reform process. Toward the end of the year with the Mostar Declaration leaders of leading political parties from the three groups „confirmed their commitment to the three EU principles for Police reform“. The commitment however was conditioned by successful constitutional reform (Koneska, 2019:146). In the end, in 2008, the watered-down Police reform package was passed, and the EU announced that the conditions have been met (Ibid.).

Aybet and Bieber (2011) argue that the main reason for the EU's failure to persuade local elites to accept the conditionality is mainly because of the weakness of the existing domestic structures and institutions. Next, the EU created requirements that were not shared by the members of the Union itself, member states were not required to have joint police forces. And lastly, the EU did not set up clear standards, it lacked the commitment and technical expertise to propose feasible and realistic reforms. This harmed the credibility of the EU conditionality in Bosnia and Herzegovina and highlighted the difficulty of 'normative overstretch' (Sasse, 2004 in Aybet and Bieber, 2011:1910) „beyond the core features of EU

conditionality over the implementation of the *acquis communautaire* and the Copenhagen Criteria“ (Ayber/Bieber, 2019:1918). Both, the extent of the conditions which went above the scope of the EU's expertise and experience together with the response of the domestic political elite indicate that the 'conventional' conditionality was not applicable to the state-building processes in Bosnia and Herzegovina.

6.2.3 International mission(s)

Following the 2006 and failed reforms „the main political parties have increased their uncompromising rhetoric“ (Belloni, 2009). Besides the EU's lack of expertise and failure to take the responsibility for the mediation, the OHR played a key role in the reforms. With HR „Bonn powers“ were granted in 1997 so the HR could take actions against persons „in violation of the legal commitments made under the Peace Agreement or the terms of its implementation“ (Peace Implementation Council, 1997 in Belloni, 2009:362). By 2009 HR have used „Bonn powers“ more than 800 times to ensure functionality, including removing elected politicians and imposing laws, which affected local ownership and incentives to reach a political compromise. Furthermore, this created a sense of belief among political parties that the international community will in the future also intervene and impose solutions to more favorable views (Belloni, 2009).

Around the same time, Peace Implementation Council (PIC) made a radical decision to stop the use of „Bonn powers“ from 2006 when HR Cristian Schwarz-Schilling refused to use his powers, as it was decided that it is time to transition to local ownership. The momentum was especially used by newly elected Serb politician Milorad Dodik, who openly defied the OHR decisions and threaten with independence referendum (Balazs, 2008).

6.3 Coordination mechanism in Bosnia and Herzegovina

The Coordination mechanism of the EU integration processes covers all the activities which are implemented with the aim to secure the highest compliance and cohesion of the institutions, on all levels of governance in Bosnia and Herzegovina that are connected to the execution of the SAA for the purpose of joining the EU (Odluka o sistemu koordinacije procesa evropskih integracija u BiH, "Službeni glasnik BiH", broj: 72/16, 35/18). The Coordination mechanism was adopted in January 2016 and in February 2016 President Čović

delivered the application of Bosnia and Herzegovina for membership in the EU. The EU seemed satisfied with the progress, and political leaders in Bosnia and Herzegovina promised to do all necessary reforms to reach candidacy status by end of 2017, but so far reforms and requests have not been fulfilled (ESI Report 2016).

6.3.1 Before the Coordination mechanism

The need to coordinate different EU processes came as a challenge already in 2000 when the first steps towards EU accession have been made. And in 2003, under the leadership of Adnan Terzić, the Chairman of the Council of Ministers, an expert team was set up with Igor Davidović (Serb), Lidija Topić (Croat), and Osman Topčagić (Bosniak) who also became the first director of Direction for European Integration (DEI). The years that followed required lots of commitment and coordination between different institutions, translations of documents, and later translations of the answers. The first questionnaire in 2003 contained 346 questions and the answers were sent back to European Commission within 3 months. The cooperation with entity prime ministers was very good, regular meetings were held and all aspects were analyzed and aligned. The second assignment from the EU was 16 areas that needed advancement with a deadline end of 2004. These 16 priorities were translated into 45 or 46 legislations and approximately 27 institutions that needed to be set up and with its implementation leadership of Bosnia and Herzegovina managed to surprise the EU. The third opportunity for advancement came in 2005 with the start of SAA negotiations which were finalized in December 2008. Then another set of reforms has been requested in 2008, which gave the opportunity to Bosnia and Herzegovina and four other countries to qualify for visa liberalization. This the end of September 2009 all of the requests have been implemented and Bosnia and Herzegovina will receive visa liberalization in 2010 (ESI, 2016).

Starting with 53 priorities in 2004, 103 priorities in 2006, and 177 priorities in 2008, Bosnia and Herzegovina coordinated the „longest and most impressive coordination exercise“ that lasted from 2004 to 2012 (Ibid. 2016:12). The process required the identification of institutions on state, entity and canton level that are responsible for respective areas together with coordination of all level to be aligned with their regulations and DEI acted as consultant and coordinator of all processes.

End of 2009, DEI wrote to the EU and asked for the next step in the European partnership, but the response came a year later, rather informally, sta the „European partnership is

finished, and there will be no new one“ (ESI, 2016:13). And in 2012, DEI published its last report about the implementation of the EU requirements.

6.3.2 Coordination mechanism

The Coordination mechanism, as the unique body, is supposed to represent one voice in front of Bosnia and Herzegovina during the negotiations with the EU. Before the adoption of the Coordination mechanism, the coordination of all reforms and requests made by the EU, as mentioned, was done by the DEI. In 2011, in a Progress Report for Bosnia and Herzegovina, made by the European Commission, the EU has been asking for better coordination of all levels of governments in “order to harmonize the transposition of the EU acquis throughout the country” (EC, 2011:10). In 2012 Report, this request was repeated (EC, 2012), and it will be the topic mentioned by the EU representative on many more occasions.

A couple of years later, in 2016, the Coordination mechanism was voted on and adopted by the Council of Ministries (CoM), not only once but twice. The first time Coordination mechanism was adopted on 26.01.2016 by the CoM, and the decision was formally published in Službenom listu BiH (Official Journal for publishing decisions and legislations, <http://www.sluzbenilist.ba/>) on 09.02.2016 (Istinomjer, 2016). The problem became when the public first heard about the adoption on the day of official publishing, and there was no indication that there was an official session of the CoM that was held on 26.01.2016. The accusation was that the CoM secretly adopted the Coordination mechanism (Novalić, 2016). There were immediate actions taken from the delegates of RS who did not recognize this decision as legal, while the President of CoM tried to explain how they could not wait any longer for alignment of all levels of government (Istinomjer, 2016). For the second time, the Coordination mechanism was adopted on 23.08.2016 and was accepted by both entity governments. What is important to note is that before the formal adoption by entity prime ministers and CoM, the leader of the Bosniak SAD party Bakir Izetbegović, and the leader of the Serb SNSD party Milorad Dodik, had a meeting in East Sarajevo and reached an agreement about the Coordination mechanism. Leader of Croat HDZ Dragan Čović was not satisfied that no additional steps were incorporated for better inclusion of Croats in the Coordination mechanism (Obradović, 2016). This directly pointed out the way ethnic parties decided on the Coordination mechanism and should have predicted the way it will function in the future.

The Coordination mechanism represents the principle of the existing domestic legal and political structure of Bosnia and Herzegovina. The coordination processes are led on the horizontal (coordination within one level of governance) and vertical levels (coordination among different levels of governance). Next, for efficient implementation of vertical coordination joint bodies have been established: College for European integrations; Conferences of Ministries; Commission for European integrations; Workgroups for European integration (Odluka o sistemu koordinacije procesa evropskih integracija u BiH, "Službeni glasnik BiH", broj: 72/16, 35/18, pp.16).

College for European integrations is the main body in the coordination system with its following members: a) President of the CoM of Bosnia and Herzegovina, b) vice-President of the CoM of Bosnia and Herzegovina, c) Prime minister of government FBiH, d) two members of government FBiH, e) Prime minister of the government of RS, f) two members of the government of RS, g) mayor of Brčko Distrikt Bosnia and Herzegovina, g) presidents of governments of the cantons, with DEI as secretary of the department (Ibid, pp.20).

Conferences of the Ministries are there to ensure that all cantons have equal access to the processes of institutions at all levels of government that are covered by the European integration processes. Members are ministers from the CoM, entity governments, cantons, and Brčko Distrikt (Ibid, pp.20).

Commission for European integrations supports the Coordination mechanism with general, technical, operational, and methodological coordination to ensure comprehensive work of leading institutions. Permanent members of the Commission are: a) the Director of DEI, b) one delegate from each entity government, c) one delegate from each canton, d) one delegate for Brčko Distrikt, and e) DEI employee with the role of the secretary. Supplementary members are: a) the President of the working groups, b) one delegate in the name of institutions from levels of Bosnia and Herzegovina, entities, cantons, and Brčko Distrikt in charge of giving an opinion about the alignment of acts with laws of the EU, c) delegates from Coordination IPA board, one for each level of government state level, entities, cantons, and Brčko Distrikt d) representatives from other levels of government in accordance to the topic of the meeting e) representatives of the nongovernmental sector and academic community in accordance to the topic of the meeting (Ibid, pp.21).

Working groups for European integrations represent operational bodies and consist of representatives from all institutions of all levels of government. Additionally, DEI works as a

professional and technic-operational body that also communicates with the European Commission and Delegation of EU in Bosnia and Herzegovina (Ibid.)

The most important and the most crucial aspect of the Coordination mechanism is the decision-making process. The quorum for holding a meeting and adopting the decisions must consist of a) the President of the CoM, b) the Prime minister of the government of RS, c) the Prime minister of the government of FBiH, d) delegates from all 10 cantons, e) representative of the government of Brčko Distrikt. All decisions are made by consensus (Ibid, pp.19).

6.4 Findings

Taking into consideration where Bosnia and Herzegovina is at the moment we find that reforms and other developments have been challenged by different actors. On the one hand, there is a political elite and ruling ethnic parties with their interpretation of the Dayton Agreement and on the other is the EU with its conditionality mechanism and failure of the EU policy that has been not giving the desired results for over two decades. “As a result, Bosnia and Herzegovina is likely to be pushed into institutional gridlock” (Suljagić, 2018).

Institutional gridlock is nothing new in Bosnia and Herzegovina and it keeps happening whenever delegates of one of the ethnic parties and/or groups find certain legislations not working in their favor. In February 2020, Bosnian Serb delegates stopped work on any state-level matters and blocked any procedures because of the adoption of a new law by the Constitutional Court which declared the RS Law on Agricultural land unconstitutional (Kovacevic, 2020). In August 2021, Milorad Dodik announced another blockade of state institutions because of the imposed law banning the denial of genocide and the glorification of war criminals made by HR Valentin Inzko. The blockade ended in February 2022 (Hina, 2022).

Constituent representation, undefined “vital national interest” veto, and “entity” veto are taking a big part of this institutional gridlock and have been criticized and on the reform agenda from the beginning of the 2000s. In 2005, Venice Commission highlighted that three constituent peoples provide a strong blocking position (Venice Commission, 2005). And with more recent insisting on more exclusive rights within the electoral reform from Croat leader Dragan Čović, it came to be even more prominent that constituent representation is preventing Bosnia and Herzegovina from more forward in the direction of EU membership

(Mujanovic, 2021). “Vital national interest” veto and “entity” veto provide opportunities to keep institutional gridlock lasting as long as the political elite wants and also provide control over the monopoly of the interest of constituent peoples at the price of the real interest of the state (Sahadžić, 2012). This also fits into Bahtić-Kunath's application of Tsebelis veto players theory where she concludes that “veto mechanism generates strong veto players which, ..., increase the country's policy stability and hence decrease the political system's capability to induce policy change and reach accurately to problems. while political stability and status quo orientation imply the opposite” (2012:901).

In Bosnia and Herzegovina ‘vital national interest’ veto can be used in the Presidency and the Parliament Assembly's House of Peoples. Within the House of Peoples, a simple majority of the constituent people's representatives can oppose the legislative decision in case they consider it threatening to their vital national interests. The matter is then referred to an ad hoc joint commission comprised of three delegates from each constituency. In case the commission is unable to resolve a matter, it is moved to the Constitutional Court. When a “vital national interest” veto is used in the Presidency, then the matter is referred to the RS National Assembly or the House of Peoples of the FBiH. If the two-thirds of delegates confirm the veto, then the proposed decision will not take place (Sahadžić,).

‘Entity’ veto is used in the Parliament Assembly's House of Representatives where RS has 14 seats and FBiH 28 seats. As the legislation is passed with majority support, including one-third from representatives of each entity, one-third of representatives can also use the veto to block legislation. If the proposals fail, they are sent to the committee for resolution. If the committee fails to produce a solution, “decisions shall be taken by a majority of those present and voting provided that the dissenting votes do not include two-thirds or more of the delegates elected from either entity” (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 4).

Next, the EU conditionality mechanism has been acknowledged as one of the most important EU mechanisms that stimulate internal domestic reforms in countries that want to be part of the EU. The conditionality mechanism is used as a “bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions” (Schimmelfenning and Sedelmeier, 2004:670). Unfortunately, in Bosnia and Herzegovina, “the entire process resulted in fixed positions of ethno-nationalists that are ready for Brussels only at a declaratory level” (Brljavac, 2020:8). The promise of the EU

reward has not been efficient because more often than not the experience shows that the reward would be left out. The best examples are Macedonia and Albania and their inaccessibility to accession talks which lasted for seventeen and eight years (European Forum for Democracy and Solidarity, 2022). The EU disciplining for those who opposed and blocked European integration has not been applied adequately either, rather the EU failed to counterbalance their dynamics and persuade domestic actors to cooperate.

First, the EU was reluctant to take a proactive role in the Constitutional reform process partially because of the emphasis on ‘domestic’ ownership, but also because of the internal division. On one hand, “both the EU Enlargement Commissioner, Olli Rehn, and the Head of the European Commission’s Bureau for the Western Balkans, Reinhardt Priebe, emphasized the importance of the reform, but the High Representative of the EU CFSP Javier Solana failed to attend the meeting” and publicly declared that he is not in favor to open the Dayton.

Second, the EU failed to “link the power and incentives” to condition constitutional reform as part of the accession process (Sebastian, 2009:344). Then, the EU accepted a watered-down version of the Police reform accepting compromises under the pressure (Koneska, 2019).

Third, the EU conditionality mechanism did not and is not producing the desired results because of the ‘conventional’ conditionality. The emphasis on the ‘conventional’ conditionality is because the majority of the literature on the EU’s impact on the conditionality mechanism is based on the reform processes in the CEE countries. For both processes of policy adoption, socialization which relies on learning the prospect of them being right, and rationalization which is based on the necessity to further its political goals, local norms are of crucial importance. “Processes of conventional conditionality are very much dependent on the pre-existence of a domestic structure which involves domestic norms and institutions and a rational local elite with a unified view of the political structure of the state” (Aybert/Bieber, 2011:1916). Taking into consideration the existing state of norms and institutions and fragile domestic structure within the post-conflict societies it is proved that the conditionality mechanism was “not able to generate the same transformational success” (Knezović, 2009).

Then, the lack of clarity from the EU regarding the necessary reforms and not providing clear timetables to carry out these reforms are preventing the EU to act upon non-compliance. But then again, even when there is a very obvious lack of will to move toward the reforms, the

EU is lacking the determination to act upon those who are responsible for that standstill. This is followed by failure to reward progress and frequent blockades from Member states over bilateral issues is discouraging the EU agenda within the domestic leaders (Zweers, W., Cretti, G. et al., 2022). Next, frequent negotiations with ethnic political leaders rather than with elected representatives, together with a strong top-down conditionality that has been weakening domestic accountability mechanisms and allowing the ruling elite to overpower domestic opponents. Richter and Wunsch note that this not only did not activate positive development in the Western Balkans but actually assisted the consolidation of state capture and legitimization of the ruling elite (2020).

Furthermore, the EU has been experiencing not only enlargement fatigue but enlargement resistance as well which is questioning the legitimacy of the EU conditionality mechanism and manifests in political backsliding. The enlargement fatigue has been displayed through ‘integration capacity’ which translates to the capacity of the EU to take new members and remain highly functional. Enlargement resistance is rather focused on internal political and economic legitimacy, especially with “considerable upheavals in the EU’s political order which pose a direct threat to the integration project as a whole” (Economides, 2020:4).

Lack of the experience or expertise in using the leverage within the mentioned conditions, together with the EU enlargement fatigue, the EU has been on receiving end of criticism for not being “thorough, explicit and consistent enough in its demands – and not vigilant enough in its enforcement” (Vachudova, 2014:124). Vogel also claims that by accepting the Coordination mechanism as such in Bosnia and Herzegovina the EU formalized the current dysfunctional practices (2016).

The EU accepted the Coordination mechanism that was negotiated behind closed doors between ethnic political leaders. And even though the Constitution of Bosnia and Herzegovina defines foreign policy as the state’s responsibility and the Coordination mechanism is intended “to speak with one voice” with the EU, the final version of the mechanism has provided cantons with “the right of veto on any and all decisions regarding the EU integration process” (Suljagić, 2018). This especially goes against the practice used in Poland’s transition to EU membership, where the EU changed Poland’s EU coordination structures to a more centralized structure for better functionality (Dimitrova, Toshkov, 2009). Such a Coordination mechanism “formalizes oligarchy” and brings Bosnia and Herzegovina to step back from the membership negotiations. “So once again, the EU will support a

political deal in BiH without regard to its constitutional implications or its effect on decision-making and good governance. And once again, EU officials will ask themselves why BiH is dysfunctional, and why popular faith in democratic processes is so low” (Vogel, 2016).

Chapter 7: Conclusions

7.1 Conclusion

Discussions and debates about the EU conditionality mechanism will continue to unfold in the future. This study tried to explain how the EU conditionality mechanism works and why did the EU decide to use this mechanism in the Western Balkans, together with how do veto players influence the implementation of the EU conditionality mechanism. The EU conditionality mechanism is manifested as an efficient tool to influence democratic transition and normative reforms in states that want to join the EU. Using sanctions and reward to accelerate democratic reforms in the CEE pre-accession conditionality has produced successful development and policy changes in that the EU offered the same conditions to the Western Balkan states (Schimmelfening/Sedelmeier, 2020). And after more than two decades of the EU's attempts to develop a long-term strategy, Bosnia and Herzegovina and states in the region “still exhibits a number of characteristics of failed states” (Blagovcanin, 2016:92). The main argument is that Bosnia and Herzegovina and the rest of the Balkans are not having certain structure predispositions as CEE states had the ‘conventional’ conditionality and the expected impact is difficult to achieve (Aybet/Bieber, 2011).

Unfortunately, instability in the Western Balkan region made the EU focus on both security and stabilization, and democratization processes. And the challenges the EU met along the way created many setbacks in the pre-accession process of the Western Balkan states. On the one hand, the EU top-down leadership approach with stability ahead of democratization caused ‘state capture’ (Richter/Wunsch, 2020:42) or the creation of ‘stabilitocracy’ governments (Bieber, 2018:176) which, furthermore, enabled the ethnic political elite to secure their positions and use the policy reforms to their advantage. On the other hand, in certain areas, because of the problems of legitimacy, consistency, and lack of response to the backlash received from local actors, the incentives lost their stimulus for reforms in Bosnia and Herzegovina (Vachudova, 2014).

The study has identified that state capture has been supported by both domestic conditions and the EU conditionality mechanism. Because of the internal structure of the government and abusive interpretation of the Constitution of Bosnia and Herzegovina domestic political elite have been playing on both sides. On one hand, they are pro-EU but on the other, they are keeping everything as it is, so they do not lose any control that they have at the moment (Bieber, 2016). This has been supported with a “vital national interest” veto and “entity” veto

mechanisms which allows all and any processes, on state and entity level, to be blocked by one of the constituent people in case it is going against their ethnic interests. The reason for this behavior is that the domestic political elite focuses on short-term ethnic interests instead of the future progress of the state. EU integration programs urge reforms that are having high domestic costs and would result in the decline of the whole ethnic control system of politics in Bosnia and Herzegovina (Brljavac, 2011).

The next reason is the EU relationship with Bosnia and Herzegovina that is followed by an imposed top-down approach which as a result has the EU and other international actors interchangeably switch between roles of peacebuilders and state builders (Aybet/Bieber, 2011). Further, not only that the EU did not find the fitting mechanism to transfer the state-building role to domestic politicians but its created certain legitimization of the party leaders while excluding elected institutions and elected representatives (Perry, 2015). Following failures of both Constitution and Police reforms that went beyond the *aquis* conditions, the legitimacy of the EU conditionality mechanism was damaged.

On top of this, the EU is experiencing a capacity vs expectations gap, the EU has been talking about the agendas and rewards but so far it showed rather a lack of capabilities, frameworks, and foreign policy goals that could deliver those agendas. With the loss of both credibility and legitimacy and the absence of an efficient mechanism to address the domestic ethnic elite that is blocking any possible development, the EU is perceived as “pursuing risky policy which describes it as a weak and not-serious enough to challenge sensitive global problems” (Brljavac, 2011:7).

The study has demonstrated that not only does the EU conditionality mechanism not efficient in Bosnia and Herzegovina, but it also enables informal power networks to assist the state capture. So far, the EU agenda is rather supportive of the status quo “in order to sustain the current ‘stability’ therein” (Perry, 2015:15). And as the conditionality mechanism failed to convince and persuade Western Balkan states to accept the EU transformative power model as an inspiring model would “shatter the EU’s credibility as an international actor” (Rupnik, 2011:30).

7.2 Recommendations

The final part of this study presents a set of policy recommendations that have been identified based on the literature review and the analysis. The policy recommendations that this research highlights as the most crucial are:

1. Since the decision-making process as the most important element in a multi-ethnic society can be paralyzed when those responsible are abusing the veto power, the first suggestion would be to define veto areas of both “vital national interests” veto and “entity” veto. So far, in Bosnia and Herzegovina, the veto rights are left to the political elite for interpretation, and it has been proven that the ruling elite is using this in order to maintain the status quo (Zahar, 2005; Sahadžić, 2012). Venice Commission (2005) identified veto immobilization as an urgent area to work with as it carries the potential to hold the state captured.
2. While the Constitution includes Article IV a) Law on Prohibition of Discrimination, and Bosnia and Herzegovina committed against any discrimination when it ratified its membership in the UN and CoE, it is also a base for a discriminatory decision-making process that excludes any groups of people that do not belong to one of the constituent peoples Bosniaks, Croats, or Serbs (Keil, 2021). Human Right Watch (2019) points out ethnic discrimination as a key barrier to continuing with stalled EU enlargement process.
3. The EU approach toward Bosnia and Herzegovina requires “rethinking in a wider historical process” (Bieber, 2019:241). The EU accession criteria for Bosnia and Herzegovina (and the rest of the Western Balkan states) need to hold full clarity of the nature and scope of the reforms that need to be implemented, followed by an explanation of the precision and binding nature of the conditions followed by clear monitoring and reward system (Zhelyazkova, A., et al., 2019).

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