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How to Foster the Rule of Law in the Western Balkans: 10 Notes to Decision-Makers

By Dorian Jano and Jovana Marović

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Introduction

In a recent communication on enlargement policy and individual country reports, the European Commission has highlighted a number of issues that stand in the path of Western Balkans' democratization.

The message is the same as years ago: if Western Balkan countries want to join the European Union, "comprehensive reforms are required in crucial areas, notably on the rule of law, including the fight against corruption and organized crime, on economic reforms and competitiveness, regional cooperation and reconciliation".¹ In short, none of the Western Balkan countries have yet achieved the label of consolidated democracy.² The European Union conditionality that implies the need for stable institutions guaranteeing democracy and the rule of law³ has not

been able so far to adapt Western Balkan countries to the values it advocates, but these countries have developed a new governing model which combines elements of authoritarianism and democracy.⁴

With the appointment of the new European Commission, the EU and the Western Balkans have a chance to shape the rule of law reform on a new stronger basis.

This paper is the follow-up of the rule of law policy brief developed by the SEE Think Net Network⁵ and titled "Western Balkans and the Rule of Law: How to solve a catch 22?"⁶ in 2018. In last year's policy paper we underlined the unsatisfactory state of rule of law and its position within the Berlin Process framework. Thus, **"10 notes to decision-makers in the Western** ▶

¹ European Commission. "Communication on EU Enlargement Policy," 2019, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-communication-on-eu-enlargement-policy_en.pdf

² Nations in Transit. "Confronting Illiberalism", Freedom House, 2018, <https://freedomhouse.org/report/nations-transit/nations-transit-2018>

³ Political criteria for EU membership, see: Accession (Copenhagen) criteria http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html

⁴ Bieber, Florian. "Patterns of competitive authoritarianism in the Western Balkans", East European Politics, 34:3, 337-354, 2018, DOI: 10.1080/21599165.2018.1490272, <https://www.tandfonline.com/doi/pdf/10.1080/21599165.2018.1490272?needAccess=true>

⁵ More on the SEE Think Net: <https://bit.ly/2XCpkyC>

⁶ Marović, Jovana. "Western Balkans and the Rule of Law: How to solve a catch 22?", Institute for Democracy "Societas Civilis, 2018, <https://idscs.org.mk/wp-content/uploads/2018/07/Rule-of-Law-2.pdf>

► **Balkans and the EU** are a summary of the proposals we have developed so far. They imply what this re-affirmed action of the EU and the level of Western Balkan countries' actions should embrace. Addressing gaps in the rule of law involves action on several levels: improvement of regulations, their unselective application and change of the socio-political culture. This also entails greater EU dedication that would lead to improved conditionality and tools to monitor reforms. While adoption of regulations is the easiest part, the remaining pre-conditions, taking into account the lack of democratic political culture in the region and the existing EU policy of keeping the Western Balkans at a distance, are more demanding and imply commitment and time.

Notes to Decision-Makers in the Western Balkans

1. Develop a Culture of Lawfulness⁷

Citizens in the Western Balkans are placing corruption as a third burning issues in the region,⁸ while at the same time many of them are giving a bribe for certain services, especially in the health sector.⁹ Therefore, despite the widespread awareness that corruption is harmful and present at all levels and in all sectors and as such represents a serious obstacle to the democratization of society, citizens still believe that it is the required way to exercise their own rights. Building the confidence that the law provides a fair and just response to citizens' needs implies long-term commitment. The rule of law reform requires a broader approach of societal transformation and compliance

⁷ "Culture of lawfulness" refers to an end-state "when the dominant or mainstream culture, ethos, or mindset within a society supports the application of laws to societal activities and interactions, and believes that those laws should be applied without regard to an individual's family, ethnicity, race, gender, and political or other status within the society". Roy Godson, 2000, "Guide to developing a culture of lawfulness", Trends in Organized Crime 5(3): 91-102

⁸ Regional Cooperation Council. "Balkan Barometer 2018: Public Opinion Survey", 2018, <https://www.rcc.int/pubs/66/balkan-barometer-2018-public-opinion-survey>

⁹ Rujevic, Nikola. "Balkan medical system gripped by endemic corruption", DW, 2018, <https://www.dw.com/en/balkan-medical-system-gripped-by-endemic-corruption/a-435725005>

with democratic and good governance standards.

Therefore, the governments in the Western Balkans should:

Invest in Education (Learning on Justice and Rule of Law) in order to provide sufficient knowledge so that the population can influence the improvement of the rule of law and apply its principles on a daily basis. Such approach requires working with educational institutions and changing curricula in primary and secondary schools and at university.

Work with Media and take all other additional activities (including promotional events) to bring regulations closer to citizens and encourage their participation in the decision-making process. name dispute between Skopje and Athens. Five years later, however, things took yet another dramatic shift.

2. Provide Measurable Results

The rule of law reform is very complex and means much more than a purely technical effort to adopt legislation and strengthen the capacity of institutions. Effective RoL reform must tackle the very heart of existing political power structures in the Western Balkans. This is even more complicated if one takes into account elements of captured states in each of the Western Balkan countries.¹⁰ Hence, countries, in their efforts to carry out a successful rule of law reform and to provide measurable results, should firstly prove that the application of the law is unselective and that the institutions are independent and impartial.

3. Present Challenges and Achievements in a Simple Way

In addition to investing in education, the media and civil society should assist



¹⁰ European Commission. "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans", 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

► in the mission of bringing the rule of law closer to the citizens, governments in the region should present results of strengthening the rule of law in a short and understandable way, as an overview of key challenges and achievements. Current reports on reforms in this area cover hundreds of pages and are only clear to a limited number of citizens.

4. Improve Transparency & Foster Partnerships

Though by implementing reforms under the umbrella of EU conditionality all WB states have to some extent improve the transparency of the public administration's work, it is still low. Also, despite the improved frameworks related to the involvement of civil society organizations in the decision-making process and regardless of the openness principle, there are still many documents that are hidden from the eyes of the public. The more complicated an issue

on the agenda, the more closed the institutions are. By fully opening their work to the public, institutions would send a strong message that they do not have anything to hide and that they are determined to face the problems of its politicization.

Western Balkan governments have, in response to obligations arising from the integration process, improved their legislation in relation to the role of CSOs in the decision-making process. However, their meaningful involvement in the reform agenda has not yet been achieved. CSOs influence on public policy design and control of the work of the institutions remains limited. The role of civil society and the media in helping to ensure transparent and accountable governance is crucial. Hence, governments should provide a favorable environment for media and civil society engagement, free from labeling, intimidation and attacks, in order to

increase their role in transforming society and holding administration accountable.

Criticism should be welcomed, as it is the only way to boost changes.

5. Improve Regional Cooperation & Deal with Legacy Issues

While strengthening the rule of law requires a tailor-made approach for each country, touching on all the specificities and vulnerabilities, regional approach also helps. This primarily includes the strengthening of regional cross-border cooperation between law enforcement agencies and judicial authorities in the fight against corruption and organized crime through, inter alia, mutual legal assistance and joint investigation teams. Moreover, regional cooperation on data exchange in specific segments of anticorruption, such as assets disclosure and conflict of interest, is particularly important. A strengthened and developed regional instrument on data exchange

would be helpful in that direction.

One of the additional reasons, apart from weak rule of law, why Western Balkans' transformation goes slowly and painfully, is that, in addition to the structural problems of democracy, there are various open issues that are obstacles to deeper integration and regional cooperation. Resolution of the long lasting dispute between Greece and North Macedonia over the name gives a strong impetus to overcoming other open issues, but their number remains large, and the complexity is different from one to another.¹¹ While the EU should develop mechanisms at supra-national level to encourage their resolution, the prime responsibility lies with the countries of the Western Balkans. In order for stakeholders to contribute to their resolution and monitoring, progress reports on bilateral disputes resolution prepared on the basis of the template developed between the summits in London and Poznan should be public.

¹¹ Nechev et al. "The Credible Enlargement Perspective for the Western Balkans through the lenses of the Berlin Process, Institute for Democracy "Societas Civilis", 2018, <https://idscs.org.mk/wp-content/uploads/2018/07/Enlargement-Perspective2.pdf>

Notes to Decision-Makers in the European Union

1. Develop a Tailored Response to Specific Problems in the Countries

Western Balkan countries do not fit into the same policy framework. This should potentially leave more room for the EU to define clear criteria and to strictly control its fulfilment. "A diversity of rule of law challenges requires a diversity of effective responses".¹² A more practical approach to integration would relegate EU's efforts to secure democracy and stability in each of the countries by focusing on those policies which are particularly problematic. In that respect, the development of specific tools, roadmaps,¹³ for each of the countries with indicative dates for transition from one

stage of integration to another and with clear incentives and sanctions for results, or lack of it, would help.¹⁴

2. Improve the Conditionality Framework

Taking into account the state of the rule of law and democracy in the Western Balkans, it could be said that the existing EU conditionality framework does not provide a satisfactory agenda for democratic consolidation. The EU should constantly upgrade it by making it more secure through linking the available instruments. In that sense, the benchmarks for each of the countries should be measurable, more concrete and subdivided, and annual priorities clearly defined and peer review missions (case-specific and target-oriented) organized in accordance with these priorities. With more specific requirements, states should respond more precisely and

¹² Ministry of Foreign Affairs of the Republic of Serbia, "Chronology of Relations between the Republic of Serbia and the European Union," 2014, <http://www.mfa.gov.rs/en/foreign-policy/eu/political-relations-between-the-republic-of-serbia-and-the-european-union/12452-chronology-of-relations-between-the-republic-of-serbia-and-the-european-union>.

¹³ Conference on accession to the European Union, "Ministerial Meeting Opening the Intergovernmental Conference on the Accession of Serbia to the European Union," December 2013, http://www.mei.gov.rs/upload/documents/pristupni_pregovori/neg_frame.PDF.

¹⁴ Conference on accession to the European Union, "Chapter 35," November 30, 2015, 35, http://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/ch35_common_position_eu.pdf

update their measures on an annual basis to meet these requirements. The EU should also exert pressure and apply sharp language in its reports pointing to all abuses. The semi-annual reports on the status of rule of law reforms that the European Commission now prepares for Montenegro and Serbia (non-papers) should be extended to other countries as well.¹⁵

3. Provide a Real and Credible Accession Perspective for the WB6

Brussels' policy towards the region has been unsustainable and superficial for too long under the auspices of over-concerns for stability.¹⁶ EU officials are constantly reiterating the willingness of the EU to integrate the region, but campaigns and activities in that regard are neither sufficient nor convincing. Leaders of the countries in the region responded by adopting the EU principles rhetorically but not substantially. As EU membership is a foreign policy priority for all WB countries,

commitment to the integration process is usually used by political elites as an instrument for gaining political points and votes and not for substantive reforms. Though this formula, beside clientelism, the well-developed mechanisms of exercising pressure on voters and misusing public funds for party purposes, yields results, growing euroscepticism makes it unsafe in the long run. However, European values will not be interesting to political elites in the region if their fulfilment doesn't imply full integration into the European Union. Thus, the prospect of membership, proven by activities in practice, and not just rhetorically, is an important instrument to encourage reforms in the area of rule of law in the Western Balkans.

4. Combine All Existing Initiatives

Taking into account that the Berlin Process is a supportive initiative for the enlargement process, the EU should combine the mechanisms within the enlargement process with the instruments under the Berlin Process. ►

¹⁵ BiEPAG. "Strengthening the Rule of Law in the Western Balkans: Call for a Revolution against Particularism", 2018, <https://biepag.eu/wp-content/uploads/2019/01/Strengthening-the-Rule-of-Law.pdf>

¹⁶ "BiEPAG. "The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy", 2017, BiEPAG, <http://www.biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf>

► Still, during last year's London Summit in the framework of the Berlin Process, a joint declaration was adopted on the principles of cooperation in the area of information-exchange for law enforcement agencies,¹⁷ and each of the WB6 (except Serbia) committed to actions to tackle corruption.¹⁸ However, it is unknown whether and how the countries will report on the fulfilment of these obligations during the upcoming Poznan Summit. It is therefore of particular importance to improve the mechanisms for monitoring and reporting on activities and obligations within the framework of the Berlin Process. The nature of the Berlin Process as a high-level summit, with the involvement of the Western Balkans, the EU Member States, the European Commission, the civil society, the media, the business sector and the youth is favourable to dealing with the most complex issues. So, as it was recommended at the 2018 Civil Society

Forum of the Western Balkans Series, rule of law should also be included as one of the Berlin Process' goals,¹⁹ on top of the four listed in the Final Declaration from the Summit in Berlin in 2014.

5. Consult Civil Society and Media More

The European Union has already developed the practice of consulting local NGOs during the work on annual country reports. Yet, civil society should be provided with more space to influence the content of the European Commission reports.²⁰ Likewise, civil society should be consulted on enhancing flagship initiatives²¹ and drawing up an action plan for Western Balkan states over a two-year period.

¹⁷ Government of the United Kingdom. "Joint Declaration: Principles of Cooperation in the Field of Information-Exchange for Law Enforcement", Western Balkans Summit, London, 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723748/Joint_Declaration_on_Principles_of_Cooperation_in_the_Field_of_Information-Exchange_for_Law_Enforcement_2.pdf

¹⁸ Government of the United Kingdom. "Western Balkans Anti-Corruption Pledges", 2018, <https://www.gov.uk/government/publications/western-balkans-anti-corruption-pledges>

¹⁹ Civil Society Forum of the Western Balkans Summit Series. "Recommendations for continuation of the Berlin Process", 2018, <https://berlinprocess.info/wp-content/uploads/2018/07/CSF-recommendations-for-continuation-of-the-Berlin-Process-24.7..pdf>

²⁰ Civil Society Forum of the Western Balkans Summit Series. "Civil Society Forum recommendations as part of the Western Balkans Summit Declaration", 2017, <https://wb-csf.eu/csf-news/civil-society-forum-recommendations-as-part-of-the-western-balkans-summit-declaration/>

²¹ European Commission. "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans", 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

Conclusion

Long-term stability in the Western Balkans is only achievable through democratically accountable political systems founded on liberal values and the rule of law. The values advocated by the European Union do not have an alternative, even though the full integration of Western Balkan countries is uncertain due to the slow pace of reform and lack of real commitment, but also due to the challenges that the European Union is going through which substantially alter its functioning and ability to integrate candidate countries. Because of the neighbouring ties, it is expected from Western Balkan countries to work together and solve outstanding issues, including deepening trade and economic ties, but also improving

co-operation in criminal matters and cross-border issues towards eliminating corruption and organized crime. The European Economic Area²² can serve as a model for meeting these goals. In addition, efforts to strengthen the rule of law in the Western Balkans should be advanced at all levels: national, regional and EU. Only in this way is it possible to preserve the stability of this part of Europe.

²² Membership in the European Economic Area (EEA) should imply integration into a single market, with the establishment of a customs union with the EU, binding institutional market-related reform and accession to the Schengen area. - "Consolidated Multi-annual Action Plan for a Regional Economic Area in the Western Balkans Six", July 2017, See: http://www.governo.it/sites/governo.it/files/documenti/documenti/Notizie-allegati/balcani/Consolidated_Multi-annual_Action_Plan.pdf

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Information about SEE Think Net

The SEE Think Net Network was established in mid-march 2018 as the first regional network composed of civil society organisations that aim to monitor the topics related to the Berlin Process. The Network encompasses think tanks, civil society organisations and individuals from the 6 Western Balkan countries plus Croatia and Slovenia. Besides the Institute for Democracy “Societas Civilis” (IDSCS) which will coordinate the Network, the SEE Think Net Network includes the Network of the European Movement in Serbia (NEMinS), Open Society Foundation for Albania and its affiliate, the EU Policy Hub, Adnan Ćerimagić, Politikon Network from Montenegro, Kosovar Centre for Security Studies, the Institute for Development and International Relations (IRMO) from Croatia and the Centre for European Perspective (CEP) from Slovenia. The goal of the SEE Think Net Network is to produce significant policy inputs and provide policy recommendations on topics that derive from the Berlin Process. As such, its activities are devised in order to closely monitor the Berlin process and the policy areas the process encompasses.

As part of Regional cooperation in the Western Balkans The Berlin Process and Visegrad Group in comparison project, in December 2018, the SEE Think Network received financial support from the International Visegrad Fund. The network therefore broadened its scope of activities in the Visegrad region through cooperation with the following think tanks: the Centre for Eastern Studies from Poland (OSW), Institute for Foreign Affairs and Trade from Hungary (IFAT), the Research Centre of the Slovak Foreign Policy Association (SFPA) from Slovakia, and EUROPEUM Institute for European Policy (EUROPEUM) from the Czech Republic.

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Information about the International Visegrad Fund

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