

## 2 - Literature Review

### 2.1 - Introduction

Minority protection in the EU has increasingly become a topic for scholarly research since the early 1990s; this correlates to the period when the EU first got involved in minority protection after the downfall of Communism and the devastating effects of the Balkan Wars, and made it an accession requirement in its Copenhagen Criteria. Europeanization research became more widespread around the same time, as the Maastricht Treaty and subsequent legislation made a significant impact on domestic rules (Featherstone and Radaelli 2003: 5 show a considerable rise in academic articles regarding Europeanization in the late 1990s). Comparative research on minority protection standards was carried out mainly in the post-communist context, and focused on EU influence on the installment and implementation of minority protection standards. The issue was important from a human rights as well as from a security point of view; conflicts in ethnically heterogeneous societies needed to be mediated to prevent outbreaks like those in the Western Balkans and possible destabilizing effects on the whole EU. Scholars looked at norm development, spread and compliance, and how such processes may be achieved – two main schools of thought can be identified for this process, namely rationalist and constructivist approaches. Rationalist thinkers trace decisions back to cost-benefit calculations and possible veto players, while constructivists are interested in preference change and learning, and the way these processes can be started or fostered (e.g. through discourse). Similar to minority protection research, early Europeanization literature focused strongly on ‘top-down’ developments (from the EU level to the national and subnational levels), and was concerned with how European developments and demands on domestic structures, actors and preferences created adaptational pressure and a degree of ‘fit’ or ‘misfit’ (Börzel & Risse 2003) between the newly introduced European norms and traditional domestic preferences. Therefore, the primary topics of investigation were areas within the *acquis*, where the EU had the competence to draft legislation influencing national rules. Minority protection remained outside the *acquis*; it became part of the Copenhagen Criteria for accession, but as a merely political prerequisite. As Hoch-Jovanovic (2014) argues, Europeanization was often merely regarded as “EU-ization”, which led scholars to neglect minority issues as a field of study because the EU had no legal competence on the matter. However, more recent approaches give further attention to ‘bottom-up’ Europeanization (proces-

ses initiated at the domestic level), such as lobbying or advocacy coalitions, as well as to learning and discourse, showing that Europeanization processes are also at work in an environment that falls outside EU legislation.

A process-oriented approach to Europeanization (Exadaktylos & Radaelli 2012), which will be outlined in more detail below, provides an adapt tool for the analysis of Europeanization in non-acquis areas: instead of sole outcome-orientation, it focuses on the ongoing and underlying processes. ‘Bottom-up’ developments will be especially interesting, as not many comparative cross-country analyses have been carried out on the topic yet. The comparative scholarly output on minority protection so far has largely been on ‘top-down’ processes and in the context of CEEC (Central and Eastern European Countries) accession, as they were the first set of new members subjected to accession conditionality. Even though minority protection remained a merely political criterion outside the acquis, its presence as part of the requirements for membership allowed the EU to exert leverage and make demands regarding minority groups during the accession process. The EU pressed candidates for protection standards that ‘old’ member states often did not possess – a frequently criticized ‘double standard’ between ‘old’ and ‘new’ member states was created (cf. Schweltnus 2007). Europeanization processes have been looked at in a ‘top-down’ direction during the accession context (conditionality). In the post-accession context, the tool of conditionality is no longer present, and other factors are increasingly looked at by scholars – post-accession compliance or a possible backlash, as well as the impact of civil society operating at both the domestic and the transnational level. This leads to Europeanization being defined not only as a ‘top-down’, but also as a ‘bottom-up’ process, in which European integration influences and constrains the national level, but the national level or non-state actors (such as NGOs) may also use the European sphere for awareness raising or networking. This two-way character of Europeanization is the crucial concept and underlying assumption for the present thesis. I will first present an overview of what has been investigated regarding Europeanization (both ‘bottom-up’ and ‘top-down’) and minorities so far, and also shortly touch upon constructivist and rationalist understandings of how spheres of influence and norm transfer work. ‘Bottom-up’ Europeanization processes may also present a source of ‘input-legitimacy’ which is otherwise lacking in the field of minority protection (‘output-legitimacy’ might be attainable through conditionality, but stakeholder influence has been very limited so far). Through looking at the current state of the debate and research carried out up until now, I identify two shortcomings in the scholarly

production: There is a lack of studies encompassing both ‘old’ and ‘new’ member states and thus bridging this dichotomy, and Europeanization ‘from below’ has often been neglected. My thesis therefore aims to address both of these issues.

## **2.2 - Europeanization – A Process-Oriented Approach**

Ideas about Europeanization were already present in the classic theories of European integration; neofunctionalists address shifts of loyalty from the domestic to the European level, as well as a re-orientation of civil society towards the EU. Liberal intergovernmentalists, on the other hand, argue that integration processes make the nation-state stronger, not weaker, and that actors use the EU for negotiating their own bargains. Multi-level governance theorists also provide an interesting input; they see Europeanization as a process, in which power is redefined and redistributed between different actors and along the center-periphery divide. Finally, comparative public policy analysis focuses on domestic factors and their impact on Europeanization, such as implementation capacity or different bureaucratic cultures (Radaelli & Exadaktylos 2010: 190-191). Europeanization processes are therefore an important part of the scholarly literature, and can be identified and analyzed with a variety of different approaches and lenses.

Traditional Europeanization literature is concerned with the impact of European level norms and policies on the domestic sphere, and the degree of ‘fit’ or ‘misfit’ between the two levels, which determines to what extent European measures can be implemented in the domestic sphere (Börzel & Risse 2003); ‘bottom-up’ approaches have become more frequent over the last decade. Europeanization processes have been analyzed across a variety of topics; e.g. agricultural policy (Graziano 2004; Roederer-Rynning 2007), health care (Martinsen 2012), or higher education (Amaral 2009). Scholars aim to describe how “Europeanization as a process affects policy, politics and polity, and with what consequences it affects the nature of governance, identities and representation at the national and subnational level” (Radaelli & Exadaktylos 2010: 192). A common definition of Europeanization has not been established (Radaelli & Exadaktylos 2012); a clear conceptualization of what the term refers to is therefore necessary in all individual studies, as “different authors are after different things when they attend to measuring Europeanization and its effects” (Radaelli & Exadaktylos 2012: 256). In one of the earlier articles on the subject, Schmidt (2002) speaks about three different kinds of adjustment following Europeanization: economic, institutional, and idea-

tional. Europeanization has been defined as “the domestic adaptation to European regional integration” (Vink and Graziano, 2007: 7), focusing explicitly on the impact of European-level proceedings on the domestic sphere. Schimmelfennig and Sedelmeier (2005: 7) give a simple definition of Europeanization as “a process in which states adopt EU-rules”; again, the concept of ‘EU-ization’ is prominent, but the very narrow definition suffices for their study on Europeanization in the CEECs and conditionality. Europeanization may be EU-driven (rules would not have been implemented without EU influence) or domestically driven (the candidates themselves strove for rule adoption; a type of ‘bottom-up’ development), and can follow a logic of external incentives or of social learning, or a rationalist or constructivist model. Risse, Cowles and Caporaso (2001) define Europeanization as “the emergence and the development at the European level of distinct structures of governance, that is, of political, legal and social institutions associated with political problem solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative European rules” (Risse, Cowles & Caporaso 2001: 3). Their definition is interesting, as it explicitly refers to the creation of European rules as being part of Europeanization, and to the interaction among several levels of governance. Risse, Cowles and Caporaso see Europeanization as taking place on supranational, national, and subnational levels. Even though they largely analyze the impact of Europeanization on the domestic sphere, they also recognize that “the causal processes go both ways – activities at the domestic level affect the European level and vice versa” (Risse, Cowles & Caporaso 2001: 4). Europeanization tends to create tensions and inconsistencies between European and domestic structures, which are then the source of adaptational pressure (a similar concept as the one present in Börzel and Risse’s 2003 model of ‘fit’ and ‘misfit’).

Radaelli (2003: 19) looks at Europeanization as an analytical focus stressing key changes in contemporary politics and highlighting “the adaptation of institutional settings in the broadest sense (of rules, procedures, norms, practices) at different political levels in response to the dynamics of integration”. This broader definition also encompasses different levels (e.g. national, subnational, supranational), and procedures and practices, and goes beyond traditional legislation-based approaches. The ‘dynamics of integration’ can be witnessed as both ‘top-down’ and ‘bottom-up’ developments, and may impact different levels and also different types of actors; ongoing processes at these levels can then be analyzed regarding their influence on the stakeholders who are involved. Radaelli (2003: 30) talks about

processes of construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles and ‘ways of doing things’. “[Europeanization] also consists of shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated into the logic of domestic (national and subnational) discourse, identities, political structures, and public policies. Thus, Europeanization is an interactive process rather than a simple process of unidirectional reaction ‘to Europe’. It covers both the notion of Europeanization as ‘domestic impact of Europe’ (or pressure) and Europeanization as creative usages of Europe (Jacquot and Woll 2004)” (Radaelli & Exadaktylos 2010: 193). This dissertation follows Radaelli and Exadaktylos in their argument for an interactive and process-oriented view of Europeanization, and also adopts the view that “the presence of the EU level of a forum of discussion, an arena for negotiation, or a political architecture for interaction and discourse” is a necessary, although not sufficient, condition for Europeanization (Radaelli & Exadaktylos 2010: 194). The notion of ‘forum’ is especially important for the present research project, as it refers to “the domains where the EU does not legislate, but provides architectures for the discussion of policy goals, the definition of common targets, the diffusion of innovations and the stimulation of learning processes” (Radaelli & Exadaktylos 2010: 195) – such as minority policy. The EU is present as a facilitator, but not as a legislator, as it lacks legal competences on the matter; however, as mentioned above, a ‘forum of discussion’ and the possibility for interaction are necessary for Europeanization processes to take place, and could, along with an active civil society, be sufficient in the case of ‘bottom-up’ developments.

Establishing impact and causality in Europeanization is a difficult concept, and Europeanization processes may be detected in a variety of ways: While sometimes a new single development, such as a new piece of EU legislation, functions as a trigger for change, it “can however also be a long process of discussion or deliberation, a chain of decisions, or, at the other extreme, a series of meetings and bargaining sessions that over the years do not end up with a final agreement, yet they may at least change some opinions in some countries through socialization [...]” (Radaelli & Exadaktylos 2012: 3). It is therefore difficult to establish the conditions under which Europeanization processes happen, and to analyze their mechanisms. Radaelli and Exadaktylos also argue that the added bottom-up dimension of Europeanization renders the matter even more complex, and that transnational processes have to be analyzed as well. In order to account for the complexity of these issues, they take on a process-oriented view of Europeanization.

on, looking at Europeanization as “a process that affects domestic politics, public polity and institutions” (Radaelli & Exadaktylos 2012: 7) instead of an outcome. My thesis adapts a process-oriented view as well; I will argue that also non-state actors (such as civil society, minority organizations or other NGOs) are influenced by Europeanization processes, especially when looking at ‘bottom-up’ processes of Europeanization. Direct impact of EU regulations can only be measured on issue areas within EU legal competence; different tools and more far-reaching frameworks than mere law implementation have to be used when dealing with issues outside the *acquis*, such as minority protection. Clear theoretical expectations about the mechanisms of Europeanization tell us more about possible intervening variables at the domestic level; they can mediate pressure from the EU-level (‘top-down’) or create domestic change influencing the European sphere (‘bottom-up’) (Radaelli & Exadaktylos 2010: 197-198). Studies encompassing both directions (‘top-down’ as well as ‘bottom-up’ processes) provide two points of view on the same story, so that the bias created by one design is reduced by the other (Quaglia & Radaelli 2007). My study therefore also aims to look at both types of processes, in order to avoid bias and provide a more complete picture of Europeanization developments. For the influence of Europeanization processes on minority communities and minority protection, the Central and Eastern European Countries (CEECs) and accession conditionality have provided a setting for a large amount of scholarly output, and have been especially productive regarding comparative work across a number of different cases. An overview of the (largely ‘top-down’) literature on the CEECs and Europeanization processes will therefore be given in the next section; afterwards, the research output on ‘bottom-up’ Europeanization and especially on non-state actors and transnational advocacy networks will be analyzed.

### **2.3 - Comparative Case Studies on the CEECs and the Western Balkans: ‘Top-Down’ Europeanization Through Conditionality and Post-Accession Compliance**

The CEECs were the first area where the EU actively demanded minority protection measures before accession, by referring to the 1993 Copenhagen Criterion of “respect for and protection of minorities”. Alongside the EU’s interest in minority protection, the topic also found its way into the literature. Before Eastern Enlargement, studies on minority protection were usually firmly rooted within a national context, and often analyzed only one specific minority group. If a comparative

perspective was given, it mostly looked at protection systems and provided best practices for establishing protection (cf. Ermacora & Pan 1993). Minority language protection became one of the most well-researched fields in the area of minority rights (Extra & Gorter 200; Adrey 2005; etc.), and studies about compliance with the European Charter for Regional or Minority Languages constitute one of the few examples in which progress was evaluated for the ‘old’ member states as well as candidate countries. Why did international organizations and especially the EU become interested in minority protection in the early 1990s? Jackson Preece (1997) argues that minority rights become more important when boundaries are in flux, as was the case in Europe after the downfall of communism. Malloy (2005) cites three reasons, which go along with the enlargement process and the “opening” of the Union towards possible new members. First, she notes a securitization of minority rights, which has led to European organizations focusing on conflict prevention, something seen lacking in the former Yugoslavia. Secondly, the focus on democratization processes in the CEECs framed minority protection as part of the larger human rights discourse, and therefore as a necessary part for the transition to a liberal democratic system. Finally, minority rights protection has become a part of the European integration project itself, safeguarding minorities, fighting discrimination and the preservation of cultural heritage are framed as ‘European’ core values, despite the obvious practical discrepancies. Security, democracy and integration therefore represent three concepts that are overlapping international organization interests, and all are present in the dimension of minority protection (Galbreath & McEvoy 2012).

When CEEC accession approached, a number of studies were carried out on norm adoption and compliance, often focusing on the importance of conditionality to achieve protection. Conditionality can be defined as ‘the interaction between multi-level actors, perceptions, interests, differentiated rewards and sanctions, temporal factors and different degrees of institutional or policy compliance’ (Sasse, Hughes & Gordon 2004: 3-4). Single case studies are rare in CEEC minority protection research, most focus on a comparison between candidates that joined the EU in 2004. Latvia, Estonia and Slovakia constitute some of the most often researched cases. Latvia and Estonia are interesting due to their large Russian-speaking populations and the struggles to integrate these populations into the respective societies; the Russian-speakers see themselves as an autochthonous minority, while the governments want to frame them as an immigrant population. Hungary is an exemplary case for kin-state involvement, as it has significant minority po-

pulations in neighboring states, and therefore often steps up as a rights champion for its co-nationals (Galbreath & McEvoy 2010). Slovakia is sometimes quoted as an example of strong EU leverage, as the non-compliant Meciar government was replaced with a more European counterpart; however, authors like Haughton (2011) and Sasse (2008) stress the importance of domestic factors. Haughton notes that the desire to remove an illiberal party came from within, and that the 1998 elections would probably have shown the same result without EU conditionality. Pridham (2008) highlights the importance of domestic factors as well, and comments that if domestic elites are not committed to following the steps laid out by the EU, conditionality cannot do much to change this. Public support for Europe was strong, and the electorate made their pressure for change heard by not re-electing the non-compliant Meciar government. In another challenge to the role of conditionality, Peter Vermeersch (2002) explores minority issues in Poland, the Czech Republic and Hungary. He notes that enlargement was just one of the factors contributing to the establishment of protection measures, and far from always the most important one. Since the CEECs were given ample space in the implementation of protection measures, different needs could be catered for, but reaching a common standard proved to be difficult. Vermeersch argues that there was no consensus regarding the extent of protection norms at the EU level, which hindered norm legitimacy and thus also made norm transfer difficult. Grabbe (2005) is concerned with how the process of EU accession shaped public policy making in the CEECs in the pre-accession context. She defines Europeanization as “a set of processes whereby rules and procedures are constructed and defined in the EU policy process and then incorporated into the logic of domestic discourse, identities, political structures and public policies” (Grabbe 2005: 204). Conditionality added a dimension to this process, as it gave the EU considerable leverage in transferring its principles, norms and rules as well as shaping administrative structures. The success of Europeanization efforts depended on the precision and certitude of EU demands, and the degree of political will and ability to implement a certain policy, which again highlights the importance of the domestic sphere. Along similar lines, Schimmelfennig, Engert and Knobel (2003) argue that the EU used a strategy of ‘reinforcement by reward’ for achieving compliance. They compare Slovakia under Meciar, Latvia and Turkey and argue that the success of conditionality depended on political elites and domestic conditions. Sasse, Hughes and Gordon (2004) doubt the success of conditionality, as it was applied inconsistently by the Commission, and find no clear-cut causal relationship between accession conditionality and outcome. They argue that conditionality should not



be seen from a cause and effect perspective, but rather as a process, whose characteristics change depending on the area of use and the actors involved. There is thus consensus in the literature about the importance of domestic factors, but not about the role of conditionality and the impact it made on minority protection policies in the CEECs. However, most scholars agree that conditionality did at least give the EU stronger leverage on the matter than it normally possesses (as the area is not one of EU legal competence).

More recent studies on the CEECs are concerned with post-accession compliance: Ten years have passed since the 2004 enlargement; were the changes made during the accession phase stable or was there a backlash against norms implemented via conditionality? Schweltnus, Balázs and Mikalayeva (2009) analyze both the pre- and post-accession periods in their study, covering a period from 1997-2008. They conduct a multi-value QCA of the adoption and sustainability of minority protection rules in Poland, Romania, Estonia, and Latvia, covering five issue areas: non-discrimination, language use, education, citizenship, and integration of Roma. Starting from a rationalist external incentives perspective, they identify domestic factors that might hinder or enhance the development of protection: government position (is the government favorable, indifferent or opposed to protection; are minorities included in the government coalition), veto players (trying to revoke norms or block further proposals), and size of minorities (a larger size could lead to more political pressure, but also to higher norm adoption costs for the government). The study shows two paths leading to positive change: a domestic path without external incentives, based on favorable governments and small minorities, and one including external incentives, needed to produce a favorable outcome if minorities are larger and nationalist veto players are present. A decline in compliance is noticeable after accession, but no revocation of already installed rules has occurred. However, Schweltnus, Balázs and Mikalayeva explicitly note that they focus on formal rule adoption, and not on practical implementation: it would be interesting to see how their findings on the identified factors differ when looking at this side of norm adoption and sustainability. Pridham (2008) takes up the problem of ‘institutionalization for reversibility’, meaning the notion that once candidates have become member states, they might reverse the adopted policies. In conducting interviews in candidate countries, Pridham found that the discrepancies in standards between old and new member states negatively affect the legitimacy of norms, and that a backlash could occur. In looking at the cases of Slovakia and Latvia, Pridham concludes that European backing often provi-

ded the needed additional push for national leaders to implement positive change. He also suggests that post-accession compliance is good, and that no backlashes have occurred so far. International pressure is not absent after conditionality has ended, it just experiences a shift from direct to indirect pressures, which result from engagement as a member inside the EU. In the case of Europeanization, this could encompass a shift from ‘top-down’ to ‘bottom-up’ processes; conditionality is no longer available, but new patterns of interaction and influence can become prominent.

While post-accession developments in the CEECs will remain an important subject to be studied, the Western Balkans constitute the next area of interest for comparative work on minorities in the EU. The first country from this area, Croatia, has joined the EU in July 2013, and therefore makes for the first Western Balkans case in which both pre- and post-accession analysis will be possible. As the area has a significant history of ethnic conflict and is very heterogeneous, minority protection is an important issue. Schimmelfennig (2008) predicts that conditionality will still be used in the Western Balkans, but that it might lose some of its effectiveness due to the highly contested nature of the ethnic question. Tina Freyburg and Solveig Richter (2010) point in a similar direction by arguing that national identity might hinder norm compliance, if the norms to be implemented run counter to its interests, and democratization processes could thus be blocked. Research carried out in the CEECs as well as now in the Western Balkans points in the direction of domestic factors being very important for norm adoption. Conditionality may enhance processes of norm transfer, or serve as a catalyst for change. However, its presence alone is not sufficient if domestic elites are not willing to make concessions, or more salient issues such as national identity run counter to European demands. The importance of domestic factors as highlighted by the CEEC comparative case studies is supported by both the rationalist and constructivist literature on norm transfer and norm adoption, as well as by Europeanization theorists. Conant (2014) notes that war and ethnic cleansing have not resurfaced in countries that had a history with such practices since democratic consolidation fostered by the EU has impacted the country; however, the EU prioritized formal legal change, and neglected its implementation. She mentions Hungary as one of the prime example for a ‘backsliding’ away from human rights, as the developments under the Orban regime since 2010 show.

The Impact of Europeanization on Minority Communities

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