



European Fund for the Balkans

Reinstating the Transformative Power of the European Union in the Western Balkans

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Introduction

The European Union finds itself in the midst of multiplying crises. The possible secessionist crisis triggered by Brexit is the latest manifestation of Europe's fragility and of the declining attraction of integration. An increasing lack of unity, caused by an inability to overcome divisions and reach consensus, is becoming evident in the EU's approach to ongoing financial and refugee crises. In spite of this, support for EU integration in the countries of the Western Balkans remains very high, and their peoples still perceive the EU as a major source of reforms which may lead to a better life. However, the current state of affairs in the EU is heightening tensions in the Western Balkan region, and raises fears that eventual accession could be stalled indefinitely.

In the words of Germany's defence minister, Ursula von der Leyen, the solution for the current crisis lies in the member states ceding more power to the EU¹. The same could be argued for enlargement policy — which has slowed dramatically, owing to lack of political will and bold leadership in the EU and certain of its member states to finally complete the project of unifying the continent. If rising threat vectors are ignored, it is only a matter of time before the situation escalates, confronting the EU with another crisis in its immediate neighbourhood.

To bolster enlargement policy, especially in those cases where the process is directly obstructed by particular member states, the EU needs to provide clear and credible enlargement perspectives for the Western Balkan hopefuls, and it should kick-start the process by initiating accession negotiations across the board. Such an approach would create a win-win situation in which both sides would benefit: the EU would regain its credibility and its leverage to apply the conditionality policy rigorously, while the Western Balkan hopefuls would have no excuse not to converge with EU policies and criteria. Under such circumstances, the *Commission* would level the playing field for the hopefuls whatever their current status. Additionally, it could use the momentum generated by "accelerated" accession to steer the countries towards resolution of all contentious issues during the accession process, while maintaining complete control over the process itself. Regardless of how far advanced their status is, the EU hopefuls would be assessed on their own merits. The *member states* would still have their say in the opening and closing of chapters, with numerous opportunities to slow the process down if they deemed it necessary for any reason. Such an approach has already been proved to be a recipe for success with the countries of the fifth enlargement round. The European integration model needs to be extended further so as to encompass the whole of the European continent, as it was in 1997, when a visionary approach was adopted towards the countries of Central and Eastern Europe.

1 EUobserver, "Germany: Refugee crisis is like euro crisis", <https://euobserver.com/migration/133085>. [accessed on 29.09.2016]

The current state of affairs

A post-Brexit Europe will see an increase in the already preeminent German influence on, and therefore responsibility towards, the EU and its policies. From the perspectives of the Western Balkan countries, at a time when EU enlargement policy is being re-nationalised², this is viewed as positive news. After all, Germany remains the most influential supporter and principal proponent of further enlargement. A diplomatic programme towards the countries of the western Balkans, known as the *Berlin process*, was launched in 2014, on the initiative of the German Chancellor Angela Merkel and the Foreign Minister Frank-Walter Steinmeier. Given this state of affairs, and given the positive perceptions of the Western Balkans countries towards Germany, there are favourable conditions for applying Germany's newly acquired function of Europe's CFO – Chief Facilitating Officer in the enlargement process³. However, on the part of accession countries, progress has been hindered by a lack of political will among the region's leaders to engage fully in painful and expensive EU-related reforms that could, if applied properly, hurt their popularity and reduce their room for political manoeuvring. Additionally, confusing signals from the EU and member states allow conflicts to multiply, and encourage Western Balkan political elites to continue preserving their power and clientelist patronage networks, which subvert the rule of law reforms required by the EU and the *acquis*.

A U-turn is necessary to boost the process, restore credibility and reassert EU leverage in the Western Balkans. At present, the policy is to create specific dialogues on the rule of law and good governance issues, such as the High Level Accession Dialogue with Macedonia, the Rule of Law Dialogue with Kosovo, the Justice Dialogue with Bosnia and Herzegovina, stimulating progress and preparing for real negotiations. This policy has mixed results. If instead, the Commission opened accession negotiations, it would offer the countries a negotiation framework and a clear, precise roadmap to EU membership. Just as in the fifth enlargement round, in line with the principle of differentiation, all countries from the Western Balkans would be provided with a reasonable opportunity to catch up with countries that started accession negotiations earlier⁴.

Such a new constellation of circumstances would create an arena where the EU hopefuls could compete in conducting reforms, and could enhance their eventual role as regional leaders in the EU integration process. Additional tangible incentives along the path to full membership, such as additional financial resources via the Instrument for Pre-Accession Assistance (IPA) or greater access to the EU job market, should be directly dependent on the adoption and proper

2 Stiftung Wissenschaft und Politik, "Ten Years of Solitude", 'Andrea Despot, Dušan Reljić and Günter Seufert', http://www.swp-berlin.org/fileadmin/contents/products/comments/2012C16_despot_rlc_srt.pdf. [accessed on 24.09.2016]

3 "Maintaining Transatlantic Unity in a Complex World". Speech by Federal Foreign Minister Frank-Walter Steinmeier at the Centre for Strategic and International Studies, Washington DC, http://www.auswaertiges-amt.de/sid_3DBCE4CB2C46B-B68133CD2896D1549DE/EN/Infoservice/Presse/Reden/2015/150312_CSIS.html?nn=388768. [accessed on 05.10.2016]

4 Extracts from the European Council Santa Maria da Feira 2000, Presidency Conclusions.

implementation of EU *acquis*, and the resolution of contentious political issues. In the most likely situation, the value of the incentives would positively correlate with the level of engagement on the part of national Governments. Indeed, in the recent past, the visa liberalisation process has shown that this approach can deliver positive results. Thus, the Commission would reclaim the baton for EU enlargement, and reduce, as far as possible, the (negative) political influence of certain member states over the process. This is essential, since, at present, the accession process is hampered by numerous bilateral issues. One reason why this process has lost its credibility lies in the actions of certain member states, who exploit the process so as to pressurise accession aspirants into making concessions at their own expense; in the eyes of aspirants, this makes the EU appear as a merchant of chaos, not an agent of change. A well-known instance of this is the seven-year deadlock in Macedonia's EU accession process due to the name dispute with Greece.

The EU's enlargement strategy

The Commission has been somewhat innovative in making the accession process more structured and more authentic. Based on the experience gained during negotiations with Croatia and previous enlargement rounds, the enlargement strategy has been devised to place emphasis on the rule of law and democratic governance. Consequently, in this new approach towards accession negotiation, two chapters are particularly important: Judiciary and Fundamental Rights; and Justice, Freedom and Security. The new approach was implemented for the first time in negotiations with Montenegro, currently a frontrunner among Western Balkan hopefuls in the enlargement process. In 2013, the Commission presented a framework for strengthening economic governance, drawing on the experience of the European Semester. In 2014, the further adapted the strategy programme by adding public administration reforms as a third pillar. While the latest 2015 EU Enlargement Strategy remains focused on this three-pillars approach, the yearly revision of the strategy has been abandoned; the current strategy will be maintained in the medium-term, for the remaining duration of the Juncker Commission's mandate⁵.

A new methodology for assessing the enlargement countries in annual reports has been introduced. Bearing in mind the differing status of different countries in the enlargement process, the Commission has developed harmonised assessment tables in certain chapters, which indicate how prepared countries are for taking on the obligations of membership. Besides enabling comparison between countries across policy areas, it can be surmised that a further motive for this methodology is to spark competitiveness among candidate countries. However, if this methodology is to be applied most effectively and its potential to be maximised, the enlargement countries need to be at the same enlargement phase, i.e. to hold the status of negotiating country. In this context, it is worth mentioning that previous enlargement rounds have shown that the EU's leverage is at its strongest during the negotiation phase. If not applied in the proper setting, the potential of this methodology would not be exploited to the full, and would not produce the expected results.

5 "Enlargement strategy 2015" http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_strategy_paper_en.pdf. [accessed on 1.10.2016]

Western Balkan conundrum

While many would claim that the EU enlargement process has failed in states like Kosovo, Macedonia and Bosnia, a larger question is whether these countries are even part of the enlargement process at all. Macedonia finds itself with the status of candidate country, with no prospect of opening negotiations for a decade. The lack of progress in the accession process has triggered the worst political crisis since the armed conflict in 2001.⁶ The political leadership of Macedonia's ruling party is accused of corrupt and criminal activities following the release of wiretapped conversations. Because of its complex institutional framework and internal problems, Bosnia only managed to apply for EU membership in February 2016. The prolonged lack of progress in the EU integration process has provided fertile ground for the cultivation of nationalist political elites, especially in Republika Srpska. The last referendum is proof of that.⁷ Finally, Kosovo has been told openly that it cannot apply until recognised by all EU member states.⁸

While Serbia and Montenegro are currently the frontrunners in the EU's enlargement process, many would claim that Serbia's Prime Minister Aleksandar Vučić and Montenegro's leading political figure Milo Djukanović have, at the very least, a temptation towards authoritarianism.⁹ For example, in April 2016 Vučić called for unnecessary snap elections in order to affirm his position as undisputed leader of the country. In Montenegro, the sheer fact that Djukanović and his Democratic Party of Socialists have been in power for over twenty-five years speaks volumes about the state of democracy in the country.¹⁰ However, because of the ongoing negotiations, and because of constant monitoring from the Commission and political pressure from member states, these leaders are forced to comply with EU positions on key issues. An example is Serbia's negative attitude towards the decision to hold a referendum in Republika Srpska, and its support for the territorial integrity of Republika Srpska within Bosnia and Herzegovina, in line with the Dayton Peace Agreement.¹¹

Many accession-driven reforms, especially (but not only) those concerning the rule of law and good governance, are rushed through parliaments without substantial debate or consultation. Effective enforcement is therefore lacking in practice, as the case of Macedonia demonstrates. In 2014, the former Commissioner for Enlargement, Štefan Füle, stated that Macedonia had already reached

6 "Macedonia Report 2015", http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf. [accessed on 03.10.2016]

7 EurActiv, "The Serbian Referendum in Bosnia and Herzegovina", <https://www.euractiv.com/section/enlargement/opinion/the-serbian-referendum-in-bosnia-and-herzegovina/>. [accessed 2.10.2016]

8 European External Action Service, "HAHN: Careful with the rhetoric, words may become as swords" http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2015/20151106_02_en.htm. [accessed on 27.09.2016]

9 "The Authoritarian Temptations", Florian Bieber, <https://florianbieber.org/2014/03/15/the-authoritarian-temptation/>. [accessed on 25.09.2016]

10 EUobserver, "Serbia election: EU grasping at straws", Srdjan Cvijic, <https://euobserver.com/opinion/133226>. [accessed on 23.09.2016]

11 Tanjug, "Vucic: We do not support Republika Srpska referendum" http://www.tanjug.rs/full-view_en.aspx?izb=271723. [accessed on 22.09.2016]

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a high level of alignment with the *acquis* relative to its enlargement status, and had improved its ability to take on the obligations of membership. However, simply having legislation in place is not the actual problem: the recent wiretapping scandal exposed to the public the lack of enforcement of laws, and revealed ways in which existing legislation could be exploited in order to exert extensive political pressure on, primarily, the judiciary. The recordings prompted serious allegations concerning a widespread informal mechanism which enabled governmental and party control over recruitment, promotion and dismissals of judges, as well as governmental influence over court verdicts.¹² Solutions to avoid further backsliding in this case were provided in the “Priebe report”, but even this report observed that much of the extensive list of recommendations regarding interception of communication, oversight institutions, judiciary and prosecution, elections and media could be implemented “within the existing constitutional and legal framework”.¹³

To preserve the rule of law in these countries and promote democratisation efforts, the EU should look beyond the current, predominantly elite-centred, “top-down” approach. The monolithic institutional drive towards conducting accession-related reforms should be revised; instead, the EU should reach out more widely in all the countries, to societal groups with an interest in promoting and safeguarding the democratic fundamentals. To Europeanise enlargement countries from the Western Balkans, it is essential to empower ordinary people (especially youth), local civil society organisations and their constituencies, media outlets and academia. Empowered groups then could create a Europeanisation effect, instead of just applying it. During the accession process, a critical mass of people and institutions needs to be created and nurtured outside the sphere of state administration, in order to protect the values on which the EU was founded. Such local Europeanisation hubs, located in each of the Western Balkan countries, could pressurise national governments to respond to EU requests, even in situations where pressure from the EU itself is lacking or is too weak. For this to happen, the EU and member states need to sustain and further increase the existing funding devoted to civil society, the media and academia, through the IPA funds, as well as bilateral assistance. In particular, funding should be directed towards implementation of projects that encompass a strong inter-ethnic component, projects with robust advocacy campaigns that aim to reach citizens through the media and projects that foster sustainable action-oriented civil society networks; funding should also facilitate initiatives that nourish social trust by encouraging citizens to participate in collective action. In the same vein, these hubs can also act as resource centres for building political accountability. Nurturing such a culture will, over time, create local constituencies for change, and it will enhance the understanding of the EU and of the processes in which the countries of the region are engaged in. This will ensure public support for the accession process, and the post-accession sustainability of the reforms.

12 Balkan Insight, “Macedonia Opposition: Transcripts Show ‘Staggering’ Interference in Courts”, <http://www.balkaninsight.com/en/article/opposition-macedonia-govt-appointed-judges-influenced-verdicts>. [accessed on 28.09.2015]; Balkan Insight, “Courts ‘Fixed’ in Macedonia, Opposition Says”, <http://www.balkaninsight.com/en/article/fresh-tapes-discredit-macedonian-judiciary>. [accessed on 28.09.2015]

13 “Macedonia: Recommendations of the Senior Experts’ Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in Spring 2015.” http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf. [accessed on 23.09.2016]

In recent years, the EU has placed an emphasis on the inclusion of civil society in enlargement-related documents, recognising its importance in the process. However, more needs to be done in order to preserve the rule of law. Some positive examples of sustainable and structured inclusion of civil society organisations and academia can be found in the accession process of Serbia. While formulating action plans for the two rule-of-law chapters (23 and 24), which are a condition for opening the two negotiating chapters, the two competent ministries involved civil society representatives in the drafting process. Each of the amendments proposed by the members of civil society groups were taken into account. In those cases where the proposals were not adopted, a written justification was provided, stating the reasons for the rejection of the proposed amendment. This behaviour is a direct result of the inclusion in the negotiation framework of various principles, guidelines and procedures for conducting accession negotiations, including the following: "Serbia's reform priorities should be developed through a transparent process of consultation with all relevant stakeholders to ensure maximum support for their implementation."¹⁴ This has been the case for the chapters dealing with rule-of-law issues. Without the framework provided by the EU, it is highly probable that the Serbian Government would be wholly ignorant of this sort of dialogue with civil society.

14 "EU opening statement for accession negotiations", http://www.seio.gov.rs/upload/documents/pristupni_pregovori/neg_frame.PDF. [accessed on 3.10.2016]

Conclusion

The trade-off between democratisation and security, especially in this part of Europe, is risky and short-sighted, as it generates long-term problems that the EU's soft power cannot manage effectively. As a result, authoritarian tendencies among politicians are visibly on the rise.

Snatching victory from the jaws of defeat in the Balkans can be achieved by creatively bolstering the EU's most successful policy. After all, this recipe for success has already been applied with the countries of Central and Eastern Europe in the fifth enlargement round. Crucial elements are already in place, such as the new approach towards accession negotiations, and the new methodology for assessing the enlargement countries in annual reports. The first steps have been made in the direction of sustainable inclusion of wider civil society in the accession process. This needs to be further enhanced. By placing the countries in a negotiation framework where they can compete on an equal footing will reinstate the EU's transformative power, return its lost credibility and regain the necessary leverage to push for painful and expensive reforms in the Western Balkan hopefuls. A U-turn of this magnitude will enhance momentum in the accession process, creating an atmosphere whereby the countries are forced to converge with EU policies and push for their enforcement. The post-Brexit era, in which new unions – political, financial, defence, fiscal – are negotiated, presents an historical opportunity to take an additional bold decision on enlargement.

The EU's top-down approach to transforming accession countries has produced mixed results in the Western Balkans. Success in generating political change and preventing democratic backsliding has been limited. The solution lies in building local constituencies for change. Europeanisation hubs can act as gatekeepers for EU values, can ensure public support, and can guarantee the irreversibility of progress made during the accession process. The implementation of accession-related reforms and the reinvigoration of the EU process can only be achieved by establishing broad societal mobilisation around the accession process.

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The European Fund for the Balkans

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As a direct follow-up to the International Commission on the Balkans (2004-2006), the Fund embodies the “member-state building strategy” with the development of functioning state administrations and constituency-building as its main priorities.

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