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The EU and the Western Balkans: Challenges for the Pre-Accession Process in 2013

Dominik Tolksdorf

The year 2013 will herald a new era in the relations between the European Union (EU) and the states of the so-called Western Balkans. With Croatia most probably joining the Union in July, the membership perspective that was given to the states of the region ten years earlier finally materializes for one of the countries. Pre-supposed that there is political will for integration in the applicant country, Croatia's accession demonstrates that the EU's pre-accession process, the Stabilization and Association process (SAP), can be effective. However, as of January 2013, the pre-accession process with the other states seems to stagnate. This raises the question about the SAP's effectiveness in overcoming the remaining challenges in the region. This paper looks at the current state of affairs in the relations between the EU and the Western Balkans and examines ways to "revive" the pre-accession process.¹

Dominik Tolksdorf is TAPIR fellow at the Center for Transatlantic Relations (CTR) at Johns Hopkins University in Washington, DC and senior associate researcher at the Institute for European Studies at Vrije Universiteit Brussel.

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Unfavorable atmosphere and enlargement fatigue in the EU member states

The membership perspective of the Western Balkan states does not only depend on progress in the region itself, but also on developments within the EU. Citizens in the region are aware that new enlargement rounds are not on the top of the EU leaders' agenda. While the latter will for the next two to three years focus on tackling economic and financial issues, it is difficult to predict in which direction European integration leads. However, at least at the moment, most governments seem to be in favor of consolidating the Union instead of enlarging it. Thus, even in a scenario in which the Balkan states are "ready" for membership, there is the potential danger that member states' officials do not regard the EU to be able to

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“absorb” new member states. In addition, EU policy-makers have in the past years become aware that they have to take the interests of their national electorates more into account when it comes to enlargement issues. In order not to put the legitimacy of the whole European project into danger, some governments might be tempted to bring national referenda on new enlargement rounds into the equation.

The fact that the enlargement fatigue has increased in the past years in the member states constitutes another danger for the Western Balkans’ membership. An important but not the sole reason for the enlargement fatigue is the premature accession of Romania and Bulgaria to the EU in 2007, which has not elevated enlargement euphoria in the member states. In addition, EU enlargement is often associated with Turkey’s potential membership, a prospect which is not very popular in several member states. Probably all Western Balkan states will join the EU before Turkey. Thus, once the Western Balkan states have joined the Union, EU policy-makers will be coerced to take a decision on Turkey. Consequently, by delaying the Western Balkans membership, they can temporarily avert a decision on Turkey.

On the other hand, the crisis in the EU did not contribute to the attractiveness of the Union. This could already be seen in Croatia during the referendum on the country’s EU accession. Although the referendum ended with a 66 percent vote in favor of membership, the turnout was with 43 percent extremely low. This indicates a rather indifferent attitude towards EU membership in Croatia. In general, mainly due to the economic situation in many member states, the EU’s role as a “magnet” has lost some appeal in the Union’s neighborhood.

In addition, the technical hurdles to EU membership seem to gradually rise. In this respect, Bulgaria and Romania’s EU accession had a direct impact on the Western Balkans’ pre-accession process. The case of Croatia demonstrates that all applicant countries will be “scanned” thoroughly by the European Commission. Since the beginning of the membership negotiations in October 2005, it took Croatia eight years to finally join the Union. Given these circumstances, it can be assumed that it will take at least five to ten years until another state of the region will become an EU member – under the condition that the Union has acquired a new “absorption capacity”. Consequently, politicians and citizens in the Balkans are aware that their country’s membership is in a rather distant future. This makes it not very attractive for local politicians to advocate reforms that are necessary in the pre-accession process but unpopular among the electorate. Needless to say, many observers fear a stagnation of the SAP. Thus, what can be done to make the pre-accession process more effective and at the same time to address enlargement fatigue in the member states?

Potential and limitations of EU conditionality

Although it is often criticized, the SAP is theoretically a quite consistent strategy to bring the Western Balkans to EU membership. The rule of the game is that countries that comply with EU conditions are rewarded with closer relations with the EU and eventual membership, a perspective that was granted in 2003. In the pre-accession process, the EU calls on the aspirant countries to adopt and implement legislation in accordance with the “Copenhagen Criteria”. The latter requires the states to have democratic governance structures in place that ensure human rights and minority protection, a functioning market economy and the capacities to take on the obligations of EU membership, i.e., to implement the *acquis communautaire*. There are some additional criteria for the Western Balkans, particularly the

obligation to fully cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY), to promote refugee return and regional cooperation and to respect international treaties like the Dayton Peace Accords.

When setting conditions, the EU often refers to rules and standards set by international treaties like the European Convention on Human Rights (ECHR) and international organizations like the Council of Europe (e.g., regarding human rights), the World Trade Organization (e.g., regarding trade), the Organization for Security and Co-operation in Europe (e.g., regarding democratic elections), NATO (e.g., regarding security standards), the World Bank or the International Monetary Fund (e.g., regarding economic and budgetary areas). While the EU advises the governments, reforms need to be adopted by the local politicians. This “ownership principle” is particularly important with regards to Bosnia, and Herzegovina, and Kosovo that have been quasi international protectorates for years. The EU is only willing to accept member states that are fully sovereign.

However, as EU conditionality can have profound effect on the political and economic system of the applicant country, it is in its nature interventionist. The effective implementation of the EU benchmarks that are laid down for each country in European Partnership documents is reviewed and assessed in annual progress reports. For implementing reforms, the EU rewards the applicant countries with additional funds from its Instrument for Pre-Accession Assistance (IPA). The funds are to compensate for the “compliance costs” that are associated with reforms that do not bring short-term benefits. Controversial and difficult reform areas usually include the security sector and the constitutional system.

Conditions in the constitutional area are problematic because the EU has only a limited competence to interfere in the constitutional order of its member states – and thus also potential member states. The simple reason for this is that due to different legal traditions in the member states, their constitutional set-ups can differ significantly from each other. As a result, there is no “model constitution” to which the EU could refer to. This partly explains the reluctance of the EU to strongly interfere in the constitutional debate in Bosnia and Herzegovina. Similarly, although the segregated school education in Bosnia reinforces the ethnic division in the country and is thus considered by many observers as highly problematic, the EU has hardly competence to put pressure on the local policy-makers to reform it. In sum, EU conditionality can have immense impact on policy areas that are broadly related to the Single Market, and can thus be a powerful tool. However, as the examples above demonstrate, conditionality clearly also has its limitations in other fields.

The coherence of the EU’s policies in the region

In general, it often seems that the EU still has problems in finding the right instruments to address post-conflict societies. All states in the region have in the past twenty years been in deep transformation from socialist to market-oriented systems. Bosnia and Herzegovina and Kosovo are still in state-building processes that will take decades. In order to support these processes, the EU has not only addressed the countries in the framework of the SAP, but also with instruments of its Common Foreign and Security Policy. The deployment of a number of missions to the region since 2002/2003 had some effect on the coherence of the pre-accession process and the instrument of EU conditionality.

A famous example in this respect is the EU's efforts to pressure the Bosnian politicians to implement police restructuring. Here, the EU Special Representative, who was at the same time High Representative of the International Community, persuaded the EU Commission to set conditions in the police area, which, however, could not be defined as "EU standards". The dispute on the conditions led to several years of confrontation between EU and Bosnian politicians—mainly from the Bosnian Serb side—and the stagnation of Bosnia's pre-accession process. After three years, the EU in 2007 finally abandoned its calls for comprehensive police reform, admitting that the police structures are part of the constitutional system and can only change with constitutional reform.

Consequently, being subject to changes over the years, EU conditionality in Bosnia has lost much of its credibility. This led the EU to act more cautious in setting benchmarks and to more thoroughly check if the conditions can be derived from the *acquis communautaire*. The example of Bosnia demonstrates that the combination of Common Foreign and Security Policy and pre-accession instruments can have detrimental effects on EU conditionality. Still, many governments believe that if implemented correctly, the SAP will be effective. In their view, a coherent and strict conditionality will lead to the successful transformation of the Western Balkans. Because they fear that they might interfere in the regular pre-accession process, some EU member states are today keen on getting rid of the executive international actors in the Balkans, including the Office of the High Representative. This attitude sometimes leads to disagreements with the EU's most important international partners in the region, particularly the United States and Turkey.

The challenges of reconciliation and regional cooperation

The objectives of the pre-accession process are not only to integrate the Western Balkans into the EU, but also to eventually overcome the remaining (ethnic) conflicts in the region. Fundamental reconciliation processes are necessary between and within states. Reconciliation is a long-term societal process which requires a comprehensive examination of the past and self-reflection, and which probably takes generations to fully bear fruit. It is thus very unlikely that all conflicts will be completely solved when the region joins the EU. Although EU membership can somehow contribute to ongoing reconciliation processes the Balkan leaders have to make serious attempts to address the roots of all conflicts in the next years. EU leaders have made clear that they are not willing to import another unresolved dispute (like Cyprus) into the EU. Therefore, the Western Balkan politicians have to demonstrate that they are willing to cooperate on a regular basis and to gradually improve the relations between the states. In the long run, this will also be for their own good: once they will join the EU, they will regularly have to cooperate with each other in order to push through common regional interests on the EU level—similar to the cooperation between Germany and France. Today's policy-makers should be prepared for these future tasks. In this, the politicians do not necessarily have to like each other, but they have to understand that without pragmatic cooperation and a certain degree of mutual trust, they will not be able to achieve the common goal of EU membership.

This is also true for the countries that still suffer from internal conflicts. To refer again to the example of Bosnia and Herzegovina, politicians have to understand that without a certain degree of national consensus on fundamental issues, they will not be able to achieve EU

membership. Already today, in order to advance in the pre-accession process, the Bosnian policy-makers have to find ways to overcome their ethnic rivalries and to pragmatically find compromises on reform projects. Croatia is to some extent a good example in this respect: following the Tuđman era, once there was national consensus on the objective to attain EU membership, the country's integration process went rather smooth.

Conclusion

Before finally joining the EU, however, Croatia still has to take on the last obligations of the pre-accession process. After its accession, it should demonstrate that a new member state does not constitute any risk for the Union's functioning, neither with regards to decision-making nor the allocation of EU funds. With regards to the other Western Balkan states, taking the challenges pointed out above into account, several points could be considered to "revive" the SAP and to accelerate the region's integration into the EU:

- 1) Enhance reconciliation processes:** Politicians and citizens in the Western Balkans are aware that EU membership is not a panacea for all problems in their countries. In its fundamentals, the EU remains a regional trade organization, and thus, it has only limited competence to strengthen reconciliation and other social processes. Thus, much depends on the political will of the local policy-makers to advocate reconciliation processes. Therefore, as an example, local politicians in Bosnia and Herzegovina should concentrate on changing the education system. As solutions cannot be imposed by the EU, the potentials of the pre-accession process should not be overestimated in this respect. On the other hand, once EU members, the countries of the region will be closely tied together, which will indirectly contribute to regional reconciliation processes. However, EU membership is not a self-fulfilling prophecy towards stability and prosperity, but pre-supposes self-responsibility and activism to solve local and regional problems on the side of the local politicians. The Croatian government should assist its neighboring states and provide advice for their pre-accession processes.
- 2) Strengthen good neighborly relations and regional cooperation:** The pre-accession process requests from all participating countries to enhance regional cooperation and good neighborly relations. This condition should be taken more serious in Brussels. As an example, the EU should more strictly request from the Serbian government to increase its cooperation with its neighboring states. The dialogue between Belgrade and Prishtina, which has already brought some compromises, is a good start and should gradually be expanded. EU officials should also remind Serbia that it is a guarantor of the Dayton Agreement and thus a supporter of a multi-ethnic Bosnian state. The EU heads of government should therefore be strict with their Serbian counterparts if there are any indications that the Serbian government treats the Republika Sprksa as if it were a state. Instead, EU officials should consistently promote regional cooperation between Serbia, Bosnia and Herzegovina, Kosovo, and the other states of the region. Enhanced regional cooperation would also convince the electorate in the EU member states that the Western Balkan's integration in the EU will not import new conflicts into the EU and even hamper the Union's decision-making procedures.

3) Apply fair and coherent conditionality: Without question, EU conditionality can be a powerful tool to transform the economic and political systems in the applicant countries – provided that it is applied in a fair and coherent manner. Conditionality should in no way be subject to tactical considerations within the EU, but should always have a sound legal basis. Thus, the pre-accession conditions should always be thoroughly examined in Brussels before they are set. This also includes a regular double-check of the European Commission’s work in the pre-accession process by member states’ officials. In addition, the EU should ensure that it speaks with one voice towards the Western Balkans. This pre-supposes not only a better coordination of the member states, but also between the instruments of the European External Action Service and the European Commission.