
ENLARGEMENT AND NEIGHBOURHOOD

The EU Enlargement to the Western Balkans: Time to Put Conditionality First Again

Vladimír Bartović Senior Research Fellow, Europeum

Julie Herschend Christoffersen Research Assistant, DIIS

David Král Director, Europeum

Tijana Memišević Director of the European Research Center of Sarajevo;
for Europeum

Eliška Sláviková Senior Research Fellow, Europeum

Enlargement after the Lisbon Treaty: a risk of incoherence

The coming into force of the Lisbon Treaty brought some changes in the enlargement area. As a policy, it remains under the Commission's competence, while all the enlargement issues are now dealt with the General Affairs Council (GAC). This is still chaired by the rotating presidency and subject to unanimity decisions on all enlargement issues. However, in European Union (EU) terms, there is a distinction between countries that are already negotiating and those which only enjoy accession perspectives. The Council working group on enlargement (COELA) currently deals with Turkey, Iceland and Croatia. The remaining countries with accession perspectives are dealt with by the working group on the Western Balkans (COWEB).¹ The Stabilisation and Associations process (SAP) and the status of Kosovo, etc., are considered a part of EU external relations and foreign policy and thus handled by the Foreign Affairs Council, which is chaired by Vice-President of the European Commission / High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton. This means that the role of the rotating presidency is limited to the negotiations in the COELA, which mainly decides on the closing and opening of chapters.

The actual effects of the new institutional set-up remain to be seen. However, due to the different chairmanships of the two Council working-groups, and due to the parallel presence

1. Bosnia and Herzegovina, Serbia, Montenegro, Kosovo, Macedonia and Albania

of geographical desks at the European External Action Service (EEAS) and the responsible offices in the Directorate-General (DG) for Enlargement at the Commission, the situation does raise coherence issues. The initial intention of the Lisbon Treaty, to simplify the EU's relations with the rest of the world in general and the Western Balkans specifically, has been obscured.

Credibility of the enlargement process: a triple challenge

The credibility of future enlargement is more at risk than ever. This lack of credibility concerns all three major actors: EU members, the European Commission and candidate or potential candidate countries.

The somewhat flawed accession process of Bulgaria and Romania has led to tougher positions among Member States in the Council. This is reflected, *inter alia*, in a higher number of negotiating chapters or in a stricter negotiating framework allowing for suspension of negotiations. Although bilateral disputes have always featured in the accession negotiations, never before were they used to block the accession negotiations as much as we have witnessed recently. The internal problems in many of the Member States, coupled with the outcomes of the serious debt crisis in several EU members has also led to a generally lukewarm attitude towards enlargement. Nowadays, there is not a single EU leader strongly in favour of continued expansion. Thus the political impetus of the policy is largely lost. Although granting Montenegro candidate status in December 2010 as well as substantial progress in negotiations with Croatia can be judged positively, this illustrates that Member States can move forward on non-controversial issues while more sensitive ones (Kosovo, Turkey) are intentionally left off the agenda.

The Commission has consistently reiterated emphasis on conditionality, most recently in its 2010 Enlargement Strategy. This worked quite well in the case of visa liberalisation for the Western Balkans. The Commission reflected on this positive experience in order to produce a set of more tangible criteria in order for Montenegro and Albania to be able to open accession negotiations. However, the Commission's insistence on conditionality is still largely dependent on the room for manoeuvre left to it by the Member States. This can be illustrated with the example of Macedonia, where the start of accession negotiations was blocked despite the Commission's positive opinion, or with Kosovo, where the Commission is held back by non-recognising Member States.

Moreover, the candidate countries also bear part of responsibility for the diminished credibility of the enlargement process. They often send negative signals towards the EU – for example, concerning elections in Albania or Kosovo, or by not delivering on pledges to the EU (especially in case of Bosnia, or the inability to apprehend General Ratko Mladić in case of Serbia). Although the population of all the countries in the region is highly supportive of

European integration, the political elites often prefer particular interests, at the expense of putting this ambition at the top of their agenda.

Diminished credibility I: Kosovo

The EU perspective for Kosovo has seen perhaps the most disappointing change in the region. Despite persistent reassurances from Brussels, the gap between the country and the rest of the region is widening. The main problem is lack of unity over the country's recognition, which prevents the EU from placing contractual relations with Kosovo on a new footing and enabling it to participate fully in the Stabilisation and Association Process (SAP). Having to balance various restrictions on which Member States insist, the Commission cannot move forward on any technical agendas. The EU did not use the momentum produced by the International Court of Justice's (ICJ) advisory opinion on the declaration of Kosovo's independence. This would have allowed the EU to engage with non-recognising Member States and thus search for viable ways to respond to this new reality. Despite the EU's readiness to facilitate dialogue between Pristina and Belgrade (reflected in a joint EU-Serbia declaration, which was also adopted by the United Nations General Assembly), there is little excitement in Pristina about the dialogue. Firstly, recent political developments mean that Pristina could remain paralysed with a weak or caretaker government, and the possibility of early elections ensures that dialogue with Serbia does not top Kosovo's political agenda. Secondly, if the feeling prevails that the dialogue is solely an EU-Serbia endeavour where Kosovo authorities are not invited to shape its agenda, priorities and expected results, then the likelihood that Pristina will be ready to engage fully in such dialogue diminishes substantially. At the moment, the EU's political agenda with regard to Kosovo has become limited to the prospect of launching the dialogue that could become a way of overcoming its own stalemate regarding status. However, it is somewhat naïve to believe that Serbia and Kosovo will be able to solve the conflicting issues in the framework of the dialogue, while the EU has not been able to address them, despite its strong involvement on the ground (for example, through the EU Special Representative (EUSR), the EU Rule of Law Mission (EULEX) or the European Commission Liaison Office).

After Albania and Bosnia and Herzegovina were granted a visa-free regime with the EU in December 2010, Kosovo is now in isolation in the region. In Kosovo's case, not only has the EU failed to propose a roadmap setting forth technical conditions to be fulfilled, but the Member States' consular practices regarding issuing visas to passport-holders remain strikingly different, with some Member States not issuing Schengen visas at all. The first step for which the next Trio Presidency should aim is to unify the Schengen-visa procedure for passport-holders from Kosovo. After this, the next logical step is to set the list of technical conditions necessary for a visa liberalisation dialogue, and once these are met, to set a clear timeframe for such a dialogue. The example given by other countries of the region has shown that if there is a timeframe and a clear list of technical requirements, conditionality can work. The EU needs to take these steps *vis-à-vis* Kosovo as well.

Diminished credibility II: Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) can serve as another prime example of the EU's reduced conditionality in the enlargement process. The EU has in the past clearly chosen the country's stability over support for democratisation and EU-inspired reforms, succumbing to threats by various Bosnian political representatives to destabilise the country (particularly those from Republika Srpska). Yet, the visa liberalisation process has proved that when the Road Map conditions are clearly tabled as non-negotiable, conditionality can work.

This, unfortunately, does not apply to other areas of EU-Bosnia relations. The 2010 Progress Report is considered to be the worst ever, with little or no progress at all in almost all the areas (except for the aforementioned visa liberalisation), meaning that the country has fallen behind its neighbours in progress towards the EU. The lack of progress can be explained, *inter alia*, by the complicated ethno-territorial organisation of the state and the abuse of the constituent nations' right of veto in cases of "vital national interest". This not only blocks the EU-conditioned reforms, but also generates a nationalist and exclusivist political environment and a blockage of decision-making. Constitutional reform is thus the most urgent issue, particularly with regard to the need to reduce the predominance of collective rights (vested in constituent nations) over individual rights. The Bosnian Constitution is in breach of the European Convention on Human Rights as well as previous rulings of the Constitutional Court of BiH.² The incoming Trio Presidency should thus focus on discussing constitutional changes, and not simply concerning political representation. There is also a need to lead a wide public debate, involving experts and non-governmental organisations, and taking inspiration from the Venice Commission reports on the BiH Constitution and from European Parliament resolutions.

Likewise, the Trio Presidency should push for the establishment of a Supreme Court of BiH, which would contribute to the creation of a single legal framework. Bosnia is divided not only politically, but also legally, with different incompatible laws and regulations among the administrative units and the state. Among other things, this hampers the emergence of a single economic market.

Similarly, the EU must take decisive steps to press for a more efficient fight against corruption in BiH, which is a serious problem undermining the functioning of the state. Compared to lower-level agencies, which are often politically controlled and the independence of which is questionable, the state-level law enforcement agencies (such as BiH State Prosecution or BiH's State Investigation and Protection Agency) have a fairly good track record in prosecuting and investigating organised crime and corruption. Thus, the EU must support the

capacity of state-level BiH agencies to carry out its tasks, with political support, technical and logistical assistance and training. It must reject firmly some Bosnian politicians' calls for the abolishment of such agencies or any attempts to weaken them – unlike in 2009, when EU representatives agreed with the termination of international judges' and prosecutors' mandates at the Court of BiH, all of whom were involved in investigating corruption.

Also, the EU should be more cautious in judging progress in regional cooperation. It praised the recent rapprochement between President Ivo Josipović of Croatia and President Boris Tadić of Serbia in the case of their regional cooperation initiative. But, it did not take note of the marginal involvement of the Presidency of BiH in this endeavour, nor the leaders' interventions in the internal affairs of BiH – such as Tadić's unconditional support for President Milorad Dodik of Republika Srpska or Josipović's recent interference with coalition-building talks in Sarajevo.

Conclusion

Conditionality is a central part of EU's enlargement policies and its long-term credibility is key to the EU's success in transforming countries in the EU's neighbourhood. When the objective opinion of the Commission is overruled by bilateral disputes or security-related concerns in the Council, the credibility of conditionality as an instrument decreases dramatically. The same holds true in the opposite case – when an accession country is being rewarded without actual compliance, this has a negative impact on the reforms needed to join the EU. In the coming period, the Trio Presidency should make it a priority to put conditionality first again.

Top recommendations to the EU:

1. To avoid sending mixed signals and to ensure coherence in the enlargement process, clarify the division of responsibilities between EEAS and DG Enlargement in relation to potential candidate countries (not yet in the process of accession negotiations).
2. Create a framework for the settlement of bilateral disputes so that they cannot be used to block the entire negotiation process (including unrelated chapters), for instance by creating a special negotiating chapter dealing with neighbourly relations.
3. To renew the credibility of the accession process, introduce clear and tangible criteria that must be met in order to proceed to the next stage of the accession process – such as the criteria for the opening of accession negotiations with Montenegro and Albania set forth in the Commission's opinion in 2010.
4. The EU should stand firm on its previous conditions such as full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and continue to support the promotion of human rights and the process of reconciliation.

2. Case U 5/98 III, Issue of the "Constituent Peoples", Constitutional Court of Bosnia and Herzegovina, *Official Gazette of BiH*, No. 23/00, 1 July 2000, available at: http://www.ccbh.ba/public/down/Bulletin%202005_english.pdf

5. In relation to Kosovo, the EU should provide a clear list of technical conditions that must be met in order for the visa liberalisation dialogue to begin. Once these criteria are met, the EU needs to set a clear timeframe for such dialogue. In the meantime, the EU should harmonise the Schengen visa procedures for passport-holders from Kosovo.
6. The dialogue between Kosovo and Serbia should be placed in a clear timeframe with a specific agenda, which should be compiled by active contribution of both parties to the dialogue. New issues that might arise between Belgrade and Pristina should not be added on an *ad hoc* basis to this agenda, but dealt with separately, should they arise. Also, possible lack of progress in the Kosovo-Serbia dialogue should not be used as a pretext for impeding Kosovo's progress on other issues, such as SAP or visa liberalisation.
7. The EU must insist on swift constitutional reform in BiH in order to bring it into compliance with the ECHR and pave the way to more democratic and efficient decision-making, based on civic rather than national or ethnic principles.
8. The EU should support the creation of a Supreme Court of BiH, which would contribute to the creation of a single legal framework across Bosnia and thus strengthen state-level governance and law enforcement.
9. The EU should support the efforts of state-level agencies in BiH dealing with the fight against organised crime and corruption by providing them with political support, technical and logistical assistance and training.

ENLARGEMENT AND NEIGHBOURHOOD

EU Integration and the Prospect of further Enlargement: The Case of Turkey

Andreas Theophanous Director, CCEIA

Christina Ioannou Research Fellow, CCEIA

Despite the fact that it has been over five years since the European Union (EU) and Turkey started accession negotiations, this remains a major issue of intense debate and controversy across Europe. With the bulk of the negotiations chapters blocked by the EU, the prospect of Turkey's accession is uncertain. Turkey considers accession to the EU as a strategic objective. Yet, it does not appear that Ankara fully appreciates what is required in order to become a member of the EU. Turkey seems to be pursuing an *à la carte* policy in relation to the multi-dimensional challenges that it has to address (such as respect for basic freedoms, the Cyprus problem, the Kurdish issue and the role of the army, among many others). This paper briefly assesses the prospects for a potential EU enlargement involving Turkey.

Within this framework, a number of issues are addressed: (a) the philosophical approaches in relation to Turkey's potential accession, (b) the wider debate concerning the kind of Europe that existing members would like to see, as well as (c) the practical problems faced in relation to Turkey's accession process. In this context, key questions are raised as to the extent to which the problems encountered, as well as the intense debate on the issue of Turkey, threaten to derail this country's accession course. The broader philosophical debate in relation to the future of Europe and Turkey's commitments are also assessed.

Historical background

For over half a century, the EU (and its predecessor, the European Economic Community) has been pursuing, in a broad spectrum of policy areas, ever-deeper integration through closer cooperation among its members. At the same time, this integration process has come to involve more Member States through successive enlargements. The two processes (deepening and widening) have often moved in parallel, without cancelling each other out.