
The EU Accession Process: Western Balkans vs EU-10

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Summary

The article discusses main differences in the EU enlargement strategy/process between the one applied for the big-bang Eastern enlargement in 2004/2007 and the one being used for the EU accession of the Western Balkan countries. Within this framework, the article focuses on the key drivers that have contributed to the slowing down of the EU accession process for these countries over the last decade. Among others, these drivers include some traditional ones, such as lessons from the EU-10 enlargement and general “enlargement fatigue” in quite a number of EU member states, as well as a number of more recent ones, such as the consequences of the economic crisis, the migrant/refugee crisis and the Brexit. The reduced appetite of the EU member states for Western Balkan enlargement has been reflected in the reshaped EU enlargement strategy that is now based on the so-called “fundamentals first” approach with the rule of law, early resolution of bilateral issues and strengthened economic governance as its key pillars. Besides, the enlargement process is run today much more on the intergovernmental basis than this was the case during the large Eastern enlargement.

Keywords: European Union, EU Enlargements, Western Balkans, Accession, Regionalism

I. Introduction

EU enlargements have been one of the most positive achievements of the European integration process.¹ With the end of the Cold War in the late 1980s and early

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1990s, a window of opportunity was opened for a far reaching political and economic transformation of the European continent. The elimination of the East – West divide opened the door for successive enlargements of the EU, first, with the politically neutral countries in the mid-1990s, and later on with Central and Eastern European countries in transition, through the so-called big-bang enlargement in 2004 (EU-10), followed by the accession of Bulgaria and Romania in 2007, and finally Croatia in 2013.

During this “golden period” of EU enlargement policy, the relationship of the EU and the Western Balkan region (Croatia, Bosnia and Herzegovina, Serbia, Macedonia, Montenegro, Albania) was marked by the quest for a defining policy that would have as its first aim the full stabilization of the region. The reason for this was the 1990’s dissolution of former SFRY, and unsolved issues among its successors. The Stabilization and Association Policy (SAP) was created in 1999, and this policy used models and instruments that were created for the purpose of preparing CEE countries for EU membership; of course, SAP has adjusted those models and instruments for the specific situation of WB countries.

In contrast to the rather expeditious big-bang Eastern enlargement of 2004, with its completion in 2007, the Western Balkan enlargement, with the notable exception of Croatia has been increasingly delayed. The main objectives of this paper are twofold, *first*, to analyze the key drivers that have contributed to the slowing down of the EU accession process for the countries from the Western Balkan region over the last decade, and *second*, to present and discuss differences in the EU enlargement strategy/process between the one applied for the big-bang Eastern enlargement in 2004/2007 and the one being used for the EU accession of the Western Balkan countries.

In addition to the Introduction and Conclusion, the paper consists of three main sections. The second section focuses on key features of the 2004/2007 big-bang Eastern enlargement (EU-10 enlargement). This section also provides an insight into the broader political and economic environment that accompanied the EU-10 enlargement process. The third section is aimed at discussing main drivers that have been behind the slowing down of the EU accession process for the Western Balkan countries. Among others, these drivers include some traditional ones, such as lessons from the EU-10 enlargement and general “enlargement fatigue” in quite a number of EU member states, as well as a number of more recent ones, such as the consequences of the economic crisis, the migrant/refugee crisis and Brexit. The fourth section discusses how the reduced appetite of EU member states in the period since the big-bang enlargement in 2004 has shaped EU enlargement strategy for the Western Balkan countries.

II. Key Features Behind the 2004/2007 Eastern Enlargement

II.1. Specifics of the Eastern Enlargement vis-a-vis the Previous Ones

The Eastern enlargement was in a strictly formal sense modeled on previous enlargements. Similar to previous enlargement episodes, this enlargement pursued two strategic objectives, a political one and an economic one, and similarly to previous enlargements, the Eastern enlargement was based on the same legal basis and was subject of the negotiations about the terms and conditions candidate countries need to fulfill in order to join the EU.

Nevertheless, the Eastern enlargement was in many fundamental elements very different from previous ones, either the Southern enlargements of the 1980s or the EU enlargement with three former EFTA countries in the 1990s. One big difference was that never before had the EU negotiated with so many candidate countries simultaneously and never before had the negotiations been extended for such a long time. Further on, never before had the accession negotiations been based on explicit accession criteria articulated in the form of the Copenhagen criteria, and they had never included such a long list of measures to be implemented by the candidate countries prior to accession, organized in, at that time, 31 negotiation chapters. On the side of EU member states, the Eastern enlargement represented unprecedented institutional challenges as the increase from 15 to 25 (27) members required a major recalibration of the decision-making rules in EU institutions. The enlargement with around 100 million new EU citizens contributing less than 5 percent to the overall EU GDP presented a major challenge for some of the EU policies as well (Schimmelfennig and Sedelmeier, 2005: 20). It is for this reason that EU member states requested a number of transition periods in the most sensitive areas, such as the free movement of labor, agriculture and cohesion policy. For the free movement of labor, a 7-year transition period was agreed to, while the full participation of new member states in the Common Agricultural Policy was, with respect to direct payments, achieved only after a 10-year long transition period. As far as the cohesion policy is concerned, a *de-facto* transition period was experienced primarily by more developed new member states, especially Cyprus, the Czech Republic, and Malta, in the period from 2004 to 2006 due to the limited amount of funds allocated for enlargement under the Agenda 2000 medium-term financial perspective covering the period between 2000 and 2006.

II.2. Political and Geo-Strategic Aspects of the Eastern Enlargement...

In contrast to the enlargement with the EFTA countries in the 1990s, the Eastern enlargement was strongly based on political and, for the EU member states, also geo-strategic considerations. For the new democracies from Eastern Europe, integration into Euro-Atlantic integration, primarily the EU and NATO, was on the top

of their political agenda while for the EU member states, the Eastern enlargement was aimed primarily at promoting the political stability of newly established democracies in the eastern part of the continent and at strengthening the international influence of the enlarged EU.

Strong geopolitical considerations of the EU member states associated with the decisions about Eastern enlargement had two aspects. One was the timing aspect. The 1993 Copenhagen European Council decision to enlarge in the East was strongly influenced by the fears that the transition process in ex-communist countries may stall, as well as by the outbreak of hostilities in the former Yugoslavia. Another aspect supporting strongly the geopolitical character of the Eastern enlargement was the readiness of the EU to reconsider its enlargement strategy. While the EU, at its 1997 Luxembourg European Council, decided to launch the EU accession negotiations with only 5 Eastern European countries, at the 1999 Helsinki European Council the decision was revised. In the context of the Kosovo crisis, the EU member states decided to start the negotiations with another 5 countries from the region that just two years before had been assessed as unprepared for negotiations.

A strong geopolitical motivation of the Eastern enlargement from the perspective of the EU member states was more than obvious throughout the process of the negotiations. For example, member states and EU institutions were rather benevolent in the interpretation of the Copenhagen criteria. This applies both to the political and economic criteria as well as to the *acquis* criteria. As far as the assessment of the latter is concerned, a stronger focus was made on the harmonization of national legislations than on their implementation. Even though the negotiation process was run by the European Commission in technical terms, the member states were firmly in the driving seat of the process. The rotating presidency was giving the tone to the dynamics of the convoy negotiation process and the European Council was ready to adopt all those politically sensitive decisions that were needed to complete the negotiations in an expeditious manner. A typical example of this kind is the Copenhagen European Council decision from December 2002. Even though the negotiations started with the Luxembourg group, i.e., the group of better fitting candidates, much earlier than with the Helsinki group, i.e., the group considered at that time as less fit, and even though the “own merits” principle was in place, the negotiations were completed for both groups at the same time.² The very fact that the less fit candidate countries as a group needed less time to meet all Copenhagen criteria and finished

² At the 2002 Copenhagen European Council, the EU accession negotiations were completed with 10 out of 12 candidate countries while for the remaining two, Bulgaria and Romania, a commitment was made by the EU member states to bring the two countries into the full membership in 2007 or 2008.

the negotiations earlier that the candidates with a better starting position in the negotiations confirms the strong political character of the process.

II.3. ... and Economic Aspects

The Eastern enlargement had a strong economic dimension as well. The enlargement was happening in the environment where the EU made important decisions about the deepening of its integration process. With the transformation of the EU from a customs union into an area of four freedoms in the early 1990s, each successive enlargement of the EU had its own strong economic logic. This applied to the 1995 enlargement with Austria, Finland and Sweden and even more so to the 2004 Eastern enlargement with 10 countries and its completion in 2007 when Bulgaria and Romania also became full members.

From the perspective of Eastern European aspirants and later on candidate countries, the process of the EU accession was viewed as a useful tool for speeding up the transition process. Clearly determined commitments on the side of candidates accompanied with a precise timetable of the course of the EU accession negotiations had mobilized policy makers and the public at large for the effective implementation of tasks. The process was strongly supported by various instruments of pre-accession financial assistance geared specifically to the accession objectives, on the one hand, to the effective harmonization to the *acquis*, and on the other hand, to the effective preparation of the candidate for efficient use of cohesion funds once the country would become a member state.

The process of Eastern enlargement which in institutional terms started with the Association or Europe Agreements signed in early 1990 provided a legal framework for strengthening economic cooperation between the candidates and the EU member states. The latter became the destination for an increasing proportion of the exports from Eastern Europe and the EU member states became by far the most important source of foreign direct investment. In time and based on increasing economic integration with Western Europe, both in terms of trade and investment, the candidate countries started to generate economic growth that was much higher than in the EU member states and to reduce the development gap *vis-a-vis* the member states.

Despite some affirmations to the contrary, the Eastern enlargement had a strongly beneficial economic impact on the EU member states as well. The quickly growing candidate countries had namely become important markets for goods and services from EU members. In the period just before the accession, they had a bilateral overall surplus with all the new member states. Almost all Central and Eastern European countries were individually in deficit *vis-a-vis* the EU-15 (Landaburu, 2007: 13). As a group, the Eastern European candidate countries represented the second most important trading partner for the EU (Verhaugen, 2007: 3).

Companies from the EU did not only sell their goods and services in Eastern European candidate countries, they also bought existing businesses and launched entirely new ones with the effect of a significant amount of job creation. Between 1990 and 2004, countries of the region benefited from FDI worth more than 100 billion EUR. In the last years prior to accession, FDI from EU member states equivalent to around 20 billion EUR a year were flowing into Central and Eastern Europe with a large majority of the investment channeled into the four Visegrad countries, especially Poland (Landaburu, 2007: 13). The trade creation effects of the Eastern enlargement outweighed those of trade diversion within the EU members and therefore boosted the overall economic standing of the EU in the world economy *vis-a-vis* both traditional competitors, such as US and Japan, and emerging economies, such as China and India (O'Brennan, 2006: 133). With its close to 500 million customers, the EU, enlarged with Eastern European countries, became the largest market in the world. And finally, the Eastern enlargement boosted significantly the negotiating power of the EU on the global economic scene, and in particular within the WTO.

III. Drivers Behind the Slowing Down of the EU Accession Process for Western Balkans

III.1. Lessons from the 2004/2007 Eastern Enlargement

The Eastern enlargement enjoyed a top priority status of the EU member states during the 1990s and the early 2000s. To what extent the enlargement was successful depends on the criteria for evaluating this policy. If assessed through the optic of security, stability and economic prosperity for both the old and new EU member states, the pre-accession period of the Eastern enlargement may be considered largely successful. For the post-accession period where enlargement is considered to be successful if it leads to the harmonious integration of new members and allows EU institutions and policies to function correctly, this assessment is less positive and in some circles even negative (Avery, 2015: 13). On the other hand, the European Commission in its report on the economic developments after the big-bang Enlargement speaks of its huge economic benefits (*European Commission Report on Enlargement, Five Years Later*, 2009: 5).

It is not surprising that lessons from the 2004/2007 Eastern enlargement, especially the less positive ones, have had an important impact on the Western Balkan enlargement process. One of important negative lessons was a political one related to the accession of Cyprus as a divided state. Although the Copenhagen criteria do not address the subject of national borders, EU member states have become significantly more attentive to the issue of unresolved border issues. Even more so after the border dispute between Slovenia as an EU member state and Croatia as a candidate

country, and taking into account that there are numerous unresolved border issues in practically all the Western Balkan states. The Serbia-Kosovo issue as well as Bosnia and Herzegovina's institutional structure are particularly difficult in this context.

Another important lesson from the 2004 and especially the 2007 enlargement was that conditionality with respect to the Copenhagen criteria has to be implemented in a more comprehensive and strict manner than was the case during the Eastern enlargement process. It namely became more than obvious that the back-loading of more difficult negotiating chapters with strong political sensibility, especially the one related to the judiciary, backfired quickly after the accession. The cases of Bulgaria and Romania were highly illustrative in this respect.

Deficiencies were detected also with respect to the fulfillment of the *acquis* criteria. In the pre-accession period, the candidate countries were rather successful in harmonizing their national legislations with the EU legal system. Unfortunately, the implementation was very often lagging behind. This explains why the enlargement process for Western Balkan countries has become much more structured than before with a number of checkpoints introduced in various stages of the negotiation process. In addition, the EU member states have also learned from this that setting early deadlines for the completion of the negotiation may reduce the incentive for the candidate country to proceed with the reforms and adjustment. There is no instrument to push for the reforms once a country becomes a member state, and this is one of the reasons why the EU now insists much more on conditionality.

III.2. Enlargement Fatigue

Another set of drivers behind the slowing down of the EU accession process after the Eastern enlargement is closely interrelated with the above discussed Eastern enlargement lessons, and has a common denomination in what is called "enlargement fatigue". Though the concept is not new as it already emerged for the first time during the 1960s in the context of the first EU enlargement and surfaced again in the context of the Southern enlargement in the 1980s and the Eastern enlargement at the turn of the century, enlargement fatigue gained a strong political meaning with the failure of the 2005 French and Dutch referendum on the Constitutional Treaty. Though the Eastern enlargement was not the cause for the failure of the referendums, it provided a convenient scapegoat for the rejection and the notion that the European integration project was run by elites.

The perceived public opposition to further enlargements has been increasingly integrated into the official EU enlargement policies of old member states. In France, for example, it became compulsory to hold a referendum on further enlargements, unless the endorsement is reached with a demanding 60 percent majority of the two houses of their parliament. Or in Germany and Austria, there was an open discus-

sion whether negotiations with Turkey should end with full accession or in a kind of a privileged partnership only (Sedelmeier, 2014: 6).

The enlargement fatigue sentiment was gaining further ground after the EU accession of Bulgaria and Romania in 2007. It was sometimes claimed the EU could not afford to accept any more institutionally weak states, which has unfortunately been a characteristic of several Western Balkan states aspiring to become members of the EU. With the justification that the EU has to introduce institutional changes before any further enlargement, the failure of the Irish Lisbon Treaty referendum in 2008 contributed its part to the slowing down of the EU enlargement dynamics towards the Western Balkans.

As explained in the 2015 report on The Western Balkans and EU enlargement by the Directorate General for External Policies, opinion polls, which also serve as an important guide for political decision-making, display growing scepticism among European citizens in many member states towards a further widening of the EU. The perceived high levels of immigration from the states that joined in 2004 as well as refugees and asylum seekers arriving through and from the Western Balkan countries have contributed to this trend as well. It is possible that some of this disapproval is directed at Turkey, also languishing in the EU's waiting room. Finally, reports of legal uncertainty, corruption, and increasing poverty in the Western Balkans affect public perceptions in the EU countries, and these perceptions influence internal decision-making regarding potential enlargement.

III.3. The Economic and Migrant Crises and Their Management

As presented in the previous sub-section, the reluctance towards the Western Balkan enlargement was initiated well before the start of the global and euro-area economic and refugee crises, but it has intensified significantly since then. There are at least two mutually reinforcing explanations for this development. One of them is the very fact that EU member states have become increasingly preoccupied with their internal problems, primarily with how to manage the twin crises and more recently also with how to address the Brexit issue. As a consequence, the importance of enlargement has been minimized on the political agenda of the EU. Another explanation for growing enlargement fatigue in recent years is the way in which the two crises have been managed. Developments over the recent years have shown that in the crises management process the relative power of the European Commission, which has traditionally been a strong supporter of EU enlargements, has been weakened, and consequently the position of the European Council and member states has been boosted.

The change of power between the member states and the EU institutions that evolved over recent years has been increasingly reflected in the enlargement dos-

sier as well. Today, the enlargement process is run more on the intergovernmental basis than was the case during the large Eastern enlargement. The European Commission continues to play a central bureaucratic role in the enlargement process, but the role of the member states, through the Council and the European Council, has become more explicit and direct. The Council rather than the European Commission is increasingly setting the benchmarks for the negotiations and what *de-facto* determines the pace of the negotiation process. In contrast to previous enlargements, where the process had been largely run on its own, rational and normative decision-making logic, the Western Balkan enlargement process is subject to increased politicization and a growing number of bilateral conditions that would have previously been considered inappropriate (O'Brennan, 2013: 39). The growing role of member states in the negotiation process is well summarized in the following quote: "... increased national safeguards and mechanisms to steer and control the conduct of enlargement; increased 'intergovernmentalisation' in the sense that the General Affairs Council and the European Council assume a more decisive role in decision-making on enlargement, often overruling or ignoring the Commission's opinion; and the growing influence of domestic politics at key moments of the enlargement process and over outcomes in the dossier" (Balfour and Stratulat, 2015: xiii).

A very remarkable shift in the institutional arrangement of the EU enlargement process has happened also with respect to the European Commission's approach towards this subject. Though the European Commission has traditionally been a strong promotor of the EU enlargements, this can hardly be said for the Juncker Commission. The watering down of the enlargement topic in the European Commission's agenda can be illustrated in several ways. One is the statement of Mr. Juncker at the beginning of his mandate that there would be no EU accession during the term of this European Commission. Though he said something that was obvious,³ the statement still sent a message of a political choice heard primarily among politicians and the public at large in EU member states. Another illustration deals with the institutional changes within the European Commission where enlargement lost its own commissioner and Directorate General (DG) enlargement was renamed into DG neighborhood policy and enlargement, giving a clear signal about the priority of political choices (Hillion, 2015: 26).

³ Even under the most optimistic scenario, none of the Western Balkan countries could become an EU member by 2019. This would namely imply that the accession negotiations would have to be completed by the end of 2017 and that was not realistic under any scenario.

IV. Revised Strategy for the EU Accession of the Western Balkans and Its Implementation

IV.1. The Same Legal Basis and Formal Criteria for Enlargement but with a More Rigorous Interpretation

At the 2003 Thessaloniki European Council, the EU member states made a clear commitment to the political future of the Western Balkans, ensuring that the region's future was within the EU. Similar to previous Eastern enlargements, the legal basis for accession is Article 49 of the TEU, and similar to those enlargements, the conditions for accession of the aspirant countries are determined in the Copenhagen criteria. These criteria do remain the conceptual backbone for the EU accession of the Western Balkans. The problem, however, is that the criteria have never been articulated precisely and therefore they allow differences in interpretation. Furthermore, the criteria cannot be interpreted as a primarily legal and/or technical matter, but also as a matter of how EU values and policies are established and implemented.

In the context of the 2004/2007 Eastern enlargement and the forthcoming accession with Croatia (and Turkey) and taking into account the changed political attitude of many member states towards further EU enlargements, the European Commission revised its Enlargement Strategy in November 2006. The document repeats the political commitments of the EU to the Western Balkans, reiterating that each country has the potential to become an EU member once it fulfills the necessary conditions. The crucial element of this revised strategy is encapsulated in the last part of this sentence, meaning basically that a Western Balkan country will enter the EU "once it fulfills the necessary conditions". The issue here is not the wording. It has always been the case that candidate countries were required to meet accession conditions. The difference lies in the substance of this phrase. "Fulfilling necessary conditions" can be interpreted in various ways. During the Eastern enlargement, it was interpreted rather benevolently, due to the strong pro-enlargement political commitment of the member states and the "convoy" type of negotiations. After this enlargement, there was a growing belief that significant challenges that needed to be tackled remained in some new and prospective members in the areas of the rule of law, and activities against organized crime and corruption. The new approach/strategy also reiterated the need for more rigorous conditionality and greater emphasis on the EU's absorption capacity, i.e., its capacity to accept new members, in accession negotiations (*Review of the Balance of Competences*, 2014: 28). As a result of the growing nationalization of EU Enlargement Policy, the role of the national parliaments of the Member States has also grown. Though, it is important to notice that this is a trend that has coincided with the increased role of national parliaments in creating EU public policies in general.

Though the new approach towards EU enlargement is a natural result of the experience gained from previous enlargements of the Union, it is also largely based on the understanding that the EU is above all a community of values, not just a common market. The rule of law, particularly the protection of fundamental rights is a prerequisite for the legitimacy of the EU, which goes far beyond economic and political integration. Within these issues that are now of such importance to the negotiations, it is considered that there are nine norms that are significant to European values – five basic norms (peace, the idea of freedom, democracy, rule of law and respect for human rights and fundamental freedoms) and four “lesser” norms (social solidarity, anti-discrimination, sustainable development and good governance) (Manners, 2007: 242).

Further on, the new approach towards Western Balkan enlargement also reflects the region’s specific political reality after the wars on the territory of the former Yugoslavia in the 1990s. One important ingredient of the EU enlargement strategy for the Western Balkans is its regional component conceptualized in the Stabilization and Association Agreements (SAA). In contrast to similar arrangements of this type signed between the EU and countries of Central and Eastern Europe in the early 1990s (they were called Accession or Europe Agreements), the SAAs of the Western Balkan countries have a strong regional dimension. The regional dimension of the Western Balkan enlargement strategy has as its main objective to strengthen stabilization and regional cooperation, and to improve neighborly relations among countries of the region. Another important specific of the Western Balkan enlargement strategy is its requirement for full cooperation of the countries from the region with the ICTY and the return of refugees. The component called the “Copenhagen Plus” encompasses also a strong security dimension and is aimed primarily at the implementation of various political and peace agreements stemming from the developments in the 1990s (Kmezić, 2015: 13).

The new approach for the EU enlargement of the Western Balkan countries was initially articulated in the 2006 enlargement strategy (its main elements are presented in sub-section IV.2) and the conditionality was further developed in the 2013 and 2014 enlargement strategies based on the newly introduced “fundamentals first” pillars, which encompass, in addition to the rule of law, the early resolution of bilateral issues (sub-chapter IV.3), the importance of economic governance (sub-section IV.4) and public administration reform (sub-section IV.5). The final part of this section presents the main changes that have been introduced into the pre-accession financial instrument as a reflection of the revised EU strategy towards enlargement (sub-section IV.6).

IV.2. Key Elements of the “New Approach to EU Negotiations”

What is now called the “New Approach to EU Negotiations” actually started to take shape during Croatia’s EU accession negotiations.⁴ Its first and very important innovation was the introduction of benchmarks into the negotiating process aimed at strengthening the monitoring of the negotiation. Benchmarks are required to be met in order to either open negotiations on a particular chapter (“opening benchmarks”) or to provisionally close the negotiating process on that very chapter (“closing benchmarks”). The benchmarks were actually used for the first time for the opening of negotiations with Montenegro in 2011. Since then, benchmarks have become an integral part of every chapter of negotiations and have *de-facto* become an important instrument for a more structured approach to the negotiations.

The new approach introduced another fundamental novelty in the negotiating process. In previous enlargement negotiations chapters addressing the political criteria, such as the rule of law, were opened quite late within the process. As a consequence and as experience shows, they had often been closed prematurely within the context of the political pressure to finalize the negotiation process. Based on the conclusion that meeting the political criteria usually takes a very long time to achieve, the EU decided that reforms of the candidate countries in these areas need to be “front-loaded”. This means that the candidates must embark on an ambitious reform program in this area from the very beginning of the negotiations. As agreed in 2011, this new approach stipulates that the rule of law conditionality elaborated in chapter 23 (judicial reform, the fight against corruption and human and minority rights) and Chapter 24 (Justice, Freedom and Security) must be tackled from the beginning of the negotiations. This in practice means that these two chapters are now the first ones to be opened and also the last ones to be closed. This approach aims at providing candidate countries with sufficient time to introduce the reforms, both through the harmonization of the legislation and by demonstrating a strong track record of implementation, before negotiations close.

The negotiations on these two chapters have been *de-facto* given the role of “controller” of the negotiations. The new approach namely introduces the so-called “imbalance clause”, which stipulates that any delay in implementing the obligations under these two chapters may lead to the activation of a mechanism that halts negotiations on all the chapters. Further on, apart from “opening” and “closing benchmarks”, the negotiations on these two chapters are also subject to so-called “interim benchmarks”, which are also defined to evaluate the consistency with which alignment within the area of the rule of law is achieved. The introduction of the “imbalance clause” as well as of “interim benchmarks” is just more evidence of how the

⁴ The text of this sub-section is based on Mišević, 2016.

negotiations are increasingly shaped by the EU member states, as they just decide whether the benchmarks have been met or not. Finally, the benchmarks are becoming more numerous. As an example, one can note that Montenegro has twice as many “interim benchmarks” in chapters 23 and 24 than was the total number of all benchmarks in Croatia’s EU accession negotiations. It can be concluded, in fact, that each step taken in the negotiating process is now far more difficult and politicized than ever before.

In the case of Serbia, there is another unique feature that has been introduced into the negotiation process. It refers to chapter 35. This chapter usually covers issues such as the new *acquis* that entered into force in various chapters after the negotiations were temporarily closed, access to various special bodies of the EU as well as special arrangements for specific countries (for example, trade regime in the Neum corridor for Croatia).

In the case of Serbia, however, this chapter has been turned into a mechanism for monitoring all the agreements, those that have been achieved and the future ones, concluded as a result of the dialogue on the normalization of relations between Belgrade and Pristina. This chapter has the same status in the negotiating process as the ones concerning the rule of law. It therefore incorporates “transitional criteria” and may activate the “imbalance clause” if it is assessed that there is no sufficient progress in the implementation of the agreements. It is not clear at this point what criteria will be used to assess whether sufficient headway has been made in meeting the obligations arising from the chapter. As the substance chapter is completely new, with no earlier experience not only for Serbia as a candidate country but also for the EU institutions (the EEAS and the European Commission) and the member states, it is realistic to expect that it will be one of the most challenging chapters in the overall negotiation process for this country. What is clear at this point are the basic principles of chapter 35. It cannot be a substitute for dialogue and is only a mechanism for monitoring the implementation of what has been agreed to in the dialogue. Further on, the framework of the chapter must not exceed the framework of dialogue, and cannot go outside of the framework of the agreements that have already been reached. This means that chapter 35 is not meant to broaden the topics related to normalization into new areas. This can be done through the dialogue exclusively.

IV.3. “Fundamentals First” Approach – Part 1: Early Resolution of Bilateral Disputes

The dissolution of the former Yugoslavia that went through a period of severe hostilities and wars in the 1990s has resulted in the creation of several sovereign states on this territory. As the borders of the republics of that predecessor state had never

been formally established, this opened the door for disputes among the neighboring states about the borders. The first large dispute of this kind among the ex-Yugoslav republics, and one that had a strong implication on the EU accession process was the one between Slovenia, at that time already an EU member state, and Croatia as a candidate country. The dispute escalated to the point where Slovenia temporarily blocked the EU accession negotiations of its neighbor. This in fact meant that an EU member state was using the EU accession negotiations of its neighboring country as leverage for addressing bilateral disputes.

The case of the Slovenia-Croatia dispute and its disruptive impact on the EU enlargement process as a whole has indicated very clearly that bilateral conditionality may become a major obstacle for the EU accession of other countries in the Western Balkans. This is not only because of a large number of potential disputes as many of the border issues between the Western Balkan states remain unresolved, but also because there are now many more decision points for the member states at which they could put pressure upon a candidate. Though unresolved border issues between the Western Balkan countries are potentially very problematic for effective EU enlargement process of the countries in the region, they are not the only ones. There are other unresolved issues with a potentially disruptive role as well, such as the name dispute in the case of Macedonia, the status of Kosovo, and the institutional setting of Bosnia and Herzegovina.

Based on the experience from the Slovenia-Croatia border case, the 2013 enlargement strategy calls for addressing the expected bilateral issues among the Western Balkan countries as early as possible in the accession process so as to avoid turning them into an obstacle in the EU accession negotiations at a later stage. The EU institutions are expected to provide pro-active mediation in these processes.

IV.4. “Fundamentals First” Approach – Part 2: Economic Governance

In the decades prior to the economic crisis, European economic governance had a rather limited impact on the EU accession process.⁵ Countries in the process of EU accession were asked to enter in the so-called “pre-accession fiscal surveillance”. This consisted of two components. The first was a policy dialogue on medium-term policy framework (primarily on macroeconomic and fiscal issues) based on so-called Pre-accession Economic Programmes for official candidate countries and Economic and Fiscal Programmes for potential candidate countries. The second component of the “surveillance” consisted of fiscal notifications. As far as EU accession negotiations are concerned, European economic governance issues were considered as a rather “light” and uncomplicated negotiations subject. *Acquis* in

⁵ The text of this sub-section is based on Mrak, 2015.

this area was very limited and largely focused on issues associated with the central bank independence.

During the economic crisis it has become obvious that a sustainable monetary union, due to the high level of economic dependency among the members, requires stricter rules of their implementation than in the case of EU members. There is no doubt that the “six-pack”, the “two-pack”, the Fiscal Compact and the European Stability Mechanism do contain the most far-reaching legal reforms of the fiscal governance framework since the introduction of the single currency. The introduction of these legal acts has, however, contributed to a drastic transformation of the EU/euro area economic governance from a rather simple one into a very complex one.

A significantly strengthened *acquis* in the economic governance area and in particular the fact that Croatia was placed into the excessive budget and excessive imbalance procedures soon after its accession into the EU triggered the decision of the EU member states that more attention in the EU accession process has to be attached to economic governance. Through the 2014 EU enlargement strategy, it was constituted as one of the fundamental first pillars.

The reformed European economic governance has been trickling down into the EU accession process through two main channels. The first one is a broadened framework for consultation on economic policy coordination. While before the crisis this framework was largely focused on macro and fiscal issues, it now encompasses in a much more systemic manner also growth and competitiveness issues. In 2014, the candidate countries were asked for the first time to produce a document called the Economic Reform Programme (ERP) which, in fact, represents the new generation of document supporting economic policy dialogue between a candidate country and the European Union. Also the procedure for assessing this document has been strengthened. Now, the annual cycle of the consultation ends with a ministerial meeting, in the ECOFIN format, where country-specific recommendations are adopted for each of the EU candidates.

The second channel for strengthening economic governance in EU candidate countries is a broadened scope for *acquis* harmonization within chapter 17 of the EU accession negotiations. In contrast to the pre-crisis period, the *acquis* chapter on economic and monetary policy, now chapter 17, has become much broader covering numerous economic governance issues. Negotiations under this chapter have become increasingly and more explicitly linked with the fulfillment of the Copenhagen economic criteria. From a candidate country's point of view, the crucial element for successful negotiations on this chapter is good cooperation between the central bank and the ministry of finance. The role of the latter with respect to this chapter of the negotiations has increased significantly.

IV.5. “Fundamentals First” Approach – Part 3: Public Administration Reforms

Reform of public administration is another big area that gained increased importance under the “fundamentals first” approach. The experience from previous enlargements as well as from the recent economic crisis has shown that there is no economic development without a well-functioning public administration. Consequently, there is a strong need for a more systemic approach towards reforming the public administration. A comprehensive approach is needed in order to create an administrative apparatus that will have not only the capacity to negotiate, but also the ability to implement everything that has been agreed on. Such an administrative apparatus, not only on a national level, but also on a local or regional one, must be ready to meet all the requirements that come from EU membership once the country becomes a member, when all EU policies become a part of its national public policies (Mišćević, 2016: 80).

The main elements of the public administration reform within the EU accession process are the following: first, a comprehensive public administration reform that consists of five separate but interlinked and mutually reinforced dimensions (public service and human resource management, policy development and coordination, public financial management, accountability and service delivery) and the strategic framework that addresses all five separate dimensions. Second, a more evidence-based approach to public administration reform (based on SIGMA and OECD baseline measurements). Third, comparative reporting in the annual reports (on each of the five separate dimensions and on the sixth one that is of a cross-cutting nature). Fourth, structured policy dialogue (regular policy dialogue on individual dimensions through SAA structures). And fifth, mainstreaming of public administration reform (aims to ensure that EU sectoral assistance does not create unsustainable “islands of excellence”, but respects general public administration reform efforts and promotes key principles of public administration development) (Brunet, 2016).

IV.6. IPA II as a New Generation of a Pre-Accession Financial Assistance Instrument Adjusted to the Revised EU Enlargement Strategy

The changed political climate among EU member states towards the Western Balkan enlargement reflected in significant revisions of the EU enlargement strategy over the last decade got its response also in the IPA II as the new generation of pre-accession financial assistance instrument.⁶ Its overall philosophy is to continue with the provision of the pre-accession financial assistance, but the assistance should be, in line with the “fundamentals first” approach of the revised EU enlargement stra-

⁶ The text of this sub-section is based on Mrak, 2016.

tegy, less focused on narrowly defined EU accession objectives and more on general socio-economic and good governance objectives (Koeth, 2014: 14).

Even though general objectives and areas of intervention of the IPA II are conceptually not very different from the IPA I and in this respect represent its continuation, the revised IPA instrument is still very different from the IPA I in several features, and each of these new features is consistent with the revised philosophy of the 2014-2020 pre-accession instrument.

One novelty of the IPA II is undifferentiated access to funds meaning that the status of all the candidate countries is the same. There is no distinction between candidates and potential candidates. This seems logical under the circumstances when the EU enlargement agenda is increasingly unclear in terms of the timetable. Experiences over the last decade clearly indicate that being a candidate country does not necessarily mean that a country is closer to membership status. Macedonia, which has been a candidate country for 10 years, but has not even started the EU accession negotiations, well illustrates this point.

Also, the structures for managing the IPA II funds are significantly different from the ones under the IPA I. As following the “fundamentals first” approach, the IPA II has departed from narrowly designed accession-driven objectives towards more general development and good governance objectives, it is logical that this has been reflected in the adjusted structures for managing these funds. Under the IPA I, the focus of these strongly accession-driven structures were EU-accredited institutions aimed primarily at preparing the candidates for effective absorption of EU funds after the accession. Under the IPA II, however, these management and implementation structures are largely adjusted to the general development and good governance objectives of each individual candidate country.

The third novelty of the IPA II is the introduction of the so-called sector approach. A provision of the assistance based on the sector approach is in sharp contrast to earlier versions of pre-accession instruments, including the IPA, where assistance to the EU candidate countries was implemented through numerous individual projects covering a large number of thematic priorities. This project-by-project approach was, indeed, sub-optimal as stand-alone projects – even in circumstances of being managed well and having met their narrowly defined objectives – had only limited sectoral or even national policy relevance and impact. The sector approach introduced under the IPA II has been aimed primarily at addressing these deficiencies. There is little doubt that the sector approach has many positive sides, as it strengthens ownership of the beneficiary over the project, links better individual projects with national and sectoral priorities, and provides a framework for better coordination with other donors. However, the approach is associated with potential disadvantages as well. This may be less the case for the candidates that are

still far away from the membership, but the disadvantages are more obvious for the candidates closer to EU accession. For them, moving funds away from specific EU accession projects namely increases risks that these countries will not be well prepared, first, for assuming obligations under the *acquis*, and second, for absorbing the large volume of EU funds they will be entitled to upon the accession.

And finally, closely associated with the sector approach is another novelty of the IPA II, namely the introduction of the sector budget support instrument. The instrument – it was used extensively in delivering EU development assistance in previous decades and as an exception also under the IPA I – is to be implemented through sector reform programs. Sector budget support implemented through Sector Reform Contracts consists of the transfer of EC funds to the national treasury of a beneficiary country, in exchange for its commitments to implement certain policy measures and meet the agreed conditions or benchmarks. The instrument fits well to the “fundamentals first” logic of the revised EU enlargement strategy as it is aimed at supporting the EU candidates in the key reform areas, such as the rule of law, economic governance, public administration reform and public financial management. There is, again, no doubt that sector budget support has many benefits, including a clearer link between the political agenda and financial resources, increased ownership and improved domestic accountability, improved macroeconomic stability and the management of public finances, and lower transaction costs. On the other hand, the instrument seems to be less suitable for focused, accession-driven objectives that require the use of fine tune individual projects. What proportion of total IPA II funds should be channeled via a sector budget support instrument into an individual candidate country should, among other things, depend on its status in the EU accession process.

V. Conclusions

EU Enlargement Policy has been one of the most successful and influential policies of the EU. Not only has it overcome the Cold War differences among European states, but it also changed tremendously and in a very short period of time dozens of countries into modern European democracies. The negotiation process of Central and Eastern European countries proved to be a very powerful tool instrumental in those changes, but not a perfect one. Namely, it is imperfect in terms of the complete alignment or mechanism of oversight after membership. Negotiating procedures have to be adjusted to the needs of both the EU's 28 members and Western Balkan states.

The role and attitudes of EU member states during the negotiation process are important technically, having in mind the large number of benchmarks (opening and closing, and in some cases even during the negotiation process) for which consensus

is needed. But consensus is never a technical issue – it is a deeply political one, and it is influenced not only by the assessment of the reform process of a candidate country. The general attitude towards enlargement as not being the priority of the EU, and especially, bilateral issues with the candidate country, have a much more important role. In other words, political consensus is much more difficult to reach and if there is no agreement, it is much easier to explain it with the technical objections.

Europeanization, the EU's transformative power, still exists and offers a huge attraction for the Western Balkan countries. There is a strong message coming from EU member states that enlargement is going to continue and candidates are going to become members as soon as they fulfill the necessary conditions. At the same time, the business of negotiating accession is not as usual. "Acquired experience" of previous waves of enlargement (more bluntly, mistakes, leftovers and loose ends), find their expression in the New Approach to negotiations, with fundamentals first front loaded. In other words, the toughest issues first, and not to be left for the very end of the negotiation process. It is not clear what repercussions this will have on how long talks will last, but for sure it is clear that it affects the content. With the supremacy of the rule of law, the basis for the reforms is rightly established. This is, with no question, the good basis for working on European values, the corner stone of the EU.

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