



EU Enlargement in troubled times?

Adapting to new realities and drawing lessons from democratisation failures

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Vienna, 10 November 2015
ISSN 2305-2635

Policy Recommendations

1. Rather than refraining from engaging in potentially divisive debates, supporters of EU enlargement should proactively contribute to politicising the topic with the aim of recovering their discursive superiority. They should launch media campaigns and urge political parties to present less ambiguous cues.
2. With the introduction of mechanisms constraining enlargement in several member states and the side-lining of the Commission, the institutional dynamics of the EU's enlargement policy have changed. More coordination is required to reframe the politics of enlargement at the EU-level in a way that limits unpredictability and inconsistencies.
3. The EU should regionalise enlargement, allow an earlier participation of Western Balkan states' representatives in EU politics, and above all systematically place its support for civil society at the core of its relations with (pre-)candidate states. The Commission's progress reports, in democratisation matters, should be designed with the primary purpose of increasing the domestic leverage of civil society actors.

Abstract

Enlargement was once considered the most successful external policy of the European Union. But the sparse progress recorded in the Western Balkans in the past few years and their overall democratic backsliding have cast doubt on the EU's capacity to

genuinely transform Western Balkan societies. The rise of authoritarianism in this conflict-laden region raises serious concerns, which the EU's "business as usual approach" is unlikely to address.



EU Enlargement in troubled times?

Adapting to new realities and drawing lessons from democratisation failures¹

Enlargement, once considered the most successful external policy of the European Union (EU), is no longer a top priority. The European perspectives offered to the Western Balkans (WB) in the early 2000s have lost their appeal. Progress in the region is sparse, when not backsliding. Among the member states, serious anxieties related to WB good governance practices prevail. In times of economic crisis, these have a sobering effect on EU widening prospects. Euroscepticism and anti-immigration discourses are riding high, while geopolitical developments in Ukraine and the Middle-East, with their humanitarian implications, show how fragile the EU remains. The fear that hasty enlargements could import further instability, insecurity and economic fragility into the EU holds up the process. It nurtures the now-structural enlargement fatigue, which in turn reverberates in the WB through rising authoritarianism.

While the EU prevaricates and invokes its integration capacity, the timely accession to the EU of WB states as well as their successful transformation have become a scenario that does not conjure bleaker perspectives². Attempts at compensating for the EU's eroding capacity to inspire through an ever sophisticated conditionality regime are no panacea. Top-up, incentive-based modes of Europeanisation do not entail the shift in political loyalties³, upon which the EU's integrative power

shall rest. They do not inspire legitimacy, build trust, nor do they capture peoples' imagination.

In Central and Eastern Europe (CEE), the EU thought it had found the perfect recipe for democratising transition countries. But today's WB are not like yesterday's CEE countries⁴. Likewise, the EU of the 1990s is not the EU of today. **Rather than relying on what it thought was a recipe for democratising transition countries, the EU should engage in finding one that is adapted to WB states' specificities.**

1. Enter the age of politicisation!

A key determinant of the so-called integration capacity⁵ of the EU is the public support for enlargement in EU member states⁶. With the shift in the political sphere from "permissive consensus" to "constraining dissensus"⁷, the pursuit of European integration

1) This Policy Brief has been produced in collaboration with the Austrian Institute for International Affairs (oiip).

2) Balkans in Europe Policy Advisory Group. 2014. *The Unfulfilled Promise: Completing the Balkan Enlargement*. Graz: CSES, EFB.

3) Haas, E.B. 1968. *The Uniting of Europe: Political, Social and Economic Forces (1950-1957)*. Stanford: Stanford University Press.

4) The heritage of the wars is just one fundamental difference among many others. See Dolenc, D. 2013. *Democratic Institutions and authoritarian Rule in Southeast Europe*. Colchester: ECPR Press.

5) i.e. the "Union's capacity to absorb new members, while maintaining the momentum of European integration" according to the European Council. 21-22 June 1993. Presidency Conclusions of the Copenhagen European Council. The concept, originally termed "absorption capacity", gained impetus in 2006-2007 at the policy-level in the context of the enlargement fatigue.

6) Schimmelfennig F. 2014. *Enlargement and Integration Capacity. A Framework for Analysis. MAXCAP Working Paper (1)*.

7) Hooghe L. & Marks G. A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus. *British Journal of Political Science* 39 (1).



is, indeed, increasingly contingent on public opinions. Throughout the EU, their support for enlargement has shrunk. Despite their generally low awareness, a majority of EU citizens is now opposed to further enlargements. With the rise of Eurosceptic discourses in Europe claiming that there are considerable trade-offs between enlargement and immigration, the gap in EU enlargement negative attitudes between the political elites and general public is being bridged.

„Supporters of EU enlargement should proactively contribute to politicising European integration.“

Studies show that anxiety-producing media framing and negative party cues undermine public support on enlargement matters⁸. Rather than lamenting about the rise of popular dissatisfaction, regretting the use of enlargement scapegoats for electoral purposes, and refraining from engaging in potentially divisive debates on enlargement, **supporters of EU enlargement should proactively contribute to politicising European integration** with the aim of recovering their discursive superiority. EU-financed communication campaigns in EU member states **acknowledging the cleavage and yet promoting past and future enlargements** would be a first step.

With the politicisation of enlargement in the EU, political parties have seen their influence grown on that topic. Their manifestos almost always include a chapter on European politics –and sometimes on enlargement too. Yet, transnational links between EU and WB political parties remain weak. Accentuating the politicisation of enlargement would **put pro-enlargement party families under greater pressure in the European Parliament to condemn the conduct of their party sisters in the WB, when these violate European standards.**

8) e.g. Toshkov D. et al. 2014. The ‚Old‘ and the ‚New‘ Europeans: Analyses of Public Opinion on EU Enlargement in Review. *MAXCAP Working Paper* (2).

2. Re-framing the inter-institutional dynamics of the enlargement policy

At the institutional level, **mechanisms to steer and restrain the enlargement process at all stages have been introduced in several member states**⁹. In France (and Austria to a lesser extent), national referendums are now posited as “constitutional requirements” for the ratification of future accession treaties¹⁰. In Germany, the Bundestag, pursuant the 2009 Federal Act on EU Cooperation, may now decisively influence the Council’s enlargement decisions on granting candidate status or opening negotiations. And it has. For instance, it did not follow the recommendations of the Commission in 2011 and 2012 to grant Serbia and Albania the status of EU candidate.

Meanwhile, at the EU level, intergovernmental institutions have (re)gained decisive power on enlargement matters. They commonly disregard the Commission’s recommendations and withhold any automaticity (and not only on the opening of accession negotiations with Macedonia). The intergovernmentalisation of enlargement is a distinctive feature of the latest initiatives aimed at giving the process a new impetus (e.g. Berlin Process, British-German initiative). The Commission, the assessments of which key member states (e.g. Germany, France) deem biased and too positive, has seen its authority contested¹¹. Its organisational restructuring (with the fusion of DG enlargement and DG ENP in the new Commission) and the

9) Balfour R & Stratulat C. 2015. EU Member States and Enlargement Towards the Balkans. *EPC Issue Paper* (79).

10) Art. 49 TEU states provides that accession treaties “shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements”.

11) EU member states usually use their diplomatic representations to get a better grasp of WB politics, while some parliaments carry out their own assessment missions (e.g. Germany, Denmark, Sweden and the UK).



Juncker Plan only confirm that **the Commission, side-lined, no longer occupies a position of leadership** in enlargement matters.

„Rather than arguing for the re-centralisation of enlargement at the supra-national level, the emphasis should be put on enhancing intra-EU, inter-institutional coordination to ensure horizontal coherence.“

The uncontrolled fragmentation and unframed decentralisation of the EU enlargement policy is a growing source of unpredictability for prospective members. The spontaneous emergence of a plurality of veto players may render the process more democratic, less technocratic, but it may also undermine the credibility of enlargement as collective endeavour. Rather than arguing for the re-centralisation of enlargement at the supra-national level, the emphasis should be put on **enhancing intra-EU, inter-institutional coordination to ensure horizontal coherence.** The Commission should redefine its role accordingly, foster inter-institutional communication, work more closely with the European Parliament and take national assessment studies into account in the elaboration of its own progress reports.

Meanwhile, actual and future member states should be aware **that EU member states' domestic politics and national interests increasingly matter in the conduct of enlargement.** Germany is doubtlessly the most influential capital¹². Berlin pushes for a tough line on conditionality (like the Netherlands, Finland and Sweden), also in an attempt to defuse Euro-sceptic sentiments at home. France has no strategic interest in the question and generally aligns itself with Germany. The UK continues to support enlargement, but its credit on EU matters shrunk with its growing hostility towards immigration, the Brexit question and rising UKIP. Poland supports a softening of the conditio-

nality process (together with Hungary and Italy) but its relations to the WB are historically weak. Austria nurtures a strong ambivalence between the official stance and its more sceptical public opinion. As for Croatia, for want of a unified approach and sufficient capacities, it did not succeed in acting as norm-entrepreneur on WB matters. **The heterogeneity of governmental stances, which rose in past enlargement waves, requires an emphasis on institutionalised intergovernmental coordination. This task could be entrusted to the President of the European Council¹³.**

3. Revising the EU's conditionality approach

The 2000 Zagreb Summit gave shape to the EU's "individualized approach" towards the WB. Strongly advocated by Germany, France, Sweden and Spain, it de facto contrasts with the grouped accession of 10 new member states in 2004. By assessing and rewarding individually their progress, the aim of the EU's "regatta approach" is to stimulate constructive competition and help identify best-practices. Fifteen years of trial, however, show little evidence of distinctive success for this method. The fact that many of the issues hindering progress have a regional dimension certainly contributes to this disappointing result. Emphasising the substantive need for regional cooperation (e.g. through the Berlin process), for that matter, will not be as effective **as regionalising enlargement, grouping accession prospects and multilateralising conditionality.** The EU should more systematically deal with the WB on a regional basis and encourage them to coordinate their national positions regionally (e.g. empowering the SEECF).

In the past few years, the conditionality mechanism has undergone important changes. In 2006, the "renewed consensus" introduced strict

12) Balfour R. & Stratulat C. 2015. Op. cit.

13) Art. 15(6)c. TEU states: "he shall endeavour to facilitate cohesion and consensus within the European Council"



conditionality assessments throughout the negotiation process. The opening and closing of negotiation chapters are now subject to the preliminary fulfilment of opening and closing benchmarks. By compartmentalising conditionality, the EU multiplies its opportunities to sanction (more than reward) WB states. Furthermore, in 2011-2012, the EU adopted a “new approach”, prioritising chaps 23 and 24 in the accession negotiations¹⁴. Frontloading these chapters as the first to be opened and setting interim rather than closing benchmarks is intended to help WB states develop a solid track record and avoid the post-accession activation of accession treaty safeguard measures or cooperation and verification mechanisms (CVM)¹⁵. **The “renewed consensus” and “new approach” amendments to EU conditionality, advanced by Germany in the first place, have contributed to strengthen the role of veto-players at the intergovernmental level and rendered the whole process stricter.**

„Whereas conditionality fosters rule-following, long-term transformation requires their internalisation.“

Tougher conditions, however reassuring they are to EU enlargement sceptics, do not inflexibly lead to effective compliance in democratisation matters¹⁶. Studies, firstly, emphasise the risk of literally transposing the EU acquis, with no adaptation to specific circumstances and little consultation in the preparation of laws. **In the WB, the routi-**

nised practice of passing EU-inspired laws under emergency procedures is time-effective but not democracy-supportive. It is also obvious that formal institutions can be changed through tougher conditionality, without prevailing informal and behavioural practices being affected, due to the region’s “deeply embedded tradition of political interference in administrative decisions, and the lack of a clear division between the public and private sphere”¹⁷. **Whereas conditionality fosters rule-following, long-term transformation requires their internalisation.** In judiciary reforms, conditionality-induced de jure changes have so far not prevented the continuation of de facto political interference¹⁸.

Conditionality, secondly, is less fruitful in political contexts where civil society is weak, since infringements or dubious behaviours will more easily go undetected and unpursued. Post-accession research shows that CVM reports were most effective when civil society actors, including independent media, could use them to pressure their governments from below¹⁹. **To have a lock-in effect,**

14) Chaps 23 and 24 deal with judiciary and fundamental rights, and justice, freedom and security.

15) Safeguard measures have been invoked against Croatia in 2013; CVMs are in place since 2006 to review the progress of Bulgaria and Romania in the fields of judicial reform, corruption and organised crime.

16) e.g. Falkner G. & Treib O. 2008. Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. *Journal of Common Market Studies* 46 (2).

17) Cohen L.J. & Lampe J.R. 2011. *Embracing democracy in the Western Balkans: from post-conflict struggles toward European integration*. Washington: John Hopkins University Press, p.131. See also Elbasani A. 2013. *European Integration and Transformation in the Western Balkans*. Abingdon: Routledge. Džihic V. & Hamilton D. 2012. *Unfinished business: the Western Balkans and the international community*. Washington: John Hopkins University Press. Kmezic M. (ed.) 2014. *Europeanization by Rule of Law: Implementation in the Western Balkans*. Skopje: Institute for Democracy SOCIETAS CIVILIS.

18) In Montenegro, the President of Supreme Court is no longer solely appointed by the Parliament but by the Judicial Council first. Still, the incumbent President was re-elected. Fagan A. & Sircar I. 2015. Judicial Independence in the Western Balkans: Is the EU’s ‘New Approach’ Changing Judicial Practices?. *MAXCAP Working Paper* (11).

19) Dimitrova A. & Buzogany A. 2014. Post-Accession Policy-Making in Bulgaria and Romania: Can Non-state Actors Use



EU conditionality needs to empower society actors and facilitate broad societal mobilisation²⁰. It is essential to include civil society organisations with special expertise as partners in the exercise of conditionality, and to institutionalise this inclusion as early as possible in the accession process. Civil society actors, for instance, should play a decisive role in shaping EU benchmarks and monitoring progress. **In democratisation matters, the Commission's progress reports, likewise, should be designed with the primary purpose of increasing the domestic leverage of civil society actors.**

„To have a lock-in effect, EU conditionality needs to empower society actors and facilitate broad societal mobilisation.“

The need to empower civil society actors in the WB shall respond to unintended developments brought about by European integration. EU member states and a fortiori countries preparing for EU accession all demonstrate a tendency for concentrating political power in the hand of the central executive vis-à-vis the parliament, political parties in the opposition or civil society²¹. **Empowering civil society actors then boils down to reducing the domestic imbalances created by the EU's dominantly intergovernmental approach.** There is, here, plenty of room for improvement,

EU Rules to Promote Better Governance?. *Journal of Common Market Studies* 52 (1).

20) Dimitrova A. 2015. The Effectiveness and Limitations of Political Integration in Central and Eastern European States: Lessons from Bulgaria and Romania. *MAXCAP Working Paper* (10).

21) See Börzel T.A. & Sprungk C. 2007. Undermining Democratic Governance in the MS? The Europeanization of National Decision-making', in Holzacker R. & Albaeck E. (eds.). *Democratic Governance and European Integration*, Linking Societal and State Processes of Democracy, Cheltenham: Edward Elgar Publishing.

starting with the inclusion of civil society actors in all "structured dialogues", the institutionalisation of civil society participation in negotiation processes, enhanced funding for NGOs and symbolic support for civic mobilisation throughout the region.

More generally, measures are needed to shift the emphasis in EU-WB interactions from intergovernmental, mono-logical, incentive-based, output-oriented conditionality to a more transnational, dialogical, identity-based, throughput-oriented approach. Strengthening transnational networks (including through civil society) is instrumental in achieving the identity change required for the sustainable transformation of conflict-laden societies. Engaging in dialogical interactions with WB societies is instrumental in ensuring their sincere involvement in EU politics. Assuming that WB states, being norm-takers, cannot contribute to EU politics or EU foreign policy is anything but inspirational.

An earlier participation of WB representatives in EU coordination meetings and a more willing ear lent to their views are key to socialisation processes. In the field, a more active and personal diplomatic engagement with WB societies at the grass-root level would help build trust and awareness. Finally, an emphasis on throughputs, i.e. accountability, transparency and openness to consultation²², in progress assessments should be applied to both WB states' transformation and EU-WB relations. **Assessment reports should acknowledge when the EU fails to deliver, explain why and, when necessary, apportion shame and blame to individual member states or European institutions.** This would make conditionality more legitimate.

22) Schmidt V. 2010. Democracy and Legitimacy in the European Union Revisited. *FKG Working Paper* (21).



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ISSN 2305-2635

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This Policy Brief has been produced in collaboration with the Austrian Institute for International Affairs (oiip).

Citation

Marciacq, F. (2015). *EU Enlargement in troubled times? Adapting to new realities and drawing lessons from democratisation failures*. Vienna. oiip / ÖGfE Policy Brief, 39'2015

Imprint

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