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EU Enlargement and the Western Balkans – policy changes and policy options from the perspective of candidate countries

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Abstract

This paper discusses how different is the position of the Western Balkan countries in the enlargement process and what are the policy options in the new circumstances from the position of the policy-taker, a potential EU member state. We start with the changes in the EU enlargement policy towards the countries covered by the EU Stabilisation and Association process made in 2003 by introducing so-called pre-accession instruments for all the countries of the region regardless of their stage in formal integration leading to, as we argue, a separation of factual integration from formal integration of these countries to the EU, with some important elements, such as pre-accession assistance still being tight up with formal integration steps. We proceed to outline the policy moves made at the national levels as a reaction to the slowing down of the enlargement process, a sort of domestic push to speed up the integration in the form of the National programmes for integration, comprehensive plans for integration to the EU by a set date(s) reflecting the drive for joining the EU. We argue that these two elements in synergy have led to the position of the Western Balkan countries in the enlargement context (and the costs and benefits) being significantly changed, in particular for the laggard countries. Finally, we discuss what could be the policy direction from the perspective of a (potential) candidate country speculating on the national programme for integration being transformed into a genuine instrument of governing the process and how politisation of the pre-accession policy in the pre-accession countries can contribute to the process of integration to the EU from the demand-side point of view and beyond.

Key words: Enlargement, Stabilisation and association, Pre-accession Instruments, National Programme for Integration, development strategy

1. EU Enlargement Policy and the Balkans: Is it different and how it differs?

1.1. Formulating policy for the Balkans

The starting point in the analysis is the adoption of the 1999 Stabilisation and Association Process (further: the SAP) for the countries of the region as a policy framework for their rapprochement with and later integration into the EU. This is not the first EU policy towards the region of the Western Balkans, as the EU adopted in 1996 the Regional Approach towards the countries – an unsuccessful attempt to use its leverage in the region to induce the stability in the region by offering something similar to what was given to the countries of Central and Eastern Europe (CEECs) prior to association agreements.¹ More importantly, this was the start of the conditionality policy towards the countries of the region which continued throughout the period in the form defined by the Council Conclusion of April 1997.² The Regional approach, it is widely recognised, was a failure and it is relevant here primarily as a reminder that the leverage the EU has may not be sufficient for the policy success but that the policy measures need to be clear, coherent and objective-oriented with a clear link between the conditions to be fulfilled and the progress in the development of the relations with the EU to follow upon their fulfilment.

The Stabilisation and Association process (SAP) adopted in 1999, shared many features with the previous policy towards CEECs: the motivation (policy problem), the measures (policy content), and the goal (policy objective). The crucial difference between the two policies, or processes, emerged in the long process of integration of these countries in the EU within which the new measures originally developed in CEECs enlargement are being introduced while formal integration stagnates whereby breaking the link between formal and factual integration to the EU.³ Under the following title, we examine more closely the SAP policy and the changes referred to above.

1.2. The content of the SAP

The SAP was proposed 26 May 1999 and adopted on June 21 1999⁴. The overall frame remained, i.e. the conditionality policy remained the centre of the EU policy. The main elements of the new policy were:

-  Trade Preferentials
-  Stabilisation and Association Agreement
-  Instrument of financial aid (CARDS)
-  Regional Cooperation

The access to each of the above listed elements was subject to set of conditions. The lack of clarity and consistency in their application led overtime to questioning their credibility. The autonomous trade preferentials were adopted in September 2000 for the SAP countries and territories increasing already existing trade preferentials and achieving free trade for some 95% of exports from these countries.⁵ The countries benefited from CARDS programme in the period 2000-2006 and were strongly pushed for regional cooperation. The main element of the policy, the association agreement proved to be more difficult to attain.

The new association agreement being obviously a modified version of the Europe agreement was the main element of the policy and the best indicator of the path dependency in policy-making. The key elements of the Stabilisation and Association Agreement (SAA) are the provisions on political dialogue, trade and economic cooperation, and cooperation in number of policy areas/sectors (cooperation policies) which includes of transposing legal norms into national legislation in each of the areas covered by the Agreement. New elements, compared with the Europe agreement, are the chapters on regional cooperation and justice and home affairs.⁶ For the purpose of this paper, it is sufficient to note that the SAA follows the Europe Agreement model and resembles in particular those Europe Agreements concluded at the later stage (1994 and 1996) with Baltic States and Slovenia, as they also contain among other things the call for developing regional cooperation although not formulated as a condition for integration.

The association of the Balkan countries to the EU equals, judging by the provisions of the agreements concluded until the present day, integration to the internal market (for industrial products primarily), cooperation in sector policies with legal harmonisation in those policies, supported by the financial assistance and policy guidance by the EU, and clearly represents a model applied previously. More concretely, the SAA envisaged full liberalisation of trade in industrial products (it has already been

liberalised on the EU side through the abovementioned ATPs) within 6 or 10 years, but it maintained the restrictions in agricultural products. It envisaged liberalisation of the capital flows, including short-term capital flows in the period of 4 or 6 years, but not the liberalisation of the labour movement.

Apart from the content of the SAA, it is important to note the slow progress made in concluding the agreements with the countries of the region. Not one SAA was signed until 2003 when some important changes were made in the EU policy.⁷ After the dynamic start in 1999, following 1999 crisis in Kosovo when the feasibility studies, the pre-condition for signing the SAAs, were conducted for three countries of the region between mid 1999 and mid 2000 the process of integration was developing rather slow.⁸ Feasibility study for Bosnia and Herzegovina was completed in 2003 and for the FR Yugoslavia in 2005. The SAA agreements were signed in the following order: FYROM and Croatia in 2001, Albania in 2006, Montenegro 2007, Bosnia-Herzegovina and Serbia in 2008.

The CARDS programme replaced previous programmes allocating 4.65 billion EUR for all five countries for the period 2000-2006. It introduced programming process and became more focused on the SAP priorities after 2004. The large share of funds allocated to this programme was allocated for political and economic reforms, e.g. the institution building projects took more than 60% of CARDS funds granted to Serbia in the whole period of 2000-2006.⁹ The implementation of the CARDS programme in Serbia pointed also at some potentially weak sides on the side of national administration in terms of lack of strategic national documents.¹⁰

Finally, the regional cooperation, the fourth most important element of the SAP, had been developing between the countries of the region on different levels and in different formats starting from 1996, and in particular after 1999, when numerous initiatives had been launched with more or less success. The success of individual initiatives can be linked to the topic they dealt with (not necessarily a regional issue) but there is also a broader issue of the relation between the regional cooperation and EI noted and described elsewhere.¹¹ What is under-researched is the relatively recent development of regional cooperation towards sector integration in transport and energy sectors under the Stability Pact which provided framework for cooperation rather than the initiative. The initiative come from the EU including in the conclusion of the Thessaloniki summit analysed under the following title.

1.3. *The 2003 changes: Pre-accession Instruments and Unclear Prospects of Accession*

What changed the position of these countries in the process of their integration to the EU were the changes introduced in 2003 in the so-called Thessaloniki Agenda, in the conditions of slow formal integration to the EU. With a view to strengthen the perspective of joining and the preparation for joining the EU at a later stage, the Agenda introduced several elements including the previously developed instruments of pre-accession (in the Enhanced pre-accession strategy of 1997) in the SAP for all the countries regardless of the stage in the formal integration to the EU.¹² We argue that this meant moving from stage by stage approach to continuous alignment, primarily due to the European Partnership and Progress Report instruments and linking the new pre-accession instrument (IPA) with the priorities given in the European Partnership.

We understand pre-accession as the process of purposeful alignment with the EU norms with a view to fulfil membership criteria. The pre-accession was first mentioned in Essen Conclusion of December 1994 which proposed the White Paper (1995), a sort of pathway to economic integration, while the Luxemburg Council of December 1997 put forward the Enhanced pre-accession strategy which consisted of several instruments: the accession partnership giving a set of priorities for the pre-accessing county to act upon, the new pre-accession programmes, and the European conference as a political forum. At the time of the Luxemburg Council, the opinions on applications for were published and first six countries got the green light for opening accession negotiations with the EU.¹³ The key difference is obviously the stage of integration in which these instruments were introduced. In the case of Eastern enlargement, this happen after the *avis* on applications and at the same time with opening negotiations with the first group of countries, while in the case of SAP countries, this happen before any of the countries became associated member. With two out of five countries the SAAs (Croatia and FYROM) have been signed but not ratified. Therefore, while EC priorities given in the Partnership fill the gaps left in CEECs at the final stage of their EU integration, they tend to guide the whole process in the case of the SAP countries as the process lasts for eight years already.

The most important elements of the Agenda are: introducing *instruments of pre-accession, regional cooperation, cooperation in justice and home affairs (JHA)* and *strengthening political dialogue*. In this analysis, we focus on the pre-accession instruments primarily.

European Partnership, same as Accession partnership, brings reform priorities for each country and provides basis for measuring the progress in the annual progress report and the basis for programming the

EU pre-accession funds. The structure of the annual report was changed so to follow the structure of the Partnership and provide a better tool in accessing the progress.

The European partnership covers matters that fall within the scope of *political criteria* for EU membership (political priorities) divided into: democracy and rule of law, human and minority rights, and international and regional cooperation; *economic criteria* dealing mostly with liberalisation, privatisation, macro-economic stability and the SMEs; and the so-called *European standards* under which some 20 issues are covered under two sub-titles: *internal market* (i.e. free movement of goods, services, capital and persons, custom, taxation, completion, public procurement, intellectual property law, employment and social policy, education and research) and *sector policies* (industry and SMEs, agriculture and fisheries, environment, energy, transport, information society and media, financial control and statistics); Partnerships also contain a title dedicated to *justice and home affairs*. European Partnership, unlike Accession Partnership, does not cover issues relating to the Economic and monetary union, institutional issues or foreign policy.

The European Partnership puts an accent put on internal market matters, but priorities are being given in all the sector policies in which some community *acquis* exists. The priorities refer to adopting legislation, drafting strategies, straightening institutions in different areas and fill in the policy gaps that exist in these countries in number of important policy fields. As already mentioned, this type of guided preparations started in 2004 and continues until the present day. The annual Progress reports follow the progress achieved in the three wide areas and can be easily linked with the membership criteria as split into sub-criteria by the EC.¹⁴

Other proposals put forward in the Agenda were: cooperation in the JHA area which was implemented mostly in regional format and, what we consider particularly important, it called for developing cooperation in transport, energy and announced extending the internal energy market of the EU to the region. The regional agreements on trade (CEFTA), energy (Energy Community) and transport (European Common Aviation Area) were signed in 2005-2007 period each meaning gradual (or stage by stage) integration into respective segment of EU long before membership.

However, no significant increase in financial support was planned in the framework of the Thessaloniki Agenda. The CARDS programme multiannual budget was increased for some 200 mil EUR for the period 2004-2006. More important are the clearer priorities in allocating the funds provided by the new instruments. Enhanced pre-accession strategy of 1997 introduced the new programmes, SAPARD and ISPA, in 2000-2006 period supporting measures and projects parallel to those of today's EU Cohesion Fund and structural funds and the agricultural fund in terms of aims, management methods and policy/planning basis. The new pre-accession instrument (IPA) draws more on these pre-accession instruments.

1.4. Relevant changes after 2003: New Instrument for Pre-Accession Assistance

The introduction of the economic surveillance in the form of the Economic and fiscal programmes (EFP) for potential candidates as of 2007 mirroring the Pre-accession economic programmes candidate countries and the introduction of the new instrument of financial assistance for all the SAP countries were the relevant changes in the latest period. The EFP contains an overview of macro-economic developments and basic indicators; public finances; the programmes do contain a part entitled structural reforms which is mainly focused on privatisation process and business environment.

The new pre-accession instrument (IPA) for the period 2007-2013 made an important step in preparation for future membership as it consists of five components which mirror the existing post accession EU funds. However, it made a differentiation between the potential candidates and candidates, by not granting the access to components III, IV and V to the potential candidate countries.¹⁵ Such division was reason for critics from the very beginning questioning the capacity of the new programme to support reforms and to foster process of catching up.¹⁶ It is about the amounts allocated in the pre-accession (compared to post accession) and about the priorities for funding/type of projects.

More concretely, IPA consists of 5 components, the first being dedicated to institution building (Transition assistance and institution building), the second being cross-border cooperation (similar to one of the measures under the ERDF) and the other three IPA components are directly mirroring the EU structural funds: IPA component 3 is thus dedicated to the regional component (ERDF), IPA component 4 to human resource development (ESF) and the IPA 5 component to agriculture and rural development. Denying the potential candidate countries from this type of measures is a great disadvantage as regards their economic and human development, and their policy planning capacities as IPA components 3-5 are, like the EU post-accession funds, are linked with development planning requirements. As for the amount of funds granted, the allocations are known in advance, and no significant increase has been envisaged over the 7 year budget period.¹⁷

Based on the above, we can conclude that the measure introduced in 2003 and later strengthened the process of SAP significantly. On one hand, the process of aligning with the *acquis* on the level of individual countries had been strengthened and streamlined towards fulfilling the EU membership requirements broken into sub-criteria and individual requests through the newly introduced pre-accession instruments, while on the other hand we can observe the development of sector integration in at the regional level. However, while the process of de facto integration runs continuously in these countries, albeit not at the same speed in all countries and in every moment as it is also influenced by the internal political dynamics, the process of formal integration kept progressing slowly over the period.

How long the process of factual integration will last can be important for the position of the country/s in the integration to the EU for several reasons:

- ✚ The leverage of the applicant countries (why enlarge?);
- ✚ The costs of accession as important and costly reforms that EU integration implies are being undertaken without guarantees regarding the EU membership, some of which might have been postponed for a later stage otherwise, with smaller amounts of funds made available due to the way the IPA functions;
- ✚ Narrowing the already narrow space for accession negotiations (the schedule, the derogations).

How the countries reacted in the given situation, is dealt with under the following title.

2. The Policy Answer On The Demand Side – A Domestic Push For Integration

Although there are some areas in which reforms have proved to be slow (public procurement in Serbia for example), the countries did not react in trying to slow the process or bring any significant change. On the contrary, most of the countries reacted in trying to speed up the process of norm adoption and contribute to formal integration in that way. For the implementation of the European partnerships, the potential candidate countries were supposed to develop action plans. Very soon, these action plans develop into more ambitious plans for adoption of the *acquis* and fulfilling the conditions for membership. This is particular the case with Croatia, Serbia and Montenegro which developed overarching plans for integration in early stages of their integration to the EU mirroring National Programmes for Adoption of Acquis (NPAA) used in the CEECs, under a different name.

Macedonia has for example brought the national programme for adoption of *acquis* after signing the SAA in 2001, although it did not cover everything that NPAA typically covers. The NPAA (called National Programmes for Integration in the potential candidate countries) contains list of all measures that are needed in short and mid-term to fulfil the three Copenhagen conditions with the *acquis* adoption part being divided into (35) negotiating chapters. It typically includes also the administrative capacities needed and financial recourses needed. Fully fledged NPAA was drafted in FYROM after obtaining the candidate status in 2006. Such document was developed in Croatia already in 2002 at the time of applying for candidacy. After the modifications in 2005, when it formally became a candidate country, the document included all the negotiating chapters and set the year 2010 as the date by which the process of transposition is to be completed. In the Serbia and Montenegro, this domestic drive to speed up the integration is even more obvious. These countries adopted the NPAs in 2008 scheduling the end of 2012 as the date when the obligations stemming from the membership are to be met. Albania and Bosnia and Herzegovina did not developed national plans for the *acquis* adoption, but the plans for implementation of the SAA.

Due to its comprehensiveness and the quarterly review of the progress made, the NPI is a good indicator of the dynamics of the process and the results achieved, but not an instrument for managing the process so to achieve the best cost-benefit ratio under given circumstances. Being developed so early, i.e. being a voluntary instrument of steering the process, there is a possibility to modify it so to plan the activities towards pre-set objectives and link this reform document with the developmental plans of each country. Otherwise, there is a risk of overreliance on the policy priorities put forward by the EU Commission.

3. Instead of Conclusion: What Has Been Achieved and What Might Be the Ways Forward?

Considering the quarterly NPI progress reports, where exist, and the annual progress reports by the EC as well as the time period within which the “gradual institutionalisation of norms” has been taking place, we can assume that a significant degree of law harmonisation (in terms of law adoption) has been achieved. Few studies dealing with the process of transposition of law exist already, albeit tackling individual areas, and we can now speak about and study the Europeanization process in the Western Balkans.

In the case of Serbia, it is assessed that significant progress has been made in transposing the *acquis* in the areas of money laundering, competition, intellectual property law, consumer protection and public procurement, identifying at the same time that number of problems in implementation persists in public procurement in particular.¹⁸ Similar goes for the employment policy in Serbia for example. Although implementation is the most relevant measure, the progress achieved should not be underestimated.

The progress has been made in opening of the markets for trade and financial flows. Those are not followed by significant economic growth in the region. In relation to that, a slow or absent restructuring of the production and export oriented sectors to the needs of the EU market has been noted in a recent study on regional trade integration.¹⁹

Harmonising laws is an expensive task and it is normally in accordance with the increase and evolving types of pre-accession assistance. In the case of Western Balkans, this is no longer the case, but the countries are pushing for integration without waiting for the formal recognition by the EU.

Most importantly, the over-reliance on the EU priorities is potentially problematic as those priorities do not cover development part of economic policy and cannot replace national economic policy making. The annual Progress report shows the EC approach very well. It takes into consideration existence of first, *functioning market economy* by looking into liberalisation of prices and trade, macroeconomic stability which takes note of the GDP growth and fall in a country, but it is mostly about public finances, external trade balance, FDI and monetary and fiscal policy and development of financial sector; and second, the ability to withhold the *pressure of the competition* on EU market by looking into, apart from the functioning market economy decomposed above, sufficient human and physical capital (education reform, labour market state, investments national and international), the role of state in competition, state aid, SMEs, the level of trade integration with the EU, the share of SMEs. The economic development is not the part of the criteria and development strategy is not to be found in the EC priorities. This is the major risk in EP priorities pre-empting the domestic public policy.

Considering the above as well as the declining public support and economic parameters in these countries on one hand and the current situation in the EU on the other hand (which might mean ever longer accession process), the following measures should be explored:

- a) *Putting development as the main goal in the EU Integration process* which would mean:
 - i. Developing coherent economic development strategy with clear development goal, mechanisms and objectives having in mind the achieved integration, i.e. the obligations undertaken in the process of integration, comparative advantages and global economic developments. (on the demand side)
 - ii. Providing incentives, i.e. reorientation on the side of the EU/EC with greater focus on real economic indicators, not only monetary ones; (in the supply side)
 - iii. This should be supported with changes in the IPA, increase of funds and simply abandoning the current differentiation; in relation to this, these countries have to be analysed in themselves not simply apply old measures as we are not dealing with a much smaller region.
 - iv. NPI as an instrument of guiding the process instead simply measuring the progress in transposition of *acquis* and fulfilling the EP priorities; should also be restructured around proper national economic strategy;

- b) *Politisation of the process in the SAP countries.*

The process of (pre)accession remains to be the „job” of political elites and small number of civil servants, consultants and analysts. The level of information is low among general public while public debate mainly develops around major political (instead of policy) issues, around the idea of integration rather than the substance of the integration process. Public debate as a problematic aspect of the legislative process in Serbia was mentioned in several studies.²⁰ We can assume that the situation is similar throughout the region.

The process of politisation should start with a proper and timely *public* debate on the laws and strategies being prepared but does not exhaust there. Proper *political* debate about important issues implies the role for the government, the political parties, but also for academia, think tank and NGO, i.e. civil society organisation in the policy process and sponsor research programmes, etc. The role of the government is however crucial. Declining public support for European integration process in the region calls for changes in this matter. The other reason is ensuring the involvement of all stakeholders and developing best policy solutions.

- c) Other measures that could be considered stem from the SAAs themselves and those are liberalisation of labour movement envisaged three years after the signature of the agreement and further liberalisation of trade in agriculture products.

This paper analysed the content and the changes of the EU policy towards the SAP countries, and how this changed the position of the countries, in particular those lagging behind, with a view to highlight potentially problematic aspects of the policy and try to contemplate possible improvements. It is difficult to judge the direction that the policy and the process will take in the future, but the results achieved so far and the changed circumstances in the EU and the region might suggest that the moment to rethink the policy has come. The points above provide some of the possible directions to consider.

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- 4 Communication from the Commission to the Council and the European Parliament on the Stabilisation and Association process for the countries of South-Eastern Europe, COM (1999) 235 final, 26.05.2999
- 5 Council Regulation (EC) No 2007/2000 of 18 September 2000.
- 6 Comparative analysis of the two types of association agreement provided in Phinemmore, D. (1999), *Association: Stepping Stone or Alternative to EU Membership*, Contemporary European Studies: 6, Sheffield, Sheffield Academic Press;
- 7 Some important political event took place in the region itself, the change of the political elites but also some negative events.
- 8 Feasibility study represents an analysis of the fulfilment of the political, economic, legal and administrative conditions implied by the SAA and gives an overview of the state of play in each of the areas covered by the SAA and the obligations that the SAA implies (the areas covered and the approach in assessing the current state in the areas and issues analysed is directly linked to the Copenhagen membership criteria).
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- 10 Ibid.
- 11 See for example, EastWest Institute and the European Stability Initiative: "Democracy, Security and the Future of the Stability Pact for South Eastern Europe - A Framework for Debate", April 2001, available at: http://www.esiweb.org/pdf/esi_document_id_15.pdf
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- 15 Furthermore, the condition for using all 5 components is formal candidate for membership and the accreditation of the system of management of EU funds in the beneficiary country by the EU Commission.
- 16 Breaking out of the Balkan Ghetto: Why IPA should be changed, European Stability Initiative, 1 June 2005, www.esiweb.org
- 17 The overview of the funds allocated available at: http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/cards/statistics2000-2006_en.htm
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- 20 See for example in Serbian case, Vladimir Todoric, Nikola Jovanovic, *ibid*, pp. 26-28. and Ilija Vujacic: *Upravljanje u Srbiji ili kako funkcionisu institucije*, pp. 25-38, *Institucionalne Reforme u Srbiji u 2009 godini*, CLDS, Beograd, 2010.

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