

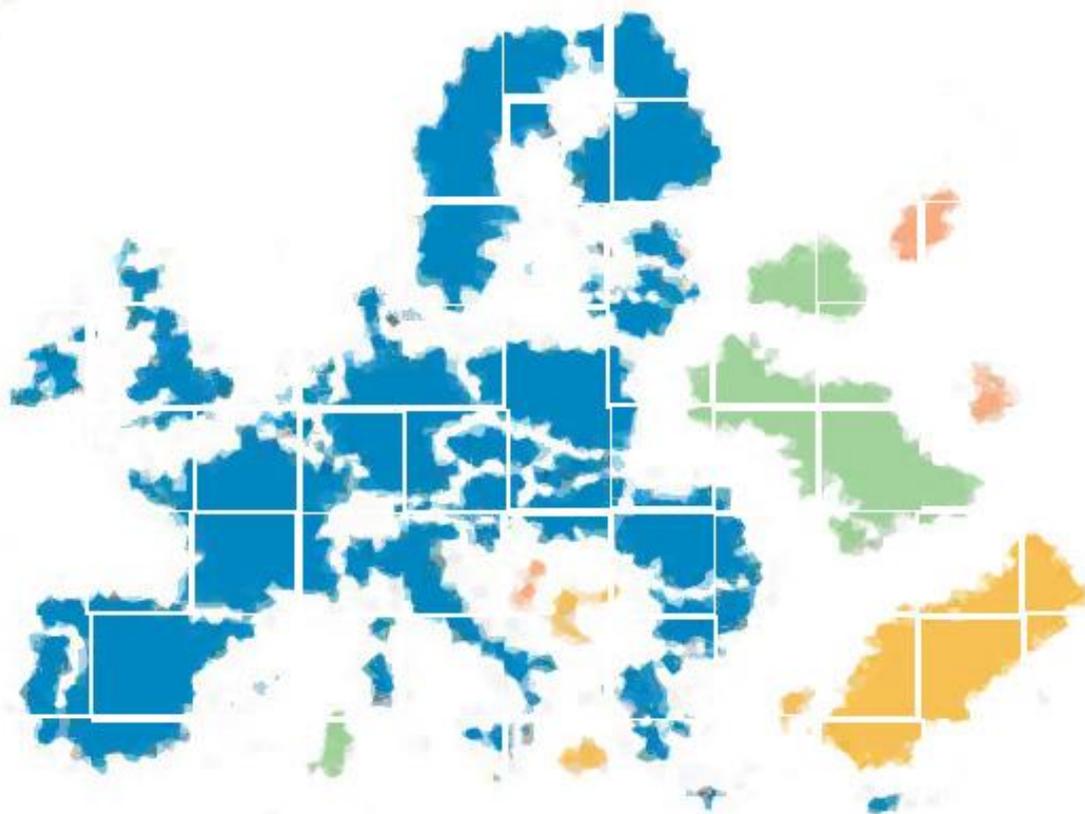
EU Frontiers

Policy Brief

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Change in the EU accession approach: A case for a flexible membership

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Center for European Neighborhood Studies

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Ivana Radic Milosavljevic is doing research on the politicization process in the European Union (a PhD) by comparing these processes with those in other contemporary consociational democracies (i.e. Switzerland and Belgium). She is interested in politics in the EU, issues of legitimization, democratization, and possibilities of a public sphere in the European Union. She is currently working as a teaching assistant at the University of Belgrade – Faculty of Political Sciences on BA and Master courses (Political System of the EU, Constitutionalism in the EU, Researching Crises in the EU, and Academic Skills). She is engaged in a teaching and research project supported by the EU's Jean Monnet Programme (Erasmus+). Ivana has a vast experience in advising and consulting activities, especially in the field of European integration process.

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Abstract

The EU enlargement crisis reflected in both enlargement fatigue and accession fatigue could be resolved by officially establishing a flexible membership. By making an offer to candidate countries other than the full membership, reluctant EU member states would still be able to keep the promise given more than a decade ago and to save the EU Enlargement Policy from further embarrassment. The flexible accession process would still be based on a conditionality approach but the conditions would be defined more specifically and related directly to the relevant negotiating chapter. This approach would move the accession process towards a true partnership between equals returning its dignity and credibility. For candidate countries, this model could contribute to their easier and faster accession thus ending their current relationship with the EU often perceived and defined as hegemonic (e.g. E. O. Eriksen, J. E. Fossum). Even more, it would allow for staying out of EU policies where the loss of sovereignty especially in times of crisis, led some member states to an equally hegemonic relationship as the one the non-membership status creates.

Introduction: developments in the EU accession process

Back in 1999, the European Council provided an impetus to a process termed the Stabilization and Association Process (SAP). The SAP was aimed at drawing the Western Balkans (WB) countries closer to the EU and offering them a membership prospect. The main difference between this approach and the EU's association process designed for the Central and Eastern European countries has been the "stabilization" element contained only in the SAP. At the time of the SAP's invention, however, nobody knew precisely what measures and objectives "stabilization" might encompass except that it was meant to contribute to the pacification and stabilization of the political and security situation within and among the WB countries. The political criteria, defined earlier in the so-called Copenhagen criteria, meant that applicant countries were to meet some general democratic standards. At the other side, there were no clear directions or ideas regarding the possible means at the EU's disposal to force or persuade WB countries to achieve them. Apart from financial assistance, which WB countries often haven't been able to absorb sufficiently, the EU and its member states might have decided to use any other possible means as they pleased. In addition to the original Copenhagen criteria, new conditions have been added such as the return of refugees, full cooperation with ICTY and regional cooperation. For some countries, such as

Serbia, these have been further specified as a normalization of relations with Kosovo, which became part of the negotiation Chapter 35.

Justified as an overall conditionality process, the contents of which were to be determined unilaterally by the EU and spontaneously throughout the course of the process, the whole endeavor led to an unprecedented interference of the European Union into the internal political and constitutional affairs and even engagement into the processes of state formation in the Western Balkans.¹ This kind of EU engagement in the region has been accepted and aided by the underdeveloped democratic political culture and capacity in the WB countries. In many cases, conditionality has been developed according to “security, geopolitical needs and interests, instead of the objective/technical criteria stated in the communitarian official documents”.² In other words, many EU demands towards the WB countries had little to do with the objective criteria in specific policy areas. As a matter of fact, prioritizing only a couple of undoubtedly political negotiating chapters (namely 23, 24 and 35 in Serbia’s case) made it clear that the other reforms will be of a less concern and dependent on these political ones.

This type of relationship and the unusual prolongation of the process, together with some other developments that are to be noted later in this brief, contributed to a loss of credibility of the process eighteen years after its inception. Even though some Western Balkans countries, such as Serbia, have their own history of sovereignty and statehood, the posture of the EU towards them is exactly the opposite –one of tutorship and hegemony, some might even call it a form of neo-colonialism. The reasons for this attitude is no longer justifiable however, if it ever was, and proves to be working both on the Western Balkans countries’ damage and to the detriment of the accession process. If continued in this manner, more and more, the process will probably lead to a kind of accession fatigue, signs of which are already emerging in some of the candidate countries.

The EU’s involvement in the region proved to be overambitious as well. The lack of the EU’s ability to engage substantially in the accession process became obvious in the last couple of years when the EU turned its focus away from actual reforms in the region to a more general and sometimes ambiguous political support to the region’s “European” future. Some signs of this shift are the numerous summits (Paris, Vienna, Berlin or the Brdo-Brioni Process) held with the purpose to keep the region on ice while the EU deals with its own problems; the lukewarm critique towards unsatisfactory reforms expressed in the Commission’s Progress Reports, especially the one for Serbia in 2016; no mention of enlargement or widening in Commission’s White Paper of the Future of Europe which was to propose options for the

¹ See: Maja Kovačević, „Križa u Evropskoj uniji i politika proširenja,“ in Slobodan Samardžić i Ivana Radić Milosavljević (Eds.), *Evropska unija: nove i stare dimenzije krize*, Univerzitet u Beogradu – Fakultet političkih nauka, Beograd, 2016, pp. 86-87.

² Ruth Ferrero-Turrión, “The EU Approach to the Western Balkans: a Security or Political Issue?,” *Europolity*, vol. 9, no. 2, 2015, p. 11.

EU's development until the year 2025. Above all, an anti-enlargement rhetoric has been evident after the last enlargement rounds (2007 and 2013) and with the subsequent crises that hit the EU from 2008 onwards.³ EU member states and their anxious public opinion became more cautious recently obviously trying to avoid additional complications that enlargement might bring about.

The EU and Serbia: recent developments

Looking into the case of Serbia, it is evident that the EU turned the blind eye on many problems happening in this country – governmental control of the media, widespread corruption or continuous violations of the rule of law being only some of them. At the same time, the EU has been showing its support to the Serbian authoritarian regime since its leader is perceived as an implementer of the EU's stability objectives in the region. The current regime shows its willingness to constructively participate in the so-called Belgrade-Pristina dialogues and to engage in keeping good relations with other neighbors, which is obviously enough for the EU at the time being. To show their support, the EU officials frequently acknowledge Serbia as “the leader in the region”, while the EU's “governing” party – the EPP – actively supports their Serbian political counterpart – the currently ruling Serbian Progressive Party. If the EU has had any doubts towards Serbian prime minister/president, Aleksandar Vucic, these doubts have been exclusively about his relations with Moscow and not about his democratic credentials.

In the meantime, public opinion surveys have showed that less than 50% of citizens would support Serbia's EU accession.⁴ According to surveys, both young and older persons are among EU opponents, while agricultural producers feel most threatened. Nevertheless, with its supportive stance towards the Serbian authoritarian regime, the EU risks alienating its so far major supporter in Serbia – its “liberal” civil society. Thus far, civil society organizations in Serbia have been keeping a low profile, avoiding politicization of the EU integration issues obviously fearful of disturbing

³ See for example the European Commission Press Release from 10 September 2014 restating the Juncker's Political Guidelines in which he states that there will be no EU enlargement in the five-year period. http://europa.eu/rapid/press-release_IP-14-984_en.htm?locale=en.

⁴ A survey done by *Nova srpska politička misao* in December 2016 shows that 44.1% of population supports Serbian EU accession, while 42.1% does not support it. See: <http://www.nspm.rs/istrazivanja-javnog-mnjenja/srbija-decembar-2016.html>

Another survey, done by the Belgrade Faculty of Political Sciences and European Movement in Serbia in June 2016 shows that 40% of young people supports, 33% does not support, while 27% don't care. See: <http://www.emins.org/uploads/useruploads/vesti/Srbija-i-Evropa-u-o%C4%8Dima-mladih-istrazivanje-stavova-mladih.-jun-2016.pdf>

A survey published in February 2017 by the governmental Serbian EU Integration Office finds 47% support for Serbian EU accession, while 29% would vote no in the event of a referendum. 15% of people would not vote on a referendum. See: <http://www.seio.gov.rs/src/vesti/941/189/335/detaljnije-podrska-clanstvu-srbije-u-evropskoj-uniji-47/>

Serbia on its “European path”.⁵ This allowed for numerous laws to be passed in the Serbian National Assembly by way of an urgent procedure, legitimized by the unquestioned need for a quick harmonization with EU law. The urgent procedure meant that public debates or any other involvement of the public would be out of the question. The only opinions on the draft laws to be taken into account have been that of the European Commission’s officials and experts concerning the compliance of these draft laws with existing EU law. Yet, to this civil society’s unconditional loyalty to EU association and the accession process, the EU responded with its support for a regime that named this same civil society an agent paid by foreign (mainly Soros) money.⁶

Since January 2014, when Serbia started accession negotiations with the EU, only six negotiating chapters have been opened. Reasons for this slow track can be found both on the EU’s and on Serbia’s side. Several times, the opening of a negotiating chapter has been delayed because one or more individual member states refused to vote in favor and at the same time introduced new conditions completely unrelated to the policy matter. Many observers have noticed this so-called nationalization of the accession process in the last decade or so, reflected by an attempt of some EU member states to solve their bilateral problems with candidate countries by using the possibility of vetoing the accession progress.⁷

Serbia on its side, despite the eagerness of its administration and experts, has been slow in introducing and implementing major reforms, especially those related to the rule of law and fight against crime and corruption. In Serbia, as in other Western Balkan countries, economic growth rates are still low and unemployment high, especially when compared to EU member states.⁸

Another important issue that can be noted in Serbia (probably in other Western Balkans countries as well), is a completely uncritical and immature relation towards the accession process. Serbian political elites promoted the idea and the aim of Serbian EU membership reacting basically to an offered European prospective from EU leaders (e.g. at Thessaloniki summit). No referendum on the question of accession has ever been mentioned let alone officially considered, despite the obvious lack of public support to the cause, especially in the last couple of years.

⁵ See: Ivana Radić Milosavljević, „Uticaj krize na politizaciju pitanja proširenja Evropske unije,“ in Slobodan Samardžić i Ivana Radić Milosavljević (Eds.), *Evropska unija: nove i stare dimenzije krize*, pp. 99-101.

⁶ See for example the statement of the Serbian Minister of Interior from 11 February 2017:

<http://mondo.rs/a981481/Info/Drustvo/Protest-vojnog-i-policijskg-sindikata-sta-kaze-Stefanovic.html>

⁷ See for example: Rosa Balfour and Corina Stratulat, “Between engagement and cold feet: ten years of the EU in the Western Balkans,” in Eviola Prifti (ed.), *The European future of the Western Balkans: Thessaloniki@10 (2003-2013)*, European union Institute for security studies, 2013.

⁸ See: Western Balkans Labor Market Trends 2017, Report Number: 113922, April 2017, The World Bank, Washington, USA. Internet: <http://www.worldbank.org/en/region/eca/publication/western-balkan-labor-market-report>

An even greater problem is that no official impact assessment or analysis has ever been done to show the possible effects of harmonization with EU law in various fields. In other words, no cost-benefit analysis has ever been done, thus the interest in EU membership has been based on a gloomy perception of political elites that EU membership is good for the country as such. Not even the last economic crisis (nor other aspects of crisis in the EU – migration, terrorism, legitimacy, Brexit...), ever prompted political elites or civil society actors to start to question or at least calculate the pros and cons of full membership or possibilities of alternative ways of participation in EU affairs. The reason behind this quiet tactic regarding the question of EU membership is the mutual support between political elites in Serbia and those in the EU motivated by exchanging the remaining-in-power for the keeping-regional-stability aims.

The possible options: how to revitalize the enlargement process

Since a complete end to EU enlargements is hardly conceivable (not only because it is still being considered as one of the most successful parts of the EU's foreign policy), it will not be considered here as one of the options. Instead, I will look shortly into two of the possible options of continuation of accession process and make a case for one in particular.

Option I: continuation with the current mode of operation

While this option seems the most probable, since the EU will hardly have strength to change its enlargement policy significantly, there are too many reasons to argue for it being abandoned. Probably, there is hardly any serious analyst or a researcher to be found nowadays who would say that the current pace of accession is a satisfactory one. Some of the reasons for this poor result were mentioned before in this brief, but it should be noted again that improvements should be made both on the EU's and on the candidate countries' sides.

For the time being, neither the EU nor the candidate states have the capacities to finish, within a reasonable time, the ambitious accession process as it was imagined as leading to full membership and denoting the substantive and all-encompassing reforms in all policy fields simultaneously. It is not certain where the continuation of this business as usual might lead if prolonged for an indeterminate period. On the one hand, if it continues, even if the region remains stable, the status of an EU non-member is more than disadvantageous because candidate countries must obey by the rules that they cannot influence in any way. It is worrying from a democratic legitimacy point of view as well, since the authority which creates the rules for a people is in fact moved out of its reach (i.e. the possibility of democratic control). For a country like Serbia, this means that it does not matter who holds a majority in its National Assembly as long as it passes the copy-pasted EU laws

adopted by supranational institutions in which Serbia does not have a say. In this way, national elections become more or less pointless.

On the other hand, if full membership is granted way before candidate countries are ready, meaning before they achieved a sufficient level of economic, legal, social and political development, scenarios similar to that of Greece during the contemporary economic crisis might repeat. It is hard to imagine how the EU would manage this situation once again with one or possibly more challenging countries. Also, it is even harder to imagine how the new countries would handle this position of being trapped inside the club too costly to stay in, and even more costly to get out.

Option II: Change of accession strategy to a flexible accession instead of full membership

These days more voices are being heard that the EU itself should pursue the logic of more flexibility or differentiated integration. Given the great political, economic, social heterogeneity of the existing 28 (or 27) member states, and the possibility of its enlargement in the future, it seems necessary to acknowledge this diversity and quit insisting on the same integration pace for all. These differences were emphasized particularly during the contemporary economic crisis when it was obvious that many member states suffered from serious difficulties and losses precisely because they gave up control in some of the policy areas where they were not ready to do so. Thus, for participation in a given policy area, clear criteria should be defined and their fulfilment by member states should be rigorously controlled.

Stimulated by the mentioned crisis, especially in the period after the Brexit referendum, many voices, even those more pro-integrationist ones started to consider or advocate this flexibility option as a solution that might bring more benefits than potential costs. Even though the EU law would not be uniformly applied throughout the EU, a flexible Union would prevent major stagnation and allow for deeper integration in many policy areas among those states ready and willing to participate. The question arises on the position of the candidate countries in such a more differentiated Union.

Whether the EU embraces a more differentiated method or not, the approach to the accession process should be completely changed to a flexible one. The flexible accession would mean that the negotiations would continue only in areas (chapters) where both the EU and candidate countries estimate that the adjustment would be smooth and mutually beneficial. This means that the candidate countries should have proper impact assessments previously done in all policy fields (Chapters) estimating the influence of harmonization with the EU law in each one of them. After that, official decisions should be made by national parliaments regarding the areas of the *acquis* in which candidate countries would participate. Ideally, consent to this decision should be given through a national referendum.

Flexible accession negotiations would lead to a flexible membership, i.e. participation in only some of the EU's areas of competence without the obligation but with an open possibility in future to accede to all of them. New member states would have a voice only in the areas they are participating in. To be precise, by flexibility of the accession process it is not understood an existing possibility for the candidate countries to propose their own deadlines by which they would adopt Acquis in all chapters. Flexibility of accession process means that it would lead to a membership in a flexible Union, i.e. to a membership in only some of its policies.

Formal decisions by EU institutions should be made in order to establish this whole new approach and to define its procedures. An official proposal could be made by the Commission after wide consultations with the candidate countries' civil society and government representatives, provided that both sides reach an understanding that this new approach should serve to unlock the stalled process. By making an offer to candidate countries other than full membership, reluctant EU member states would still be able to keep the promise of a European perspective given more than a decade ago and to save the EU enlargement policy from further embarrassment. For candidate countries, this model could contribute to their easier and faster accession thus ending their current relationship with the EU often perceived as hegemonic or arbitrary.

A couple of preconditions should be met as part of a new approach particularly in the case of stable candidate countries such as Serbia. First, the EU should abandon its tutoring stance towards those states acknowledging the fact that its counterparts at the negotiating table are sovereign states capable of knowing their own interest and position. Instead, the EU should encourage candidate countries to take responsibility and ownership for their own reform programs. So far, the EU's involvement in Serbia was such that it created a common belief that the country would not be capable of any kind of reform without the EU's mentoring. What is worse, this perception took so much root that even where the autonomous reforms were possible, political elites waited for the EU to acknowledge them. In some policy areas, future harmonization with the EU laws might even bring deterioration of existing standards (public procurement in Serbia, for example) because of a wrong understanding that harmonization means exact copy-pasting of the EU laws. The area where the EU should be involved more is the supporting the administration and civil society capacity building and training instead of encouraging an unconditional acceptance of supranational officials' opinion and copying of the EU laws (including directives).

Second, the EU should retreat from the overall involvement and interference in internal political affairs of the candidate countries while preserving and making clear its expectation on the necessity of maintaining democratic institutions and procedures as a general condition for membership. The EU's technical and financial assistance should be targeted precisely to policy areas that are being negotiated and the progress should be measured only in these

areas. The accession process would still be based on a conditionality approach but the conditions would be defined more specifically and related directly to the relevant negotiating chapter. In other words, the progress in certain policy fields should not be conditional on criteria not specifically related to it, especially not on any kind of political, security or geopolitical criteria, whether defined jointly or insisted on by only one of the member states. This changed approach would move the accession process towards a true partnership between equals returning its dignity and credibility and possibly gather support from the so-far Eurosceptics in the candidate countries. This way, the legitimacy of the process would be boosted as well. In addition, this less ambitious EU involvement in the region would be more compatible with its current need to deal with its own internal crises.

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