

Conference organised by CEDEM, KAS, Robert Schuman Foundation, German Embassy MNE,
French Embassy MNE
Hotel Avala, Budva
31 May 2013

EU ACCESSION OF MONTENEGRO - CONSTRAINTS AND CHALLENGES

On the occasion of the 50th anniversary of the Franco-German Elysée Treaty

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- ESI is a think-tank dealing mainly with the Western Balkans, EU enlargement questions and Schengen/visa liberalisation. It was founded in Sarajevo in 1999, by a group of young people who worked for international organisations in Bosnia – OHR, OSCE, UN, World Bank, etc. – and felt the need for thorough empirical field research to inform international policymaking. I was one of the founders. At the time, I worked for OHR as the head of the Press Office. Prior to that, I was a journalist and covered the wars and conflicts in former Yugoslavia for German and American media.
- Enlargement is currently a **hesitant process**. There is **enlargement fatigue** on the EU's side. There is growing **EU scepticism and disenchantment** on the candidate countries' side. This is partly fuelled by the scepticism on the EU side, but also by the political, economic and financial crises that hold the Union in their grip. **But there is also positive news:**
- The **most important positive piece of news** is that enlargement has continued despite all the crises that the EU finds itself in. Croatia is joining, Montenegro is negotiating, Serbia might soon get a date for negotiations following the implementation plan for the Serbia-Kosovo agreement, which was agreed last weekend.
- However, there is also bad news. There is a **deepening division** in the Western Balkans between these frontrunners and four countries that seem to be stuck: Bosnia, Albania, Macedonia and Kosovo.
- Today **I will discuss the good and the bad news** when it comes to enlargement, and **the necessity to tackle the widening gap and to improve the process**.
- We must not forget that enlargement to the Western Balkans is in the EU's interest. The aim is to achieve lasting peace and stability, as well as prosperity, in a troubled region.

- **On Croatia:**

- According to the Commission, Croatia is the best-prepared accession country ever. I do not agree with what Andreas Lämmel has just said.
- Croatia has undergone a long and tough negotiation process. Unlike previous accession countries, it had not only to adopt EU legislation, but also implement them and reach certain benchmarks.
- Croatia is not particularly poor. Its GDP per capita is at 61% of the EU27 average. Poland's is 64%, so Croatia is not that far off. Croatia is also richer than Latvia, Bulgaria and Romania.
- Corruption is less pronounced than in some EU MS. In Transparency International's Corruption Perception Index, Croatia is on place 62, together with Slovakia. 4 MS are worse: Italy, Greece, Romania, Bulgaria. And all WB countries are worse (MNE is on place 75).
- Of course, more needs to be done to fight corruption, but Croatia is the only country that has prosecuted its former prime minister, a vice-prime minister, other ministers, the head of the customs administration, various managers of state-owned companies and even a former ruling party.
- Unlike Mr Lämmel said, the Commission's progress report on Croatia last October does not give reason to worry. The 10 points that he mentioned are mostly point asking Croatia to continue certain activities. The Commission asked Croatia to continue to implement the Judicial Reform Strategy. It asked Croatia to continue to improve the efficiency of the judicial system. It asked Croatia to continue to cooperate with ICTY. It asked Croatia to continue domestic war crimes trials. Etc. This, however, does not mean that Croatia has not already done a lot on each of these points. It has, and I am convinced that Croatia will not be a bad surprise after accession.

- **On Montenegro:**

- It is also good that Montenegro started to negotiate last year. Things are happening now, there are screening reports with recommendations, reforms are being implemented. There is movement, Montenegro is transforming.
- This will be a long and tough process, and there are already complications: Germany does not want that any new chapters are opened before chapter 23 and 24 are opened (23: judiciary and fundamental rights, 24: justice, freedom and security).

- The Montenegrin administration is now working on producing the action plans based on which the Council will determine the opening benchmarks. If everything goes according to plan, chapters 23 and 24 will be opened before the end of this year. This should then be followed by the opening of others chapters.
- MS have to keep the momentum going. The current German blockage should not herald a process that becomes so slow that Montenegrin officials lose sight of the end of it and their motivation.
- **On Serbia:**
 - The news from Serbia is also good. The German government has recommended to the Bundestag to agree to opening negotiations with Serbia. If Serbia gets a date for accession talks at the EU Summit at the end of June, this will inject new momentum into the enlargement process. It will have a positive impact across the region, in particular on Bosnia, which might start moving if it sees that Serbia too is firmly on the EU path.
- **Now I am coming to the rest of the region, and there things do not look bright at all.**
- In fact, **a new division** is emerging in the Balkans: between the front runners, and between those countries where there is little progress - be it their own responsibility, be it due to external factors. These countries are Bosnia, Albania, Kosovo and Macedonia.
- **Bosnia** has not been capable of implementing the Sejfic-Finci ruling of the European Court on Human Rights. This is the precondition for an application.
- **Macedonia** has been held back by Greece for years.
- The issue of **Kosovo's** relations with the EU remains murky. Even though the European Commission has recommended to the Council to give it a mandate to negotiate a Stabilisation and Association Agreement - and even though the Commission maintains that the EU and MS can conclude such an agreement with entities and not just states – it is a question if the non-recognisers will agree. And even if they do – what then, what will be the next steps? It is very unlikely that Kosovo can start the accession process as long as it is not recognised by five EU member states.
- Lastly **Albania**. The June 23 parliamentary elections are considered a key test for

Albania's EU integration process. We believe that it is very likely that they will be again contested: **the result is likely to be tight and then the losing side will claim fraud.** We also believe that **the EU and IC have failed to put the train on the right tracks.**

- Let me explain: In April, the parliament removed, in violation of the Election Code, **one of the 7 members of the Central Election Commission**, the body that manages elections. The Election Commission consists of three candidates nominated from the governing coalition and three nominated by the opposition, with an independent Chair. While the nominations are by the political parties, each member is supposed to act a-politically – as, for example, in appointments to the US Supreme Court.
- Now, the man who was removed (Ilirjan Muho) was nominated by a party that was part of the current governing coalition, but has announced an election coalition with the Socialist opposition party. So, the ruling party decided to remove him. Later on, another 3 members resigned, so the CEC currently only has 4 members. This is not enough. **The CEC will not be able to perform its job. Under the Electoral Code, five votes are required to decide on appeals against the results in particular electorates or to declare the election invalid, in whole or in part.** And it is already clear that the result of the elections will be tight, like in the past. Unfortunately, neither the EU nor the US nor anybody else has clearly condemned the violation of the new Election Code even before a single vote was cast.
- This does not bode well for the elections. If they are not free and fair and if the loser does not accept the result, the institutional crisis in Albania is likely to continue. This means that candidate status for Albania will be postponed.
- One of the problems is that the current enlargement process is **too front-loaded and drawn out.** Albanian leaders know that they will not be in power if and when Albania joins the EU one day. They might not even be in power if and when Albania starts accession talks. So, their willingness to compromise in order to get closer to the EU is limited.

This is one of the problems with the current enlargement process. It contributes to the deepening division in the Western Balkans.

- The candidates spend too much time in the “waiting room” where little happens except that they are expected to complete different, often seemingly arbitrary sets of reforms: first one set of reforms to get a feasibility study for an SAA, then another to get the SAA itself, sometimes the ratification of the SAA is tied to conditions, then there are reforms to be completed for the permission to apply, then to get candidate status, and then, finally, to get a date for the start of

negotiations. The reforms are usually different for each country.

- **This long process before accession talks has failed to capture the attention and imagination of Albanian, but also Bosnian leaders.** It has also left reformers in the administrations of these countries without a clear sense of direction. It is also not of use to the EU. The most meaningful reforms are undertaken during the negotiating process – see Croatia’s fight against corruption, ICTY cooperation and stop of subsidies for the shipbuilding industry.
- Experience shows that the first invigorating step is the questionnaire that applicants have to complete after applying to allow the Commission to assess readiness for negotiations. **Even more effective is the actual screening process launched before the actual negotiations begin.** Both involve many people from the different ministries and departments of the candidate country who, usually for the first time, begin to understand what the EU is about and what is wrong with their own laws and procedures. The most effective stage is, of course, the actual negotiations.

Recommendation 1: Serbs and Macedonians were allowed to participate in the screening for chapters 23 and 24 for Montenegro, which was useful. When the next country opens negotiations, which is probably going to be Serbia, the remaining countries should be invited to all the explanatory screenings (when the Commission explains the *acquis*).

Recommendation 2: EU MS should consider getting all the countries to the negotiation stage as soon as possible and to make the pre-negotiations stage somewhat clearer.

- Another issue is to give the countries something more meaningful to do while they are waiting. An example is the **visa liberalisation process 2008-2010**. The visa roadmap was basically an extract of obligations from chapter 24 (justice, freedom and security) and to a smaller extent chapter 23 (judiciary and fundamental rights). So, the countries were asked to implement them, and they were promised visa-free travel in return. This worked very well. **Montenegro, Macedonia and Serbia implemented the reforms quicker than anyone had anticipated. It was a national priority for the governments.** The Commission stood by providing explanations and technical and financial assistance, and there were regular performance reviews.
- **But there was also competition – positive competition:** Albania and Bosnia, which were lagging behind in this process too, “woke up” when they realised in May 2009 that Macedonia, Montenegro and Serbia would be granted visa-free travel and they would not. Suddenly they started to work on the required reforms set out in the roadmap towards visa liberalisation. In Bosnia, the parliament

quickly passed several long-delayed laws. All of a sudden, the deputies could agree on which laws had to be State laws, and which laws to put at the Entity level. The government formed dozens of working groups to resolve the remaining issues. The summer holidays of the involved officials were cut short or cancelled. In Albania, it was election time, and the question of visa-free travel became a big issue, with the two main contenders promising that it would be a priority if they won the elections.

- However, what exactly had prompted this change of course? **What was crucial was that the process was transparent.** In fact, my think-tank, ESI, had made it transparent. The European Commission and EU MS initially wanted to conduct it behind closed doors. They did not even publish the roadmaps. But we did. We also published the assessments reports of the Commission showing what each country had done or not done yet. Since they were technical, we produced score cards and grade reports based on them, using colours – green, red, orange and grades - to describe progress. We also translated this all into the Bosnian and Albanian languages and briefed journalists, achieving wide coverage. So, Bosnian and Albanian politicians could not claim that Brussels was prejudiced, that they had done everything necessary, but that the EU did not want to give them visa-free travel for political reasons. The evidence was out there that they had simply been slow. This created public pressure, which the governments had to bow to.
- So, we should think along the lines of replicating the visa liberalisation process. This is **Recommendation 3**. This means: **let's take part of the acquis in a certain chapter, ask the Western Balkan countries to implement it regardless where they stand in the enlargement process, and attach a reward to it.** The best would be is to produce a roadmap with the requirements listed. This should be done based on the regatta principle, so that there is competition. The process must also be fully transparent, so that civil society can monitor progress and make comparisons. The Commission should offer financial and technical support, and it should conduct regular reviews. So, the important elements are: **Clear criteria, an attractive reward, transparency, competition, and targeted aid.** We are currently working on putting meat to this idea and will hopefully publish a paper with concrete recommendations in the coming weeks. At the same time, it would be good if you started reflecting on such an approach.
- **Lastly, recommendation 4:** This concerns the two countries that are stuck due to external factors, **Macedonia and Kosovo**. There must be a stronger effort to **resolve the Greek veto to accession negotiations for Macedonia**. This must not become a “frozen conflict” that everybody tacitly accepts. The EU should become more involved and pro-actively try to find a solution that allows Macedonia to start negotiations.

- Concerning **Kosovo**, the Commission and EU MS should be acutely aware that it will be very difficult for Kosovo to advance towards the EU as long as five member states do not recognise it and make a problem of most EU interactions with Kosovo. Let's see if Kosovo will be able to conclude a normal Stabilisation and Association Agreement with the EU. If it won't, then the Commission and friendly MS should switch to emergency mode and tackle the issue.
- Thank you for your attention.

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