
AICEI PROCEEDINGS

The Effects of the Lisbon Treaty on Accession Countries

Marija Risteska

Abstract

The European Union is a major reform-driving factor for accession countries. It sets standards and establishes a model for development that the countries in the region aspiring to membership should follow. The EU approach in the Western Balkans has two dimensions: (i) the EU has affected the developmental path of these countries through its role as 'an active player' in the mediation and conflict resolution needs of the region; (ii) the EU also acts 'as a framework' providing the possibility of participation in decision making for these countries and equipping them with models of governance and policy options (Noutcheva et al, 2004). In this Europeanization process, conditionality encompasses a political/democratic and economic requirement and the adoption and implementation of the EU acquis. This paper assesses the impact of the Lisbon Treaty on future accessions to the European Union.

Keywords: *Western Balkans, European Union, EU acquis, economic requirement.*

Introduction

The European Union is a major reform-driving factor for accession countries. It sets standards and establishes a model for development that countries in the region aspiring to membership should follow. In this process the EU has distinguished a group of frontrunners (Bulgaria and Romania), leaving the rest of the Balkan countries in the so-called Western Balkans club (comprising Croatia, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, Albania and Kosovo). The Western Balkans came onto the EU enlargement agenda at the Thessalonica Summit in 2003 when the EU set several policy priorities for the region. The countries of the Western Balkans have aspired to EU membership ever since. Today the region encompasses 2 candidate countries for EU membership (Croatia and Macedonia), 2 applicant countries for EU membership (Montenegro and Albania), one country that has a strong EU orientation and is using the Euro as its national currency

(Kosovo), and finally Bosnia and Herzegovina and Serbia where EU membership is also high on the domestic policy agenda.

At present there is a deficit of literature focusing on the European integration of the Western Balkans. Furthermore, most of the studies on this subject provide little evidence of the effects of EU conditionality on the region. Europeanization as a conceptual framework has been applied to the CEE enlargement process and the findings of this analytical work are the basis for further analysis of EU accession countries in the Western Balkans.

Conditionality for accession is set with the *acquis* which encompasses all EU legislation. The *acquis* is a dynamic concept, however, as the body of legislation grows all the time through changes to treaties, the adoption of legislative measures (including resolutions, declarations and other measures under all three of the EU's 'pillars'), international agreements, and the jurisprudence of the European Court of Justice (Grabbe, 2006). Consequently, every change of legislation affects conditionality for the accession of new candidate countries.

The adoption and enforcement of the Lisbon Treaty in December 2009 introduces a major reshuffling of the founding treaties of the European Union. It has a considerable impact on the structure and governance of the EU, increases its policy competences and widens European values.

This paper argues that the enforcement of the Lisbon treaty will have an inevitable effect on the candidate countries of Macedonia, Croatia and Turkey, as well as on the other Western Balkan countries striving for EU accession.

EU Conditionality

The EU approach in the Western Balkans has two dimensions: (i) the EU has affected the developmental path of countries in this region through its role as '*an active player*' in the mediation and conflict resolution needs of the region; (ii) the EU also acts "*as a 'framework'* providing the possibility of participation in decision making for these countries and equipping them with models of governance and policy options" (Noutcheva et al., 2004). The EU has become a normative and cognitive model (Radieli, 2004) for Balkan countries which have demonstrated a firm orientation towards European integration and have undertaken Europeanization. Europeanization is the overall frame leading towards the external transfer of EU rules and their

subsequent adoption by non member states (Schimurfennig & Sedelmeier, 2004). In this Europeanization process, conditionality encompasses a political/democratic and economic requirement and the adoption and implementation of the EU *acquis*.

There is lively scholarly debate as to the impacts of enlargement and numerous empirical research studies on the level of EU influence (EU conditionality) in candidate countries. Most of this research is concerned with the reasons for EU enlargement and the candidates' compliance with EU conditionality. In these studies, scholars and practitioners examine the factors that determine the effectiveness of conditionality through two approaches: (i) the rationalist approach (which explains how applicants engage in cost-benefit calculations and commit themselves to EU-led reforms in the light of promised rewards) (Vachudova, 2004); (ii) the constructivist approach (which emphasizes the extent of the identification of candidates with the EU, their conviction as to the appropriateness and legitimacy of EU rules, as well as learning, arguing and persuasion processes as factors behind candidates' compliance) (Checkel, 2000).

Both of these approaches treat conditionality as static. Moreover, as the literature focuses on EU enlargement towards Central and Eastern Europe as a whole, it provides few answers on EU conditionality specifically targeted towards Western Balkans countries. What these studies also fail to address is how accession conditions form and mature.

The Europeanization of the accession countries, in this respect, is not an enlargement theory but rather a practical model that helps scholars analyze the politics of the accession process. According to Grabbe (2002), it employs five mechanisms for transforming the applicant country into an EU member state: (i) models (the provision of legislative and institutional templates); (ii) money (aid and technical assistance); (iii) benchmarking and monitoring; (iv) advice and twinning; and (v) gate-keeping (access to negotiations and further stages in the accession process).

Through conditionality, EU membership status is gate-kept until the acceding countries comply with the three main Copenhagen criteria. These conditions, however, are very broad and open to considerable interpretation. The elaboration of what constitutes meeting these conditions "has progressively widened the detailed criteria for membership, making the EU a moving target for applicants" (Grabbe, 1999). Critics of the EU enlargement process have argued that the Copenhagen criteria use concepts that are

highly debatable and slippery, mainly because the EU has never provided a definition of these concepts (democracy, market economy and capacity to cope with competitive pressure and market forces).

The Lisbon Treaty

The EU institutions were based on previous institutional reforms introduced with the Treaty of Nice and were not adapted for an EU of 27 or more member states. Such reforms were, however, envisaged in the Constitutional Treaty. The latter failed, however, and thus exacerbated doubts about further enlargement, which in turn affected the EU accession process of Western Balkan countries. EU member states made it very clear that any further enlargement required new institutional reforms. The Lisbon Treaty does exactly this: it reshuffles the structures and governance of the EU with the aim of overcoming institutional deficiencies in decision making, transparency and legitimacy, EU representation and the achievement of EU goals. It also unlocks the enlargement process for Western Balkan countries.

The Treaty is a comprehensive document. However, this paper will only look at the three leading changes: the new foreign policy capacity of the EU institutions (the roles of the President of the European Council and the EU High Representative for Foreign Affairs and Security Policy); the democratization of the system (the permission of legislative initiatives proposed by a quarter of the member states, the increased role of co-decision making by the European Parliament and the new role of national parliaments); and the introduction of the European Charter of Fundamental Rights. These changes have been selected for analysis as they offer responses to numerous deficiencies in the functioning of the Union noted by scholars and practitioners.

Scholarly critics have consistently focused on the lack of continuity in the work of the six-month EU presidency. These deficiencies have been addressed by the introduction in the Lisbon Treaty of a completely new position: the President of the European Council. His/her role will be to chair meetings of the European Council, to ensure its functioning, cohesion and consensus, to present reports to the European Parliament after each meeting and to ensure the external representation of the Union in CSFP.

Another widespread criticism is directed at foreign policy governance at EU level. By introducing the function of the High Representative of the Union

for Foreign Affairs and Security Policy as a double-hatted role, the Lisbon Treaty seeks to reconcile / unify the two institutions, the Council and the Commission, in the field of external relations.

The democratizing image and effect of the EU outside its borders is unquestionable. However, the democratic character of individual EU member states and the governing system of the Union has often been challenged. The Lisbon Treaty thus introduces several novelties to improve the EU's democratic reputation. The Commission is supposed to act in the general interest of the community¹ and this principle is preserved in the Lisbon Treaty. The Treaty additionally provides for several deviations from the basic rule of the Commission's right to exclusive legislative initiatives: thus "1 million citizens who are nationals of a significant number of Member States" may now invite the Commission to submit proposals "on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties."¹ The Treaty has boosted the powers of the European Parliament with regard to lawmaking, the EU budget and the approval of international agreements, thereby giving more power to EU citizens represented in this body. What is more, the legitimacy of the EU as a union of both peoples and nations is strengthened, primarily through the new voting system¹ and also through the greater involvement of national parliaments.¹

Finally, human dignity, freedom, democracy, equality, the rule of law and respect for human rights are the core values set by the Lisbon Treaty. The Treaty guarantees the enforcement of the European Charter of Fundamental Rights, which becomes legally binding on the EU and the member states. The added value of the Charter lies in the proclamation of additional rights that are not contained in the European Human Rights Convention, such as data protection, biotechnics and the right to good administration.

The Possible Effects of the Lisbon Treaty on Accession Countries

The EU accession process pushes applicant countries towards greater convergence with particular institutional models dependent upon their speed of adjustment and the openness of their national elites to EU influence. As might be observed from the section above, the Lisbon Treaty does not introduce new policy areas, legislation or policy models to which the acceding countries should converge. It does not advance the enlargement process; nor

does it respond to the desire for added certainty in the process. The Lisbon Treaty does, however, offer institutional reforms that may significantly change the approach of the Union towards accession countries. This in turn will influence the Europeanization of the Western Balkan countries and provide further justification in theoretical debates of the Europeanization process. This chapter anticipates the impact of the Lisbon Treaty on the future accession of Turkey, Macedonia and Croatia, as well as the other countries in the Western Balkan club.

First of all, the Lisbon Treaty is designed to promote a new and more coherent approach in the external relations of the Union. The Treaty of Lisbon will help the EU to work more effectively and consistently around the world, including in the enlargement countries. The pressure now will not come only from the EC Commissioner for enlargement but also from the President of the Council and the Higher Representative for Foreign and Security Policy. Once their offices become operational, one can expect greater consistency in approach and accelerated pressure on candidate countries as the new roles become more familiar and clear strategies emerge for the holders of these new EU functions.

Secondly, the Lisbon Treaty introduces additional conditionality through its adoption of the European Charter of Fundamental Rights. As Macedonia, Croatia and Turkey are signatories of the European Convention on Human Rights,¹ which is encompassed by the Charter, these countries will have to look for ways to develop legal guarantees for the new rights regulated in the Charter, such as data protection, biotechnics and the right to good administration.

Finally, the greatest impact of the Lisbon Treaty will be on national policy making. With the more active role of the European Parliament and the novelty of involving national parliaments in monitoring, the EU is expected to look for a more engaging role for national parliaments in policy making in countries seeking accession. In Europeanization theory, the legislative task of the transposition of Community directives and regulations in national law is presented as being largely an administrative task. There is an assumption that the *acquis* is not an appropriate subject for debate as Community law takes primacy over national law for member-states; thus all candidate countries have so far introduced some kind of fast-track procedure for getting EU legislation through parliament. In the last enlargement the lack of debate in most CEE legislatures reflected a consensus on accession; however, it also

showed a lack of awareness of the details of the legislation being passed by parliamentarians (Grabbe, 2006).

This implies that the lack of involvement of parliamentarians and wider society in the accession process will become important in future EU accessions. So far, the marginalization of the legislature has had implications on the democratic deficit problem. This also runs counter to the EU's advocacy of stable democratic institutions and the development of capable lawmakers. This was for a long time paralleled by problems in the EU itself. But with the changes introduced with the Lisbon Treaty, it can be expected that policy debates will be invigorated in Parliament. This might affect accession countries as the EU is expected to look for a more active role for parliaments in policy development.

Conclusions

The Lisbon Treaty is focused primarily on internal aspects of the European Union, on its structures and governance, EU representation and the achievement of EU goals. At present we can only provide assumptions as to the external effects of the Treaty. This paper argues that the Lisbon Treaty will have three effects on future European enlargements:

- The Lisbon Treaty changes the posts that will present EU conditionality to accession countries (through the creation of the posts of the EU Commissioner for Enlargement, the President of the Council, and the Higher Representative for Foreign and Security Policy).
- The Treaty changes who is expected to be actively involved in policy development (the EU is expected to look for a more active role on the part of national parliaments and greater inclusiveness on the part of non-state actors in policy making, e.g. CSOs and interest groups, etc.)
- The Treaty introduces changes in legislation (requiring convergence with new rights regarding data protection, biotechnics and the right to good administration).

Endnotes

¹ Article 213(2) TEC states: “The Member of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.”

² Article 11 TEU (consolidated version as amended by the Lisbon Treaty).

³ Double majority voting—requiring a majority not only of EU member states (55%), but also of the EU population (65%). This will be introduced in 2014.

⁴ Through the new instrument to monitor and ensure that the Union only acts where results can be better achieved at EU level (the famous founding principle of the union—subsidiarity).

⁵ Macedonia ratified the European Convention of Human Rights on 10 April 1997.

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