

Conference Paper

Institutional Reform in Southeastern Europe: How important is the EU anchor?

Dr Othon Anastasakis

University of Oxford

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Introduction

It is broadly assumed that the power, soft and economic, of the European Union has an overwhelming transformative effect on member states and candidate countries. The transformative power of the European Union relies on the potential of europeanisation through european integration and adaptation, which can change some countries beyond recognition – be they member states, candidate states or potential candidate countries. The impact of europeanisation through european integration was first quite noticeable with the member states of Europe’s southern periphery, -Spain, Portugal and Greece- broadly linked with the consolidation of democracy and the modernisation of administrative, economic and social structures.¹ It has also been particularly evident in the transformation of Ireland, initially one of the laggards of the European Communities and currently one of the most dynamic economies of the European Union.

More recently, the force of europeanisation was tested on the East European candidate countries aiming at modernisation and post-communist transition via consistent pre-accession assistance and conditionality.² Indeed, the eastern enlargement experience shows how powerful this impact can be, on the new democracies and market economies

¹ Kevin Featherstone & George Kazamias (eds) *Europeanisation and the Southern Periphery*, co-edited Frank Cass, 2001

² Heather Grabbe, *The EU’s transformative power; Europeanisation through conditionality in Central and Eastern Europe*, Palgrave 2006

when they are offered the carrot of EU membership. All current EU member states from Central and Eastern Europe can claim the transformation of their political systems, their economies and their societies thanks largely to the rules, criteria and conditions of the enlargement method.

Encouraged by this experience, it is expected that the European Union will have a similar catalytic effect on reform and stability in the Western Balkans, a much more complicated region which includes the more advanced Croatia, the young state of Montenegro, the fragile FYR Macedonia, the internally divided Bosnia-Herzegovina, Serbia, the post-status Kosovo, and backward Albania. Through the enlargement method and what many scholars and policy-makers call “member state building”,³ it is assumed that the European Union will have the soft power to transform illiberal environments, generate regional cooperation among hostile countries and strengthen their very weak economies. This enlargement method, they argue, worked wonders in the Central and East European cases and most significantly in the more backward and illiberal cases of Slovakia, Romania and Bulgaria which now enjoy high rates of growth and are more stable and permissive democracies.⁴

One area where the EU’s transformative capacity is very visible is that of institutional reform and institution-building. Indeed, in the Western Balkans, institution-building is at the core of state building and the fight against the deficiencies of the weak states. The following paper looks and discusses the European Union’s contribution in this particularly demanding and controversial area by asking the following questions:

- What kind of institution building is the EU promoting?
- What kind of instruments does the EU use towards this goal?
- What is the local political context and response?
- Can the EU deliver in the Western Balkan countries as much as it did in the Central European cases?

³ International Commission on the Balkans, *The Balkans in Europe’s Future*, Sofia 2005

⁴ Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage and Integration after Communism*, Oxford University Press 2005

A. What kind of institution building?

Institution-building became a central concern of all major international organisations in the transformation of the post-communist states and is a necessary condition for candidate states in order to become members of the European Union. There are three arguments associated with the need for institutional transformation:

- *EU compatibility argument*: Institution-building transforms state structures in order to make them operate in the multi-state EU environment. It aims at the adoption and implementation of the *acquis communautaire* and prepares for participation in EU policies.
- *Functional argument*: Institution-building creates efficient and capable states which are able to deliver in the domestic political and socio-economic domain; they generate trust among the population and gain legitimacy and stability.
- *Normative argument*: Institution-building is linked with the quality of the democratic process, the spread of democratic and human rights values, the deepening and the consolidation of democracy in transition countries. In the EU jargon it contributes to the fulfilment of the Copenhagen political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

The EU addresses institution building in direct and indirect ways. The most direct way deals with capacity building and the creation of competent bureaucratic structures capable of implementing the *acquis communautaire*. As the European Commission argues,

“Reinforcing the institutional and administrative capacity of beneficiary countries is a key requirement for enlargement if they are to be in a position to fully adopt, implement and comply with the Community acquis. This requires modernisation of their administrations and judiciary, taking account of the principles of professionalism and neutrality. Preparing for EU membership requires far reaching changes across a broad range of sectors in many of the

*institutions and organisations involved in the legislative and enforcement process.”*⁵

As a result, the EU promotes the strengthening of the existing institutions such as ministries and central banks and asks for the creation of new ones (such as competition authorities and regional administrative units) in order help the candidate and potential candidate countries to adopt all the existing laws, norms and institutional templates of the European Union.⁶

The relationship between the EU and candidate states entails an inherent power asymmetry which defines a one-way direction in institution building (from the EU to the candidate states), it is reinforced by the weak institutional and negotiating position of the candidates' vis-à-vis the EU, and allows the latter to dictate the rules of the accession game.⁷ This power asymmetry is clearly visible in the EU's relationship with the Western Balkan countries, as a result of their feeble state structures and economies and their urgent need for transformation and adaptation to the EU norms. That gives the EU a unique leverage over domestic developments in the Western Balkans and a seemingly limitless power to impose templates, criteria and timetables. In addition, as their main financial sponsor, the EU is also in a position to impose the conditions and rules of the pre-accession process. Most Western Balkan countries some more than others, feel the heavy handedness of international interference and most of them have developed a “dependency syndrome” from which they can barely escape.

B. What kind of instruments?

The most prominent and direct way of EU institution building is through bureaucratic strengthening, technical assistance and aid (the administrative approach). On that front, the EU pre-accession institution-building identifies two main areas of action, the transfer of know-how and institution building through investment. The know-how is defined as

⁵ Communication for the Commission to the European Parliament and the Council, “Enlargement strategy and the main challenges 2006-2007”, COM (2006) 649, Brussels

⁶ Grabbe, *The EU's transformative power*

⁷ Othon Anastasakis, “The Europeanization of the Balkans” in *The Brown Journal of World Affairs*, Volume XII, Issue I, Summer/Fall 2005

the process of helping the partner countries to develop the structures, strategies, human resources and management skills needed to strengthen their economic, social, regulatory and administrative capacity. Significant resources are allocated for this purpose and are mainly deployed and implemented with Member States through the instruments of TAIEX, twinning and SIGMA.

TAIEX: The Technical Assistance and Information Exchange Instrument provides centrally managed short-term technical assistance in the field of approximation, application and enforcement of European Union legislation. Services currently provided by TAIEX come in the form of seminars, workshops, expert and study visits; training, Peer Review and Assessment type assistance, database and translation services. The beneficiaries of TAIEX assistance includes those sectors, both public and private, which have a role to play in the beneficiary countries in the transposition, implementation and enforcement of EU legislation. In the Western Balkans, TAIEX assistance has so far focused on the fields of agriculture, transport, energy, environment, internal market legislation, freedom, liberty and security.

Twinning: These are projects which involve the secondment of EU experts to the acceding, candidate and potential candidate countries on specific missions. The experts are made available for a period of at least one year to work on a project in the corresponding Ministry in the beneficiary country. Twinning aims to help beneficiary countries in the development of modern and efficient administrations, with the structures, human resources and management skills needed to implement the *acquis communautaire* to the same standards as Member States. Twinning not only provides technical and administrative assistance, but also helps to build long-term relationships between existing and future Member States and brings all beneficiary countries into wider contact with the different practices inside the EU. In the Western Balkans, during the period 2000-2006, most twinning projects focused on the fields of Justice and Home Affairs, Public Finance, Internal Market and Agriculture.

SIGMA: The Support for Improvement in Governance and Management is a joint initiative of the OECD and the European Commission and provides assistance to partner

countries in their efforts to modernise public governance systems. This includes assessing reform progress and identifying priorities; assisting in the process of institution-building and setting up legal frameworks; and facilitating assistance from the EU and other donors by helping to design projects and implement action plans.

While these instruments are common to all candidate and potential candidate countries, there is no single EU model of institution building but a variety of practices and constitutional arrangements which are inspired by the experiences of the individual member states. Up until now, these actions were financed by instruments such as PHARE, CARDS, IPSA, SAPARD, all of which had special allocations for institution building. From 1 January 2007, the Commission introduced a new financial tool for promoting reform and alignment with the *acquis* for the candidate and the potential candidate countries, the Instrument of Pre-Accession (IPA), to replace entirely the previous assistance instruments. The Western Balkan countries and Turkey are expected to benefit from almost 11.5 billion euros over the next seven years. In addition IPA also provides for better coordination with the EIB, EBRD, World Bank and other IFIs. Its target areas include support for institution-building and the rule of law, human rights, including the fundamental freedoms, minority rights, gender equality and non-discrimination, both administrative and economic reforms, economic and social development, reconciliation and reconstruction, and regional and cross-border cooperation.

Institution building and institutional strengthening also takes place in the context of a wider web of transnational exchanges, activities and policy transfers which include multilateral institutional contacts, (structured dialogue, inter-parliamentary committees), and/or socialisation and emulation practices, private sectors actions and initiatives (adopting practices of competition in home or EU markets) and the strengthening of civil society activities which results in a bottom up pressure to create competent, efficient and democratic institutions.

C. What kind of regional political context?

Most scholars and analysts have located the source of the institutional problems of the Western Balkans in the existence of weak states (some of which have also displayed instances of state failure, like in Albania 1997)⁸. Weak states lack in efficiency, responsiveness and capacity to deal with the domestic citizens' concerns and the international challenges of regional integration and globalisation. Referring to our earlier three arguments in favour of institutional reform, weak states cannot become EU compatible and are unable to adopt the *acquis communautaire*; they are also functionally problematic in the implementation of the rule of law of in their ability to influence economic development; they cannot be democratic and fully liberal since they do not respect human rights, protect minorities, guarantee a qualitative and substantive democracy. The Western Balkan states share many of these features to a greater or lesser degree. The sources of state weakness in the Balkans have to do with the existence of:

- *Communist institutional legacies which resist change*

These legacies refer to the perseverance of communist, illiberal forces and interests of the past which impede the process of democratization and marketization. The post-1989 experience showed that communist institutional legacies affected the way countries managed to achieve liberal democratic practices. Transition from communism explains to a certain degree why some countries did better than others and why some managed to adjust to new institutional models easier than others.

- *Newly established inexperienced institutions with limited capacity*

With the exception of Albania and Serbia, as the centre of former Yugoslavia, most states and institutions in the Western Balkans are new and are too undeveloped or small to deal with the exigencies of an advanced western-dominated *acquis communautaire*. There are some new and inexperienced states like FYR Macedonia who are more receptive to conditionality and external demands for reform and some new states like Bosnia-

⁸ Blue Bird Agenda for civil society in Southeast Europe, "In search of responsive government; State building and economic growth in the Balkans", Centre for Policy Studies, Central European University, 2003.

Herzegovina which are very reluctant to abide by the exigencies of integration.

Inexperienced states may lack the necessary human resources, the knowledge or even the willingness to adjust and implement reform.

- *Conflict legacies and divisive institutions*

In Bosnia and Kosovo and partly in FYR Macedonia and Serbia many institutions are the result or the response to conflict and war situation and they perpetuate a legacy of division, exclusion as well as competing with parallel informal institutions. Post-conflict states tend to be discriminatory and divisive along ethnic lines and they lack the necessary political consensus and policy continuity to achieve EU integration and adaptation.

- *Externally administered institutions with a culture of dependency*

In all Western Balkan countries, institutional models are imported from abroad and there is a profound interference on what kind of institution-building is required. But there are cases like Bosnia, Kosovo or FYR Macedonia which have been operating as protectorates or semi-protectorates, where external actors have been blatantly in charge of internal administration, at times operating in semi-authoritarian and forceful ways and creating a dependency culture and an uncertainty as to whether these states can be self-ruled.

All these sources of state weakness which appear in different forms and varying degrees are affecting the institutional and democratic pathways of the Western Balkan countries. The configuration of all those factors is different in each country influencing the success or failure in administrative reform and resulting into different degrees of state weakness and technical adaptability. Dysfunctional institutions may therefore emerge as a result of communist legacies resisting change, inexperienced of new states, ethnic conflicts and lack of consensus politics, and/or external design.

The European Union has adopted the principle that each country progresses according to its own merits and there is bound to be a diversity of outcomes and integration paths in such a limited geographical space, previously covered by one single state Yugoslavia (plus the state of Albania). It monitors the integration process through a screening

mechanism which examines state administrations and results in annual reports which aim to bolster public investment strategies. Notwithstanding the regional similarities, that have to do with weak rule of law, corruption and organised crime, problems with the judiciary and limited administrative capacity to implement the acquis, each successor state in former Yugoslavia poses its own challenges, and potential in technical and administrative adaptation.

Croatia, a candidate country currently conducting accession talks has the most promising prospects for membership, it is the best equipped state to adjust with a willingness to adapt and a technical consistency which helps its integration process. Although it lacks a clear EU roadmap for accession, it has set its own chronological timetable with 2009 as its target date for accession. The EU demands significant improvements in its legal administrative system, its judiciary and fight against corruption, areas indispensable for full implementation of the acquis but overall there is a sense that Croatia is moving along and can be the Western Balkan example to emulate.

FYR Macedonia, the second candidate state of the Western Balkans with a much more uncertain integration prospect, appears for some to be a successful post-conflict case in the implementation of the inter-ethnic Ohrid agreement, and for others a less successful example due to its very weak economy, high unemployment and divisive politics. The Ohrid agreement asks for decentralised institutions which allow for more autonomy of the Albanian populated territories previously under state discrimination by the Macedonian state. The business climate is not conducive to growth and FDI and the existence of a considerable informal sector leads to further distortions in the economy.

Albania, a country that recently signed the Stabilisation and Association Agreement suffers from deep divisions between government and opposition and fails to generate the right consensus to address the integration concerns. The Commission has often complained about the political appointments, the lack of cooperation between police and judiciary, legal uncertainty and weakness in law implementation, anti-corruption, limited

progress on improving business environment and the predominance of informal economy.

Bosnia-Herzegovina suffers from the heavy handedness of the international administration and faces two major institutional challenges: first, the transition from the Office of the High Representative to the local authority and ownership; second, the creation of commonly accepted central state structures to replace the fragmenting institutions of the Dayton constitution. The recent effort to replace the constitution failed by being outvoted in the Bosnian parliament and the country failed to transform into a more functional, sustainable and democratic state. In contrast to FYR Macedonia, the request is for the centralization of the institutions which currently suffer from fragmentation, ethnic differentiation and a total dependency from abroad.

Serbia is a more controversial case because it is a country with a considerable institutional capacity and has displayed some progress with administrative reform and an ability to catch up with the other countries in the region on the way to the EU, once it solves its own political problems. The EU froze its negotiations its Stabilisation and Association negotiations with Serbia last spring, as a result of Serbia's non-cooperation with the International Crimes Tribunal for Yugoslavia. Serbian politics are very divisive and polarized and the question of Kosovo remains inflammatory and with no agreement following the end of negotiations under Ahtisaari. Serbia adopted a new constitution last autumn in order to reinforce and democratize its governance. Despite many political problems in domestic politics and Kosovo, the country has recorded success in pursuing privatization and in attracting foreign direct investment.

Montenegro which recently achieved independence faces the challenge of its inexperience, smallness of size and lack of human resources. It is currently in the process of putting together its legal and institutional set-up as an independent state. While the new state has already been in the Stabilisation and Association process as part of Serbia and Montenegro, its current institutional capacity needs reform and assistance in order to come to terms with the demanding acquis.

Kosovo is regarded by some as the failure of the international administration and its standards before status post-1999 policy. The question of status has dominated any other agenda and has thus delayed any reforms. Through a special tracking mechanism the EU has tried to engage Kosovo in a feebly defined integration path but it is expected to play a crucial role as a civilian power in the post-status period. Kosovo suffers from a total dependency on international institutions and a future institution-building would require massive efforts in the rule of law, economy, public administration and decentralization in order to achieve a successful transfer of responsibility from UNMIK to the EU and local authorities. Kosovo is a case of case state-building where all the hopes lie with the European Union in the future.

D. Can the EU do the job?

In view of this variety of pathways, the EU and its enlargement directorate are treating the issues of the Western Balkan states as part of a regional strategy of future accession to the EU and individually as bilateral cases. But the EU is not only alarmed by the capacity of the Western Balkan countries to implement the *acquis communautaire*, it is also perplexed by its own capacity to absorb the next candidate and potential candidate states. While references to the notion of absorption capacity are very recent, the idea was first introduced as the fourth Copenhagen criteria in 1993;⁹ yet, the EU never used this fourth conditionality during the “big bang” eastern enlargement. Part of the current mention has to do with the massive challenge of Turkey’s accession to the European Union and the widespread public reluctance in Europe; part of it is connected with the current “enlargement fatigue”; part of it is linked with the Western Balkan difficulties on the ground; and part of it is a smokescreen to hide the EU’s unwillingness to commit¹⁰.

Central in the absorption/integration capacity is the need for the EU’s institutional reform in order to improve the effectiveness of a Union of more than 30 member states. The

⁹ Conclusions of the Presidency, European Council in Copenhagen June 21-22, 1993

¹⁰ Tim Judah, “The EU must keep its promise to the Western Balkans”, Centre for European Reform essay, May 2006

Nice Treaty provides for up to 27 members, thus a new institutional settlement is required by the time the next EU member state joins the Union. This in order to ensure that the EU can maintain the capacity to act according to a fair balance within institutions, decide on the budget and implement its common policies. The increased EU needs to ensure that its institutions and decision making processes remain effective and accountable and they can cope with the much bigger number of states of different economic and political developments, local institutions and abilities to implement the *acquis communautaire*.

Such difficulties from both sides –EU and Western Balkan- create major concerns as to the European future of the Western Balkan states which are widely regarded as “the EU’s unfinished business”, a “black hole” in the EU with a destabilising potential.¹¹ In some ways, the EU appears to be approaching the Western Balkans with two faces; the political which is more uncertain and ambiguous, and the technical which is more concrete, with conditions, benchmarks, stick and carrots. These two are not always perfectly compatible and as a result the candidate or potential candidate countries get mixed messages. The fact that the European Commission has included the Western Balkans in its enlargement Directorate is an indication that those countries are treated within an enlargement perspective. Yet, at the intergovernmental level there is an overall sceptical climate for further club memberships and a certain gloom over the constitutional future of Europe and, when the intergovernmental Council of Ministers refers to the Western Balkan countries, it puts them under the “external affairs” heading along other third countries.

Naturally, part of this reluctance comes as a response to the difficulties of the Western Balkan cases. These countries, with the exception of Croatia, are increasingly difficult to deal with, and there are many obstacles in their harmonisation with the EU. Overall, domestic arrangements in those countries seem so temporary that it is difficult to plan with a long-term perspective. But part of the EU reluctance to enlarge more has to do with the EU’s own ambivalence, the current state of the Union and the lack of EU public support for enlargement. Despite this climate of uncertainty and insecurity, the EU

¹¹ European Stability Initiative, “The Helsinki moment-European Member state building in the Balkans”, February 2005

remains the only anchor for the transformation of the Western Balkan countries, the only hope that these states will become competent international and domestic entities.