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A Blueprint For Accelerated Integration and Phasing-In

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Introduction

Probably the most important attempt to revamp of EU's enlargement policy in the last decade has been the adoption of the New Methodology for Accession Negotiations in 2020 which has been ambitiously envisaged as a robust framework for accelerated integration of the Western Balkans which will provide more clarity and a stronger political steer of the accession process. The New Methodology (European Commission 2020) is centered around four key areas of interest (Tilev 2020), i.e. credibility, based on mutual commitments and roadmaps for fundamental reforms; stronger political steer, which foresees a more intense mode of communication between the EU, its institutions and the Western Balkan countries; dynamism, which is based on reorganizing of the negotiating chapters into six clusters; and predictability, which introduces reversibility in the accession process by providing extra incentives for complying candidates and slowing down of the accession negotiations for non-complying candidates. The New methodology has been already formalized in the negotiating frameworks for North Macedonia and Albania (Tilev et al. 2022), while Serbia and Montenegro also decided to opt-in and incorporate the new elements of the revised enlargement methodology within the context of their existing negotiation frameworks (Council of EU 2021), but without changing the agreed frameworks.

However, although more than three years have passed since the adoption of the new methodology, there is a clear lack of more precise explanation and elaboration of the instruments that are envisaged by this revised framework. In this context, one of the most intriguing remarks in the New Methodology that in theory could unlock a great potential for accelerated integration of the Western Balkan countries is the “phasing-in” instrument for gradual integration of the candidates into the policy and institutional structures of the EU. “Accelerated integration and Phasing-in” has been initially introduced by the European Commission’s communication in February 2020 in one short paragraph under the heading *predictability, positive and negative conditionality* (European Commission 2020):

“By providing clear and tangible incentives of direct interest to citizens, the EU can encourage real political will and reward results arising from demanding reforms and the process of political, economic and societal change. If countries move on reform priorities agreed in the negotiations sufficiently, this should lead to:

- Closer integration of the country with the European Union, work for accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes, while ensuring a level playing field.
- Increased funding and investments – including through a performance-based and reform-oriented Instrument for Pre-accession support and closer cooperation with IFIs to leverage support.”

The “accelerated integration and phasing-in” principle has been further endorsed by the Council of the EU in December 2022 by stating that “It looks forward to exploring its full potential (of the new methodology), in particular “phasing-in” to individual EU policies, the EU market and EU programmes, while ensuring a level playing field and being subject to progress on reform priorities” (Council of EU 2022).

Finally, a slightly more extensive reference to “phasing-in” has been included in the Negotiating framework with North Macedonia and Albania. For example, the Negotiating framework with North Macedonia states the following:

“If North Macedonia makes sufficient progress on reform priorities agreed in the negotiations, this should lead to:

- 1/ closer integration with the European Union, through accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes in order to unleash the potential of such integration, in particular by removing technical barriers to trade, while ensuring a level playing field; primary focus should be given to areas where the candidate country already has the capacity and expertise

for exports to the EU, and on areas of mutual strategic interest where the candidate country has significant production but needs to meet EU norms and standards (e.g. production of critical raw materials), and as well on areas where there is a vast untapped potential (e.g. digital/ green economy)."

Although these references clearly indicate the commitment of the EU to engage more extensively into "phasing-in" as an instrument for accelerated integration, so far there are many open questions, or blind spots, on its structural organization and practical implementation. Conversely, the aim of this policy brief is to explore in more detail the possible venues for application of the "phasing-in" mechanism. Recognizing the great potential of positive conditionality for accelerated reforms in the Western Balkans, "phasing-in" is perceived as a tool that could provide intermediate rewards in the accession process and thus provide tangible benefits for both the authorities and the general public, but at the same time to ensure accelerated integration in real terms.

Having in mind the main characteristics of "accelerated integration and phasing-in" as defined in the official EU documents, the brief analyzes the mechanism both from a policy and an institutional perspective. The policy "phasing-in" aspect is elaborated through a "fundamentals first" approach and explores the possibilities of "phasing-in" of the respective Western Balkans countries in EU's rule of law mechanisms and the modalities of inclusion into the Single Market. The second key dimension explored in the brief is the institutional "phasing-in" which focuses on possible modalities of increased participation in the decentralized EU agencies on one hand; and enhanced participation of the Western Balkan countries in the comitology structure in the European Commission and Council preparatory bodies on the other.

Policy Phasing-In

The starting point for the policy “accelerated integration and phasing-in” is the existing EU “fundamentals first” approach in the accession negotiations. The policy phasing-in should provide enhanced linkages between the rule of law reforms and economic governance with special emphasis on improving economic convergence, as prerequisite for smooth entry into the European Single Market. Finally, the phasing-in approach allows to positively reflect on the common interest and demands of the Western Balkans citizens for building just, and prosperous societies on an equal footing with the current member states.

Integrating into EU's rule of law mechanisms, the economic governance framework and single market

Strengthening rule of law is a must and determines the pace of accession negotiations. It was not that long ago when the Commission acknowledged the serious rule of law situation in the countries of the Western Balkans region with clear elements of state capture (European Commission 2018), which is the case in some of the Western Balkan countries even today. One could claim that there was some progress made in this area, however, the linkages between organized crime and corruption that existed on various levels of government and administration are not dismantled and still are a cause of concern for the citizens. The societal change the EU accession process should empower is lacking, the rule of law weakens, and consequently the EU attractiveness is diminishing leading these countries towards authoritarian regimes such as Russia or China. Because in the end, a captured state is equally destructive for its own people regardless of which side (East or West) tolerates and cooperates with it.

Therefore, the Western Balkan countries need to be first phased into the Rule of Law (RoL) mechanism including the Justice Scoreboard. In accordance with the fundamentals first approach of the New Methodology, this should be the initial, and most important element of policy phasing-in. Threat the candidate countries as future member states

and integrate them early in the process so they can compete not only among themselves in the region but also with the best performers in the EU. By doing so, we are closing the door to all those actors (in the candidates and EU Member States) that want to manipulate the performance of the candidate countries in the area of rule of law which is an area in which there is significant number of soft acquis. Accountable governments and administrations before the domestic and EU publics is the by-product this policy phasing-in aims at achieving.

The Economic Governance Framework, which includes all the economic criteria (Council of the European Union 2023) is an essential part of the accession process. The entire exercise around the existing Economic Reform Program (ERP) proved sufficient for maintaining some pace of reforms. However, as the interest to phase in the Western Balkan countries increases, the existing ERP would be no longer sufficient to address the needs of these countries, nor the appetite of the Commission. In order to foster irreversible free-market economic reforms and enhance economic governance, the countries of the Western Balkans should be phased into the wider Economic Governance Framework starting with the European Semester, including the Fiscal Compact rules. The Economic Governance Framework and the European Semester need to be the driving force for increased economic convergence. In light of the announced new Growth plan for the Western Balkans by the European Commission President von der Leyen, in which 2 out of 4 pillars are focused on the economy, namely bringing the Western Balkans closer to the EU single market and deepening the regional economic integration, the importance for such policy phasing-in becomes a necessity.

Accelerated integration and phasing-in into the European Single Market (Internal Market) through the Common Regional Market¹ needs to become a practical instrument that connects trade and economies of the Western Balkans with those of the EU (Tilev 2023). Some positive steps have been taken in the right direction (agreements signed under the Berlin process), but we need to ensure that all Western Balkan countries are on board, that all are members and follow the World Trade Organisation rules and comply fully with the EU standards and norms. At the same time all Western Balkan countries need to fully respect CEFTA agreements and that all are fully implementing the Stabilisation and Association Agreements (SAA) (are not in breach with the SAA obligations).

¹ <https://www.rcc.int/pages/143/common-regional-market>

The Regional Cooperation Council can play certain role to coordinate and facilitate this process, but we also need to strengthen the role and to get direct involvement of the Commission services and EU MS's into the process, including the exchange of relevant experiences.

These are complex and expensive processes that need to be supported by relevant funds. Therefore, extending IPA type of assistance should be considered, bringing the Western Balkan countries closer to the real cohesion policy by introducing a new Cohesion fund for the Western Balkans, under the same or similar rules as for the EU countries. This may be the real game changer, to be used as leverage to bring back the trust of the people from the Western Balkans countries into the EU, and on the other side it may become the main political tool for the EU to award successfully implemented reforms with an accelerated decrease of the economic disparities.

The Common foreign and security policy (CFSP), including introduced restrictive measures and sanctions extending cooperation and compliance with the Common security and defence policy (CSDP), should be added to the "fundamentals first approach", as a crucially important topic considering all tectonic movements after the aggression of Russia to sovereign Ukraine state.

Institutional Phasing-in

Modalities of increased participation in EU agencies

There is a variation in the extent of participation of third countries in EU's decentralized agencies. Different clusters of third countries have different levels of partnership with the agencies. For example, the European Economic Area (EEA) countries have the most prominent access to the work of EU agencies as under the EEA agreement they are "formally associated to decision-shaping" (Lavanex and Öberg 2023: 7). Due to contractual arrangements, the EEA countries are represented in the administrative/management board in each EU agency where an EU member state is represented. Their participation in the boards means that they have the same rights and obligations as the EU member states, apart from the right to vote (EEA Joint Parliamentary Committee 2012). Consequently, the EEA countries have the largest institutional access to influence the policy cycle at almost every stage, i.e. from policy formulation, to policy implementation and monitoring.

Another group of third countries that in theory should have privileged participation in EU agencies are the candidate countries for EU membership. Firstly, the privileged partnership of the candidate countries with the EU in general and its agencies in particular is based on their commitment to approximate and implement the *acquis* in their legal systems. Secondly, granting access to EU agencies to the candidate countries is a part of a wider socialization exercise, where the EU is expected to gradually increase the opportunities for participation in its institutional structures as a means to further familiarize, train and integrate the administrative bodies of the future member states into the EU policy network. In this sense, participation in EU agencies (as well as in EU programmes and committees) for the candidate countries has already been endorsed by the European Council in 1997 (European Council 1997). Following a similar logic, as of 2006, the EU has enabled the European Neighbourhood Policy (ENP) countries to participate in the work of the EU agencies and programmes.

Yet, the candidate status and the expectations of accelerated integration that come with it surprisingly does not seem to have a straightforward effect on increased participation of the candidate countries across and within agencies. A recent analysis of the levels of third country access to EU agencies has shown that the sort of privileged position that comes with the candidate status and the commitment to implement the *acquis*, does not necessarily guarantee privileged participation across EU agencies compared to other third countries (Lavanex and Lutz 2023). While this assumption works with the EEA/EFTA countries which have the highest rates of participation in EU agencies both in scope and depth, it does not correlate well with the case of the seven candidate countries. Contrary to expectations, the second group of third countries with widest and deepest access to EU agencies are the countries that are major trade partners of the EU like the United States, Canada or Japan. In comparison, the “candidate countries cooperate with fewer agencies and enjoy lower access” (Lavanex and Lutz 2023: 11).

Currently, the Western Balkan countries have some mode of cooperation with 20 EU agencies. However, there is a significant variation in the *de jure* status of the Western Balkans countries in relation to these agencies which is also reflected in the scope and depth of cooperation. In terms of scope, some agencies have established cooperation with selected Western Balkan counterparts, but not with all Western Balkans candidates (e.g. EMCDDA²)³. On the other hand, there are agencies that have established equal model of cooperation with all Western Balkan states (e.g. BEREC⁴, CEPOL⁵, FRONTEX⁶, Europol⁷, EASA⁸, Eurojust⁹). In terms of depth, again there is a significant variation both in terms of inclusion in the policy cycle and the type of agreement that establishes the modalities of cooperation. For example, BEREC and the European Environment Agency provide access to their work for all Western Balkan countries which is equal to the EEA countries, which include a seat at board meetings and engagement at most levels of the policy cycle with the exclusion of voting rights. Another policy area that has recently gained prominence in inclusion of the Western Balkans in the work of its agencies is Justice and Home Affairs (Damjanovski and Nechev 2022; Mortera-Martínez et al. 2021). For example,

² European Monitoring Centre for Drugs and Drug Addiction

³ Due to the peculiar situation of Kosovo's status *vis a vis* non recognition of some member states, Kosovo has more limited access the EU agencies when compared with the other Western Balkan countries

⁴ Body of European Regulators for Electronic Communications

⁵ European Union Agency for Law Enforcement Training

⁶ European Border and Coast Guard Agency

⁷ European Union Agency for Law Enforcement Cooperation

⁸ European Union Aviation Safety Agency

⁹ European Union Agency for Criminal Justice Cooperation

most Western Balkan states have status agreements with FRONTEX and agreements on operational and strategic cooperation with Europol which, quite remarkably give access to the authorities from these countries to some of the databases of these agencies and include them in some operational activities. On the other hand, cooperation with at least 10 agencies¹⁰ is in its inception, subject to initial IPA funding (based mostly on contribution agreements) as a means of preparation for more prominent participation in the future.

This initial mapping of participation of the Western Balkan countries in the EU agency network indicates that there is a lot of space for phasing-in, both in terms of access across agencies and depth of cooperation. On a short-term basis, the phasing-in should result in granting access of the Western Balkan countries to all remaining EU agencies via established cooperation agreements. On a long-term basis, the phasing-in instrument should (where applicable) include the Western Balkan countries in the management boards of the agencies and opt them in all phases of the policy cycle without voting rights.

Participation in the European Commission's comitology structure and Council preparatory bodies

Another key institutional access point of phasing-in for the candidate countries is the work of more than 350 committees that are part of the European Commission comitology structure.¹¹ As currently devised, a majority of these committees do provide a de jure access to third parties and countries, limited to observer status at meetings because of legal limitations. Thus, more than 60% of the committees do provide a legal basis for third country involvement mostly as observers (no voting rights). However, the scope and depth of this association is very limited as third countries are rarely invited to participate at committee meetings and in most cases this participation has been limited to the EEA/EFTA countries. An analysis of the composition of participants in recent meetings of Commission committees indicates very low levels of participation of Western Balkan representatives. The reasons can be explored in more details, but beside legal limitations,

¹⁰ European Institute for Gender Equality (EIGE); European Union Agency for Railways (ERA); European Foundation for the Improvement of Living and Working Conditions (Eurofund); European Chemicals Agency (ECHA); European Centre for Disease Prevention and Control (ECDC); European Food and Safety Authority (EFSA); European Maritime Safety Agency (EMSA); European Agency for Safety and Health at Work (EU-OSHA); EU Agency for Fundamental Rights (FRA); European Medicines Agency (EMA)

¹¹ <https://ec.europa.eu/transparency/comitology-register/screen/home?lang=en>

there are also financial considerations as well as shortages of experts in specific fields. In the period that encompasses the past three years, at least one of the Western Balkan countries has been represented at a meeting in less than 10% of active Commission committees, with the participation limited to multiple committees under the departments of Education, Youth, Sport and Culture; and Research and Innovation.

In this sense, the phasing-in principle should provide a much wider opportunity structure for participation of Western Balkan representatives at Committee meetings. Since in most cases, the rules of procedure of the committees allow third countries to be invited at their meetings, they should be incentivized to utilize this opportunity whenever possible as means of giving a meaningful voice to the candidate countries and as a socialization agent. The process of accession negotiations, starting with the screening process, should be used to stimulate wider and more meaningful participation of the experts/representatives from the Western Balkan countries in the work of a greater number of the committees.

In a similar vein, the EU should explore the possibilities of enhanced cooperation with the Western Balkans within the network of Council preparatory bodies.¹² While participation in these bodies is reserved for the member states only, loose frameworks of cooperation could be explored such as sharing of detailed political and technical briefings of the agendas, draft policy papers, draft decisions and legislative proposals with the Western Balkan partners (Tilev 2023).

Both political leaderships and experts need to understand the gravity of the importance of accelerated integration and phasing-in. This will raise an understanding of the scope, procedures, and technical elements that are needed in order for the Western Balkan

¹² <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/>

countries to make necessary decisions at the national level and to propose meaningful accelerated integration and phasing-in in the areas of mutual interest for both sides. The Council for Stabilization and Association, in line with the New Methodology proposition, could be the first decision-making level for some elements of accelerated integration and phasing-in, while the Council of the EU and its relevant bodies¹³ for other elements of phasing-in, where the anonymity of the member states is required.

¹³ GAC, COREPER, COELA

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