

# THE EFFECTS OF THE LISBON TREATY ON ACCESSION COUNTRIES

*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 add certainty to it. The Treaty, however, does offer institutional reforms that may significantly change the approach of the Union towards accession countries. This paper assesses the impact of the Lisbon treaty on future accessions to the European Union.*

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The European Union is one of the key agents of reform for accession countries. Countries that seek membership model themselves after the EU's criteria for progress and development. In this process, the EU has distinguished a group of frontrunners (Bulgaria and Romania), grouping the remainder of Balkan countries in the so-called Western Balkans club; this club is comprised of Croatia, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, Albania and Kosovo. The Western Balkans was put on the EU enlargement agenda at the Thessaloniki Summit in 2003, when the Union set several policy priorities towards the region.<sup>1</sup> Since then, Western Balkan countries have been pushing for EU membership. Today, the region includes two candidate countries for EU membership (Croatia<sup>2</sup> and Macedonia<sup>3</sup>), two applicant countries for EU membership (Montenegro<sup>4</sup> and Albania<sup>5</sup>), one country that has strong EU orientation and uses the Euro as national currency (Kosovo), and finally Bosnia and Herzegovina and Serbia where EU membership is also rather high on the domestic policy agenda.

Conditionality for accession is set with the *acquis*, which encompasses all EU legislation. The *acquis*, however, is a dynamic model because the body of legislation grows continually via Treaty change, 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.<sup>6</sup> Accordingly, every change in the legislation affects conditionality for accession of new candidate countries. The Lisbon Treaty, is a foremost example of this. Its adoption in December 2009 and its enforcement have prompted a major reshuffling of the founding treaties of the European Union. It has impacted the structure and governance of the EU considerably, broadened its policy capabilities, and widened European values.

With these notions in mind, I will argue that the enforcement of the Lisbon Treaty will have an inevitable effect on the EU candidate countries of Macedonia, Croatia, and Turkey, as well as on the rest of the Western Balkan countries that have a drive for EU accession.

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<sup>1</sup> The Thessalonica Summit acknowledged that the Stabilization and Association Process (SAP) remains to be the framework for the European course of the Western Balkan countries, all the way to their future accession and introduced the enhanced co-operation in the areas of political dialogue and the Common Foreign and Security Policy, parliamentary co-operation, support for institution building, opening of Community programs for the region.

<sup>2</sup> Acquired candidate status in 2004 and commenced negotiations in 2005.

<sup>3</sup> Acquired candidate status in 2005.

<sup>4</sup> Submitted application for membership in 2009.

<sup>5</sup> Submitted application for membership in 2009.

<sup>6</sup> Heather Grabbe, "A partnership for accession? The implications of EU conditionality for the central and east European applicants", *Robert Schuman Centre Working paper 12/99*, (San Domenico di Fiesole: European Institute) 1999, p.6.

## EU Conditionality

The EU approach in the Western Balkans has two dimensions: first, its role as an ‘active player’ with regards to mediation and conflict resolution in the area affects the region’s path of development;<sup>7</sup> second, acting ‘as a framework,’ the EU provides the possibility of participation in decision-making for these countries and equips them with models of governance and policy options.<sup>8</sup> The EU has become a normative and cognitive frame<sup>9</sup> for the Balkan countries that have demonstrated a firm orientation towards European integration, and have thus undertaken Europeanization. Europeanization is the general structure that leads toward external transfer of EU rules and their subsequent adoption by non-member states.<sup>10</sup> In this Europeanization process, conditionality encompasses a political/democratic and economic requirement, and the adoption and implementation of the EU *acquis*.<sup>11</sup>

There is an active scholarly debate on the impacts of enlargement, as well as many empirical research outputs on the level of EU influence (or conditionality) within EU candidate countries.

Most of these studies are concerned with the reasons for EU enlargement and the candidate’s compliance with EU conditionality. Scholars and practitioners, within much of this research, examine the factors that determine the effectiveness of conditionality using two approaches. One is the rationalist approach, which explains how applicants engage in cost-benefit calculations and commit themselves to EU-led reforms in light of promised rewards.<sup>12</sup> The other is the constructivist approach, which underlines EU candidates’ identification with the EU, their

*“The Lisbon Treaty introduced several novelties that improve the EU’s democratic reputation.”*

<sup>7</sup> Gergana Noutcheva, Nathalie Tocci, et al. “Europeanization and Secessionist Conflicts: Concepts and Theories”, *Journal of Ethno-politics and Minority Issues in Europe*, Vol. 4 No. 8

<sup>8</sup> Ibid. p.8.

<sup>9</sup> Claudio Radaelli, “Europeanization”, cited in Gergana Noutcheva, Nathalie Tocci, et al. “Europeanization and Secessionist Conflicts: Concepts and Theories”, *Journal of Ethno-politics and Minority Issues in Europe*, Vol. 4 No. 8, p.26.

<sup>10</sup> Frank Schimmelfennig & Ulrich Sedelmeier “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European Public Policy* Vol. 11, No 4, p.661.

<sup>11</sup> Gorica Atanasova, “Does Europeanization equal democratization? Application of the Political Conditionality Principle in the Case of the Macedonian System of Governance.”

<sup>12</sup> Milada Anna Vachudova, “Strategies for Democratization and European Integration of the Balkans” in Marise Cremona, ed. *The Enlargement of the European Union*, (Oxford: Oxford UP, 2003), pp. 141-160 and Frank Schimmelfennig & Ulrich Sedelmeier “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European Public Policy* Vol. 11, No .4, pp. 663-667.

conviction of the appropriateness and legitimacy of EU rules, as well as learning, arguing and persuasion processes that lead to candidates' compliance.<sup>13</sup>

Both of these approaches treat conditionality as static. What these studies fail to address is how accession conditions form and mature. Also, 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.

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Europeanization of the accession countries in this respect is not an enlargement theory, but rather a practical model that aids scholars in analyzing the politics behind the accession process. It uses five mechanisms for transforming the applicant country into an EU member state: models (provision of legislative and institutional templates); money (aid and technical assistance); benchmarking and monitoring; advice and twinning; and gate-keeping (access to negotiations and further stages in the accession process).<sup>14</sup>

Through conditionality, EU membership status is kept at the gate, at least until acceding countries fully comply with the three main Copenhagen conditions. These conditions are implementation of democratic rule, converting to a market economy, and developing the capacity to cope with competitive pressure and market forces. These conditions, however, are very broad and open to considerable interpretation. The elaboration of what constitutes meeting these terms "has progressively widened the detailed criteria for membership, making the EU a moving target for applicants."<sup>15</sup> Critics of the EU enlargement process have argued that the Copenhagen conditions use concepts that are highly debatable and slippery, mainly because the EU has never provided a definition of these concepts.

<sup>13</sup> Frank Schimmlerfennig & Ulrich Sedelmeier "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe", *Journal of European Public Policy* Vol. 11, No. 4, pp. 663-667.

<sup>14</sup> Heather Grabbe, "Europeanization Goes East: Power and Uncertainty in the EU Accession Process" in Kevin Featherstone and Claudio Radaelli (eds.) *The Politics of Europeanization*, (Oxford: Oxford University Press, 2002), p.9.

<sup>15</sup> Heather Grabbe, "A partnership for accession? The implications of EU conditionality for the central and east European applicants", *Robert Schuman Centre Working paper 12/99* (San Domenico di Fiesole: European Institute, 1999), p.6.

## ***The Lisbon Treaty***

The EU institutions based on the last institutional reform brought by the Treaty of Nice were not adapted for the EU-27, let alone an increasing numbers of member states. The needed reforms were envisaged in the Constitutional Treaty. However, the adoption of this treaty failed, postponing any further enlargement. This in turn substantially affected the accession of Western Balkan countries to the EU.<sup>16</sup>

As the existing EU member states have remained on their position that any further enlargement presupposed new institutional reform, the Lisbon Treaty responds to this quest. It reshuffles the structures and governance of the EU, aiming to improve institutional deficiency in decision-making, transparency and legitimacy, as well as EU representation and the achievement of EU goals. Hence, it unlocks the enlargement process for the Western Balkan countries.

The Treaty is a comprehensive document. However, this paper will only look at three prominent 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 (introduction of legislative initiative by quarter of Member states, the increased co-decision by the European Parliament and the new role of national parliaments); and the introduction of the European Charter of Human Rights. These changes are especially worth analyzing and studying as they offer responses to the numerous deficiencies in the functioning of the Union, as noted by scholars and practitioners.

First, academic critics have always focused on the lack of continuity in the work of the six-month EU presidency. The Lisbon Treaty, however, addresses these deficiencies by introducing the completely new position of the President of the European Council. The role of anyone in this position will be to chair meetings of the European Council, ensure the Council's functioning, cohesion and consensus, present reports to the European Parliament after each meeting and ensure external representation of the Union in the CSFP.

Another widespread criticism is directed to foreign policy governance at the 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 is attempting to reconcile and unify the two institutions, the Council and the Commission, in the field of external relations.

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<sup>16</sup> Notably Enlargement fatigue seemed a huge political issue in Europe, as witnessed in the results of the 2009 European elections, which have furthered positions of the populist and extremist parties exploiting anti-immigration and anti-Europe sentiments.

The democratization image and effect, that the Union has outside of its borders, is undoubtful. However, the democratic nature of the EU member states and the governing system of the Union was often challenged. Therefore, the Lisbon Treaty introduced several novelties that improve the EU's democratic reputation. The Commission, for one, is intended to act in the general interest of the community<sup>17</sup> and this principle is preserved in the Lisbon Treaty. However, the Treaty provides for several deviations from the basic rule of the Commission's right to exclusive legislative initiative as "one million citizens who are nationals of a significant number of Member States" may invite the Commission to submit a proposal "on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties."<sup>18</sup> The Treaty boosts the powers of the European Parliament in regards to lawmaking, the EU budget and approval of international agreements, which delegates more power to the EU citizens represented in this body. In addition, the legitimacy of the EU as a union of both peoples and nations is strengthened. Primarily, this is fortified through the new voting system<sup>19</sup> and secondly, the greater involvement of national parliaments.<sup>20</sup>

Finally, human dignity, freedom, democracy, equality, the rule of law and the respect of human rights are the core values set by the Lisbon Treaty. It guarantees the enforcement of the European Charter of Fundamental Rights, which is legally binding for the EU and the Member States. The added value of the Charter is in the proclamation of the additional rights which 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 Acceding Countries***

The EU accession process is pushing applicant countries towards greater convergence with particular institutional models in proportion to the speed of adjustment<sup>21</sup> and openness of national elites to EU influence.<sup>22</sup> As it 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

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<sup>17</sup> 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".

<sup>18</sup> Article 11 TEU (consolidated version as amended by the Lisbon treaty)

<sup>19</sup> Double majority voting (majority of not only EU member states (55 percent), but also of the EU population (65percent) that will be introduced in 2014.

<sup>20</sup> Through the new instrument to monitor that the Union only acts where results can be better achieved at EU level (the famous founding principle of the union – subsidiarity).

<sup>21</sup> Heather Grabbe argues that adaptation in CEE to the EU happened much faster and more thoroughly than the adaptation in the current EU-15 members.

<sup>22</sup> The last enlargement has shown that the CEE countries are more receptive to EU institutional paradigms than existing Member States, because EU models are being presented at the same time as their national policy-makers are seeking institutional models to replace or to create new structures.

does not advance the enlargement process, nor does it add certainty to it. The Treaty, however, does 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 for further justification in the theoretical debate that Europeanization is indeed a process. This chapter anticipates the impact of the Lisbon Treaty on the future accessions of Turkey, Macedonia and Croatia, as well as the rest of the countries in the Western Balkan club.

First of all, the Lisbon Treaty is designed to promote a new and inevitably more coherent approach in the Union's external relations. The Treaty will aid the EU to work more efficiently and consistently around the world, but most especially 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, it is expected that there will be greater consistency in the approach and added pressure on candidate countries, as new roles will become more familiar, and strategies more clear for the holders of the new EU functions.

Secondly, the Lisbon Treaty introduces additional conditionality in respect to the adoption of the European Charter of Fundamental Rights. As Macedonia, Croatia and Turkey are signatories of the European Convention for Human Rights,<sup>23</sup> which is encompassed by the Charter, they will have to look for ways to transfer the Convention's legislation guarantees to the new rights regulated in the Charter. Specifically, this is in regards to data protection, biotechnics and the right to good administration.

Finally, the most important and far-reaching implications the Lisbon Treaty will have are on national policymaking. With the greater role of the European Parliament and the new involvement of national Parliaments in monitoring, the Union is expected to look for a more engaging role of national Parliaments in policymaking in the acceding countries. In the Europeanization theory, the legislative task of transposition of the Community directives and regulations in national law is presented as being largely administrative; there is an assumption that the *acquis* is not an appropriate subject for debate,<sup>24</sup> and therefore 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

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<sup>23</sup> Macedonia ratified the European Convention of Human rights on 10 April 1997.

<sup>24</sup> As Community law takes primacy over national law for member-states.

reflected a consensus on accession, but it also showed a lack of awareness of the details of the legislation being passed on the part of parliamentarians.<sup>25</sup>

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 had implications on the democratic deficit problem. It also ran against the EU's advocacy of stable democratic institutions and the development of capable law-makers. This was for a long time paralleled with the problems in the EU itself. But with the changes introduced with the Lisbon Treaty, it should be expected that policy debates will be invigorated in Parliament. This might have an effect on accession countries, where the EU is expected to look for a more active role of the Parliament in policy development.

### **Conclusions**

The Lisbon Treaty has faced internal problems within the European Union, legislating new means of improving its structures and governance, EU representation and the achievement of EU goals. At the moment we can only provide assumptions on the external effects of the Treaty. This paper argues that the Lisbon treaty will have three effects on future European enlargements:

- Change in who will present the EU conditionality for acceding countries (embodied in the EU Commissioner for Enlargement and the President of the Council and the Higher Representative for Foreign and Security Policy);
- Change in who is expected to be actively involved in policy development (the EU is expected to look for active role of the Parliament and inclusiveness of the non-state actors in policy making – CSOs, interest groups, etc.); and
- Change in legislation (convergence with the new values for data protection, biotechnics and the right to good administration).

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<sup>25</sup> Heather Grabbe "How does Europeanization affect CEE governance? Conditionality, diffusion and diversity, *Journal of European Public Policy*, Vol. 8 No. 4, pp. 1013-1031.