

## **BÖLL TEA BRIEFING**

### **SERBIA ON ITS WAY TO THE EUROPEAN UNION: CHALLENGES AND OBSTACLES<sup>1</sup>**

*On January 19th 2011 the European Parliament ratified the Stabilisation and Association Agreement with Serbia. This can be seen as a first step to Serbia's eventual EU accession, even though sixteen Member States will still have to approve the SAA. Signed in April 2008 its ratification was launched only two years later as many Member States doubted Belgrade's willingness to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The latter remains a sensitive issue as Enlargement Commissioner Füle pointed out in Belgrade only recently. The European Parliament also showed its approval of the readiness of the Serbian government to engage in a dialogue with Kosovo. The European Union seems to be ready to welcome Serbia as a candidate member in spite of enlargement fatigue and economic crisis. In the meantime people in Serbia show signs of scepticism about EU membership. Support for EU accession has dropped to a meagre 57%, the lowest level of support since 2002 (when the Serbia EU Integration Office started these surveys), while a third of the respondents fears that the EU will stop the enlargement process altogether in the near future or may even fall apart. What are the challenges and obstacles to tackle during the accession process for both sides, Serbia and the European Union?*

The European perspective for the countries of the Western Balkans became clear in the second part of 2003 at the Thessaloniki Summit. It was in June of that year that it was agreed that all Western Balkan countries, Albania, Slovenia, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and Montenegro (at that time still one country) could receive EU member status once they had completed the necessary requirements. The official attitude of the EU at that time was to encourage the citizens and political elites of the Western Balkans to work at establishing regional stability, the rule of law and a functioning market economy in each country. The Thessaloniki Summit was the actual starting point for the European integration of Serbia.

The Council adopted a positive feasibility study in April 2005 which was followed by the beginning of negotiations on the Stabilisation and Association Agreement. Serbia signed this Agreement in May 2008 and is now waiting for the candidate status. If you follow the European integration process of the Western Balkan countries you will notice that Serbia together with Bosnia and Herzegovina is at the bottom of the list of those countries willing to join the EU.

There are three key obstacles regarding Serbia's EU accession. Obstacle number one is its failure to define state borders. The Republic of Serbia is transitioning towards further territorial changes. The issue of its southern border, the border with Kosovo, has been open and remains unsolved while there has also been potential for opening the issue of Serbia's

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<sup>1</sup> **Guest speakers** were **Aleksandra Cavoski**, professor at the Faculty of Law at the Union University, Belgrade and visiting professor at the Faculty of Political Science, University of Belgrade, **Vladimir Pavicevic**, lecturer at the Department of Political Science at the University of Belgrade and Programme director of the Belgrade Open School and **Tomasz Banka**, Secretary Delegation for South East Europe, Enlargement and EEA Unit, European Parliament. The event was held under Chatham House Rule. The opinions expressed do not necessarily represent the opinions of the Heinrich-Böll-Stiftung.

south-western or western borders, i.e. the border with Bosnia and Herzegovina.

The inability to instate and secure the borders of the country is one of the irremovable obstacles to Serbia's European integration. This attitude has been demonstrated through Serbian policies concerning Bosnia and Herzegovina, but also through the way the Kosovo issue has been dealt with. It has been shown by making the status of Kosovo inviolable in the new constitution of Serbia of 2006. Prioritising the Kosovo issue both in domestic and in foreign policy has pushed the issue of European integration of Serbia to a secondary level. Serbian Foreign Minister Vuc Jeremic said "if the price for accession to the European Union is acknowledging Kosovo's independence, in that case Serbia will reject the European Union." Serbia entering the EU without a solution of the Kosovo issue seems unthinkable because of the Cyprus situation.

Obstacle number two is the incomplete cooperation with the Hague Tribunal. In Serbia, the issue of non-cooperation with the Hague Tribunal has lasted as long as the tribunal itself. So it remains a disputable subject even today, ten years after Slobodan Milosevic. The Serbian government today is incompetent to arrest Ratko Mladic, which for the EU policymakers and officials means, not only that Serbia is not ready or is not willing to arrest Mladic<sup>2</sup>. It means that Serbia is not ready to transform its own value system which is one of the key obstacles on Serbia's way to the EU.

Obstacle number three is Serbia's cooperation with its neighbours. During the last decade of the 20th century, Serbia held mostly irrational policies towards its neighbours and those policies had great consequences for the relations in the region. This is especially valid for new neighbours, so to say countries formed after the break-up of former Yugoslavia, which means Croatia, Bosnia and Herzegovina, Montenegro and Macedonia. But having in mind that regional cooperation is one of the key indicators of Serbian progress towards the EU; it is clear how important this obstacle is.

### **Alternative Turkey?**

So what is the main challenge regarding the Serbian integration process? Despite all those obstacles, the European Union should invite not only Serbia, but all the Western Balkan countries to join as soon as possible. If the region remains in the waiting room for a longer period of time, the alternative will emerge: Turkey. Turkey is presently among the most active external political actors in the Western Balkans. Turkey has zero problems with its neighbours.<sup>3</sup> It is also increasingly present in the education as well as in the popular culture of all Western Balkan states. Most popular Telenovela's and shows across the region are Turkish at this moment.

Turkey's EU candidacy has not progressed far. With the accession negotiations going on since October 2005, Turkey has been unable to open many of the negotiating chapters in the EU accession process, only 13 out of 35. The strained relationship with Cyprus is blocking Turkey from moving forward on the EU prospect. The concepts of the EU's privileged

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<sup>2</sup> Former Bosnian Serb military leader Ratko Mladić was finally arrested on 26 May 2011 and extradited to The Hague on 31 May 31. His trial began on 3 June 2011

<sup>3</sup> Other participants pointed out that, Turkey does have problems, also with its neighbours, firstly Armenia, and secondly there is the Cyprus issue, which is still one of the main obstacles concerning the enlargement negotiations with Turkey.

partnership as laid down by conservatives in France and Germany, will be sooner or later accepted by Ankara. On the other hand, it is not unlikely that in 2013 France will have a different president than the one it has today and Germany will have a different government than the one it has today and suddenly attitude towards EU-membership of Turkey could be totally different. This does not mean that Ankara at that time is fit to be a member, but the process of becoming a member might find some acceleration again. However, if Ankara is not capable of moving on the question of Cyprus, it is looking against the wall.

Of course, Turkey is aware that today the Western Balkans region looks toward the EU for integration. If the region remains in front of the EU gates, an alliance with Turkey may become more attractive to some leaders in the region with historic cultural and religious affiliations with Turkey than waiting indefinitely to become part of the EU.

At the same time among the Balkan political elites, the process of EU integration is presented as inevitable and often political, economic, institutional or societal changes are justified by the requirements of accession to the EU. This approach to EU integration abolishes any critical approach to societal transformation in use by the EU, thus, giving the integration process an almost ideological character. EU membership has become an ideology through which political elites vindicate their actions and cause resistance. Because of this the alternative with Turkey can emerge as a relevant one. The idea is that the Balkan societies should perhaps first turn to themselves and their neighbours in order to be able to look inward and truly reform into politically, economically and socially stable, modern states. A true regional organisation of states, which would include the Western Balkans and possibly Turkey, is feasible. Turkey is the only country which has the capacity to influence the future of the Balkans even more than the European Union does. This is the greatest challenge for the European integration of Serbia as well. Again, if the region remains in the waiting room for a longer period of time, an alliance with Ankara may become more attractive for these countries. We should prevent this. The EU should invite all those countries, despite the obstacles and challenges, to start the accession negotiations and to become members of the EU as soon as possible.

Turkey is currently a very strong player in the Balkans, which as such is only positive, because they are simply doing a good job, they are very constructive. As long as the EU can cooperate with Turkey and keep its EU perspective, the Turkish involvement in the Balkans is welcome.

#### **Four pillars**

The EU may be the first topic within the political field in Serbia, but it is not its first priority. For example, European integration is part of Serbia's foreign policy. Vuk Jeremic, the foreign minister of Serbia, constantly repeats that Serbian foreign policy is based on four pillars. The first pillar is Moscow, the second pillar is Brussels, the third one Beijing and the fourth one is Washington. He says that this keeps Serbian foreign policy balanced and independent. This is rather ambivalent, because we don't know which pillar is really the first one. What we have never heard is that Brussels is the first pillar. But we can hear very often is that Moscow should be the first pillar. Secondly, regarding the European orientation in Serbia: the political elite in Serbia, the leaders of the parties which are in the government now and those of the opposition parties alike, doesn't really want Serbia to become a part of the EU. They only use the idea of Europe, the possible European orientation for self-promotion, but are not doing very much to bring Serbia closer to the EU.

Jeremic's four pillars do not make any sense. Ideologically you cannot be at the side of China and the European Union at the same time. Even some members from the ruling coalition say

that Jeremic is just a lonely hunter, he is saying some things which do not represent what Serbia thinks, but after all he's the Minister of Foreign Affairs and he represents the country to the outside world. And if he says the referendum in the Republica Srpska is something that Serbia supports, then that is the official point of view of Serbia. How can you expect that with such a statement you will get a candidate status? The *acquis* and all technicalities behind it are at the second place. The mental attitude towards democracy, European values, division of powers, a strong parliament, towards consultation with civil society, the fight against monopolies: these are values of the EU and sometimes in Serbia they are not respected. This has to change if Serbia is to become member.

The business sector in Serbia is not especially interested in the European integration of Serbia, because there are actually two men in Serbia financing all the political parties and they are not willing to demonopolise the whole market in Serbia. This is one of the strongest obstacles to Serbia's EU-accession. What is even sadder is that if you look at the *acquis* with regard to the competition and state-aid etc.: everything is transposed. The Serbian companies' act is fully in accordance with all the directives. However, in practice it's badly implemented, exactly because of those monopolies.

As far as Russia is concerned: that orientation is not symbolic or historically based, it is really substantial. Serbia's energy sector is under the dominant control of the Russians.

### **Acquis communautaire**

When we talk about Serbia, we usually talk about Kosovo, we talk about The Hague. We tend to forget one thing that is very important, i.e. to prepare Serbia to assume the obligations for membership and to see what is the assistance needed, what are the results and what are the main challenges that Serbia finds on its road. Therefore it is important to speak about the fulfilment of the third Copenhagen criteria, which deals with the transposition of the *acquis communautaire* and its subsequent implementation.

If one works with civil servants one notices that they still have the problem with transposing certain parts of the *acquis*. That involves mostly directives which are binding as to the objective to be achieved. Very often in this process of transposing the *acquis*, reaching the objective is a problem for civil servants and that results, unfortunately, in provisions that are not in line with EU rules and provisions that are costly for the Serbian administration. If, for example, you look at the EU water framework directive it prescribes several principles which are necessary to achieve a proper water policy management. And there are the precautionary action and the preventive action of a state. However, if you look at the very reason to adopt the water act, you will see that the legislators needed to prescribe something like that. Then again, one of the problems with transposing the *acquis* is that the EU legislation contains concepts which are not familiar in the Serbian legal system. This is a problem that is shared by all new Member States, but consistency is needed in that respect. For example, if you look at the area of justice and home affairs, you have a lot of provisions in the Brussels I and the Brussels II regulations dealing with the domicile residents and the habitual residents.

What will be the best way to tackle transposition of this source of legislation? Transposition is very difficult in cases when the costs are immediate and benefits are long-term. You delay in those situations, of course. Finally, you also delay transposition in policy areas where you essentially need the coordination of several ministries, because of the possible lack of coordination. One of the things that has to be strengthened in Serbia – and is very important for assessing the Serbian efforts in transposing the *acquis* – is something that it is to some extent lacking: a proper cost-benefit analysis of legislation. If you look at the cost-benefit

procedure mechanism that exists in Serbia, it is obvious that in some policy areas it is not effective. It is something that is prescribed by the Serbian legislation, essentially by the rules of procedure of the government, however, leaves a great margin of discretion for the government to assess when the cost-benefit analysis will be taken. In many cases the ministry decides not to undertake the cost-benefit analysis which, obviously, effects the subsequent actions. And even when they do decide to carry out the cost-benefit analysis, it is often not done properly. In certain policy areas, for example environment, mining, telecommunications, fields which are for all the countries to join and all the countries that are on the road to the EU are very difficult, you will see that the ability of the Serbian economy to adjust is not taken into consideration. If you look at the big companies in Serbia, if you look at the policy area of environment, you will see that very often the ability of Serbian companies to adjust to the new rules is not taken into consideration. And then you have a situation where companies cannot adjust, they do not have the capacity, they do not have time, or they do not have the money. Then you essentially jeopardise the implementation of the legislation that is being transposed into the Serbian legal system.

One of the other things that need to be strengthened is the participation of the general public. You could argue here that the participation of the general public is a weakness of all systems and you could say that the general public is by rule not interested in EU measures. However, the Serbian procedures for participation of the public essentially undermine the public participation. If you look at the procedural mechanism, you will see that unfortunately, it is upon the ministry to decide whether the general public needs to participate. That can be dangerous in certain policy areas; you really need to involve the public. Another thing that has to improve, although it varies depending on the policy field and efforts are being done to improve it, is one of the fields where assistance is always welcome – and that is the coordination, both horizontally and vertically, between state authorities. If you look at the horizontal coordination, and this is something that is essential in transposing the *acquis*, you have to have ministries working together. However, sometimes that does not happen. And as a result, you may have conflicting provisions. If you look at the waste management act you will see that the Minister of Health and the Minister of Environment have the same competence. The reason for that is simply the fact that the ministries did not coordinate their work enough in the past. Very often this can be due to a personal conflict; sometimes it can just be the lack of proper institutional coordination between ministries. This lack of coordination is even more visible between the local and central government. There are several reasons for that. With the local government this is more of a problem than with the central government as it is often guided by a political agenda and not ‘by law’.

Finally, something that needs to be strengthened and efforts have, of course, been made, is the subsequent enforcement of legislation. After all, what is even more important than to transpose the *acquis* is to have it applied in practice. Strengthening the administrative capacities is something that needs to be done, in terms of the number of personnel, but also in terms of their expertise. One may argue here that this is a very strange remark bearing in mind that we have a proliferation of state bodies in Serbia, especially state agencies which is a trend present in Serbia since 2001. It needs to be ‘verified’ how the competences are divided between the ministries and state agencies and the question needs answering whether the state agencies really improve the administrative capacity. Enforcement, unfortunately, lies upon the courts, which are going through a judicial reform. Unfortunately, the judiciary has a lot of pending cases, has a backlog of cases. Finally, something that also needs to be improved in Serbia is the training of judges, essentially because they will apply the law whenever there are conflicting norms.

### **Unstable region**

Serbia for a long time was the 'bad boy'. It was connected with the wars, with Milosevic and so on. Lately, Serbia has joined the peloton, not so much because it is that fast, but because the rest of the group is slowing down. The whole region has entered the most unstable period of the last decade. We have Albania with a chronic political crisis, Kosovo which just managed to have a president, but was close to repeated elections, Macedonia with earlier elections, Bosnia without a government. All of this makes Serbia look better (even than Belgium) which does not mean it is doing well. The big difference between Belgium and all Balkan countries, of course, being that Belgium has a civil service that functions and that is why even in deep political crises things keep on moving, whilst in the Balkans if there is no political direction, nothing works.

It is not true that Kosovo is put as a political European condition for enlargement, even though it is very often presented in Serbia like this. Recognising Kosovo's independence is not a condition; the condition is a constructive attitude of Serbia towards Kosovo and towards the whole region. This is why the dialogue which is taking place right now between the two sides is so crucial, also for the Commission in order to decide how Serbia really cooperates in the region. Kosovo itself is still very far from the point where Serbia is on the path to the European Union.

What is the main political obstacle for Serbia? It is Mladic, not Kosovo.<sup>4</sup> If there will be no full cooperation, or if the prosecutor will not rank Serbia's cooperation as complete, politically, also in the European Parliament, there will be no support for further steps.

### **Enthusiasm curbed**

Everyone in the Balkans talks about enlargement fatigue, but there is no fatigue, though there is maybe not the same enthusiasm as ten years ago. If you look for example how political parties in the European Parliament voted for the SAA in January, from ultra-left to ultra-right there was support. Commissioner Füle said two days ago, that he is disappointed about the fatigue at the Balkan side. There is right now no ambition on the Serbian side to get a candidate status and open negotiations in one step. Everyone now takes for granted that what Macedonia and Montenegro got is now a standard. It is not, but politicians in the Balkans behave as if it was a standard and they are actually making the European partners follow their thinking. If there is no enthusiasm at the Serbian side, there will be no enthusiasm at the EU side.

Other participants pointed out that there is enthusiasm in Serbia, certainly at the individual level. People are very enthusiastic to join the EU – one has to look at the different target groups. Of course, the enthusiasm fluctuates depending on how long people have to wait for certain things, depending on actual political stability or instability. Civil servants are really enthusiastic about joining, they are really enthusiastic about working, they are very happy with any assistance they get. They welcome any training, for example at the moment they essentially need training about the negotiations, because they don't really know what awaits them, how to tackle those things. There is a good positive climate.

Many Maps think now that the promises once made by certain politicians to the Western Balkan countries were a big mistake. As a result, we had Mr Prodi's 'regatta strategy' of countries entering as they were ready. Maybe one should not concentrate on conditioning as a source of promoting and sparking enthusiasm within the country, but rather on the long-term

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<sup>4</sup> This statement was questioned by other participants.

emulation, which would make people voluntarily follow the values and the principles that the EU is built upon. The EU may be a club with rules and a membership price, but at the same time if we want to be enthusiastic about that club, we will have to keep reminding this club of the very values and the very principles it has built its leverage upon. The club first needs to stick to its own rules before it can expect the others to stick to its rules. Before 1993 there were no official criteria that the countries had to adopt before joining, it is only in 1993 that the Copenhagen criteria were established. It is the real change that needs to come and it needs to come, not from above, but from within. The countries need proactive support from the European side. That's how you get enthusiasm.

People do not necessarily know what awaits them once their country becomes an EU member. They know about the benefits and they usually only think about the benefits, but not really about what it essentially means for them when they are within the EU. On the other hand, no one has left the EU so far, so we'll cross that bridge when we come to it.

But, in order to become a member you have to have the energy to go through all the *acquis*, you need ideology, you need to see not only economic profit behind it, but you have to believe that it makes sense for your country to be at this side of the world. If this energy is not there, everyone will just look at profits and subventions for the farmers. In that respect, Turkey for example might, indeed, be economically more interesting for the region. But it wouldn't be ideologically. It is a bit like the debate in Poland where you had a group which was called "Poland joins NAFTA." The EU should stand for more than that.

We currently see a rise of populist and right-wing parties in EU Member States. On the other hand, in Germany according to the latest poll, the Greens come out in second place with 28 per cent. There is one thing that you can say about the Green Party, it has never hidden the fact that they are pro-European Union, pro-integration even though there has always been a broad discussion in that party that goes from not wanting to have anything else but an alliance of nations, to people that want a federal Europe to other people that want a confederal Europe. For the reality of the extreme right and the nationalists' discourse, the responsibility lies with the Council, the Member States. Whenever an executive or a Minister goes back to their capital and explains that whatever has been decided there in Brussels is bad, and whatever is done and implemented in their own country is good and comes from that very capital, how do you expect people to understand the EU? It's an impossibility!

As long as the language is "they in Brussels," and not "us in Brussels", you make it easy for people like Wilders (PVV/Netherlands) or 'The True Fins' that will come with a simple answer to highly complex questions, answers that have nothing to do with reality. The challenge for the political class, for the people that want the European Union, is learn to say: we made a deal, because that deal was the best possible deal we could get under those circumstances in our interest and for the common good. As long as the political classes do not do this, we will keep on seeing the Wilders, the 'True Fins', the Jobbiks and other populist and/or extreme-right parties growing. If you're not prepared to accept that the European Union is complex and that the political decision-making process is complex and that you have to tell it to the people that it's always going to be complex, you're in an extremely difficult battle.

### **Bosnia and Herzegovina**

It would be indecent if Croatia becomes an EU-member before Bosnia and Herzegovina becomes a member. It would be unbearable if Serbia became a member before Bosnia and Herzegovina. And Bosnia and Herzegovina is stuck in a system from which it cannot get out itself. In 1996 during the Bosnian war, an assistant at the German parliament wrote a proposal

saying, tell them to stop shooting at each other, they can become all members of the European Union right now without fulfilling any conditions and we will organise their divorce. Peace in Bosnia and Herzegovina would only be attained if it becomes a protectorate of the United Nations in the foreseeable future of thirty to forty years. At the end of the day the prognosis was not that off base. That is the bitter part of what is taking place in the Balkans. The ones that have been the object of the war and never been the subject of their own destiny are the ones that are going to pay for this. That's indecent, but it's also realpolitik.

The tragedy of Bosnia and Herzegovina depends mostly on the neighbouring countries' policies towards Bosnia and Herzegovina than on itself. And this is actually the tragedy of Bosnia. That is why the Western Balkan countries should be invited to join the EU together.



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