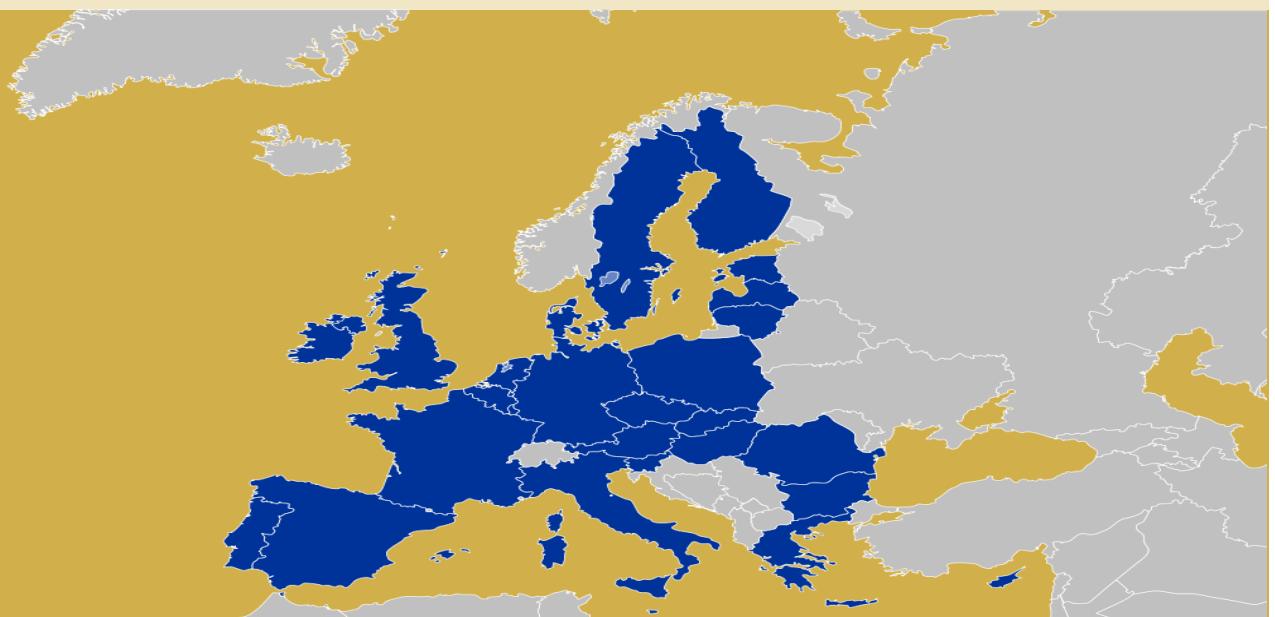


A POLICY REPORT BY THE GROUP FOR LEGAL AND POLITICAL STUDIES

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# The EU-Kosovo Relationship in the Context of EU Enlargement Policy



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## Policy Report 03/2013

### The EU-Kosovo Relationship in the Context of EU Enlargement Policy

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May 2013

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# THE EU-KOSOVO RELATIONSHIP IN THE CONTEXT OF EU ENLARGEMENT POLICY

## I. INTRODUCTION

### - The current 'state of play'

Since early 2012 there has been an intensification of the EU-Kosovo relationship, with a number of important developments giving increasing practical effect to Kosovo's 'EU perspective'. A key such development was the issuing by the European Commission in October 2012 of a feasibility study for a Stabilisation and Association Agreement (SAA) between the EU and Kosovo.<sup>1</sup> Whilst being much taken up with the identification of numerous perceived deficiencies in Kosovo's public systems, the study offered encouragement to Kosovo in that it identified benchmarks that, if achieved, would enable the Commission to be able to recommend to the Council the opening of SAA negotiations. The contents of the Commission's report were broadly endorsed by the Council in December.<sup>2</sup> Kosovo was subsequently judged, in a joint report issued in April 2013 by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy, to have met the benchmarks.<sup>3</sup>

But though meeting the benchmarks was a necessary condition for the EU agreeing to open SAA negotiations, it was never likely to be a sufficient condition. It would also be necessary for there to be some stabilisation in the deeply troubled relations between Kosovo and Serbia (the latter of which was more advanced than Kosovo in its EU membership ambitions and was pressing for accession negotiations to be opened). The relations would not need to be fully 'normalised' – which would not be possible given that Serbia resolutely refuses to recognise Kosovo as an independent state – but some sort of accommodation between Kosovo and Serbia, especially concerning the disputed territory in the north of Kosovo, would be required. On 19 April 2013, after months of very difficult and protracted EU-mediated talks, including ten rounds at Heads of Government and EU High Representative level, an accommodation – based on an outline, fifteen point, deal – was reached between the two sides.<sup>4</sup>

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<sup>1</sup> European Commission (2012a) Communication From the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement Between the European Union and Kosovo, Brussels, 10 October, Com (2012) 602 final, accessible at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf).

<sup>2</sup> Council of the European Union (2012), Council Conclusions on Enlargement and Stabilisation and Association Process, General Affairs Council meeting, Brussels, 11 December, accessible at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/134235.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134235.pdf)

<sup>3</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy (2013a) Joint Report to the European Parliament and the Council on Kosovo's Progress in Addressing Issues Set Out in the Council Conclusions of December 2012 in View of a Possible Decision on the Opening of Negotiations on the Stabilisation and Association Agreement, Brussels, 22 April, JOIN (2013) 8 final, accessible at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/ks\\_spring\\_report\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_spring_report_2013_en.pdf)

<sup>4</sup> First Agreement of Principles Governing the Normalisation of Relations, accessible at: <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>

Following the deal, on 22 April the Commission issued recommendations to the Council that negotiations should be opened on a SAA between the EU and Kosovo<sup>5</sup> and on accession with Serbia.<sup>6</sup> The Council welcomed the recommendations but, as has become customary with most major and high-profile enlargement matters, left the final acceptance decisions to be taken by the European Council (at its meeting scheduled for June 27-28 2013).

The key significance of the Commission's SAA recommendation is that the launching of such negotiations is generally recognised as constituting the first formal step of Balkan states on the road to EU membership. It is a road that Kosovo wishes to take.

### **- The focus and structure of this policy report**

This policy report focuses on the broad features of the EU's ongoing and constantly evolving enlargement policy and their implications for Kosovo's aspiration of eventually becoming an EU member state. What might be called 'the specifics' of Kosovo's current position in relation to the EU – which includes the identification of the almost countless measures it needs to adopt as it embarks on a SAA, and probably ultimately EU, road – are deliberately not given much attention in the analysis. This is because they have already been extensively 'logged' and published by the European Commission: most recently in a staff working document accompanying the 2012 feasibility study.<sup>7</sup> What this report therefore does is not to re-tread the ground that has already been covered by the Commission but rather to focus on locating Kosovo's ambitions for EU membership within the context of EU enlargement policy as a whole. More particularly, the report deals with two core questions concerning EU enlargement policy – why does the EU keep enlarging and what are the key features of enlargement processes? – and considers the implications of the answers to these questions for Kosovo.

## **II. WHY DOES THE EU KEEP ENLARGING?**

### **- The nature of the puzzle**

The advantages of accession for those countries that would like to become EU members are easy to identify: they involve varying mixtures of economic, political and security benefits. But, the advantages for the EU of enlarging have become increasingly difficult to discern. For whilst new members bring an assorted mixture of potential benefits for existing member states with them,

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<sup>5</sup> European Commission (2013) Recommendation for a Council Decision Authorising the Opening of Negotiations on a Stabilisation and Association Agreement Between the European Union and Kosovo, Brussels, 22 April, COM (2013) 200 final, accessible at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/ks\\_recommendation\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_recommendation_2013_en.pdf)

<sup>6</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy (2013b) Joint Report to the European Parliament and the Council on Serbia's Progress in Achieving the Necessary Degree of Compliance With the Membership Criteria and Notably the Key Priority of Taking Steps Towards a Visible and Sustainable Improvement of Relations with Kosovo, Brussels, 22 April, JOIN (2013) 7 final, accessible at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/sr\\_spring\\_report\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/sr_spring_report_2013_en.pdf)

<sup>7</sup> European Commission (2012b), Commission Staff Working Document Accompanying the Document Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels 23 October, SWD (2012) 339 final/2.

most notably in the form of increasing the size of the internal market and thereby increasing the prospects for higher levels of trade, they have, post the 1995 EFTA enlargement round (when Austria, Finland and Sweden – all members of the European Free Trade Association – acceded), also posed considerable problems. So, amongst the difficulties and challenges posed by the most recent acceding states – those that became members in 2004/07 – were increased pressures on the Common Agricultural Policy (CAP) and the EU budget, the diversion of Structural Fund assistance away from existing beneficiaries, and the creation of major problems in respect of the composition of the EU's institutions and the functioning of its decision-making processes. Regarding Balkan state applicants and potential applicants, including Kosovo, they present similar problems to the 2004/2007 acceding states – though in budgetary terms on a lesser scale because of their generally smaller populations – but with additional difficulties, many of which are related to ethnic tensions, border disputes, the operation of public institutions, and the rule of law.

Yet notwithstanding these problems and difficulties, EU enlargements and enlargement processes have proceeded and continue to do so. How is this to be explained and what are the implications for those states that, like Kosovo, would like to become EU members? Why with 'difficult' potential applicants has the EU not simply refused to enlarge and insisted on restricting itself to the various types of pre-accession arrangements – in the form of stabilisation and association agreements, customs unions, and preferential partnerships – it has negotiated/is negotiating with many would-be member states?

## A) Explaining via rationalism

The most common and obvious explanations of the EU's willingness to continue with enlargement processes and of the varying stances it adopts towards particular applicants and potential applicants are based on a rationalist approach. Such an approach rests on the assumption that EU decisions on enlargement are taken to maximise utility. That is to say, it is assumed that EU decision-makers take decisions that will minimise costs whilst maximising benefits for the EU. So, potential members will be permitted to accede only when it is judged that their membership will have net beneficial consequences for the whole EU.

Taking such an approach is clearly useful in explaining why some enlargement processes (those leading to the 1973 and 1995 enlargements) were completed very rapidly (on average three years from the submission of applications to membership) whilst others (the Mediterranean enlargement round of the 1980s, the 2004/07 enlargement, and the scheduled enlargement to Croatia) were much lengthier (on average, eight to nine years). Quite simply, the states that acceded rapidly brought with them many benefits for existing member states whilst posing relatively few problems (because they were long-established and well-functioning democracies with robust market-based economies), whilst the 'balance sheets' of those states whose enlargement processes were more protracted were much more mixed.

### - Implications and recommendations for Kosovo

Using such a rationalist approach leads to the conclusion that Kosovo must do as much as it can as rapidly as it can to, from the EU's perspective, maximise the perceived benefits of its accession and minimise the costs. The perceived benefits will be marginal because of Kosovo's small size, but the possible costs – which include the importation into the EU of political tensions (arising most notably from relations with Serbia), of poor government, and of high levels of

organised crime – are significant. Moreover, they have come to be seen by EU decision-makers as being increasingly significant as a result of:

- *The Bulgarian and Romanian accessions.* These are now widely viewed in EU circles as having been permitted to occur prematurely. At the time the decisions were made to permit Bulgaria and Romania to become members it was recognised that in some respects the two countries were not quite ‘ready’ – not least in terms of the robustness of their public institutions and the application of the rule of law. However, political decisions were made to proceed with their accessions, though both countries were made subject to unprecedented post-accession monitoring processes. But, the continuing institutional and rule of law problems in Bulgaria and Romania have clearly demonstrated how difficult it is to interfere with a country’s internal politics once it has become a member state. Lessons have been learnt by the EU from the ‘mistakes’ with Bulgaria and Romania, with the consequence that states that now wish to become EU members will have to demonstrate full (or nearly full) compliance with EU standards before accession.
- *Growing Euroscepticism across much of the EU.* Stemming partly from fears of large scale movement of peoples from acceding states, especially Bulgaria and Romania, this rising Euroscepticism is playing a role in fuelling support for anti EU/nationalist parties in several member states, which in turn is making EU governments more wary of and cautious about accessions.
- *The financial and eurozone crisis.* This has disrupted the EU’s internal functioning and thus increased its resolve not to permit potentially ‘problem’ states to become members before they are fully ready.

Kosovo thus needs to do make the policy and institutional changes that are suggested to, and indeed are required of, it by the EU via such channels as progress reports, the feasibility study, the visa liberalisation roadmap, and the numerous contacts that exist between EU and Kosovar representatives. But the changes must not just be formally made, but need to be accompanied by both a demonstrable political acceptance of the need for the changes and a clear political willingness to be making them. Until there is such willingness and acceptance, Kosovo’s advance to EU accession will be slow indeed.

## B) Explaining via constructivism

A problem with employing a rationalist approach is that all key EU decisions on enlargement are taken either in the Council of Ministers or in the European Council on a unanimous basis, yet it is known that many decisions that have been taken on enlargement matters have not been fully supported by, and in some cases have even been opposed by, some member states. If they had been acting in a wholly rationalist manner, such states would be expected to have opposed aspects of the enlargement process. Such, for example is clearly the case with Turkey, where it is known that several member states – most notably Austria, France, Germany and the Netherlands – have harboured significant reservations about Turkey’s membership: yet, accession negotiations were opened in 2005.

A rationalist form of explanation thus needs to be supplemented. A useful supplementary approach is constructivism. In broad terms, constructivists take the view that the behaviour and actions of political actors are not driven, or at least are not wholly driven, by objective and instrumental political and economic situations and needs. Rather, behaviour and actions are socially constructed in that they are shaped, in large part at least, by social norms, values and

identities. So, in terms of explaining EU enlargement decisions constructivists have a quite different approach to rationalists. Whereas rationalists explain decision-making in terms of a *logic of consequences*, which involves decision-makers asking what is the likely overall outcome of taking a particular decision, constructivists explain decision-making in terms of a *logic of appropriateness*, which involves decision-makers asking what is the appropriate decision to take in the contextual situation.

There is an extensive body of academic analysis showing that since the EFTA enlargement round constructivist considerations provide useful insights into enlargement processes.<sup>8</sup> The starting point of this analysis is that had existing member states acted purely on the basis of their own national needs and preferences then some of them 'should' have voted to reject, or at least considerably slow down, post-EFTA enlargement processes. The reason they did not do so in the late 1990s/early 2000s in respect of the Central and East European countries (CEECs) was that their decisions were not shaped by instrumental considerations alone. Non-instrumental considerations encouraged existing member states to be pre-disposed to support the admission of the applicants. Foremost amongst the non-instrumental considerations producing such sentiments were, according to Schimmelfennig and Sedelmeier, the shared identity and sense of obligation that can, they argue, exist between liberal democratic states.<sup>9</sup> Common identity and associated feelings of obligation are certainly not so strong on the EU side when it comes to Turkey, and perhaps not also Balkan states. Constructivists would see this greater 'distance' as helping to explain why the Turkish application is proving to be much more difficult to process than that of the CEECs and why some Balkan enlargement processes are proceeding only very slowly.

A different constructivist perspective to explaining 'difficult' enlargements focuses not on the relations between the EU and applicants but rather on the relations between those in the EU who take enlargement decisions. Crucially in this context, a member state that has reservations about the desirability of moving the accession process forward with a particular applicant or applicants may well be reluctant to use its veto because it wishes to be viewed as being a good 'club member' by falling in with the prevailing preference. This notion of 'falling in' can be developed to show how, in post-EFTA enlargement round policy, those member states that have most favoured enlargement – 'the drivers' as Schimmelfennig calls them<sup>10</sup> – have used rhetorical action to pressurise and shame those states that have been reluctant. An important tactic of the drivers has been to make use of values and norms – such as 'loyalty' to fellow Europeans – to bring the 'brakemen' on board. The intent of the drivers has not necessarily been to persuade the brakemen to change their views of what is in their self-interest, but rather has been to persuade them that there are wider organisational interest they should support.

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<sup>8</sup> See, for example: Schimmelfennig, Frank and Sedelmeier, Uli (2005) *The Politics of European Union Enlargement*, London: Routledge; Nugent, Neill (2007) 'The EU's Response to Turkey's Membership Application: Not Just a Weighing of Costs and Benefits', *Journal of European Integration*, Vol. 29, No. 4, pp 481-502.

<sup>9</sup> Schimmelfennig and Sedelmeier, op cit.

<sup>10</sup> Schimmelfennig, Frank (2005) 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', in Schimmelfennig and Sedelmeier op cit, pp 142-71.

### - Implications and recommendations for Kosovo

The history of enlargement policy shows that ideas, values, and norms amongst EU decision-makers play a very important role in both advancing and slowing enlargement processes. The accession paths of states that would like to become EU members is considerably eased if existing member states are, for whatever reason, favourable disposed towards them. As Cyprus's membership shows, what may, especially in the early stages of accession processes, seem to be almost insuperable obstacles can be overcome where good will exists towards applicants.

As Kosovo embarks on the membership road, its representatives and officials should, therefore, direct attention not just at satisfying the EU's formal requirements but also at cultivating a positive image of Kosovo as an applicant that merits being supported. At present, such a positive image does not exist in most EU member states, not least because Kosovo is seen as harbouring major criminal problems – including human and drug trafficking – which its authorities are not seen as tackling with sufficient robustness. In consequence, member states have generally negative perceptions of Kosovo's capacities and intentions in key policy areas – which are reflected, for example, in the EU's cautious approach in the ongoing visa liberalisation process.

It has been made clear by the European Commission that foremost amongst the steps that would assist Kosovo would be greater perceived commitments and efforts, from the topmost political levels downwards in Kosovo, in tackling high level and high profile crime and corruption and in ensuring that judicial processes are wholly independent.<sup>11</sup>

### C) Explaining via political pressures

Those who make enlargement decisions are pressurised on the decisions they take. The pressures come from many quarters, but the most important are from the applicants themselves and from the governments of some member states.

As regards pressures from applicants, the amount of pressure they can exercise depends on a number of factors, of which the most important is their value to the EU. This has been no more clearly demonstrated than with Turkey which, despite all the major difficulties associated with its application, has been able to use to its advantage its positions as one of the EU's leading trading partners and as a geo-strategically important state. When, as happened particularly in the late 1990s and then again in 2012-13, Turkish leaders have reacted to a lack of accession progress with statements to the effect that Turkey might have to start looking more seriously to its east and south for allies, EU leaders have quickly sought to be conciliatory

As regards pressures from the governments of member states, some member states – led by the UK – are more favourably disposed in principle to the EU enlarging than are others, whilst sometimes a member state presses the case of a particular applicant or potential applicant. But whether they are general or particular enthusiasts of enlargement, such member states can be invaluable to would-be members because they can seek to persuade and pressurise those that are more reluctant (see the comments above about 'the drivers'). Classic examples of this occurred prior to the 2004 enlargement, when doubts were raised about whether Poland and Cyprus were ready for membership: Germany quickly came to act almost as

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<sup>11</sup> For a summary of these problems see: Kosovar Institute for Policy Research and Development (2013), A Comprehensive Analysis of EULEX: What Next?, policy paper 1/13, especially pp. 12- 20, accessible at: [www.kipred.org](http://www.kipred.org), especially pp. 12- 20.

a sponsor of Poland and Greece did so of Cyprus – so much so that both let it be known to doubters that if the entry of ‘their’ candidate was to be delayed then they (Germany and Greece) would delay the entry of all other candidate states.

Pressures from the governments of some member states were also apparent in the lead-up to the decision of the European Council in June 2011 to call for the quick conclusion of the accession negotiations with Croatia and for the signing of an accession treaty by the end of the year. Commission reports had cast doubts on Croatia’s preparedness for membership, especially because of concerns relating to justice and home affairs, the restructuring of some industries, and corruption, but pressures from a number of states – notably Germany, Poland, Hungary, Austria, and the Czech Republic – plus strong support from the President of the Commission and the Commissioner for Enlargement, played an important part in ‘politics winning the day’.

### **- Implications and recommendations for Kosovo**

Kosovo has few resources available to it that can be used to directly pressurise the EU. Nor does it have any special ‘supporters’ that can be relied on to ‘go out of their way’ to back its membership ambitions, although in the period leading up to the April 19 Kosovo-Serbia agreement Germany in particular showed considerable support, in the face of perceived Serbian intransigency, for Kosovo’s wish to open SAA negotiations. In the words of the German Foreign Minister Guido Westerwelle, ‘When one country [Kosovo] delivers results and another doesn’t, the one that is taking steps... that is doing its homework, must not be held responsible for the lack of good will by the other [Serbia].<sup>12</sup>

Notwithstanding Germany’s strong support for the opening of SAA negotiations even if no agreement with Serbia could be reached, the fact is that to put ‘accession’ and ‘Kosovo’ in the same sentence runs almost completely contrary to the current discourse about Kosovo and the EU that exists in political circles in the member states. But despite this, Kosovo has grounds for thinking that it is possible to reduce the considerable caution, even scepticism, that exists in most member states about its future membership prospects. One such ground is that Kosovo does have potential supporters, with Germany and the UK probably being the most prominent: in response to queries on a number of matters concerning Kosovo and the EU, one Kosovar official in the Ministry of Foreign Affairs voiced the view that ‘without the direct support of Germany and the United Kingdom, the pace of our integration process would be even more difficult’.<sup>13</sup> Another ground for optimism is that, as noted above, the negative discourse and the generally negative image of Kosovo that exists in most member states would gradually be reduced if Kosovo was seen to be displaying a much more determined resolve to tackle its perceived problems.

## **III. KEY FEATURES OF ENLARGEMENT PROCESSES**

### **A) The length of enlargement processes**

Enlargement policy processes are, for most states that aspire to EU membership, now very protracted. So, there was almost twelve years between the applications from Bulgaria and Romania and their accessions, whilst almost thirteen years will have elapsed between the launch

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<sup>12</sup>‘Germany Sides with Kosovo Against Serbia’, EUobserver, 17 April, 2013.

<sup>13</sup> The official answer of the Ministry of Foreign Affairs of the Republic of Kosovo, on the basis of several questions submitted to it, 10 April 2013.

of Croatia's Stabilisation and Accession process, which is the enlargement stage Kosovo now is approaching, and its (scheduled) accession in July 2013.

There are three main reasons why accession processes for most applicants are now so drawn out:

- With the exception of the application from Iceland in 2009, all recent applications have come from the east and the south – where serious questions have arisen, and still do arise, about the membership ‘credentials’ of applicants in terms of their political, administrative and judicial systems, their levels of economic development, and in some cases also their cultural make-up. This has resulted in pressures from within the EU not to over-rush accession processes and to make provision for long adjustment and transitional periods.
- The EU’s policy portfolio has grown enormously over the years, to the extent that it now has at least some involvement in just about every sphere of public policy.<sup>14</sup> In consequence, there is a much larger range of issues to be covered in membership negotiations than there used to be.
- An increasing number of aspirant EU states have raised ‘special political problems’ of one sort or another. When this happens, aspirants are likely to see their application processes slowed as a result of their special problems becoming highly politicised, with attention becoming much focused not just on the technical matters that are the customary ‘staple diet’ of accession processes but also on the contentious matter(s). So, for example, Cyprus’ accession process, which in ‘normal’ circumstances could have been handled relatively easily and quickly, took fourteen years because of the division of the island problem. Turkey’s accession process has been made highly problematic by, amongst other factors, Turkey’s ‘occupation’ of part of the territory of Cyprus and by the feared effect on the character of the EU of admitting so large an Islamic country. Of the Balkan states, FYROM’s accession path has been stalled by the problem of its name – which Greece refuses to accept because Macedonia is the same name as an historical Greek region – whilst Serbia’s ambitions have been checked by its problems with alleged war criminals and its relations with Kosovo.

### **- Implications and recommendations for Kosovo**

There are too many incalculable variables in play to be able to estimate with any accuracy how long it will be before Kosovo can become an EU member state. In particular, the time impacts of the three main special political problems associated with Kosovo are very difficult to judge:

- *The problem of the five non-recognisers.* Five EU member states – Cyprus, Greece, Romania, Slovakia, and Spain – do not officially recognise Kosovo as an independent state. In consequence, the EU itself also does not recognise Kosovo – because this would require unanimous approval by the member states. As a result, all first references to the word ‘Kosovo’ in official EU documents are asterisked with: ‘This designation is without prejudice to positions on status....’
- In its 2012 feasibility study on a SAA between the EU and Kosovo, the Commission asserted two important legal principles: the non-recognition of Kosovo by five member states does not constitute a legal barrier to the contraction of a SAA; and the contraction

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<sup>14</sup> For a detailed account of the nature of the EU’s policy portfolio see: Buonanno, Laurie and Nugent, Neill (2013) *Policies and Policy Processes of the European Union*, Basingstoke: Palgrave Macmillan.

of a SAA would not constitute recognition of Kosovo as an independent state by either the Union or individual member states of the Union.<sup>15</sup> However, whilst the assertion of these principles cleared possible legal obstacles to the furtherance of Kosovo's relations with the EU, they did not clear the political reasons that lie behind the non-recognitions.

These reasons vary considerably between the non-recognising five, with two reasons being particularly important.<sup>16</sup> First, empathy with Serbia, which is important for Romania, Slovakia and Cyprus, but is not especially so for Greece or Spain. Second, concern that the formal recognition of Kosovo could set a possible dangerous precedent by both encouraging ethnic-based pressures for separateness while, at the same time, also giving greater legitimacy to secessionist movements. This second reason is a factor for all of the five non-recognisers, but particularly for Spain given its Basque and Catalan separatist movements, and even more so for Cyprus given the division of the island into separate Greek Cypriot and Turkish Cypriot zones and the self-proclaimed description of the Turkish zone as the 'Turkish Republic of Northern Cyprus'.

The indications are that none of the five non-recognisers will take their political concerns to the point of vetoing the opening of negotiations on a SAA, but they – and especially Cyprus, which takes the firmest line on the issue – may later be more rigid in respect of ratifying a SAA if their concerns have not been allayed.<sup>17</sup>

- *The problem of north Kosovo.* The governance problems in the north of Kosovo need resolving. The April 19 agreement sketches out a broad framework for achieving this, based essentially on recognition of the ultimate authority of the Pristina government but with considerable decentralised powers for the authorities in the Serb majority areas. But clearly, extensive, very difficult and delicate work needs to be undertaken on operationalising and implementing this framework in a durable way.
- Whilst Cyprus was permitted to accede to the EU when the authority of its government did not extend to part of the country (the 'Turkish zone' in the north of the island), EU spokesmen have consistently made it clear that a comparable situation will not be permitted for Kosovo.
- *The problem of Kosovo-Serbia relations.* With the EU anxious to ensure that it does not 'import' significant internal security problems and with it anxious also that no part of the Balkans slides into regional instability, 'normal' relations clearly need to be established between Kosovo and Serbia. At present this is nowhere near being achieved, as the reactions of leading Kosovar and Serb politicians to the April 19 agreement clearly demonstrated: whilst the former described the agreement as embodying a *de facto* recognition of the sovereignty and territorial integrity of the whole of Kosovo, the latter

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<sup>15</sup> European Commission, 2012a, *op cit*, page 3.

<sup>16</sup> For a very useful review of the positions, and reasons for the positions, of the five EU non-recognisers, see: *Kosovar Calling: International Conference to Launch Position Papers on Kosovo's Relation With EU and Regional Non-Recognising Countries*, April 20 2012, Pristina: Kosovo Foundation for Open Society and British Council, accessible at <http://kfos.org/wp-content/uploads/2012/04/Kosovo-Calling-ENG.pdf>

<sup>17</sup> For further discussion of this point, see: Group for Legal and Political Studies (2013), *Readyng for SAA Negotiations: A Blueprint of Achievements, Slow Reforms and the Path Ahead*, policy analysis no. 02/2013, March, Pristina, accessible at: <http://legalpoliticalstudies.org/download/Policy%20Analysis%2002%202013.pdf>

were firmly insistent that the agreement implied no such recognitions and certainly no acceptance of the independence of Kosovo.

Stepping back from the immediacy of the present, there are grounds for thinking that, in time, these 'special' political problems can eventually be overcome. It will, of course, be extremely difficult, and may not be fully realisable until a new generation of politicians is in power given that in both Serbia and Kosovo many of those currently in government or working behind the scenes of government have entrenched beliefs, often stemming from direct and bitter memories of the armed conflict of the 1990s. But, nonetheless, it is worth noting that the EU has had some success in pressing Serbia to be more conciliatory in regard to the second and third special problems: by virtually promising Serbia a date for the opening of its accession negotiations if it enabled significant progress to be made. And if, following the April 19 agreement, significant progress is made with the second and third problems identified above, then the non-recognition problem is likely to wither in all of the non-recognisers, though probably most slowly in Cyprus.

Assuming the political problems are overcome, recent enlargement experience suggests that a period of at least ten years will elapse from the contraction of a SAA and full EU membership.

## B) The roles of the EU's policy actors

The key formal decision-makers on the EU side in accession processes are representatives of the governments of the member states based in the General Affairs Council and the European Council. Because both the Council of Ministers and the European Council have to act unanimously when taking enlargement decisions there is always the possibility that a single state or small group of states could bring an accession process to a stop if they were to judge that accession would not be in their interests. However, though there certainly have been reservations on the part of some states in respect of the accessions of CEECs and Turkey, for the reasons that were outlined above regarding the preference of the member states for consensual decision-making, no veto to bring an enlargement process to a stop has been exercised.

The absence of a use of the veto does not, however, mean that sceptical and oppositional member states have not been able to make advantageous use of the existence of the veto provision. Cyprus, strongly supported by France (when Nicolas Sarkozy was President) and Germany, has been in the lead in slowing the pace of accession negotiations with Turkey – to the point that they have virtually been stalled for approaching three years. And Slovenia, wishing to satisfy domestic political objectives and public opinion, held up Croatia's accession negotiations for several months in a bid to re-open an old border dispute over the Gulf of Piran that dates back to the break-up of Yugoslavia. (The EU brokered a deal in 2009 for Croatia and Slovenia to bring the matter to arbitration and decouple the dispute from accession negotiations.)

But though representatives of the governments of the member states are the key decision-makers, much of what they do in the enlargement policy area is led by the Commission. Virtually all important enlargement decisions are based in very large part on Commission reports and recommendations of some sort. From the formulation and drafting of pre-application arrangements, through the issuing of opinions on membership applications, to the compiling of the long and detailed annual progress report on candidate and would-be candidate states, the assessments and positions taken by the Commission are extremely important at every accession

stage. It is true that the member states have not always proceeded as quickly on enlargement matters as the Commission would have preferred, but they have proceeded in the general direction advised by the Commission.

### **- Implications and recommendations for Kosovo**

As was noted above, an accession process can be greatly assisted if an aspirant state has particular supporters among member states. Equally, it can be slowed if member states have particular concerns – as FYROM and Turkey know to their costs. Kosovo's hope of making progress on the accession road will certainly be advanced if it can – by being seen to be making really committed attempts to be tackling such problems as organised crime, internal security, and administrative and judicial competence and independence – defuse the current concerns that exist in member states about its resolve to make the necessary changes.

Because of its centrality to all enlargement decisions the Commission is an especially important policy actor, so the cultivation of good relations with it is essential if Kosovo is to proceed as smoothly and quickly as possible on the enlargement road. But, this cultivation needs to be based not only on responding positively in documentation and reports to Commission requests and requirements. It also necessitates giving a good impression in the many less formal channels of communication – such as meetings between Kosovar and Commission officials – that play a part in shaping the Commission's views of Kosovo's *real* commitment to reform. At present, such an impression can barely be said to exist, with the perception of many in the Commission being that although Kosovo is formally making suggested and required changes, there is insufficient political willingness or acceptance behind them.

## **C) The conditionality of accession process**

An important and increasingly explored area of EU studies since the late 1990s has been 'Europeanisation'.<sup>18</sup> The concept is interpreted and applied in different ways, but most often it is taken as referring to the increasing penetration of EU influence into the public life of the member states. More specifically, it covers the ways in which the political, administrative and legal systems of the member states and the behaviour, actions and decisions of policy practitioners in the member states are shaped and constrained by the EU. Europeanisation – or EU-ization as some have termed it – does not suggest that a uniformity of national structures and actions is necessarily emerging amongst the member states as a result of EU membership, but it does suggest there is a growing intertwining between the EU and its member states and increasing similarities between the member states in respect of many aspects of their public policy arrangements, processes, and outcomes.

But although Europeanisation applies most obviously and directly to the EU's member states, it is not restricted to them. In particular for our purposes here, it applies also to EU applicant and potential applicant states. States that wish to enter an enlargement process must ensure that they meet, or at least are capable of meeting, the EU's so-called Copenhagen criteria, which specify that: they are functioning democracies that apply the rule of law; they have market-based economies that can compete in the internal market; and they can adopt and apply the EU's *acquis*. States that then enter into accession negotiations have to adjust and adapt in all

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<sup>18</sup> See, for example Börzel Tanja and Panke, Diana, (2013) 'Europeanization', in Michelle Cini and Nieves Pérez-Solórzano Borragán, European Union Politics, 4<sup>th</sup> edn, Oxford: Oxford University Press, chapter 3.

sorts of ways – not least by incorporating into national law the 80,000 plus pages of EU law. Accession processes thus are, even before they formally begin, highly conditional on potential members ‘falling into line’. They are much focused on potential members adopting and applying EU policies, laws and practices. More broadly, they are about the export of EU values and standards and the removal of departures from these values and standards in future member states.

The EU can take this hard-line, which amounts to it imposing its requirements on potential members, because the power balance in accession processes is wholly unequal. One reason for this imbalance is that the EU is by far the better resourced of the two negotiating sides. Another, and more important, reason is that the EU has the advantage of not being so dependent on an accession process being successfully concluded. Potential members invariably have a stronger interest than the EU in accession processes succeeding, so are much less able to dig their heels in, let alone walk away, if outcomes are not to their satisfaction. For its part, the EU is able to take something near to a ‘take it or leave it’ stance.

### **- Implications and recommendations for Kosovo**

Unpalatable though it may be, like all aspiring EU members Kosovo just has to accept that it will be given very little room to manoeuvre during pre-application and then during accession processes. This is because the processes are not focused on making the EU suitable for new members but rather are based on the premise that new members should be (made) fit for membership.

As such, whilst the EU will doubtless continue, and indeed step up, its various forms of assistance to Kosovo, most of the responsibilities for making the necessary transitions lie in Kosovo. As Enlargement Commissioner Štefan Füle stated on the day of the issuing of the Commission’s SAA feasibility study in October 2012: ‘The pace of Kosovo’s progress forwards [towards] European integration does not depend on the European Union. It depends on Kosovo’s hard work to meet its reform commitments and on the ability of all political parties to build a strong consensus around Kosovo’s European goal and it is for them to create and to be part of this inclusive pro-European agenda.’<sup>19</sup>

## **IV. MOVING FORWARD**

The EC/EU has never had a clear or consistent policy towards enlargement in the sense of it knowing how far and at what pace it ultimately wants to extend geographically. Rather it has, for the most part – and necessarily it might be argued – reacted to (mainly external) events and circumstances. This essentially reactive nature of enlargement policy has resulted in many key decisions on enlargement being determined not only by technical and legal considerations – involving, for example, judgements on whether a would-be member state’s economy is sufficiently ‘marketised’ to warrant the opening of accession negotiations – but also political considerations. So, whilst the almost herculean tasks of incorporating the EU’s vast volume of law into national law and of ‘EU-izing’ national structures are necessary conditions of membership, they are not always sufficient conditions. Rather, they sometimes have to be

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<sup>19</sup> Füle, Štefan (2012), Kosovo – Building a Common Vision of its European Future, [http://ec.europa.eu/commission\\_2010-2014/fule/docs/articles/20121010\\_kosovo\\_article.pdf](http://ec.europa.eu/commission_2010-2014/fule/docs/articles/20121010_kosovo_article.pdf)

accompanied by satisfying special political conditions – including conditions concerning the nature of the applicant state itself.

In Kosovo's case, the most obvious special political conditions are those concerning the 'non recognition' and the Kosovo-Serbia relations issues. Clearly these present great difficulties, but it is useful to place them in two contexts. The first context is that the history of enlargement policy suggests that what may appear to be almost insurmountable barriers in the early stages of an accession process can almost invariably be eventually overcome. The second context is the increasingly encouraging 'general noises' emanating from authoritative EU sources about Kosovo's long-term membership prospects. For example, in January 2012, on the day of the appointment of Samuel Žbogar as the EU's Special Representative in Kosovo, the Council issued a statement declaring that 'He will support Kosovo's progress towards the EU, in line with the European perspective of the region.<sup>20</sup>

On a final point, it is important to recognise that by the time Kosovo (presumably) becomes a member state the EU is likely to be very different to the EU that exists today. In particular, the trend of recent years whereby the EU has displayed an increasing propensity to make itself a more flexible organisation, with the use of differentiation (where not all member states are part of a policy activity) and of new and soft policy instruments (where there is manoeuvrability at national levels regarding how policies are to be applied), is likely to be much further advanced.<sup>21</sup>

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<sup>20</sup> Council of the European Union (2012) Council appoints EU Special Representative in Kosovo, Brussels, 25 January, 5694/12.

<sup>21</sup> On this increased flexibility, see, for example Leuffen, Dirk, Rittberger, Berthold, and Schimmelfennig, Frank, (2013) *Differentiated Integration: Explaining Variation in the European Union*, Basingstoke: Palgrave.

## **POLICY REPORTS**

Policy Reports are lengthy papers which provide a tool/forum for the thorough and systematic analysis of important policy issues, designed to offer well informed scientific and policy-based solutions for significant public policy problems. In general, Policy Reports aim to present value-oriented arguments, propose specific solutions in public policy – whereby influencing the policy debate on a particular issue – through the use of evidence as a means to push forward the comprehensive and consistent arguments of our organization. In particular, they identify key policy issues through reliable methodology which helps explore the implications on the design/structure of a policy. Policy Reports are very analytical in nature; hence, they not only offer facts or provide a description of events but also evaluate policies to develop questions for analysis, to provide arguments in response to certain policy implications and to offer policy choices/solutions in a more comprehensive perspective. Policy Reports serve as a tool for influencing decision-making and calling to action the concerned groups/stakeholders.