

EU Reform Policy Under Scrutiny

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Brussels urging Balkan membership candidates to do more to reform their justice systems, but isn't providing appropriate funding and expert advice for them to do so.

The European Union is seeking more progress from aspiring Balkan members in judicial reform than it did in previous enlargements, but there is still room for improvement in its own approach, analysts say.

After last year's accession of ten new EU members and the upcoming entry of Bulgaria and Romania in 2007, Brussels is set to raise the bar for the reform criteria it imposes on candidate and potential candidate states - a measure which will directly affect those bidding for membership in the western Balkans.

These requirements, known as the Copenhagen criteria, form a set of standards which new members must meet in advance of candidature and accession. Chief among the political criteria is ensuring the stability of "institutions guaranteeing...the rule of law" - of which judicial reform is a very important component.

On May 11, Enlargement Commissioner Olli Rehn reflected concern that progress in this area had been piecemeal when he told Reuters, "We have learned from the previous round of enlargement and now with Bulgaria and Romania that, even though the rule of law has been previously included in the ... political criteria before starting negotiations, it often gets left to the last mile."

Within the spectrum of changes required to satisfy the Copenhagen criteria, the establishment of independent and effective judiciaries is vital, both to safeguard democracy within states with long experience of undemocratic systems and also to ensure that the panoply of EU laws and regulations which have been passed over a wide range of policy areas are upheld across the union. Increased judicial cooperation has also been sought to improve security across the continent in the aftermath of 9/11.

But while the promise of EU membership has been a crucial motor for reform in the former communist states of Europe, in practice judicial reform has lagged behind. The justice systems of candidate countries were often still unreformed on the eve of accession, while Brussels in turn allowed countries to pass certain tests on the basis of a formal enactment of reforms onto the statute, without demanding evidence of implementation.

With Romanian and Bulgarian accession now scheduled for 2007, the EU has serious concerns about their capacity to meet the obligations of membership, not least in the judicial sphere. Indeed, the latest survey of democratic standards in Europe and Eurasia conducted by Freedom House classified their judicial systems as lagging significantly behind those of the central and eastern European states which joined the EU last year.

So while both countries signed their accession treaties earlier this year, Brussels has said that the "process of considerably reinforcing administrative and judicial capacity will need to continue after Bulgaria and Romania join the union". To that end, the two states have become the first ever members to have strings attached for membership, with safeguard clauses, which allow for aspects of their membership to be suspended for up to three years after accession.

As a result, the emphasis on judicial reform has become much stronger as the states of southeast Europe prepare for EU candidature. In addition to transforming the judicial system built up under communism, the former Yugoslav states must also contend with the legacies of war and the often authoritarian state-building process which followed.

Most of the EU's development assistance to southeast Europe is currently delivered within the framework of the Stabilisation and Association process, SAP. Along with the accompanying CARDS funding programme, SAP was originally designed for post-war reconstruction and conflict resolution.

Later given the extra task of assisting preparation for EU membership, the programme has been criticised as too centralised and inflexible for that complex task. Indeed, the 2004 external evaluations of CARDS and the European Agency for Reconstruction, which implements CARDS funds in Serbia and Montenegro (including Kosovo) and Macedonia, found that the system also failed to encourage enough domestic accountability and participation.

Some of these criticisms have been addressed. Following the 2003 EU summit in Thessaloniki, where the western Balkan countries were formally recognised as potential candidates, European Partnerships were introduced to identify priorities and obligations to which EU financial assistance is directed. Countries are then encouraged to draw up their own national action plans for their implementation.

Moreover, Brussels has proposed that when the new seven-year budget is put in effect in 2007, all potential and actual candidates could benefit from a simplified system, the Instruments for Pre-Accession Assistance, IPA. This would give partial access to some accession funds, but many analysts argue that in order to promote effective judicial reform, potential candidates should have full access to pre-accession funds.

Gerald Knaus of the European Stability Initiative told Balkans Crisis Report, BCR, he would like to see the full pre-accession system made available to the whole region by the end of next year, with its "sophisticated institution-building techniques", screening, annual reporting on bench-marked progress, and domestically-generated, national development planning for public investment.

"The pre-accession system helps build capacity in public administration, because receipt of EU funds for public investment is conditional on them developing management, accountability and transparency mechanisms. The western Balkans funding structure, where we send in experts and conduct training, or focus on police and judges, will not help bring about development," he said.

Kristie Evenson, Europe director for Freedom House, concurs, "EU assistance mechanisms for the western Balkans need to be drastically redesigned. They are short term with foreign experts, not tied to longer term steps and processes."

As the sole candidate country in the region, only Croatia currently has access to EU funds. Macedonia has a good chance of achieving candidate status in the near future, but without substantial changes to the framework, all other states and entities in the area must continue to rely on SAP and CARDS as the chief mechanism to table and fund reform.

But the higher standards of proof being required of western Balkan states and entities seeking EU candidature offer an opportunity, as well as a challenge. The EU must also learn from past mistakes and take account of criticism, in order to build a more effective process of enabling and facilitating reform.

"The EU was too easy on us. It believed us when we said we were fulfilling the political criteria, when this is exactly what we weren't doing," Sorana Parvulescu of the Romanian Academic Society think tank told BCR.

Gergana Noutcheva, of the Centre for European Policy Studies, agreed, "The western Balkan publics should welcome pressure... this is an important reform which should come early, since it touches on law, the business environment, everything."

The EU should become better informed of the existing systems in potential candidate countries, she added. In Bulgaria, for example, "even when the political will for reform was there, some of the procedures required were still long and difficult to enact. Training personnel and reducing caseload was all achievable. It was the structural changes which proved most difficult".

In other cases, aid absorption problems affected the reform process. In Romania, the EU PHARE programme funded a case management software application and a virtual legislative library, which then lay idle for three years while additional PHARE funding was sought to buy the necessary computers, according to an independent audit recently commissioned by the Romanian government to assess its anti-corruption strategy.

An Open Society Institute project following the EU integration process in the run up to last year's enlargement noted, "There are few EU standards on how the judiciary should be organised and how it should function, and the existing expert support system is often uncoordinated and ineffective. Pre-accession advisors and twinning institutions have often simply encouraged the adoption of specific solutions imported from their own states."

The existence of a large number of other donors in the western Balkans can further complicate matters. Olga Ruda, who works on judicial reform at ABA/CEELI, an American law reform NGO project, confirmed that in the Balkans "judicial reform assistance is often ad hoc, with little coordination between actors. They don't necessarily do what is best for the region, but rather what they know. Reform advice can be conflicting, and programmes are sometimes repetitive."

Last year, an ABA/CEELI report assessing the state of judicial reform in Kosovo, found a "lack of coordination among training organisations" in the transformation of the Kosovo Judicial Institute into a school for magistrates. Monthly donor coordination meetings were "seen to have little effect on the overall coordination".

Finally, the EU must address the facts that funds available to the western Balkans have been diminishing and will continue to do so. "There is a danger that the rhetoric of the rule of law detracts from the obvious point - that the socio-economic situation in the region is a serious worry," Knaus pointed out.

Emphasising the rule of law within the current SAP framework, he added, does nothing to address that reality, "The assertion that if crime and corruption are somehow defeated, then investment and economic development will automatically follow, is dubious. What we need are programmes and incentives for far-

reaching administrative reform."

Singling out corruption and lack of independence in the judiciary in southeast Europe, the European parliament has called for the provision of considerable additional financial resources to support the necessary strengthening of institutions and creation of new ones.

Analysts all agree that without appropriate financial and expert support, setting the bar higher for western Balkans membership candidates could end up looking like double standards - and, in the end, prove counter-productive.

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