

Bilateral Disputes and EU Enlargement in the Western Balkans

Since the beginning of the new phase of the war in Ukraine in February 2022, there has been a renewed enthusiasm on EU integration. The Western Balkans, which has been part of the enlargement agenda for over two decades, is once again attracting attention from Brussels and EU member states. However, various bilateral disputes continue to affect the region, such as statehood recognition, border demarcation, rights of ethnic minorities, and others. Many of these disputes derail the EU enlargement process or have the potential to do so. Increasingly, many of the EU decision-makers are considering how to separate bilateral disputes from the accession process, how to develop a more determined, proactive, and comprehensive strategy to address these issues, and whether the countries of the region could push for a separate initiative to resolve them.

To discuss these issues and ideas, the Council for Inclusive Governance (CIG) in cooperation with the Federal Foreign Office of Germany (AA) organized on September 28, 2024, in Tirana, Albania, a roundtable for senior officials of main political parties from the Western Balkans. The roundtable is part of a larger initiative to strengthen the region in the face of new geopolitical challenges. The discussions were held under the Chatham House Rule. CIG's Senior Associate Igor Novakovic drafted this report. The report does not necessarily represent the views of individual participants, CIG, or AA. It instead reflects the discussion as a whole, and CIG is solely responsible for its content.

Reform of the EU and bilateral disputes

The EU's focus is increasingly diverted by the complex multilateral situation and numerous geopolitical challenges, particularly in Ukraine and the Middle East. While there is a renewed interest in the EU enlargement, maintaining attention on the Western Balkans remains difficult. Despite this, the EU continues to be the only viable option for the region. However, for the EU to enlarge, it must also undertake internal reforms. Another critical factor is the EU's pursuit of strategic autonomy from the US, a topic underscored by the significance of the upcoming US presidential elections. Additionally, the conflict in Ukraine is shaping the new security architecture in Europe and could significantly influence the resolution of bilateral disputes in the Western Balkans.

Germany, in particular, is a driving force behind the push for EU integration, while also advocating for regional cooperation. At present, the focus is on the Berlin Process, where Germany aims to secure tangible deliverables, especially in terms of unblocking reached agreements or advancing existing frameworks such as CEFTA.

Regarding EU reforms and enlargement, several key challenges exist, with unanimity being a central issue. Unanimity is required for both the Common Foreign and Security Policy (CFSP) decisions and for enlargement-related decisions. The first requirement complicates the EU

decision-making which is already complex. The second allows EU member states to condition candidates bilaterally for reasons unrelated to the accession process. An expert on EU affairs highlighted the seriousness of this issue, noting that it undermines the EU's efforts in the region and contributes to the growing influence of external players, particularly China and Russia.

He and other speakers proposed potential solutions to address the unanimity requirement:

1. Attempt to reach a consensus to shift from unanimity to majority voting.
2. If that is not feasible, advocate for a reform requiring a collective veto, meaning that at least three or more countries would need to agree to veto a decision in order for the veto to proceed.
3. If a broader reform is not possible at this time, consider applying the Passerelle clauses to CFSP and enlargement matters. Article 48 of the Treaty on European Union provides this mechanism, allowing decisions to bypass unanimity without necessitating treaty changes.¹

Another speaker emphasized that the EU has consistently maintained that enlargement should be merit-based. However, without a clear or indicative accession date, political elites often "find other priorities instead of pursuing pro-EU reforms." An expert for the EU matters added that for candidates and potential candidates not yet deeply engaged in reforms or the accession process, the EU can utilize the European Partnership as an instrumental tool this time around.

Regarding the EU's influence on bilateral issues, particularly the Serbia-Kosovo relationship, another speaker stressed the need for the EU to take enlargement more seriously. "If Serbia, as the largest country in the region, is not ready to advance reforms and normalize relations with Kosovo, a rational approach would be to push forward the accession processes of other countries. If Serbia is surrounded by EU successes in North Macedonia, Albania, and Montenegro, it would increase the local demand for integration, leaving the ruling elites with no other choice" but to pursue a more determined EU integration. This underscores the need for reforming the EU's voting process.

One participant suggested that the EU should be more assertive and strategic with its financial assistance. "The EU Growth Plan currently resembles humanitarian aid. In contrast, the Marshall Plan targeted strategic sectors to stimulate future economic growth."

Bilateral issues and how to approach them

There are two types of bilateral disputes: those between EU member states and candidate countries, and those between candidates themselves, and a clear distinction should be drawn between the two.

A speaker noted that in disputes between an EU member state and a candidate country, it often becomes "a matter of twisting the arm of the weaker party." This dynamic, according to the speaker, has caused the EU integration process to lag behind or even stop, as it has become largely transactional. Another participant highlighted that rule of law reforms are particularly difficult for the elites, as these reforms often result in a loss of power. "If there is no tangible rewards for

¹ See more <https://eur-lex.europa.eu/EN/legal-content/glossary/passerelle-clauses.html>

painful reforms, such as an indicative accession date or a serious approach to resolving bilateral disputes, why would the elites bother implementing them?" the participant asked.

Another speaker emphasized the need to completely separate certain issues, especially those related to identity, such as language and history, from the accession process and negotiations. He argued that this is the only way to ensure the process is successful. Some participants also suggested applying the Passerelle principle, particularly in the context of opening Cluster 1 (Fundamentals), as an alternative to the unanimity requirement.

Another participant proposed an approach similar to that used in the Prespa Agreement, which he called the "French Proposal Plus." In the case of the Prespa Agreement, certain provisions only came into effect once Greece ratified North Macedonia's accession to NATO. This approach could turn bilateral disputes into structured processes by establishing a mechanism for their resolution. Essentially, this would mean postponing the most challenging bilateral issues until the final stage of the accession process, while focusing on merit-based reforms until then. For instance, in the case of North Macedonia, Bulgaria's demands for constitutional changes would be addressed before accession.

Another speaker stressed the importance of simultaneous processes and equal standards. He argued that if North Macedonia is required to amend its constitution at Sofia's request, Bulgaria should also be expected to implement the 14 priorities set by the Council of Europe concerning the rights of the Macedonian minority in Bulgaria.

There are already subtle indications of potential bilateral blockades by some EU member states. A speaker highlighted Croatia's possible intentions to condition Montenegro's accession (the current frontrunner) over border demarcation issues and Serbia's progress. "A few years ago, the Croatian Academy of Sciences and Arts issued a document emphasizing the need to defend Croatian national interests during the EU negotiations with candidate countries. This document could be a blueprint for what is to come." Several other participants suggested that Croatia should be reminded, perhaps by Germany, which has played a central role in EU enlargement, of its promise not to block other candidates as Slovenia did to Croatia during its accession process.

The debate also addressed the Serbia-Kosovo issue, with participants exchanging various perspectives on the current stalemate in the dialogue and how this impasse is impacting regional integration efforts.

Regarding bilateral disputes between candidates and potential candidates, a speaker emphasized the need to establish a principle that limits the veto power of new EU member states. Specifically, accession treaties for new member states should include a clause that prevents them from vetoing the accession of other candidates. Additionally, the EU should take a proactive approach by developing viable mechanisms for resolving disputes, initially focusing on issues that may be easier to address, such as border demarcation.

Conclusions and recommendations

The following conclusions and recommendations reflect the discussions and proposals made by the participants; however, they are not based on consensus or unanimity.

- **EU Reform for an Enhanced Accession Process:** Reform is essential to enhance the accession process. The major obstacle is the requirement for unanimity on issues related to foreign relations, defense, and the accession of new member states. Therefore, there is a need to shift towards a qualified majority or, at the very least, to implement a system of collective vetoes (requiring agreement from at least three countries to impose a veto on specific decisions).
- **Transforming Bilateral Disputes into Processes:** Bilateral disputes in the Western Balkans should be transformed into processes to prevent immediate blockages of EU integration. This approach allows for gradual resolution of issues. A prime example is the Prespa Agreement, where certain provisions came into force only after Greece ratified North Macedonia's NATO accession. A similar approach could be adopted for EU accession, where major bilateral reforms are postponed until just before accession.
- **Utilizing the Passerelle Principle for Cluster Negotiations:** The EU should apply the Passerelle Clause for opening clusters in negotiations with candidate countries, allowing for the opening of clusters without unanimity. This approach would maintain a merit-based focus in negotiations while facilitating the transformation of disputes into processes.
- **Distinction Between Regional and EU Member State Disputes:** There should be a clear distinction between disputes among countries in the region and those involving EU member states. The EU should include a clause in the accession treaties of new member states to eliminate the possibility of vetoing other candidates or acceding countries. Additionally, Brussels and EU capitals should take concrete actions against violators of good neighborly relations.
- **Proactive Measures for Member State and Candidate Disputes:** In disputes between EU member states and candidates from the region, Brussels and major EU capitals should take preemptive action. They must remind current member states of the benefits of having their neighbors join. The first test will be with Montenegro, which may face bilateral conditions from Croatia regarding several issues. At the same time, candidates should avoid actions that could create new bilateral disputes.
- **Strategic Investment Inspired by the Marshall Plan:** The experience of the Marshall Plan should inform the EU's Growth Plan. The EU should strategically invest in sectors that will boost regional economies targeting strategic sectors, thereby increasing local demand for EU accession.

Participants

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