

SUMMARY

INTRODUCTION

This final paper argues the role of EU conditionality in the visa liberalisation process in Western Balkans, by highlighting how Bosnia and Herzegovina managed to fulfil the benchmarks related to law enforcement matters, as EU Commission required in its tailor made roadmap. The focus on the topic is due to the commitment that EU keeps conducting towards the Balkan backyard through the “carrot and stick approach”; on the other hand, no international projection for the Western Balkan area is possible unless it does not engage itself to a European perspective. From EU’s point of view, promoting people-to-people contacts thanks to technical requirements would have helped to leap over the etno-political rivalries that still affect the most domestic scenarios of the countries involved. The case in point – Bosnian law enforcement system and how did it change until the visa liberalisation – has been analysed to challenge conditionality up against a multi-level and multi-ethnic government organization where the state building process is still far from being accomplished.

Chapter 1 – Towards a visa-free regime (1991-2011)

Having become part of EU legal framework, the Schengen area soon turned into a political leverage of great impact on both potential candidates and States close to the EU’s external borders. On the one hand, it can be intended as a matter of internal security; on the other hand, it can promote short-stay freedom of movement within a huge area, which widens opportunities and new perspective for individuals. Therefore, the launch of open dialogues on a possible admission to the Schengen ‘white list’ for Western Balkans represented a step further towards the enlargement process whose timing is still very critical to predict.

Before the 90s crisis burst, jugoslavian passport let all citizens travel back and forth to east and west, even during the Cold War. The situation changed dramatically as soon as the first waves of refugees started to flock to the Western European countries that tried to cope with the emergency by either sweetening or hardening their entry policies. Discussing the issue within international forums, the EU supported the solution of “safe havens”, which were meant to grant the asylum seekers the right to remain in their country in safe areas. Nevertheless, as Amnesty International warned, this “thin” view of protection served the States’ own interests rather than assure refugees’ human rights.

From 1995 on, Western Balkans countries have been included into the Schengen “black list”, an annex to European regulation 539/2001 listing third countries whose nationals needed visa to cross EU external borders. As a consequence, ex-jugoslavian citizens and Albanians (apart from Croatian citizens) who wanted to travel to EU for studying, working or tourism were asked to pay a visa fee, explain the reason of their journey and prove to have financial means to maintain themselves. The only people who actually took advantage of such a visa regime seemed to be the smugglers.

The first breakthrough came in 2003 during Thessaloniki Summit, when EU ministers showed to be aware of the importance that people and governments in Western Balkans attach to the visa liberalization. At the same time, they advertised for the first time the preventive fulfilment of technical benchmarks in order to enhance major reforms in areas such as the strengthening of the rule of law and administrative capacity in border control and security in documents, combating organized crime, corruption and illegal migration. However, it turned out to be rather a form of pan-european rhetoric, since the first concrete step towards the goal were taken only in 2007, thanks to readmission and visa-facilitation agreements.

From then on, nationals from Western Balkans not authorized to stay in a Member State territory were to be repatriated, once their illegal stay had been proved; on the other hand, some categories of people such as students, NGOs staff, journalists, researchers etc., could obtain the short-stay visas through an easier procedure and in a shorter length of time. This achievement was mainly due to the lobbying activities led by several issue networks within the civil society. Thanks to their campaigns, citizens became more aware of the advantages that visa-free regimes could bring, but at the same time they understood that it was strictly necessary to step further.

Eventually in 2008, the Commission launched the visa dialogues with the Balkan partners, whose progress towards the visa liberalization target would be monitored by Council and Commission through periodic assessments based on roadmaps. Such documents prescribed four blocks of benchmarks the States had to fulfil, regarding Document Security, Illegal Migration, Public Order and Security, External Relations and Fundamental Rights. This approach was considered to be a best case of conditionality, because as governments accomplished the listed technical criteria, they would have been “rewarded”. Peer missions were sent by EU to evaluate the development in the Integrated Border Management System and the conformity of domestic legislation in comparison with EU legal framework. Since the beginning, Macedonia turned out to be the forerunner, followed by Serbia and Montenegro, while Albania and Bosnia and Herzegovina were lagging behind.

In 2009, the Parliament held a session on the matter, encouraging the passage to the white list for all the Western Balkans, while the Commission pointed out that Macedonia, Serbia and Montenegro

only had achieved the necessary requirements. In particular, the Slovenian EP member Tanja Fajon warned that this discrimination towards Bosnia and Albania could lead to a crack in the region, while their promotion altogether would push them to work even harder to catch up with the others. Nevertheless, on November 30, 2009, the proposal of amendment to regulation 539/2001 was approved as it was originally formulated by the Commission. Just six months later, the same amendment was proposed for Bosnia and Albania; in the meantime, the Parliament was given the co-decision power according to the Lisbon Treaty. Among the EP members, some were skeptical, given the first negative outcomes derived from the case of Macedonia and Serbia in terms of asylum misuse; others did not present any other amendment in order to let the procedure run faster. How could Bosnia and Albania accomplish the remaining benchmarks (specifically, improvements in the field of electronic data exchange between police and prosecutors, fight to corruption and organized crime) in such a short time? There were those who accused EU of religious discrimination towards the two Muslim countries, but rather than this, it was clear that politics released the process, which would have probably got stuck under technical conditionality yet unfulfilled.

As soon as the visa free regime entered in force, the percentage of fake asylum applications increased dramatically from 10,000 in 2009 to 26,000 in 2010. Citizens from Serbia and FYROM especially asked for international protection in countries such as Belgium, Germany and Sweden, where asylum procedures lasted from 2 to 5 months. Moreover, it was proved that most of them had actually Roma origins, willing to spend some months with healthcare and accommodation provided for free, as law envisaged. As a response, Member States rejected more than 90% of applications, while EU Commission launched the Post-visa Liberalisation Monitoring Mechanism in order to collect data and plan a strategy to stem the phenomenon. In particular, EU started supervising local police cooperation, illegal migration and money laundering; on the other hand, Frontex was given the responsibility to alert the EU Commission in case of abuses. Local governments gave their contribution thanks to awareness campaigns about the duties prescribed by the new visa regime. However, in 2011 a group of Member States put pressure on EU institutions to solve the emergency; insomuch as the EU Commission proposed another amendment to 539/2001 regulation, introducing the so called "safeguard clause". As the Parliament voted for it, the mechanism would allow a Member State to ask the EU Commission for a suspension of visa free regime towards a third country whose nationals clearly misused asylum applications. The news got the Western Balkans governments very frustrated, despite the efforts they have been going through in order to step further in a wider European horizon. As a matter of fact, technical conditionality was not entirely fulfilled when EU stated so; at the same time, EU could not jeopardize its commitment

towards the region before the international community. Some policy analysts regarded the visa liberalisation process as a best case of conditionality, but one should wonder whether its feature itself to fit domestic law frameworks and political scenarios is effective without any additional assessment that comes straight from politics. Technical requirements had to yield to political evaluations in order not to undermine the “investment” in terms of credibility and resources that EU made already a long before.

Chapter 2 – Bosnia and Herzegovina and law enforcement challenges

Once Bosnia declared its independence from former Yugoslavia in 1992, the Bosnian Serbs – supported by neighboring Serbia and Montenegro – responded with armed resistance aimed at partitioning the republic along ethnic lines and joining Serb-held areas to form a "Greater Serbia". After three years of bloody war, as Dayton agreements were signed in 1995, Bosnia was parted in two entities: the Federation, ruled by Croat-Muslims, and the Republika Srpska where the majority of population was Bosnian-Serb. Each entity was provided with full governmental powers (Annex 4), while the central State was rather weak. The purpose of such a system was to launch a future reform once the ethnic parties would agree on a stronger central State, though respecting religious and ethnic differences. Unfortunately, this structure that was meant to be temporary is still working nowadays, while corruption and inefficiency jeopardize its tripartite institutions which are organized by ethnic quotas. Police wise, no law provisions were formulated at central level government; thus, each entity has its own police bodies. More specifically, while Republika Srpska adopted a centralized police model, the Federation established a system that gave each of its 10 cantons the competences to rule the matter by itself.

In order better to understand how Bosnia dealt with law enforcement provisions contemplated by the roadmap, it is useful to look back to the process that led to police reform (2004-2008) which was defined as a top pre-requisite for SAA agreement. Multi-level and multi-ethnic police bodies made the restructuring very complex, also because political parties were not willing to cooperate on the matter. Technical benchmarks, which should have inspired the reform, were given by the High Representative together with EU, but Prime Minister of Republika Srpska claimed they threatened the sovereignty of the entity because they seemed to aim at a centralization of powers at a state level. Thus, it was impossible to negotiate until the EU Commission announced to enable the sign of SAA, after a meeting held in Mostar, 2007, where Bosnian political parties came to a generic agreement. As a result, the reform approved in 2008 did not improve upon structural organization

and effectiveness of police forces, given the frail balance of different interests that it was supposed to combine.

So, when Bosnia was given the roadmap no mechanism of interagency cooperation existed: generic provisions led horizontal and vertical cooperation, but the information exchange was definitely lean. Dayton's agreements had established that both the Entities and the Brčko District have their own police bodies, but this is not the main obstacle *per se*. In order to achieve an efficient police structuring, seven organisms were created, whose tasks were either to coordinate or supervise over the sub-national agencies. Moreover, the link between police and prosecutors was strengthened thanks to the project Establishment of Enhanced Mechanisms of Coordination between the Police and the Prosecutors. Even though EU Commission welcomed warmly Bosnian commitment, both EUPM and Bosnian Parliament Members pointed out that all the new institutions were playing nothing but the same role that pre-existing structures already did. The key was not to create new organisms but to make work better those Bosnia already had, according to bottom-up approach.

Besides, the centralization that the reform wished depended on Ministry of Security, which had less power than it should have had. Its main duties dealt with responsibilities for cooperation and the development of special investigative capacities. In fact, the newborn Directorate for Coordination of Police Bodies was given resources and the adequate staff, trained thanks to seminars and programs in cooperation with Member States' agencies. Regarding the special investigative capacity, SIPA (State Investigation and Protection Agency) and Border Police strengthened their competences in info management, data collection and fight to money laundering and cross-border crime.

In the field of international police cooperation, bilateral agreements with both neighbor States and EU Member States were concluded along with regional multilateral frameworks, such as the Convention on Establishment of the SELEC (Southeast European Law Enforcement Centre) and the PCC SEE (Police Cooperation Convention for SouthEast Europe). The roadmap required specifically to take further steps in the implementation of the strategic agreement with EUROPOL as a prelude to the operational agreement which has not been signed yet. Meanwhile, the INTERPOL Sarajevo started looking after cooperation between police bodies, prosecutors and other agencies involved, such as IDDEEA (Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina). Overall, law provides all this bodies with an ample space of manoeuvre in the management of international police contacts, so their competences often overlap each other and provoke incoherent dynamics.

CONCLUSIONS

The technical essence of conditionality itself, though flexible, could not stand alone given the cross-cutting implications that such an achievement entailed; thus, politics and its bargaining dynamics played a crucial role whenever strict criteria could not find a proper implementation.