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To cite this article: Alexander Strelkov (2016) The EU and rule of law promotion in Western Balkans – a new role for candidate states' parliaments, East European Politics, 32:4, 505-524, DOI: [10.1080/21599165.2016.1228529](https://doi.org/10.1080/21599165.2016.1228529)

To link to this article: <https://doi.org/10.1080/21599165.2016.1228529>



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Published online: 03 Sep 2016.



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## The EU and rule of law promotion in Western Balkans – a new role for candidate states' parliaments

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### ABSTRACT

The article explores the recent shift in the European Union's approach towards candidate states in the Western Balkans.<sup>1</sup> It argues that the European Commission has started to pay greater attention to parliaments in candidate states in order to promote and secure accession-related reforms. As a result, national parliaments in candidate states have greater opportunities to shape the content of these reforms, including those in the rule of law sector. Consequently, the article elaborates on the factors that could potentially affect Balkan parliaments' involvement in the accession process.

### ARTICLE HISTORY

Received 8 September 2015  
Accepted 15 August 2016

### KEYWORDS

EU enlargement; national parliaments; rule of law; Western Balkans

## Introduction

Although representatives of the European Commission have alluded that no further European Union (EU) enlargement is happening before 2020 (Euractiv 2014b), the EU still remains committed to accession talks with several Western Balkan candidate states. At least some of the EU leaders demonstrate a clear commitment to enlargement, as Chancellor Merkel has done at the Western Balkan Conference in August 2014 (Euractiv 2014a; Balkan Insight 2015); Balkan enlargement is not off the agenda of the EU, yet the time-frame of this process remains elusive. This situation not only raises questions about the way EU policy towards the region is formulated, but also about the sustainability of accession-related reforms in candidate states. This relates especially to judicial reforms (Chapters 23 and 24 of the accession *acquis*), which are often considered to be the main challenge of the current accession talks.

The aim of the article is to demonstrate that the approach of the European Commission (hereafter shortened to “Commission”) to Balkan enlargement has shifted, which has important consequences for the ability of candidate states' parliaments to shape the trajectory of accession-related reforms. The change in the approach, which occurred in 2013–2014, has taken place as the Commission realised that: (a) unilateral external pressure on Western Balkan candidate states to reform political and judicial institutions often results only in formal compliance with EU norms and rules; and (b) ex-post mechanisms of compliance control (such as the Cooperation and Verification Mechanism (CVM)<sup>2</sup>) are not an effective

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tool to secure rule of law<sup>3</sup> amongst new member states. As support for enlargement amongst Western Balkan population becomes less pronounced (Balkan Barometer 2015), involvement of the Commission in “internal political issues” (judicial reform, media freedom, party funding, etc.) is considered less legitimate, resulting in limited compliance with EU norms. The EU, however, has to find means of securing compliance, as failing to do so questions its ability to prepare candidate states for membership. As a result, the Commission puts emphasis on candidate states’ parliaments (something it has not done in previous enlargement rounds; see Grabbe 2001, 2006), which can act as legitimate “watchdogs” that increase the “ownership” of the reform process and alert the Commission to violations of compliance with EU rules. Such a change in the policy of the Commission gives national parliaments of candidate states a greater degree of leverage in shaping accession-related reforms.<sup>4</sup> This article elaborates on three questions. Firstly, how did the change of Commission enlargement strategy towards the Western Balkans come about? Secondly, what implications does this have for Western Balkan parliaments’ ability to shape accession-related reforms, particular in the rule of law sector?<sup>5</sup> Thirdly, which factors could affect Western Balkan parliaments’ involvement in the accession process?

The article only considers Western Balkan candidate states with which the European Commission has recommended to open negotiations, namely Macedonia (FYROM), Montenegro, and Serbia. This formal status sets them apart from other Western Balkan states (Albania, Kosovo, and Bosnia and Herzegovina)<sup>6</sup> as it signifies the willingness of the EU to actually apply “linkage and leverage” (Way and Levitsky 2007) in order to prepare accession countries for full membership. Moreover, the case selection reflects variation among these countries in terms of quality of democratic institutions and compliance with the rule of law principles. International rankings such as the 2014 Bertelsmann Transformation Index, 2015 World Bank rule of law indicators, and 2015 Nations in Transit show that Macedonia (FYROM), Montenegro, and Serbia differ in terms of judicial independence and regime type.<sup>7</sup> It should be noted, however, that all of these countries face similar challenges in terms of securing impartial and accountable governance (Börzel 2011; Keil and Arkan 2015a). Given the fact that it is unclear whether dependent (implementation of rule of law reforms) and independent (e.g. level of parliamentary involvement) variables will co-vary to the same extent in all the analysed Balkan candidate states, the article adopts instead a “diverse” case-selection strategy (Seawright and Gerring 2008). It strives to illuminate a full range of country variation across key political and judicial parameters in the region.

The evidence presented in this article has been gathered through the analysis of EU documents, policy papers of several non-governmental organisations (NGOs), as well as anonymous interviews with staff members of the Commission, European Parliament, European External Action Service (EEAS), and former diplomats with extensive experience in the Balkan region.

### **The shift of the commission’s approach towards Western Balkan candidate states**

The academic debate on the impact of EU policies in the Balkan region is far from over. While some (Vachudova 2014, 2015) argue that the EU’s involvement has been able to lock in democratic reforms in the Balkans, others (O’Brennan 2014) have a more sceptical view. Nevertheless, representatives of both approaches agree that there remains a

challenge of promoting reforms through an EU-driven external incentive structure. EU leverage depends on the cost–benefit calculations of candidate states, consistent application of conditionality by the EU, and availability of socialisation instruments (Börzel 2011) – yet all of these parameters are now operating in a new context (Balfour and Stratulat 2015). In contrast to previous enlargement rounds, the new context is characterised by the growing preoccupation of the EU with internal economic problems, decreased support for accepting new member states, and a greater level of conflict between supranational institutions and member states about the trajectory of accession negotiations. Although the EU remains committed to the “European perspective” for Western Balkan candidate states, it tries to avoid the use of language that could lead to “rhetorical entrapment” (İçener and Phinnemore 2015). This signifies the onset of “enlargement fatigue” (Szołucha 2010), a situation when support for accepting new member states is waning amongst both the EU political elite and the general public. In such a context, the capacity of the EU to transfer its institutional norms on the basis of rewards and sanctions is severely limited (Toneva-Metodieva 2014): all parties involved in accession talks doubt each other’s commitment to comply with conditions and provide benefits. This implies that the EU needs to come up with a new approach that can secure credible and sustainable reforms in the Western Balkan candidate states.

New elements of this approach can be discerned in the Commission’s enlargement progress reports: there is a focus on effective parliamentary oversight in candidate states, greater attention to judicial reforms, control over *acquis* implementation (as opposed to adoption), and transparent party funding. The Commission has recognised that “the role of national parliaments remains underdeveloped” and parliamentary scrutiny in the Balkans often remains a formality (European Commission 2013; European Commission 2014a). The new focus lies in empowering national parliaments and NGOs of the candidate states to act as “watchdogs” in the conduct of accession-related reforms. Previously, the EU has focused on strengthening the capacity of candidate states’ executives and largely neglected respective parliamentary bodies. Although the Commission was aware that this negatively affected the inclusiveness of the accession process, its main concern was about timely adoption of the *acquis communautaire* (A5). Recently, as respondents from the Commission (A3, A6) as well as studies commissioned by the European Parliament (COWI 2014) testified, there is a greater focus on parliamentary administration, training of MPs and parliamentary involvement in the accession process within the candidate states’ progress reports. It is possible to discern several reasons behind the introduction of this new approach.

The first reason is the limited impact of CVM on judicial reform effectiveness in Bulgaria and Romania. Although CVM has contributed to some improvement in the judicial sphere (Spendzharova and Vachudova 2012; Vachudova and Spendzharova 2012; Gateva 2013), its overall impact has been disputed (Kavrakova 2009; O’Brien 2014; İçener and Phinnemore 2015). As a current staff member of the EEAS puts it, “CVM in Romania provided some leverage but was imperfect ... The EU had leverage before accession but it vanished after the accession. CVM was one of the few instruments at the disposal of the EU” (A1). In fact, the idea of introducing a similar CVM with Croatia has been disregarded precisely because the Commission introduced a more rigorous process in terms of preparing for the accession (A2). A staff member of the Commission presents an assessment of the CVM’s usefulness for Western Balkan candidate states:

Our objective, also in Croatia, was precisely to avoid the CVM. We wanted to make sure that the countries are ready upon accession, through the new methodology, the introduction of opening and closing benchmarks and the focus on the rule of law. (A3)

It is quite telling that a former MEP who specialises in Eastern Europe and Balkan affairs described the possibility of re-introducing CVM for future candidate states in the following terms:

No, never again. It did not work, it was a mistake ... We should have taken more time to get more guarantees on the implementation side from Bulgaria and Romania – they still have not done what they promised; they do not care. Such problems should be solved before countries join. (A4)

In other words, the CVM does not guarantee the fulfilment of reform commitments by the candidate states and new mechanisms of sustaining the reform process are necessary.

Secondly, there is a need for greater credibility and openness of the enlargement process itself. The Commission has been criticised for managing enlargement as an elite-driven process: low involvement of civil society and parliaments from candidate states undermines the positive effect of the EU's democracy and rule of law assistance (Chandler 2010; Balkans in Europe Advisory Policy Group/BiEPAG 2014). Many experts argue that the Commission's suggestions for conducting democratic reforms are arbitrary and lack uniformity, while conditionality is not applied in a consistent manner (Kochenov 2004; Piana 2009; De Ridder and Kochenov 2011; Kmezić 2014).<sup>8</sup> Conducting enlargement negotiations in the same old manner exacerbates "enlargement fatigue" in the candidate states, while the perceived lack of legitimacy by the candidate states leads to fake and partial compliance with EU demands (Noutcheva 2009, 2012). In principle, the EU's aim of sustaining democratic states in the Western Balkans cannot be achieved without creating representative and power-sharing institutions as strong parliaments help consolidate democracy (Fish 2006; Dolenec 2013; Elbasani 2013).

Thirdly, the Commission faces a specific dilemma of monitoring progress in the candidate states. Addressing politically sensitive issues is crucial to ensure sustainability of governance and democratic reforms, especially in situations where governmental actors often instrumentalise EU conditionality and assistance in order to consolidate their power rather than advance reforms (Ganev 2013; Stratulat 2014). Yet precisely such involvement in politically sensitive issues triggers resentment from candidate states and accusations towards the EU (Aspen Institute 2014). Both the Commission and EEAS, which is also involved in managing aspects of EU-Balkan relations, are very eager to avoid such accusations (A1, A7). In relation to the judicial sector, Nicolaidis and Kleinfeld (2012, 6) describe the situation in following terms: the EU needs to strike a balance between assessing and promoting rule of law and the "imperative of exercising humility regarding the claims made by the EU on the behalf of the rule of law assessment".

This leaves the adoption of EU rules and norms subject to arbitrary reversal: candidate states can fake compliance because EU demands are not considered as legitimate (Noutcheva 2009). The authority of the Commission to monitor compliance in politically sensitive domains can de facto be questioned by the candidate states. The problem can be even more challenging when EU conditionality addresses policy areas which are not, strictly speaking, part of the *acquis* (e.g. judicial reforms), potentially resulting in ambiguous messages and incoherent policies on the part of the EU. This allows local elites to "use

and abuse the EU integration card for their own purposes”; there remain doubts about the sustainability of reforms even in successful cases (Keil and Arkan 2015b, 236–237).

Hence, the Commission tries to overcome the “executive bias” of the accession process (Balfour and Stratulat 2013, 33) and increase its “ownership” by empowering local actors and stakeholders to carry out monitoring of politically sensitive domains (party funding, rule of law, etc.). A staff member of the Commission describes the new approach in the following terms: “We want to be sure that there are internal monitoring mechanisms [within candidate states] to sanction and detect problems as well as act accordingly” (A5). The key stakeholders in this process are candidate states’ parliaments as they provide a more institutionalised and less partisan platform for public deliberation and debates in comparison to NGOs and civil society groups. Ultimately, even if such involvement cannot on its own guarantee comprehensive implementation of EU rules, it nevertheless creates a set of institutional guarantees that could help secure the accountability of the executive branch and diminish partial or fake compliance with EU demands. What has been the mechanism behind the transformation of the Commission’s management of Western Balkan accession? It can be argued that it has been the result of social learning (Zito and Schout 2009) by the Commission as well as increased policy leverage of the European Parliament.<sup>9</sup>

First of all, a substantial number of Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) staff that is currently working on the Western Balkans dossier has had experience with the fifth enlargement round.<sup>10</sup> Reflection on individual experience and learning could have been institutionalised at the higher levels of Commission hierarchy and contributed to the transformation of accession management. For example, Bågenholm (2006) argues that the Commission was aware of the limited support it was providing for candidate states’ parliaments and the challenges that such an approach could bring. Members of the academic community have also raised critical voices about the long-term effect of marginalising parliaments in the accession process (Grabbe 2001). However, the issue has not been considered a crucial problem by Commission staff and would only catch attention after successive rounds of reflection over the achievements and shortcomings of the fifth enlargement. In fact, Pridham (2007) argues that in the aftermath of the East European enlargement round, the Commission has indeed engaged in drawing lessons from accession management.

Secondly, respondents from the European Parliament (A10, A11) have argued that greater attention to parliamentary institutions in the Western Balkans is the result of a systematic inter-institutional dialogue between the Commission and the European Parliament. This reflects growing willingness of the European Parliament to exert leverage in foreign affairs after the Lisbon Treaty. In the fifth round of EU enlargement, the European Parliament has already been involved in socialising MPs from candidate states. However, there is a novel trend. For example, legislatures of Western Balkan candidate states are now connected to the information exchange system between the European Parliament and parliaments of EU member states. Moreover, the Commission and European Parliament have recently joint forces in mediating conflicts between the parliamentary majority and opposition in several Western Balkan candidate states.

The transformation of the European Commission’s approach does not imply that the EU has abandoned its policy of rewards and sanctions towards candidate states. The EU enlargement toolkit still includes both conditionality and socialisation instruments

(Sedelmeier 2011); for adequate understanding of the accession talks, one needs to make use of both rationalist and constructivist explanations (Schimmelfennig and Sedelmeier 2005; O'Brennan 2006). Rather, the Commission explores new modes of securing compliance that are based on enhancing the legitimacy of EU demands and "ownership" by candidate states. Such a shift is taking place because the key components of conditionality-based strategy are faltering: the timing and the credibility of the reward (membership) remains vague, while the monitoring capacity of the Commission increasingly comes against criticism from candidate states due to its alleged bias. On the other hand, discussing and debating the rules increases compliance better than the exclusive application of conditionality as the cost of adaptation is shared by all parties involved (Checkel 2000; Börzel and Risse 2012). This theoretical claim is in line with the findings of Noutcheva (2012). She argues that rather than predominantly rationality-based accounts of the fifth enlargement (Vachudova 2005), in the framework of Western Balkan accession it is the focus on normative context and legitimacy of EU demands that provides more explanatory power.

### Consequences of the commission policy shift for candidate states' parliaments

Literature argues that in the course of the fifth enlargement round, parliaments in Central and Eastern Europe (CEE) have acquired institutional means to address EU affairs (Syllová and Kolař 2004). Although parliaments played a crucial role in democratic consolidation, their policy input during the accession process has been limited (Haughton 2007; Kopecký 2007).<sup>11</sup> The EU was concerned with quick adoption of the *acquis communautaire* in order to diminish the potential influence of "veto players". The fears of the EU have been unfounded. Research dealing on both CEE candidate states (Bågenholm 2005) as well as "old member states" (Dörenbächer, Mastenbroek, and Toshkov 2015; Finke and Dannwolf 2015) has shown that parliamentary involvement does not negatively affect *acquis* transposition. Nevertheless, earlier research on Balkan accession argues that EU focused on securing legislative output of the candidate states' parliaments at the expense of their ability to scrutinise domestic executives (Balfour and Stratulat 2011; Teokarevic 2011; Risteska 2013).

The change of the EU approach towards managing enlargement provides candidate states' parliaments with more opportunities to shape the accession process as their in-depth involvement is now considered more acceptable by the Commission. Building on their experience in domestic (as opposed to EU-driven) judicial reforms, candidate states' parliaments can exert greater leverage (Magalhães 1999). Practitioners see greater activism of national parliaments in accession talks as well as forecast growing inter-party differences within candidate states as enlargement progresses (A8). Others argue that "increasingly you see that parliaments are reluctant to blindly rubber-stamp and continue and accept whatever there is. For Croatia this still worked, in Montenegro it is already a bit problematic in some areas, in Macedonia it is very problematic" (A7).

However, a staff member of the Commission stresses that "the fact that parliament is involved is of course in principle a good thing but it does not say anything about the outcome, is the law better or worse" (A3). One example is the case of the Serbian Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office: there



was widespread public resistance because no parliamentary debate has taken place (Mendelski 2013a, 110–111). A staff member of the Commission elaborates on another example from Montenegro:

We have seen an example of the law on conflict of interests, an important law on corruption adopted in the end of last year. Initially the law was meant to cover all public officials, including the MPs. One of the contributions of the parliament was to take out the MPs from the law on conflict of interests. It makes you wonder. This is one of the examples I had in mind that involvement of the parliament does not always improve a specific law. (A3)

The response of candidate states' parliaments to the change in the Commission approach can be seen as being guided by cost–benefit calculations. Candidate states' parliaments want to be involved in shaping the accession process in order to address both policy and electoral goals. They will not simply try to block or uphold EU demands but shape the proposed policy solutions. Drawing on the literature dealing with the CEE accession process (Grabbe 2006; Jacoby 2006; Sedelmeier 2011), it is possible to formulate a number of expectations about factors that are conducive to involvement of candidate states' parliaments. Such involvement is most likely when:

- (1) *The EU acquis is not extensive or not uniform.* Grabbe (2006) uses the terms “diffuseness of influence” and “uncertainty”, stipulating that when EU lacks clear institutional templates to transfer and there is uncertainty about what counts as meeting criteria, domestic actors have greater leverage on the accession process;
- (2) *Salience of a policy issue is high.* According to Grabbe (2006), the higher the contestation over the outcome of reforms in a given policy sector, the more salient it is. Contestation can relate to high adjustment costs, presence of “veto players”, existence of alternative policy frames (Sedelmeier 2011);
- (3) *Legitimacy of direct EU involvement is contested.* Jacoby (2006, 630) uses the term “substitution”, a situation when “external actors attempt to promote and execute specific reforms on their own”, with limited involvement of domestic actors. However, direct imposition of EU demands is perceived differently depending on the policy sector: in relation to reform of key political and judicial institutions such demands can be considered as unwarranted infringement of sovereignty.

All of these expectations are met in the domain of the rule of law. Firstly, the EU has elaborated on the content of rule of law reforms in great detail in the Western Balkans and introduced extensive benchmarking to keep track of the process (Nozar 2012). However, reforms of the judiciary in the Western Balkans encouraged by the EU are not based on a template that is shared by all EU member states. Moreover, the consistency of EU rule of law promotion policies in the region has been criticised (Mungiu-Pippidi 2011; Fatić 2012). For example, the EU is very much focused on the creation of so-called judicial councils,<sup>12</sup> disregarding other policy options. The push towards introducing autonomous judicial councils without concomitant checks and balances can result in uncontrolled judicial supremacy (Parau 2012; Coman 2014; Fagan and Sircar 2015). In general, the trend towards rule of law promotion with almost exclusive focus on the judiciary (as opposed to other political actors) is increasingly criticised (Carothers 2003; Preshova 2014).



Secondly, rule of law reforms are extremely salient, as compliance with Chapters 23 and 24 of the *acquis* is considered to be the main challenge for successful membership of Western Balkan candidate states (Memeti 2014). However, Western Balkan ruling elites from different ideological backgrounds have contested EU demands in the rule of law domain (Noutcheva 2009; Noutcheva and Aydin-Düzgit 2012; Mendelski 2013b). In fact, in the context of the Balkan rule of law reform, the key challenge is not the formal adoption of legal measures but the way they are implemented (Aspen Institute 2014).

Thirdly, as Noutcheva (2012) points out, EU conditionality is most contested on issues of sovereignty and identity. For example, cooperation between Western Balkan states and the International Criminal Tribunal for the Former Yugoslavia (ICTY), a significant aspect of rule of law reform, has been shaped by national identities and perceptions (Schimmelfennig 2008; Freyburg and Richter 2010).

The claim about activism of Western Balkan candidate state parliaments in the judicial accession-related reforms contradicts the analysis of Parau (2013). Parau argues that during the accession process of the CEE countries, their parliaments did not resist the imposed templates of judicial reform and did not act as *ex ante* veto players. Without doubting the relevancy of this analysis for the CEE region, there are reasons to consider why this is different in the context of Balkan enlargement. First, in the context of the “enlargement fatigue”, domestic institutions of candidate states can have more incentives to resist EU demands as the reward for compliance is unclear. Secondly, the EU has not comprehensively developed the Chapters 23 and 24 of the *acquis* dealing with the “rule of law” at the time of CEE enlargement. Now these policy issues are much more prominent in the negotiations and ignoring them could be costly for Western Balkan MPs. Thirdly, Western Balkan parliaments can resist and shape EU-imposed judicial reforms *ex-post*, for example, through passing by-laws and technical regulation. Macedonia provides an interesting example of such practice. Although only graduates of the so-called Judicial Academy can be nominated to the posts of judges and prosecutors in Macedonia, the parliament passed a law that effectively allowed circumventing this obligation. A staff member of the Commission (A6) describes the situation in following terms:

For three years in a row they do not recruit anyone from the Academy and there is a weird transitional provision which is interpreted by the Judicial Council. After digging and digging you have suspicions that someone has just picked up the phone and called the president of the Judicial Council, telling whom to appoint. This has happened 3–4 years ago. We had no proof. Every time we met with the Judicial Council, which is in charge of the Judicial Academy, we say that they are bound by the law, they must recruit from the Academy and not from somewhere else. And for three years in a row we get a response that the Judicial Council is an independent body that votes democratically. (A6)

The Judicial Council was able to do so only because the Macedonian parliament provided it with the necessary legal framework. This example does not mean that Western Balkan parliaments will undermine EU influence in each and every case. Rather it illustrates that they have the ability to shape the content of accession-related reforms.

In general, increased parliamentary involvement in the reform of Western Balkan rule of law sector can have important implications. The promotion of judicial reforms by the EU through the “external incentive model” has not substantially improved the rule of law situation in the Balkans (Guarnieri 2013; Mendelski 2013b). On the other hand, involvement of candidate states’ parliaments can enhance “ownership” and effectiveness of accession-

related judicial reforms (Berenschot, Imagos 2013; CEDEM 2014; Dallara 2014; Fouéré 2014; Misev 2014). This is an important condition for democratic consolidation in the region (Carothers 1998; Diamond and Morlino 2004; Vachudova 2014).

### Factors affecting involvement of candidate states' parliaments in the accession process

The previous section has considered under what conditions parliamentary involvement in the accession process is likely to take place. It should be noted, however, that parliaments from different candidate states will not necessarily respond to the shift in the Commission's enlargement policy in a similar way. In order to consider the factors that account for such variation, we draw on literature dealing with Europeanisation of national parliaments and democratic transition in CEE (Grzymała-Busse 2005, 2007, 2010; Frye 2010).<sup>13</sup>

Raunio (2014) argues that parliaments of current EU member states adapted to European integration through institutional engineering, for example, by enhancing the powers of European Affairs Committees, and through sharing "best practices" with other legislatures. Variation among scrutiny systems has been explained by institutional factors (committee strength, formal parliamentary powers, etc.) as well as levels of Euro-scepticism, although recent research has questioned the validity of the latter parameter (Raunio 2014; Rozenberg and Hefftlar 2015). Researchers point to a substantial gap between formal rules and parliamentary behaviour in a large number of legislatures (Auel, Rozenberg, and Tacea 2015a). The mismatch between formal rules and political practice in Western Balkan parliaments can be illustrated by the following example. At the end of 2013, both Serbian and Montenegrin parliaments adopted official declarations stating that they aim to be actively involved in the accession talks (European Commission 2014b; European Commission 2014c). Although interviewees have not been able to provide a detailed assessment of the implementation of such official declarations, some respondents (A4, A11) pointed out the risk of these formal commitments not being followed up by changes in parliamentary behaviour. Another respondent (A12) acknowledged that since 2014, the Serbian parliament publishes a contribution to the Commission progress report, yet the policy impact of this action merits further investigation.

Given the fact that formal institutional capacities do not determine *how* national parliaments engage in EU affairs, a number of additional factors have been identified in the literature. The first such factor is *administrative capacity*. Christiansen, Högenauer, and Neuhold (2014) examine bureaucratisation of parliamentary scrutiny, because of the growing role of parliamentary administrative actors in processing and handling information on EU affairs. Ultimately, candidate states' parliaments must have the administrative capacity to acquire and process information in order to influence the accession process and control respective governments. Moreover, Högenauer and Neuhold (2015) have shown that the role of parliamentary administrators goes beyond technical support as they can shape the scrutiny process.

Western Balkan candidate states face several challenges related to parliamentary administrative capacity. One of the respondents describes administrative capacity of Western Balkan parliaments in the following terms:

I would say in general the administrative capacity is not good ... The problem was not that the parliamentary staff was bad, they were competent bureaucrats, I would say, but the mentality was not good. All parliaments in the region are good in producing a lot of paperwork, whenever there is a problem they will propose to draft some regulation. (A7)

Another respondent (A9) mentions that more resources have to be invested into the training programmes for Western Balkan MPs as well as parliamentary and party staff. The ongoing Instrument for Pre-Accession Assistance (IPA) programme for enhancing the administrative capacity of Balkan parliaments provides only a partial solution to the challenge. According to a staff member of the European Parliament (A11), many of those who benefit from the training schemes later leave for business or government sectors as they provide higher salaries.<sup>14</sup> Such EU programmes can only be effective if they are complemented by the “home-grown” strategies of Western Balkan parliaments to retain high-quality staff. An important point of concern is the capacity of Western Balkan parliaments to obtain adequate information on the progress of accession talks as well as analyse it. For example, a staff member of the Commission (A5) says that the Serbian European integration Office (SEIO) shares information with the relevant committees and working groups in the parliament. The question remains whether this information feeds into the policy cycle and is actively used by the Serbian National Assembly. Another example of administrative challenges facing Western Balkan parliaments is the decision of the Montenegrin government to regard accession negotiation positions as confidential, a measure that could severely limit the capacity of the Montenegrin parliament to influence and control the accession process (Klaas 2014).

The second factor that shapes the way legislatures address EU affairs is *involvement in inter-parliamentary cooperation*. Parliaments develop linkages with legislatures from other EU member states in order to address policy concerns, establish information networks, and share “best practices” (Crum and Fossum 2013; Christiansen, Högenauer, and Neuhold 2014; Heffttler and Gattermann 2015). Such cooperation can be pursued at both formal and informal fora, enhancing the abilities of parliaments to influence the policy process.

In fact, parliaments of candidate states are already widely engaged in inter-parliamentary cooperation (COWI 2014). Joint Parliamentary Committees (JPCs) between Western Balkan candidate states and the European Parliament are one of the important venues for inter-parliamentary cooperation (Ozcurumez and Hoxha 2015). JPCs help socialise MPs from Western Balkan countries, transfer “best practices” (also in terms of distinct policy templates), and develop European political parties (A11, A12). In principle, JPCs can also serve as a tool for mediation in internal Western Balkan political conflicts. A staff member of the Commission (A3) describes the role of the Stabilisation and Association Parliamentary Committee within the context of the Montenegrin accession:

The committee does not intervene directly in the negotiations but it plays an important role in the political dialogue in Montenegro between political parties, which has often not been easy. For example, a year or two ago there was a partial boycott of the parliament, the opposition walked out. This is an area where the Commission is not very well placed to intervene. Through the Stabilisation and Association Parliamentary Committee, its chairman and the European Commission, there has been a coordinated push to have this dialogue again. This is not intervening directly in the negotiations but the negotiations cannot go ahead if the parliament is not working or the opposition is not in the parliament.

It is noteworthy that, during JPC meetings, issues of the rule of law and anti-corruption appear in a rather ad hoc manner: rule of law is stressed in general but specific problems rarely appear on the agenda. However, even when specific rule-of-law problems are discussed, the EU's leverage can be limited: judicial provisions that raise concerns within the EU can simply be moved to less-well-known pieces of candidate states' legislation and continue to be applied (A11).

The third factor that influences parliamentary behaviour in EU affairs is the *pattern of inter-party competition*. Auel, Rozenberg, and Tacea (2015b) argue that the different logic of political competition in majoritarian and consensus political systems affects parliamentary behaviour in EU affairs: the higher propensity of consensus-orientated systems to coalition governments is conducive to parliamentary activism. Strelkov (2015) corroborates these findings, showing that consensual interaction (as opposed to majoritarian) between parliamentary party groups allows for a more systematic involvement of the opposition and more in-depth, policy-oriented assessment of EU proposals. The argument about the crucial role of inter-party competition is also supported by literature on democratic transition in CEE. For example, Frye (2010) argues that reforms are more challenging in regimes with strong "majoritarian characteristics". There is less pressure to overcome polarisation, and as the policy distance between parties grows, so does the chance that reforms will be side-tracked. Grzymała-Busse (2005) similarly stresses that the robustness of inter-party competition is crucial for democratic consolidation. This implies that competition has to be inclusive (no political party should be excluded from the political arena a priori), while "opposition parties have to offer clear, plausible and critical governing alternative that threatens the governing coalition with replacement".

There are several examples of how inter-party competition has affected parliamentary involvement in the accession process. For instance, the lack of a constructive framework for inter-party cooperation results in perpetual boycotts of parliamentary institutions by the opposition in Montenegro, Macedonia, and Albania (A10). In February 2013, the Montenegrin opposition requested to convene extraordinary sessions of the parliament, yet because there was no majority for the adoption of the agenda the sessions were closed (Klaas 2014, 47). In principle, according to a practitioner (A11), minority governments in Western Balkan candidate states provide more room for parliamentary involvement, as is the case in Montenegro; the dominance of the governing majority very often makes such involvement problematic. The ability to constructively address inter-party relations will determine whether Western Balkan parliaments can secure effective oversight of respective governmental policies. Inter-party competition also affects the way Western Balkan legislatures develop their contacts with the European Parliament. For example, the quality of discussions during JPC meetings is affected by the partisan composition of Western Balkan delegations: when the opposition MPs are heavily outnumbered, debates tend to become biased and unproductive. A staff member of the European Parliament elaborates on this, saying that "if one force is dominating, then there is not much room for us; we can try but it is not efficient. If the gap is smaller than we can make a difference" (A11).

In the Western Balkan context, inter-party competition is often framed by clientelism:<sup>15</sup> the focus is not on policy-seeking but instead on rent-seeking. Several interviewees (A7, A12) stress that the ability of parliaments to act as transparent bodies of oversight, and

accountability can be seriously curtailed by such practices. An interviewee (A7) summarises his views by saying:

The core of the business is not parliament, it has to do with political party groups, the support you get from political party ... If MPs, the political level, are not supportive, it is not going to work. That is the baseline.

As another interviewee aptly puts, amongst Western Balkan candidate states, the parliaments are generally “top-down”, which means that “they are there either to support the government or shout at the government under strict control of their leaders. These are not independent parliaments. This limits scrutiny and the impact of parliaments on the process” (A4). Ultimately, in the Western Balkan context, the analytical challenge is not only to take into account the discrepancy between formal parliamentary competences and the actual behaviour. Rather, the challenge is more structural: one needs to grasp how formal institutions interact with the informal ones within the political systems of Western Balkan candidate states (Marcic 2015).<sup>16</sup> Informal institutions shape elite and inter-party competition, yet in order for it to be robust, inter-party competition has to be focused on formal institutional venues, for example, parliaments (Grzymała-Busse 2007, 2010). The subversion of formal institutions by informal practices has to be brought to a minimum in order to secure compliance and progress of accession-related reforms (Börzel 2011; Vachudova 2015).

## Conclusion

Although Balkan enlargement is still on the agenda of the EU, the exact timing of this process remains unknown. The onset of “enlargement fatigue” undermines the credibility of the accession model: the connection between compliance with EU conditions and the granting of membership status is not taken for granted. At the same time, the ability of the Balkan candidate states to enhance the quality of the rule of law as well as successfully transfer and apply Chapters 23 and 24 of the *acquis* is crucial for their EU membership application. The Commission’s approach towards enlargement management has evolved in order to address the above-mentioned challenge. As the CVM has not been able to secure compliance with reform commitments in the rule of law sector, the Commission realised that it has to go beyond the “external incentives” approach to guarantee compliance with accession criteria. In the process of social learning from the fifth round of enlargement as well due to a more intense dialogue with the EP, the Commission has started to pay greater attention to the parliaments of Western Balkan candidate states. The logic of this policy shift is to enhance “ownership” of accession-related reforms and empower domestic actors that can act as legitimate “watchdogs”.

Such measures will not necessarily directly enhance rule of law and democracy in the Western Balkans but will imply that parliaments of candidate states are likely to play a greater role in the accession process. Drawing on the literature on CEE accession, it has been suggested that such parliamentary activism is more likely if: (1) EU *acquis* is not extensive (or not uniform); (2) salience of a given policy issue is high; and (3) legitimacy of EU direct involvement is questioned. In the rule of law domain, all of these factors are met. Firstly, the EU is trying to promote a template of judicial organisation that is not universally applied amongst its own member states. Secondly, the content of the

Western Balkan rule of law reforms is extremely salient: political actors of different ideological backgrounds have tried to influence the content of the judicial reforms, irrespective of their attitude towards EU membership. Moreover, the involvement of the EU in some aspects of the Western Balkan judicial reform is heavily contested.

Parliaments from various Western Balkan candidate states are likely to behave differently in the context of the Commission policy shift. On the basis of literature on Europeanisation of national parliaments and democratic transition in the CEE region, a number of factors that could explain parliamentary involvement can be discerned. It should be noted that further fieldwork in the Balkans<sup>17</sup> is necessary to test the explanatory power of these factors and gather information on parliamentary involvement in judicial reforms. Administrative capacity of candidate states' parliaments, involvement in inter-parliamentary cooperation, and patterns of inter-party competition could mediate parliamentary involvement. For Western Balkan parliaments, the key challenge in terms of administrative capacity is timely access to government documents as well as the ability to process EU-related information. Inter-parliamentary cooperation (especially relations with the European Parliament) could play an important role in socialising Western Balkan MPs and sharing "best practices". Inter-party competition in consensually orientated political systems is more conducive to effective parliamentary oversight of government policies. In practice, elite and inter-party competition in the Balkans often falls short of the "inclusiveness ideal". Informal rules and practices often subvert the activities of parliamentary institutions in the Balkans. Nonetheless, involvement of national parliaments can help overturn the "executive bias" and secure inclusiveness of the accession process. As accession negotiations with Serbia and Montenegro have started only recently,<sup>18</sup> it is difficult at the moment to provide a comprehensive assessment of Western Balkan parliaments' input into the accession process. This topic, however, should be addressed in subsequent empirical research.

## Notes

1. Albania, Bosnia and Herzegovina, Macedonia (FYROM), Montenegro, Serbia and Kosovo are considered as parts of Western Balkans. The term "Balkan enlargement" refers to the (potential) accession of these countries to the EU.
2. Mechanism for Cooperation and Verification for Bulgaria and Romania (CVM) – an instrument set up by the Commission to monitor Bulgarian and Romanian progress on judicial reform, fighting corruption and organised crime after both countries became EU members. CVM was launched at the end of 2006 and is still ongoing.
3. The chapters of the *acquis* do not aim to define the "rule of law" concept. It acknowledges that there is a plethora of procedural and substantive definitions. See Jensen (2003) and Magen (2009) on the debate about the possible definitions of the "rule of law".
4. The article does not claim that such parliamentary involvement will directly enhance the state of democracy and rule of law in the Western Balkans – further research is needed to substantiate such a claim. It is argued, however, that parliaments of candidate states have to be considered when analysing the conduct of the accession process.
5. It is acknowledged that parliamentary involvement can vary depending on the policy sector at stake. Nevertheless, only the judicial sector is considered due to its crucial importance for Balkan accession.
6. Including Macedonia may be considered premature as negotiations remain blocked. However, it has enjoyed candidate status for a decade. Also the Commission has not recommended

opening accession talks with other Balkan countries such as Albania or Bosnia and Herzegovina.

7. The article does not make any attempt to aggregate the various indices. In general, the rankings of Macedonia (FYROM) are worse than those for Montenegro or Serbia.
8. There is, however, an alternative opinion that the EU's policy of promoting the rule of law should not strive for uniformity and should be differentiated (see Burlyuk 2015). For a more positive assessment of the EU rule of law promotion policies, see Pech (2012, 2013).
9. The nature of the causal mechanism involved in the shift of the Commission merits further investigation.
10. The article does not aim to provide exhaustive data on the career paths of current DG NEAR staff members. However, all of the Commission staff that have been interviewed occupy senior positions and have had experience with the enlargement rounds of 2004, 2007, and 2013.
11. Andrews (2014, 663) argues that the "apparent docility of parliaments" was the result of consensus on EU accession; however, this contributed to a situation where institutional strength of CEE parliaments is not reflected in their limited political activism.
12. Self-governing bodies that cover nomination, promotion, and disciplinary sanctions within the judiciary.
13. This is possible since both CEE and Western Balkan states faced the challenge of "multiple transition" (Offe 2004).
14. The training programmes run by the European Parliament may be less likely to face this challenge as they focus primarily on clerks with at least several years of parliamentary experience and members of parliaments (A12).
15. See Hicken (2011) on the various definitions and approaches to clientelism. See Trantidis (2015) on the negative effect of clientelism on democracy.
16. On the different modes of interaction between formal and informal institutions, see Helmke and Levitsky (2004), Grzymała-Busse (2010).
17. Ideally not only in Western Balkan candidate countries but also in potential accession states.
18. Accession negotiations with Montenegro started in late June 2012, and in early 2014 with Serbia.

## Acknowledgements

The author would like to thank Dr Anna Herranz Surrallés, Dr Heidi Maurer and Dr Kolja Raube for their comments on an earlier draft during the 14th Belgian-Dutch Political Science Conference (11–12 June 2015). The author would also like to thank Professor Tannelie Blom for comments on the draft version of the article.

## Disclosure statement

No potential conflict of interest was reported by the author.

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List of interviews:

A1 – staff member of the European External Action Service, Brussels, 17 March 2015

A2 – representative of the Croatian Parliament at the European Parliament, Brussels, 6 March 2015

A3 – staff member of the European Commission, Brussels, 6 March 2015

A4 – former Member of the European Parliament (MEP), consultant in EU affairs and EU enlargement, Brussels, 27 March 2015

A5 – staff member of the European Commission, Brussels, 5 March 2015

A6 – staff member of the European Commission, Brussels, 27 March 2015

A7 – consultant on parliamentary affairs and the Balkans, 17 February 2015

A8 – member of the European Parliament, Group of the Greens/European Free Alliance, Brussels, 13 April 2015

A9 – former EU diplomat with extensive experience in the Balkan region, Brussels, 5 March 2015

A10 – staff member of the European Parliament, Brussels, 1 July 2015

A11 – staff member of the European Parliament, Brussels, 6 July 2015

A12 – staff member of the European Parliament, Brussels, 4 August 2015