



BiEPAG

Policy brief

**Removing obstacles  
to EU accession:  
Bilateral disputes in  
the Western Balkans**

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EU accession: Bilateral  
disputes in the Western  
Balkans<sup>1</sup>

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# Key recommendations

## **MAKE THE RESOLUTION OF BILATERAL DISPUTES A PRIORITY OF INTERNATIONAL ENGAGEMENT.**

- Commit Western Balkan governments to signing a joint declaration, open to EU member states, not to use bilateral issues to block individual countries' accession negotiations.
- Initiate an annual review of the state of bilateral issues within the Berlin Process.
- Facilitate mediation where bilateral efforts do not yield results.
- Create a common framework for the resolution of border disputes, facilitating the exchange of best practices and technical assistance for border demarcation.

## **STEP UP EU INVOLVEMENT IN THE RESOLUTION OF OUTSTANDING DISPUTES.**

- Nominate a EU coordinator for bilateral disputes located in DG NEAR or the EEAS to demonstrate the EU's commitment to addressing these issues and to ensure a coherent engagement in ongoing resolution processes.
- Tackle bilateral disputes between (potential) candidates early on in the accession process, using conditionality and the joint membership perspective to encourage cooperation and compromise.
- Address disputes involving an EU member state through the European Council Presidency in view of facilitating resolution or referral to international arbitration.

## **INVOLVE OTHER LOCAL AND INTERNATIONAL ACTORS TO ENHANCE THE COHERENCE OF INTERNATIONAL ENGAGEMENT AND IMPROVE THE IMPLEMENTATION OF AGREEMENTS.**

- Strengthen the role of the RCC as an existing forum for regional exchange.
- Draw on the expertise of the Council of Europe and the OSCE's High Commissioner on National Minorities to identify problematic areas and monitor compliance.
- Involve civil society in the communication and implementation of agreements reached bilaterally or through international mediation.
- Associate local populations in border demarcation efforts.

# Introduction

The EU accession countries of the Western Balkans (WB6) have come a long way since the wars of the 1990s. Besides progress at the individual country level, the emphasis within the EU accession framework upon regional cooperation and good-neighbourly relations has contributed to an overall strengthening of relations between the WB6 and their EU neighbours. Nonetheless, the persistence of unresolved bilateral disputes – some open, some only potential – poses a real risk of renewed instability by delaying EU integration and distracting from domestic reforms. It is therefore crucial that on-going international engagement with the region focus on tackling outstanding bilateral issues, both in their own right and in view of removing potential obstacles in the countries' path towards EU entry. Adopting a proactive approach now will not only lend credibility to the EU's and its member states' commitment to long-term stability and prosperity in the region, but also help avoid potential further complications once the membership negotiations with the remaining EU hopefuls pick up speed again. Furthermore, it will also enhance the credibility of the EU as both being effective in conflict resolution and in ensuring that the accession process is merit-based and not overshadowed by the eruption of bilateral issues on the enlargement agenda.

# Bilateral disputes as a stability risk and a stumbling block for accession

Being both to the geographic position of the Western Balkans at the crossroads between different major powers and to the region's animated history, bilateral disputes between the countries in the region are manifold. All of the unresolved disputes have actual or potential repercussions on the stability of the region and on good-neighbourly relations. Existing disputes concern four sets of issues: **border disputes** mainly relate to the precise demarcation of borders between what were formerly republics of the Socialist Federal Republic of Yugoslavia. To this day, Serbia and Macedonia, as well as Kosovo and Macedonia remain the only countries to have fully agreed on their mutual border, with the remaining borders sources of potential disagreement on their precise demarcation. Still, there are no major border disputes, with existing disagreements generally concerning fairly small geographic areas. **Political disputes** in the Western Balkans generally revolve around questions of statehood and national identity. The most prominent examples in this category are the contested statehood question involving Kosovo and Serbia and the long-standing name dispute between Macedonia and Greece. **Minority rights issues** often contain a strong political dimension and are therefore highly sensitive. They focus on the kin state seeking to offer protection to its kin in another country of the region. The dispute might focus on the state of minority rights or on the special rights granted by the kin state to its minority. Whereas comprehensive minority rights laws or comparable legal protection have been adopted throughout the Western Balkans, implementation is often lacking. Moreover, the absence of an explicit *acquis* in this area limits the possibilities for outside intervention regarding these sensitive questions. Finally, a number of open questions emerged specifically from the **dissolution of Yugoslavia**. Some involved the assets and liabilities of Yugoslavia and their division among the successor states, while others pertain to a host of specific issues, such as the case of the Ljubljanska Banka. Most issues have been addressed in the Agreement on Succession, which however remains incompletely implemented, so that

a small number of specific issues persist. Other issues result from the wars of the 1990s, such as missing persons, restitution and refugee return.

While some bilateral issues, such as the unresolved border demarcation between Croatia and Serbia and Bosnia and Herzegovina have been lingering for more than a decade, other bilateral issues can arise unexpected or flare up again. The former was highlighted by the Sutorina dispute as some MPs from BiH challenged the border settlement with Montenegro over claims to a small outlet to the sea that BiH had transferred to Montenegrin in the late 1940s within Socialist Yugoslavia. An example for the latter is the recent conflict between Slovenia and Croatia over the arbitration process to settle the competing claims over the bay of Piran. Both cases highlight that while some bilateral disputes can be anticipated and resolved, there is a continued risk of settled ones reemerging and new ones being added to the list. Key is preventing an escalation and them spilling into larger political debates and tensions.

Besides the substantive content of bilateral disputes, the **actor constellation** is decisive when it comes to determining the likely success of an external intervention. When it comes to disputes involving two (potential) candidates, pressure through existing international frameworks, and most importantly the EU accession negotiations, holds great potential for achieving a resolution. The Brussels Agreement mediated by the EEAS between Serbia and Kosovo is a case in point, though it has yet to pass the test of full implementation on the ground. Disputes involving an EU member state are much less simple to tackle. Here, the EU itself is institutionally restrained from mediating a settlement. Furthermore, the default for member states will be to refuse to take sides, rather than pushing their peers into reaching negotiated settlements that do not fully align with their preferences. Concerted action at the EU level is therefore likely to be less prominent at best, and absent at worst, as can be seen most prominently in the name dispute around Macedonia.

On the whole, outstanding bilateral issues do not only have a strong potential to destabilize relations between countries in the Western Balkans, but also continue to disrupt the EU accession process and with it the democratic transformation of the countries in the region. The introduction of bilateral

disputes onto the accession agenda increases the perception of a growing politicisation of the integration process. This, in turn, weakens the credibility of the accession perspective itself, thus reducing the EU's leverage in crucial domestic reforms.

It might appear that the EU currently has more important issues to handle than resolving the often highly complex and sensitive disagreements involving a number of small (potential) candidate states. Not engaging in discussions over bilateral tensions in the Western Balkans however risks not only slowing down the ongoing membership talks, but even encouraging backsliding and disengagement from commitments made as part of the accession process. Crucially, latent or low-key bilateral disputes run the risk of becoming politicized for domestic, populist purposes. Thus, bilateral disputes cannot be viewed as being disconnected from the domestic political reforms and risk having negative repercussions on the state of democracy and reform in the region. Proactive engagement on this front by EU institutions, member states and other relevant international actors would serve to avert threats to regional stability and prepare the ground for a smoother accession process.

## Previous approaches and lessons learned

The outstanding bilateral disputes in the Western Balkans are by no means news for the European Union and its member states. It was precisely the awareness of the fragile relations between and among the Western Balkans countries that prompted the addition of regional cooperation and good-neighbourly relations added as further elements to the established Copenhagen criteria for accession, with the European Commission's annual enlargement strategies now including a separate heading on bilateral disputes. While the European Commission holds no formal mandate to tackle bilateral disputes and generally tries to avoid engagement in such issues, it has repeatedly seen itself drawn into some form of mediation when bilateral issues became too closely intertwined with ongoing accession negotiations. Since the formal launch of the European External Action Service (EEAS) in 2010, the EU's new diplomatic service has equally become involved in bilateral disputes, most prominently in the mediation of talks between Kosovo and Serbia. On the whole however, EU involvement in resolving bilateral disputes to date largely remains both reactive and of limited effect.

Bilateral disputes in WB6 are notoriously difficult to tackle, both due to their strong politicisation and to certain inherent characteristics of the WB6 accession process. Whereas the 2004 enlargement round towards Central and Eastern Europe (CEE) built on a group approach that favoured a constructive attitude and prevented aspiring countries from using a 'veto' against each other, the strong opposition of the EU and many member states towards a 'big bang' enlargement precludes these benefits for the WB6 enlargement. Instead, bilateral disputes have often erupted precisely once one country entered the EU and used its new asymmetric power to exert pressure on the dispute party remaining a (potential) candidate for accession. The border dispute between Croatia and Slovenia for instance had been smouldering for a while, but it was only after Slovenian accession to the EU that its disruptive potential to Croatian accession negotiations became fully visible. In a similar escalation of tensions following Croatia's EU membership, Zagreb has been able to put the long-standing issue of



Belgrade's treatment of Croatian minorities on the agenda of the Serbian accession talks, despite failing to fully tackle the its own minority issues prior to its accession. In light of these experiences, it appears all the more relevant to tackle bilateral disputes during the pre-accession phase, when both countries involved have a similarly strong interest in reaching a mutually acceptable agreement that brings them closer to the EU.

Most importantly, bilateral disputes in CEE were largely resolved thanks to the diplomatic leadership of key member states. Worries of ethnic conflicts in the CEE region were addressed through diplomatic initiatives by France and Germany. Thus, the French-initiated Balladur Plan facilitated a series of regional round-tables aiming to create favourable conditions for improved neighbourly relations and encourage participating states to conclude bilateral treaties. This created a collective dynamic and removed bilateral issues as a stumbling block prior to accession. In the absence of a strong resolve – or even mandate – on the part of EU institutions to tackle the outstanding issues in the Western Balkans in a similar way, decisive leadership by member states familiar with and supportive of the EU accession process of the WB6 is required. Due to their often technical nature, border disputes may be the most promising starting point for such an initiative. The Berlin Process can offer a useful format to kick off a more resolute involvement.

# Conclusions and recommendations

**B**ilateral disputes – both potential and open – abound in the Western Balkans and represent a serious obstacle for the accession negotiations and the underlying democratic transformation of the remaining aspirant countries in the region. Past experiences have shown that even issues of limited geopolitical significance and with low salience can morph into highly emotional disputes that add significant bilateral hurdles to the already stringent EU conditionality that countries need to meet in order to progress towards membership. Whereas primary responsibility for resolving outstanding disputes lies with the parties to the dispute themselves, the EU and its member states should engage more proactively in the resolution of outstanding bilateral issues in order to avoid them taking over the accession agenda and undermining the credibility of the membership perspective. The following recommendations set out some general principles regarding the tackling of bilateral disputes and a number of specific suggestions for the short term. Finally, a toolbox proposes concrete elements that the EU and its member states can draw on in addressing outstanding bilateral issues in the future.

## 1. General principles

**BILATERAL ISSUES REQUIRE BILATERAL SOLUTIONS WHICH, IF NECESSARY, SHOULD BE SUPPORTED BY THE EU AND OTHER INTERNATIONAL ACTORS.** Primary responsibility for the resolution of disputes lies with the parties involved in the dispute themselves. While external intervention may facilitate the reaching of a negotiated solution to outstanding bilateral issues, the parties to the dispute bear primary responsibility for ensuring both progress towards a mutually acceptable agreement and for preventing any existing bilateral dispute from becoming an obstacle on the EU accession path for either, or both, of them. Only where domestic commitment exists can international engagement be fruitful and bring a sustainable solution that can be realistically implemented on the

ground. Yet, the EU should remain closely involved as an observer and, where it perceives a risk for escalation, or when the accession process has been taken hostage by a member state, adopt a more proactive stance to facilitate the resolution of such disputes.

#### **TACKLE BILATERAL DISPUTES BETWEEN THE WB6 EARLY BEFORE THEY TURN INTO OBSTACLES ON THE PATH TOWARDS EU MEMBERSHIP.**

Bilateral issues become all the more difficult to address once they oppose a member state and an aspirant country, weakening the potential for fruitful involvement by EU actors. Having to negotiate bilateral issues in the final stages of the accession process similarly brings heightened tensions and unnecessary politicisation as well as a potential for escalation. It is therefore crucial to resolve existing bilateral issues as early as possible in the integration process in order to avoid intertwining the two processes and to prevent one party to the dispute from gaining asymmetric power over the other by entering the EU earlier. Instead, a common membership perspective works as a powerful incentive for resolution that can be facilitated by the EU.

#### **STEP UP EU INVOLVEMENT IN THE MEDIATION OF DISPUTES BETWEEN TWO (POTENTIAL) CANDIDATE COUNTRIES.**

Using the attraction of EU membership successfully can be effective in tackling even the most difficult disputes among two EU hopefuls, providing strong incentives for mutual compromises. This presupposes a well-coordinated, persistent and high-level effort among the EEAS, the EU, and its member states, in cooperation with the United States and the UN where necessary. It requires significant diplomatic skill to ensure that the strict, one-issue conditionality required by this approach does not cloud the importance of a country's performance on core reforms. While insistence on the need for resolution is key, a country should not be awarded or held back solely on the basis of its willingness or failure to resolve an outstanding bilateral dispute.

#### **ADDRESS BILATERAL DISPUTES INVOLVING A MEMBER STATE THAT HAVE BECOME OBSTACLES ON THE EUROPEAN PATH OF A (POTENTIAL) CANDIDATE COUNTRY AS EUROPEAN ISSUES.**

Bilateral issues between member states and EU hopefuls must not disrupt the accession process and thus undermine the credibility and integrity of the EU's enlargement policy. While the space for concerted EU action in such

cases is naturally more limited, the EU should address bilateral issues involving a member state openly and seek to facilitate negotiations primarily through the Commission, where possible supported by the EU Presidency and interested member states.

## 2. Short-term suggestions

**INITIATE A JOINT DECLARATION BY ALL WB6 COUNTRIES, OPEN TO EU MEMBER STATES, TO KEEP BILATERAL ISSUES OFF THE ACCESSION AGENDA.** Whereas such commitments exist in some isolated cases (resolution of the Croatian parliament, Serbia and Kosovo in the Brussels Agreement), a joint declaration, thanks to its public visibility and the involvement of a larger number of countries, would likely carry a larger political weight and act as a useful restraint to prevent the politicisation of further bilateral issues that may hamper accession negotiations in the future. EU member states should be invited to join this declaration to enhance its value and prevent new issues from eruption on the enlargement agenda.

**NOMINATE AN EU COORDINATOR FOR BILATERAL ISSUES.** The nomination of a specific person – either inside DG NEAR or the EEAS – in charge of monitoring bilateral disputes and, if need be, mediating under a mandate given by the member states, would underline the EU’s awareness of the disruptive potential of outstanding bilateral issues and its willingness to support negotiated solutions to such disputes. Moreover, it would signal to the WB6 a commitment not to let bilateral disputes become obstacles on the path to accession, but instead to deal with them in parallel to individual membership negotiations, thus dissociating the two processes as much as possible.

**IDENTIFY AND RESOLVE ‘EASY’ DISPUTES THAT CAN SERVE AS MODELS FOR OTHER COUNTRIES OF THE REGION.** Using the momentum of the Berlin Process and the Vienna Summit, a joint team of EU officials and representatives of member and (potential) candidate states should identify disputes that are potentially more easily solved – such as border issues whose resolution may be facilitated mainly through technical assistance – and that could set the pace for a more resolute dealing with outstanding disputes

in the future. The Vienna Summit could set an agenda containing specific action points for the coming year, with the Paris Summit in summer 2016 representing a first occasion for a review of this more proactive strategy.

#### **INITIATE AN ANNUAL REVIEW OF THE STATE OF BILATERAL ISSUES.**

The countries of the Western Balkans should report annually on the steps taken to resolve bilateral issues at the Western Balkans summit, beginning in Paris 2016. This would allow for a systematic and regional review mechanism as a concrete expression of the commitment made in the public declaration on bilateral issues.

### 3. Toolbox

#### **DEVELOP A COMMON FRAMEWORK FOR THE SOLUTION OF BORDER**

**DISPUTES.** Drawing on the experience of CEE and the Balladur Pact, a limited number of member states could carry forward an initiative to foster good-neighbourly relations through a framework facilitating the conclusion of bilateral treaties to foster a more effective, less politicized resolution of outstanding border issues. A joint team of EU member states, potentially the countries actively involved in the Berlin Process, and EU officials (EEAS & DG NEAR) would constitute a group under the leadership of the EU coordinator to address bilateral issues. Lengthy and often controversial arbitration procedures would become a last resort, and initial successes would serve as models for trickier cases. Commitment to join such a framework could be included as part of the joint declaration on bilateral issues launched at the Vienna Summit.

#### **STRENGTHEN THE ROLE OF THE REGIONAL COOPERATION COUNCIL AS AN EXISTING FORUM FOR REGIONAL EXCHANGE.**

The RCC's work focuses on promotion and enhancement of regional cooperation in South East Europe (SEE) and supports the Euro-Atlantic integration of the aspiring countries. Furthermore, one of its competences is to support the increased involvement of civil society in regional activities. Because bilateral disputes have a direct negative impact on regional cooperation, the RCC could gain a formal role in their resolution, in line with the CEE's Stability Pact for Europe that formed the model for the RCC's predecessor, the Stability Pact for South East Europe. Expanding the role of the RCC would enhance local

ownership and avoid the unnecessary creation of new institutions where useful bodies already exist.

**INVOLVE LOCAL POPULATIONS IN BORDER DEMARCATION PROCESSES.** Most of the border demarcation processes are tackled at the national political levels and do not take into consideration the views of the local population living in the border areas. Adding local consultations, with civil society organisations and citizens directly, to mediation efforts at the national level would ensure that the specific way in which people's lives in border areas are affected can be taken into account.

**ENHANCE COOPERATION WITH SPECIALISED INTERNATIONAL ORGANISATIONS TO ADDRESS MINORITY RIGHTS EFFECTIVELY.** Closer involvement of EU actors both with the Council of Europe as minority rights watchdog and the OSCE's High Commissioner on National Minorities would serve to improve the coordination of international efforts and provide expertise and international standards. One crucial aspect is to ensure the implementation of adopted protective measures for minorities so as to ensure their effectiveness on the ground.

**ESTABLISH INTER-GOVERNMENTAL COMMISSIONS,** as operational bodies whose role it is to oversee implementation of all components of bilateral agreements and protocols. They are responsible for monitoring and also further negotiation of the problematic issues related to the specific disputes. This will help to depoliticize bilateral issues and provide for a mechanism to ensure progress after the conclusion of settlements.

**INVOLVE CIVIL SOCIETY IN THE IMPLEMENTATION OF AGREEMENTS REACHED.** The politically sensitive nature of bilateral disputes will often require agreements to be reached initially behind closed doors. Yet, when the governments of (potential) candidate countries make difficult compromises and resolve disputes (mainly) motivated by progress on their EU path, those decisions can be seen as imposed by external actors. Civil society organisations can play a role in feeding the views of citizens into ongoing negotiations and communicating solutions to the broader public to ensure larger acceptance of negotiated solutions among the population and thus increasing the likelihood of successful implementation.

# Declaration on Bilateral Issues

The governments of the Western Balkans commit themselves to a resolution of all open bilateral questions in the spirit of good neighbourliness and shared commitment to European Integration. The governments agree that they will not block, or encourage others to block, the progress of neighbours on their respective EU paths.

The governments of the Western Balkans commit themselves to resolve any open questions through bilateral negotiations or other means of peaceful settlement of conflict, if this does not lead to an agreement, through international arbitration.

The governments of the Western Balkans will report annually at the Western Balkans summit on the progress made in regard to bilateral relations and outstanding bilateral questions. The first report will be prepared by the governments for the summit in Paris in 2016. Subsequent annual reports will be presented at the following summits.

The governments of the Western Balkans invite the governments of neighboring EU member states to join this commitment.

# About the Balkans in Europe Policy Advisory Group

The Balkans in Europe Policy Advisory Group (BiEPAG) is a co-operation initiative of the European Fund for the Balkans (EFB) and Centre for the Southeast European Studies of the University of Graz (CSEES) with the aim to promote the European integration of the Western Balkans and the consolidation of democratic, open countries in the region. BiEPAG is composed by prominent policy researchers from the Western Balkans and wider Europe that have established themselves for their knowledge and understanding of the Western Balkans and the processes that shape the region. Current members of the BiEPAG are: Florian Bieber, Dimitar Bechev, Milica Delević, Dane Taleski, Dejan Jović, Marko Kmezić, Leon Malazogu, Corina Stratulat, Marika Djolai, Jovana Marović, Nikolaos Tzifakis, Natasha Wunsch, Theresia Töglhofer, Mirna Vlašić Feketija, Milan Nič and Vedran Džihić.



# About the European Fund for the Balkans

The European Fund for the Balkans is designed to create and support initiatives aimed at strengthening democracy and fostering European integration by enabling inclusive policy making, supporting capacity development and creating a platform for exchange and co-operation in the Western Balkans. The Fund was launched in 2007 by four European private foundations (King Baudouin Foundation, Erste Foundation, Robert Bosch Stiftung and the Compagnia di san Paolo), within the framework of the Network of European Foundations.

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# About the Centre for Southeast European Studies, University of Graz

The Centre for Southeast European Studies was set up in November 2008 following the establishment of Southeast Europe as a strategic priority at the University of Graz in 2000. The Centre is an interdisciplinary and cross-faculty institution for research and education, established with the goal to provide space for the rich teaching and research activities at the university on and with Southeast Europe and to promote interdisciplinary collaboration. Since its establishment, the centre also aimed to provide information and documentation and to be a point of contact for media and the public interested in Southeast Europe, in terms of political, legal, economic and cultural developments. An interdisciplinary team of lawyers, historians, and political scientists working at the Centre has contributed to research on Southeast Europe, through numerous articles, monographs and other publications. In addition, the centre regularly organizes international conferences and workshops to promote cutting edge research on Southeast Europe.

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