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PROCESS OF INTEGRATION OF THE REPUBLIC OF SERBIA WITH EUROPEAN UNION

ABSTRACT

The present article tries to provide an evolution of relations between Serbia and European Union so far as possible, into its wider political, economic and legal context. It attempts to highlight the complexities of the topics it addresses, but without giving full empirical detail. At this moment, good co-operation with the European Union for Serbia is above all, a tool that enables it to overcome the obstacles in establishing a stable political and economic system. Serbia has made a progress towards approaching the common market, after the ratification of the Stabilisation and Association Agreement. In a perspective, candidat status for the association in the European Union will open a possibility for Serbia to achieve real economic growth and development. Wishing to stimulate an open dialogue on the previous status of the Serbia and European Union, the author tries to identify the forthcoming challenges in association process with European Union.

Key words: European Union, European Economic Communities Serbia, SFR Yugoslavia, Federal Republic of Yugoslavia, State Union of Serbia and Montenegro, Republic of Serbia, process of association, integration.

JEL Classification: F15, K33.

THE SFR YUGOSLAVIA AND THE EUROPEAN ECONOMIC COMMUNITIES

As the legal predecessor of the Republic of Serbia, the Socialist Federal Republic of Yugoslavia (SFRY) had formalised its co-operation with the

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European Union on 2 December 1967 when the Declaration on Relations between SFRY and the European Economic Community (EEC) was signed. The Declaration mentioned above established the institutional framework for the development of future relations between the SFRY and the EEC. In 1970, the SFRY concluded the non-preferential trade agreement with the EEC gaining the most-favoured nation status. Since 1 July 1971, the SFRY became a beneficiary of the General Scheme of Preferences. The former Yugoslavia had signed a new trade agreement with the EEC in 1973. When it expired, the relations between the two parties were expanded by concluding the Co-operation Agreement on 2 April 1980.² The Co-operation Agreement provided many trade concessions for the SFRY in the form of exemptions from customs, elimination of quantitative quotas for goods exported to the common market, preferential status in the field of traffic, industry, foreign investments, energy supply, tourism, scientific and technological co-operation and social insurance. As provided by the Co-operation Agreement the EEC was granted the most favoured nation status for exports of industrial products. There were some limitations concerning the imports of agricultural and textile products.³ In the coming years the economic, technical and financial co-operation was supplemented by concluding special protocols, what, *per se*, meant that the SFRY achieved a great economic success.⁴

200 million ECU granted by the first financial protocol, which was concluded in 1980, was utilised for building of infrastructure, railroad network, highway, postal network, etc. By concluding the second financial protocol in 1987 for a five-year period from 1985 to 1990, the EEC granted a credit of 550 million ECU for building of industrial infrastructure.⁵ The conclusion of the

² The EEC was not in a hurry to legally define the Co-operation Agreement that by its essence was similar to the Agreement the EEC used to conclude with the Mediterranean countries. Basically, the Co-operation Agreement with the EEC did not explicitly rely on Article 238 of the Treaty Establishing the EEC. The reason for that was the delicate political situation for the SFRY. If the Co-operation Agreement had been interpreted as an Association Agreement its conclusion would mean that the SFRY had joined one of the block organisations, as the EEC was regarded as such at that time. In order to avoid negative reactions from the Non-Aligned Movement and in relations with the countries of the Eastern block the SFRY was given a special status (*sui generis*), which in practice was not different from other Agreements concluded in accordance with Article 238 of the Treaty Establishing the EEC. See: „Zakon o ratifikaciji Sporazuma SFRJ i EEZ”, *Službeni list SFRJ, dodatak Međunarodni ugovori*, 1983/2.

³ Blagoje Babić, „Institucionalni problemi u ekonomskoj saradnji Savezne Republike Jugoslavije s Evropskom unijom”, u: B. Babić i G. Ilić (ur.), *Jugoslavija i Evropska unija*, Institut za međunarodnu politiku i privredu, 1999, str. 14.

⁴ The Co-operation Agreement was supplemented with the additional protocol in 1987 establishing a new trade regime. See: *Službeni list SFRJ, dodatak Međunarodni ugovori*, 1988/1; Gordana Kovačević, „Spoljnotrgovinska saradnja Jugoslavije sa EEZ”, Ljubiša Adamović (ed.), *Jugoslavija i EEZ*, Beograd, 1988, str. 48-51.

⁵ „Zakon o ratifikaciji Drugog dodatnog protokola o finansijskoj saradnji”, *Službeni list SFRJ, dodatak Međunarodni ugovori*, br. 1988/1.

second financial protocol was in accordance with 1980 Co-operation Agreement defining measures for further trade liberalisation. The implementation of the financial protocol mentioned above was not fully completed since the Yugoslav part did not utilise all the granted credit funds. Relations between SFRY and EEC could have been raised to a much higher level by the conclusion of the third financial protocol in 1990 for a period from 1990 to 1995, which is amounted to 807 million ECU. However, this protocol did not go into effect and the granted credit was not utilised.⁶ The SFRY neither utilised the funds of 35 million ECU granted by the PHARE framework agreement of 17 December 1990. The main reason was the outbreak of the world economic crisis and weakening of the SFRY's economic position in relation to the EEC. In order to keep positive its foreign balance of payments the SFRY pursued a restrictive trade policy, which brought about decline in production capacities. In the forthcoming years,⁷ this led to a total economic and political collapse and break-up of the country.⁷ After the dissolution of the SFRY, the EEC cancelled 1980 Co-operation Agreement.⁸

THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE EUROPEAN UNION

Created by the Constitution of 27 April 1992 the Federal Republic of Yugoslavia (FRY) was a new subject of international law for the EEC, what was, *inter alia*, confirmed by the Declaration of the European Council of 27 June 1992.⁹ Although the FRY was treated as a new state, its creation and further functioning was burdened by the decision on imposing sanctions against the predecessor state (SFRY), which had been adopted by the EEC Council on 8 November 1991. The reason for such acting was probably motivated by the role that the FRY played in the conflicts in the territory of the former SFRY. As late as the sanctions were suspended after signing of the Dayton Peace Agreement for Bosnia and Herzegovina, in December 1995 the relations between the FRY and the recomposed EEC "warmed" (since the conclusion of the Maastricht Treaty the EEC turned into the European Union).¹⁰ The sanctions were again

⁶ Bojana Dragović, *Ugovori o pridruživanju Evropskoj uniji*, Institut za evropske studije, Beograd, 1995, str. 72.

⁷ Valerie Bunce, "The Elusive Peace in the Former Yugoslavia", *Cornell International Law Journal*, 1995, vol. 28, pp. 709. etc.

⁸ *Official Journal of the European Communities* L 315, 15. 11.1991, p. 47.

⁹ *Bulletin of the European Communities*, 1992, n° 6, pp. 22-23.

¹⁰ Duško Lopandić, "The EC and the Yugoslav crisis - Some Issues of International Law", *Jugoslavenska revija za međunarodno pravo*, 1994, p. 311.

imposed against the FRY on 7 September 1998 after the outbreak of conflicts in Kosovo and Metohija.¹¹

After the end of the conflicts in Kosovo and Metohija in 1999 where NATO was directly involved the European Union found it necessary to redefine its relations with the FRY. Relying on the previously defined policy of stabilisation of South-Eastern Europe (SEE) from 1996, which had been a part of the development plan on common foreign and security policy the European Union provided for economic and trade instruments as well the establishment of technical and financial forms of assistance for reconstruction, development and recovery of the region. (PHARE and OBNOVA programmes). In May 1999 the EU proposed a new form of co-operation with the West Balkan countries, the so-called Stabilisation and Association Process, which was aimed at consolidating the existing EU approach to Bosnia and Herzegovina, Croatia, Serbia, Montenegro, Macedonia and Albania.¹²

The Stability Pact for South-Eastern Europe was also aimed at helping the stabilisation of the Western Balkans. It was established on 10 June 1999 in Cologne. Endeavouring to overcome the political and economic problems it was through the Stability Pact that the EU opened prospects to the states in the region aimed at their more rapid accession and approximation to the Euro-Atlantic structures.

Soon after the establishment of the Stability Pact for SEE, on 22 July 1999 on the initiative of the European Commission the EU Council of Ministers published the conclusions on the development of the regional policy based on the Stabilisation and Association Process for the West Balkan countries.¹³

The Stabilisation Process is a political framework for the promotion of relations between the West Balkan countries and the EU. The Process assumes that the establishment of agreement relations between the states mentioned above and the EU would serve the purpose of promoting trade, customs, assistance for the improvement of administrative capacities, development of democracy and civil society and building of the law-based state. By financing the planned targets stabilisation of the region is achieved, this actually including its political and economic integration in the EU. Unlike the previous wave of EU integration, the Stabilisation and Association Process gives priorities to

¹¹ *Official Journal of the European Communities* L 248/1.

¹² *Communication to the Council and the EP on the Stabilisation and Association Process for Countries of South Eastern Europe*, Brussels, 26. 05. 1999. COM (99) 235.

¹³ "Conclusions on the Development of a comprehensive Policy based on the Commission Communication on the Stabilisation and Association Process for Countries of South-Eastern Europe", 22 July 1999.

differences and flexibility concerning the specific needs and situation in every individual country.¹⁴

The main legal instruments for the implementation of the Stabilisation and Association Process are stabilisation and association agreements. As the whole stabilisation and association process, the agreements are adjusted to the circumstances present in the states with which they are concluded. Association Agreements are concluded in accordance with Article 310 of the Treaty on the European Union.¹⁵ Unlike the agreements the EU concluded with the Central and East European countries (Europe Agreements Establishing an Association between the European Communities and their Member States and Central and East European countries), the agreements with the West Balkan countries are more specific since they insist on political stabilisation and regional co-operation. The speed of association to EU and the process that follows it, this including the accession to EU, depends on the speed of fulfilling the general criteria (democratisation, development of the law-based state, development of market economy, respect of human and minority rights, co-operation with neighbours, etc.) as well as specifically stipulated conditions, which are applied only to the Balkan countries (for example, in the Yugoslav case, from the respect of the Dayton Peace Agreement, Security Council resolutions, obligations relating to the extradition of the persons indicted for war crimes to The Hague International Criminal Tribunal, etc.).

A day after the Zagreb Summit of Heads of States or Governments of European Union Member States and the West Balkans countries that took place on 24 November 2000 the FRY signed the Framework Agreement for the Provision of Assistance and Support by the EU. The establishment and activity of the EU-FRY Consultative Task Force – CTF denoted the beginning of the period of stabilisation and association of the FRY.¹⁶ In the two-year period (2002-2004) Serbia and Montenegro was enabled to use EU trade preferences and join the Community Assistance for Reconstruction, Development and Stabilisation – CARDS programme. The Memorandum of Understanding on Liberalisation and Facilitation, which was concluded in the second half of 2001, considerably contributed to further promotion of trade relations in the Western

¹⁴ Tanja Mišćević, *Pridruživanje Evropskoj uniji*, ESPI Institut za ekonomska i socijalna istraživanja, Beograd, 2005., str. 150.

¹⁵ Before amending the Treaty Establishing the European Economic Communities Article 310 was contained in Article 239. See: Duško Lopandić, „Karakteristike sporazuma o stabilizaciji i pridruživanju EU sa zemljama Zapadnog Balkana“, *Srpska pravna revija*, 2006, br. 3, str. 111-125.

¹⁶ The EU-FRY Consultative Task Force was replaced by “a structured constant dialogue”, which has since July 2003 enabled the European Commission to follow the reform processes in Serbia and Montenegro that have been harmonised with the European Partnership and the action plan for the implementation of priorities from the European Partnership. See: *Vodič kroz Sporazum o stabilizaciji i pridruživanju*, ISAC, Beograd, 2008, str. 68.

Balkans. The basic idea concerning the agreement instrument mentioned above was to liberalise conditions for the re-establishment of trade and investment activities in the South-Eastern Europe.¹⁷

Significant progress in the stabilisation and association process was made after the EU summit in Thessaloniki that took place from 19 to 20 June 2003. The policy of promoting partnership relations with the West Balkans countries (the so-called European Partnership) was affirmed by adopting the so-called Agenda for the Western Balkans. As the Thessaloniki summit confirmed, *inter alia*, the conditions for new EU memberships in accordance with the Copenhagen criteria, which concerned development of democracy and the rule of law, protection of human and minority rights, efficient market economy, acceptance of membership obligations as well as anticipation of EU *acquis communautaire* and building of partnership relations implied building of action plans for carrying out economic, political and institutional reforms.¹⁸ The conditions to be fulfilled for EU membership that had been imposed to the Central and East European countries were also imposed to the West Balkan countries. Finally, in order to induce the „European Partnership“ by adopting the seven-year financial projections (2007-2013) the West Balkan countries were enabled to use the Instrument of Pre-accession – IPA.

THE STATE UNION OF SERBIA AND MONTENEGRO AND THE EUROPEAN UNION

Putting into effect the so-called starting premises for the re-arrangement of relations between Serbia and Montenegro in the Federal Republic of Yugoslavia in March 2002 brought about the recomposition of the Yugoslav federation, which was transformed into the State Union of Serbia and Montenegro on 4 February 2003.¹⁹ On 14 June 2004, the EU Council of Ministers adopted the Decision on Principles, Priorities and Conditions contained in the European Partnership with Serbia and Montenegro including Kosovo in accordance with the Security Council Resolution No. 1244 of 10 June 1999.²⁰ The Partnership

¹⁷ A series of bilateral agreements on free trade between the South-East European states followed the Memorandum of Understanding with the EU. In November 2006, a unique Free Trade Agreement in the South-Eastern Europe (CEFTA) was signed in Bucharest. Serbia and Montenegro, BH, Albania, Moldova and the United Nations Interim Administration in Kosovo (UNMIK) joined it.

¹⁸ Internet: <http://www.seio.sr.gov.yu/code/navigate.asp?id=95>, 10/01/2007.

¹⁹ „Ustavna Povelja Državne zajednice Srbija i Crna Gora“, *Službeni list SCG*, 2003/1.

²⁰ The instrument mentioned above had defined EU-Serbia relations until the Stabilization and Association Agreement was signed. The financial assistance to our state was stipulated by achieving progress and fulfilling the general criteria for EU membership. As for the publication

defined short- (12-24 months) and medium-term (3-4 years) priorities in the preparations for EU integration.

After the European Commission had promoted a double track for conclusion of the unique Stabilisation and Association Agreement with the transformed Yugoslav Union (State Union of Serbia and Montenegro) in October 2004, the Parliament approved the Action Plan for Harmonisation of Mutual Economic Systems of Serbia and Montenegro.²¹ The aim of the Action Plan mentioned above was to harmonise legal norms in the fields of trade and customs systems of Serbia and Montenegro that would enable accelerated conclusion of a unique Stabilisation and Association Agreement with the EU. Also, the EU Commission started working out a Feasibility Study that would serve as a basis for evaluation of fulfilment of conditions for entering the negotiations on conclusion of the Stabilisation and Association Agreement. The elaboration of the Feasibility Study for Serbia was a significant step forward towards European integrations.²² In January 2005, Serbia had made a decision on forming a team for negotiations with the EU on conclusion of the Stabilisation and Association Agreement.²³ In April 2005, the EU promulgated the Report on Willingness of the State Union of Serbia and Montenegro to Negotiate on Conclusion of the Agreement. On 17 June 2005, the State Union

of this document, on 22 April 2004 the Government of the Republic of Serbia adopted the Communication on European Partnership and the need to adopt the Action Plan for Achieving Priorities from the European Partnership. See: „Odluka Saveta od 30. januara 2006. godine o principima, prioritetima i uslovima sadržanim u Evropskom partnerstvu sa Srbijom i Crnom Gorom uključujući Kosovo, prema Rezoluciji 1244 Saveta bezbednosti Ujedinjenih nacija od 10. juna 1999. godine i prestanku važenja Odluke 2004/520/EC, (2006/56/EZ)“, Internet: <http://www.seio.sr.gov.yu/code/navigate.asp?Id=130,11/12/2007/>

²¹ Internet: <http://www.mier.sr.gov.yu/code/navigate.asp?Id=71,03/05/2005>.

²² By issuing the Communication on willingness of Serbia and Montenegro to start negotiations on conclusion of the Stabilisation and Association Agreement with EU the European Commission confirmed that progress had been made in the State Union of Serbia and Montenegro and its members. The Communication points out the necessity for the Union to continue its co-operation with the International Criminal Tribunal and implementation of the previously planned priorities of the partnership with EU. Inter alia, the necessity of developing government bodies was emphasised and the aim was to strengthen the structures that would be capable of accepting the obligations related to EU integration of Serbia and Montenegro.

²³ A bit later Serbia appointed six working groups for the preparation of negotiating positions for negotiations on conclusion of the Stabilisation and Association Agreement, These working groups corresponded to the subject of co-operation the Agreement covered (from the preamble, through regulation of co-operation in the fields of trade, agriculture, movement of capital, services, negotiating financial protocol, harmonisation of rules, etc.) From September to October 2005 member states of the State Union adopted the so-called bases for negotiations on conclusion of the Stabilisation and Association Agreement. See: *Institucionalni kapaciteti SCG za evropsku integraciju*, u: Jelica Minić, Ivan Knežević (ured), *Evropski pokret u Srbiji*, Beograd, 2006, str. 95.

adopted the strategic act on national strategy for integration of Serbia and Montenegro to the EU by 2012.²⁴

The first official round of negotiations with the EU had taken place on 7 November 2005. The topic was general principles, political dialogue, regional co-operation, co-operation on financial issues, etc. In the later stage, parallel negotiations were conducted between the negotiating teams from Serbia and Montenegro and the EU. In spite of the justified expectations that the outcome of the negotiations would be positive, this did not happen because the State Union had not co-operated fully with the International Criminal Tribunal. Therefore, the European Commission suspended the negotiating process. The European Commission's decision was also supported by the EU Council of Ministers. The situation became more complicated when Montenegro seceded from the State Union on 3 June 2006.²⁵ Since Serbia was the legal successor of subjectivity of the State Union of Serbia and Montenegro on the basis of the international legal continuity, the suspension of the negotiations on conclusion of the Stabilisation and Association Agreement continued for this former member state.²⁶

RESUMPTION OF NEGOTIATIONS BETWEEN SERBIA AND THE EU

After an 11-month break, the negotiations resumed on 13 June 2007 as progress had been made in Serbia's co-operation with the International Criminal Tribunal. The negotiations included technical issues and they took place in July and September 2007. On 6 November 2007, the European Commission adopted a positive report on the progress made in the implementation of reforms in Serbia.²⁷ This led to initialling the Stabilisation and Association Agreement on the part of Serbia on 7 November 2007 in Brussels. As in February 2008 the EU Council had adopted the Decision on Principles, Priorities and Conditions Contained in the European Partnership with the Republic of Serbia including Kosovo in accordance with the Resolution

²⁴ "National Strategy of the Republic of Serbia for the Accession of Serbia and Montenegro to the EU". See: Internet: <http://www.seio.sr.gov.yu/code/navigate.asp?Id=94,11/11/2007>. The Strategy should serve as a basis for the elaboration of the „National Plan for the Adoption of *acquis communautaire*“ after signing of the Stabilisation and Association Agreement.

²⁵ Tanja Mišćević, „Odnosi Srbije i EU – da li je moglo brže?“, u: Mihajlo Crnobrnja (ur.), *Evropska unija prvih 50 godina*, FEFA, Beograd, str. 94.

²⁶ After the secession from the State Union of Serbia and Montenegro, Montenegro had resumed its negotiations with the EU in September 2006. In March 2007, it initialled the Stabilisation and Association Agreement.

²⁷ Internet: <http://www.seio.gov.rs/code/navigate.asp?Id=48,28/11/2008>.

No. 1244 of the United Nations Security Council, Serbia signed the Stabilisation and Association Agreement on 29 April 2008. Relations between Serbia and the EU established by the Agreement defined mutual rights and obligations until the moment Serbia joins the EU and confirms the possibility of Serbia's accession to the EU, depending on the social development and progress in reforms. *In concreto*, the Stabilisation and Association Agreement defines in detail the conditions for free movement of goods, labour and capital, creation of a free trade zone as well as co-operation in a number of fields with the EU, from harmonisation of Serbia's legislation with EU law to the establishment of political dialogue and financial co-operation.²⁸ After a long debate, the Assembly of the Republic of Serbia ratified the Stabilisation and Association Agreement (together with the interim trade agreement) on 9 September 2008. From 1 February 2009, Serbia has been unilaterally implementing the interim trade agreement. With this interim trade agreement, a free trade area between Serbia and the EU is created for a period of six years. The deadline for liberalisation of Serbia's trade is determined by the capacity of the Serbian industry and agriculture to adjust to free trade and also by Serbia's wish to complete the implementation of reforms as soon as possible and accede to the EU. Serbia is obliged to gradually eliminate customs on imports of goods originating from the EU in the transitional period. On the other hand, by this Agreement, the EU affirms free access of goods from Serbia to the EU market. With the Stabilisation and Association Agreement, the EU and Serbia confirmed that they will cooperate in many fields such as social policy, education and training, culture, information and communications, transport, energy, environment, research and technological development, which will help Serbia gain access to programs of technological and scientific development that exist within the European Union and which are necessary for the sake of the overall development of the country and in order to stop the "brain drain" and the departure of young people. By affirming the Agreement Serbia has gained the status of potential candidate for EU membership (the so-called evolutionary clause).²⁹ Serbia officially applied for EU membership on 22 December 2009. On 14 June 2010 the Council of Ministers of the European Union adopted the decision on initiating the ratification of the Stabilization and Association Agreement between the EU and Serbia.³⁰ After that, the Council of Foreign Ministers of the EU adopted the decision to forward Serbia's application for

²⁸ Internet: <http://www.seio.gov.rs/code/navigate.asp?Id=408,28/11/2008>.

²⁹ Duško Lopandić, Refoma Evropske unije, Zapadni Balkan i Srbija, Internet: http://www.iien.bg.ac.yu/knjige/reforma_eu_zapadnibalkan_srbija.pdf, 28/12/2008.

³⁰ The decision was adopted after the Hague Tribunal Chief Prosecutor Serge Brammertz informed the Ministers of the EU that he was satisfied with Serbia's cooperation with the International Tribunal for war crimes in former Yugoslavia. See Internet: <http://www.seio.gov.rs/info-service/questions-and-answers.259.html>, 22/09/2011.

membership to the European Commission for consideration. In January 2011 the European Parliament ratified in Strasbourg the Stabilization and Association Agreement between the EU and Serbia.³¹

³¹ At the end of the 2011, the European Commission presented its annual Enlargement Package in which it recommended that Serbia be given the status of candidate for membership in the EU. The European Commission recommended to open negotiations with Serbia when serbian side achieved progress in relations with Kosovo. A last, Serbia received a full candidate status on 1 March 2012.