

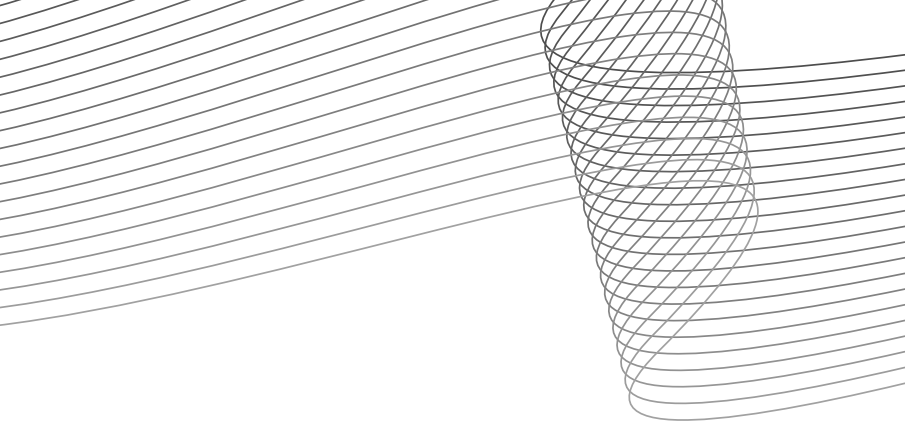
TWELVE PROPOSALS FOR EU ENLARGEMENT FROM THE WESTERN BALKANS



**European
Movement
Serbia**



Embassy
of the Federal Republic of Germany
Belgrade



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June 2018



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Twelve Proposals for EU enlargement from the Western Balkans

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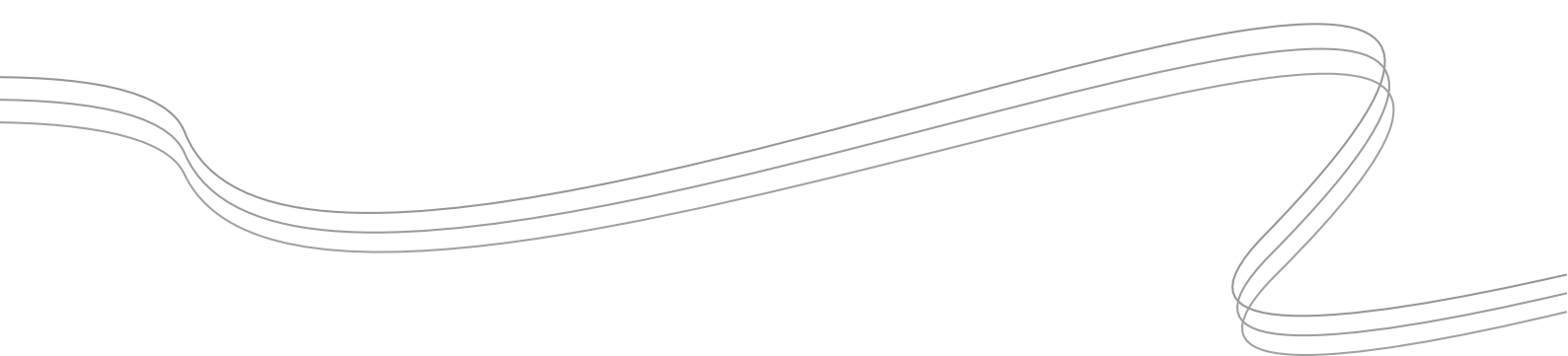
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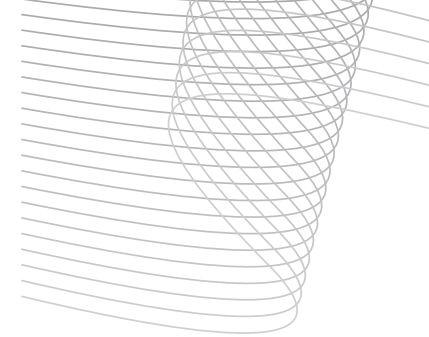
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1. Introduction

The enlargement of the European Union into the Western Balkans (WB) has become a never-ending story and now stands at a crossroad: to either pick up speed and enhance its effectiveness, or to lose credibility and become a meaningless policy.

The goal of this paper is to demonstrate that enlargement is feasible by the end of 2025 for the frontrunners, Serbia and Montenegro, and in the foreseeable future for the rest of the WB, if the manner in which it is conducted is altered and adapted to the regional context. The paper proposes actions to be taken for such alterations, summarized in twelve proposals in the conclusion. These proposals will add impetus to the enlargement process and make it easier for the candidates to fulfil the accession criteria while not diluting membership conditions.

In June 1999, the EU launched the Stabilisation and Association Process (SAP) for the WB, with the aim of working toward eventual EU membership for the relevant states. The political goal was to overcome the security crises in Europe caused by Yugoslav wars. The SAP was created to enable the EU to play a driving role in the stabilisation of the war-torn region.

At the EU summit in Thessaloniki in 2003, the leaders of the EU reaffirmed that all WB countries are *potential candidates*, with prospects of joining the EU after fulfilling the membership criteria as defined at the 2000 Fiera summit. However, 19 years after launching the process, only one country – Croatia in 2013 – has managed to join the EU.

The painfully slow progress of the enlargement process shows that changes are required if the original political goals of the endeavour are to be achieved in the foreseeable future. The *Letter of Intent to President Antonio Tajani and to Prime Minister Juri Ratas*, the September 13th 2017 State of the Union speech by President of the European Commission (EC), Jean Claude Juncker, and the Communication from the European Commission on February 6th 2018, all indicate that the EU is willing to enhance its engagement in the WB.¹

The Communication, better known as the EU's Enlargement Strategy, also contains an *indicative illustration* of steps required for Montenegro and Serbia to complete the accession process *with a 2025 perspective*. However, reasonable doubts remain over the sufficiency of the EC's new steps, especially since important member states, such as Germany and France are reluctant to endorse the Commission's timeline for future enlargement steps. Against this backdrop, it is imperative to consider further improvements to the accession process of WB states to the EU.

This paper proposes improvements and innovations in four central fields of the accession process:

1. A new methodology for membership negotiations;
2. More funds for the accession process, linked to effective conditionality;
3. A better use of the Stabilisation and Association Agreements (SAA) as frameworks for a faster adaptation to single market rules and for faster economic development;
4. A focus on the rule of law as the ultimate readiness test for EU membership.

¹ Documents available at the following link: https://ec.europa.eu/commission/state-union-2017_en





2. THE “RESURRECTION” OF THE EU’S ENLARGEMENT POLICY

The so-called *new approach* in the EU Enlargement policy, applied since 2012 towards the WB candidates, has transformed what was formerly known as *the most successful EU policy* into a kind of open-ended process, with no clear conclusion in sight. Some observers have compared the situation to the long, protracted negotiations with Turkey and even ironically described the situation as a *Dead Man walking, in need of Resurrection*.² From a position that made clear *there will be no EU Enlargement during his mandate in 2014*, EC President Jean-Claude Juncker has lately changed his tone as he approaches the end of his term. At the point when accession negotiations with Turkey had stalled and the UK’s exit from the EU appeared inevitable, the new prominence of the enlargement policy in Brussels came as a surprise. A further expansion of the EU did not feature in any of the reflections on the future of Europe expanded on by the EC President before September 2017.³ Suddenly he announced that the year 2025 might be a possible target date for a new enlargement circle and named Serbia and Montenegro as *front-runners* (they are also the only two WB countries currently engaged in accession negotiations with the EU).⁴ Juncker thus responded to the frequent request coming from the WB region for a more concrete and expedient trajectory towards EU membership. He evidently also had other motivations, such as providing an additional push toward stabilising the region as well as maintaining the influence of the EU in a time of heightened geopolitical tensions with Russia and other powers. However, Germany, arguably the EU’s most influential member in the field of enlargement policy, immediately took issue with the setting of prospective entry dates for the two *frontrunners*, insisting that this is not a helpful approach as it could diminish the candidates’ compliance with the conditionality for membership.⁵ French President Emmanuel Macron added to these doubts around the feasibility of the Commission’s renewed enlargement drive when, in a major speech to the European Parliament in April 2018, he argued that new members should enter the EU only after it had itself achieved more internal consolidation.⁶ He confirmed this position in the EU-WB Summit in Sofia in May 2018⁷. Thus the jury is still out as regards the credibility of the EU’s enlargement policy.

2 Vedran Džihčić, “EU Enlargement – Dead Man Walking in Dire Need of Resurrection”, *European Western Balkans*, December 9, 2016. <https://europeanwesternbalkans.com/2016/12/09/mle-eu-enlargement-dead-man-walking-in-a-dire-need-of-resurrection/>.

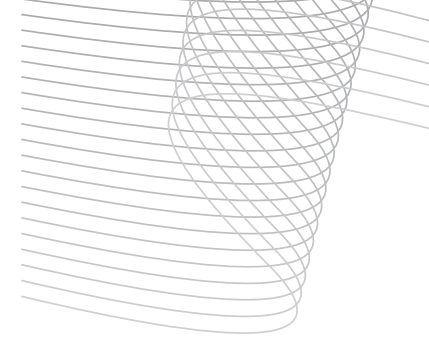
3 European Commission, *White Paper on the Future of Europe, Reflections and Scenarios for the EU 27 by 2025*, COM (2017) 2025, Brussels, March 1 2017, 32.

4 European Commission, *President Jean Claude Juncker’s State of the Union Address 2017*, Brussels, September 13, 2017, http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm.

5 German government spokesman Steffen Seibert emphasized that *it is clear* that the candidates have to implement a number of reforms in their countries so that there *will no such thing as automatic entry* into the Union at previously set dates.
See more on: <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2018/02/2018-02-05-regpk.html>

6 In a debate with the members of the European Parliament speech in Strasbourg, April 17th 2018, See more on: <http://www.euractiv.rs/vesti/36-eu-i-zapadni-balkan/12538-junker-ne-elim-da-se-rat-vrati-na-balkan.html>

7 “Macron warns against hasty EU enlargement”, *Financial Times*, <https://www.ft.com/content/c09472ce-59cb-11e8-bdb7-f6677d2e1ce8>



2.1. The EU accession process – state of play

While the economic and social problems of WB countries are often similar, their political and international situations are different, as are their levels of advancement in the EU accession process. Since the Feira summit in Portugal in 2000, all WB countries are considered as *potential candidates* for EU membership. Macedonia applied for EU membership in 2004, Montenegro in 2008, Serbia and Albania in 2009 and Bosnia and Herzegovina in 2016. Macedonia obtained the status of *official candidate* in 2005, Montenegro in 2010, Serbia in 2012 and Albania in 2014. Since Kosovo* is not recognised by five EU member states (Spain, Greece, Slovakia, Romania and Cyprus), it cannot apply for EU membership under Article 49 of the Treaty on the EU. However, Kosovo has signed the Stabilisation and Association Agreement limited to those areas that fall under EU competences, thereby not requiring ratifications by EU member states. In the EU official language, it has a *European perspective* as well. Only Montenegro and Serbia have started accession negotiations, in 2012 and 2014, respectively. By May 2018, Montenegro had opened 30 negotiating chapters and closed three. Serbia had opened 12 chapters and closed two.

Therefore, there are effectively three WB *groups* with regard to their position/progress in EU negotiations process: 1) *frontrunners*: Montenegro and Serbia; 2) *midfielders*: Macedonia and Albania; and 3) Bosnia and Herzegovina *in the rear*.

2.2. The new European Commission Enlargement Strategy

On February 6, 2018 the European Commission (EC) adopted an initiative in a Communication titled *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans (hereinafter: The EU Enlargement Strategy)*.

In the *EU Enlargement Strategy*, the Commission cautiously states that, among other things, a 2025 perspective *is extremely ambitious* and that none of the Western Balkan countries meets the Copenhagen criteria today, although significant progress has been made during the last decades. The EC also insists that *much remains to be done across the board to align with the EU's acquis*, that the WB countries *show clear elements of state capture* and finally, that *none of the Western Balkans can currently be considered a functioning market economy nor to have the capacity to cope with the competitive pressure and market forces in the Union*. However, the EC also highlights the progress achieved by WB countries, in particular that *significant progress has been made both on reforms and on overcoming the devastating legacy of war and conflict*.

The EC does not deal much with the positive achievements of the WB reform process, but stresses that the countries have a historic window of opportunity for EU accession which will be *a merit-based process fully dependent on the objective progress achieved by each country*. The EC also points to the close link between future enlargement and the possible process of EU reforms until 2025: *The Union must be stronger and more solid before it can be bigger*.⁸ The process of enlargement is, as underlined by the EC, in the political, security and economic interests of the EU itself.

The focus of the EC document is on the fundamental conditions that WB countries should fulfil in the sectors of rule of law, economy and regional cooperation, as well as EU-enhanced support to the region in fulfilling the basic conditions. Therefore, the document and its annex

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

8 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM (2018) 65 final*, Strasbourg, February 6, 2018, 2, 15.



contain six flagship initiatives (with 57 main actions) aimed at different actions supporting the rule of law and security policies, economic policies (including connectivity and digital agenda) and measures on reconciliation and good-neighbourly relations.⁹

2.3. Positive and missing elements in the EU Enlargement Strategy

It is no secret that some EU Member States have received the EC's new proposals with mixed feelings. While there is no formal opposition to enlarging the EU to include the WB at some point in the future, a number of member states oppose the idea of fixing the possible dates of accession. This is because they consider the WB to be unready. Also, the internal situation in the EU plays a strong role: a rather large proportion of public opinion opposes enlargement, the Brexit process is at the centre of attention, and the future of EU reforms is unclear. Probably for these reasons, the EC's document carefully avoids being too specific with regard to the deadlines, including the potential date of the next enlargement in 2025.

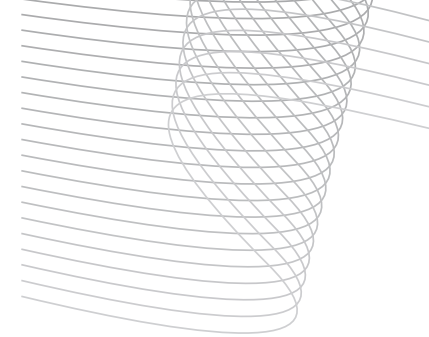
Secondly, the EC's proposals do not go far enough in regard to opening some of the EU policies and/or institutions to the WB candidates as future members. Even the idea of including WB representatives in some of the discussion fora dealing with the future of the EU is missing.¹⁰ The Commission has pulled back from the idea of enabling the WB candidates to participate, informally, in EU policy discussions leading to official Council meetings. WB countries have a strong interest in many EU policy fields as they are greatly affected by their outcomes, such as security and defence, justice and home affairs, migration, energy, transport, digital policy, social policy, education, research and innovation, etc. The EU has evidently not shifted its strategic approach in order to avoid a future rigid separation between being "in" (member states) and "out" (WB states as potential future members) when it comes to shaping policy.

This fact is even more important as regards access to EU structural funds and other financial means. Even though the WB are often cited as an integral part of the future EU, and although their need to boost development is well recognised, there is little readiness to energetically address these issues. The EU provides much more financial support to those countries in the Balkans and elsewhere that are more developed (such as Bulgaria, Romania and Croatia) than to those parts of the region that are in dire need of investment grants. This is explained by the fact that the WB are not formally part of the EU.¹¹ While recognising the crucial issue of economic and social development in the WB, the EU Enlargement Strategy is hardly changing in the matter of financial support. The region is not included in Juncker's Investment Plan for Europe or the European Investment Bank's European Fund for Strategic Investment (EFSI). At the same time, the region is mentioned as a part of the Connecting Europe Facility. There is no notion to include the WB countries into structural and cohesion funds before accession. The EU Enlargement Strategy does mention the possibility of reallocating some of the existing funds *in so far as reallocations within the existing Instrument for Pre-Accession Assistance envelope allow,*

9 European Commission, *Annex to the Communication, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, COM (2018) 65 final, Strasbourg, February 6, 2018, 6.

10 Following the Bratislava declaration (16.9.2016) on *post-Brexit* EU reforms, French president Macron has proposed a large political and citizens' debate in all EU countries on the future of Europe (*citizen conventions*). For its part, the European Council has set the debate on EU reforms under the name of *leaders' agenda* from October 2017 till June 2019. See: European Council, *Leaders' Agenda*, October 2017, <http://www.consilium.europa.eu/media/21594/leaders-agenda.pdf>.

11 For the period 2014-2020, the WB region (18 million inhabitants) will receive 4.5 billion € of IPA funds, compared to 10 billion in structural funds for Bulgaria (seven million inhabitants). See: Erwan Fouere, "A decisive year for the EU's re-engagement with the Western Balkans", *Policy insights*, No. 2018/01, January 2018.



but stops short of offering additional financial incentives to the weak economies of the WB.¹² In comparison to WB enlargement, Romania and Bulgaria, even though not included in structural funds before accession, received significantly higher amounts of assistance in their last years of accession. In the period of three years before accession (2004-2006), Romania and Bulgaria received 3,078 million € and 1,319 million €, respectively (in 2004 prices).¹³ Compared to Serbia, a WB country of similar size to Bulgaria, Bulgaria received annually around twice the amount of assistance Serbia receives today. This shows a different EU approach in two similar situations.

While the EC rightly concentrates the bulk of its actions in six flagship initiatives towards economic and social development (including connectivity and the digital agenda), it is manifest that most of these actions have already been included in one way or another in existing EU policies towards the WB. We estimate that only 4 out of 14 actions under 'flagship initiative 3 – supporting socioeconomic development', can be considered as meaningfully new; and maybe only 1 out of 11 actions under 'flagship initiative 4 – increased connectivity' involves any additional financing.¹⁴

Despite its often-ambiguous wording and limited ambitions, there is no doubt that the new EC Communication provides a significant opening. It has brought enlargement back into the EU policy mainstream as a part of its agenda for a new Europe in the year 2025. It offers the chance to boost pro-European and pro-reform forces throughout the WB region. This is particularly true for Serbia, where even though a pro-EU stance is in the majority according to public polls,¹⁵ the Euro-sceptic sentiment is probably the strongest in the WB region¹⁶. The inclusion of a potential date for further enlargement constitutes a sharp turn in the EU approach because, for many years, it was accepted wisdom in the *old* EU member countries that fixing an entry date for Bulgaria and Romania (January 1st, 2007) diminished the compliance of these two countries with membership criteria. Whatever the case, the year 2025 could now serve as a target date for the planning and implementation of reforms in Serbia and Montenegro and other (potential) candidates. Putting into effect these reforms will soon become the test for the existence of genuine political will in the region for political and economic change.

It is also important that the EC has reaffirmed the *merit-based* approach to enlargement because the differences in the achieved levels in the accession process among the WB countries have become too great. The alternative approach (the inclusion of all the WB as a group) would mean further delays and would certainly have a demoralising effect on the *frontrunner* countries.

The EC is certainly right to insist on three crucial conditions linked to WB accession progress: proof of action (track record) on the part of the WB governments to foster economic and social development, the rule of law, and regional cooperation. The EU's insistence that the political leaders in the WB must respect the rule of law and fundamental rights is one of reasons why the population of the region still shows strong support for EU membership. Reforms and their implementation in this sector need time, so it is of paramount importance that the process is already running. The EC is also right to ask political leaders of the region to unequivocally ex-

12 See proposals in Matteo Bonomi and Dušan Reljić, "The EU and the Western Balkans: So Near and yet so Far", *SWP Comments*, 53, December 2017.

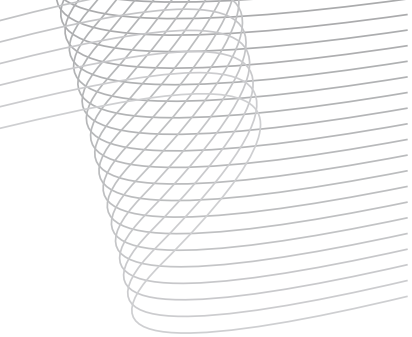
13 Gabriela Dragan, "Romania's accession to EU: Challenges and Opportunities. Romania between the Lisbon Agenda and the necessity to increase its absorption capacity", *EUJ Workshop, "EU Enlargement and Its Economic Impacts on Transitional Countries"*, 2006, 18, http://euij-tc.org/pub/research_papers/20061211_Economy_WS/EUIJ_Gabriela_Dragan_Romanian_accession_to_EU_Challenges_and_Opportunities_final_paper.pdf,

14 European Commission, *Annex to the Communication, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, *op.cit.*

15 Public polls made by the Ministry for EU integration of Serbia are available at: <http://www.mei.gov.rs/eng/information/public-opinion/>

16 Regional Cooperation Council, "Public Opinion Survey Balkan Barometer 2017", Year 3, Number 3, Sarajevo, 29, https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf





press their position regarding the region's participation in European integration. However, the EU Enlargement Strategy has not fundamentally changed the EC's approach to enlargement in the last decade or so. As the EC is avoiding stating clearly when the WB will join the EU and is not offering new incentives and instruments, including financial ones, to facilitate the process, its message is vague and relies on repeating that *the Western Balkan countries will be able to join the European Union once the foreseen criteria...are met*. Therefore, the ball is, once again, in the court of the WB countries. They are expected to deliver on well-known conditions, with some reconfigured EU support.

In addition, it is not clear how much the EU will be ready to *put its money where its mouth is* as its flagship initiatives include more so-called *soft measures* (adoption of policies, new institutions, etc.) while they are ambivalent on the issues of additional financing.

Moreover, there are no major innovations and answers to the question of how to expedite the inclusion of WB countries that are not yet candidates. It remains to be seen whether a vague promise of *European perspective* and six flagship initiatives will be enough for the exercise of the *transformative power* of the EU with regard to the whole of the WB region. While the conditionality policy has been applied for years, experience has shown that conditionality will not on its own help some WB countries to break from the social and economic blockades that have prevented greater progress.

3. THE EU MUST BE MORE AMBITIOUS IN MAKING POSSIBLE

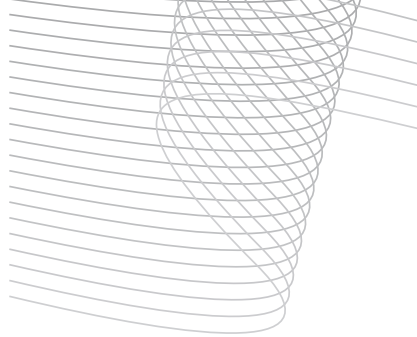
It is conceivable that the new EU Enlargement Strategy combined with some improvements of existing accession instruments may be sufficient for speeding up the accession of the two *frontrunners*, Serbia and Montenegro. However, it will by no means suffice for the rest of the WB. It is obvious that changes in the way the EC manoeuvres the enlargement process are required. High on the reform agenda of the enlargement process should be the institution of a new methodological approach to opening and running negotiations.

Over the years, the negotiating procedure has become more and more cumbersome, fragmented and, *de facto*, a tool to slow down and protract the process of accession. This trend must be reversed.

This chapter deals with possible innovations and improvements to the accession process. The proposals contain an improved methodology of accession negotiations with the purpose of moving quickly toward the opening of chapters. The bulk of reforms should be shifted to the period after a chapter is opened. This could give more support to pro-EU-oriented forces in the WB and create a push for an internal reforms agenda, showing that accession negotiations are moving forward, and that the EU offer of membership is valid and standing.

Current accession negotiations, apart from being too slow, are overly bureaucratic and segmented. This allows for negotiations to run for an indefinite period, draining the energy and capacity of a candidate country and thereby actually reducing its reform capacity and undermining pro-EU forces. There are at least 76 instances when any EU member state can stop the accession of any candidate country.¹⁷ The motives behind an EU member halting the process might not be related to a particular chapter or even connected to the *acquis* or EU membership.

¹⁷ Not taking in to account the variable number of opening benchmarks that, depending on the candidate country, would add in some cases up to 10 more instances when unanimity in EU is required for a candidate country to proceed.



For the frontrunners, Montenegro and Serbia, setting an indicative date of accession for 2025 is the most important gain from the new EU Enlargement Strategy, since this was the fundamental element missing on their road to the EU. Nevertheless, changing the way accession negotiations are run in line with the proposals of this paper could facilitate their accession in that period. For the rest of the WB not covered by the 2025 perspective, changing the accession process in accordance with proposals from this analysis is a necessity so as to give them a credible EU perspective in the foreseeable future. As already stated, the proposals cover these elements of the accession process: a new methodology for membership negotiations; more funds for the accession process linked to effective conditionality; better use of the Stabilisation and Association Agreements as frameworks for a faster adaptation to single market rules and for faster economic development; a focus on the rule of law as the ultimate test for EU membership.

3.1. New methodology of negotiations

The methodology of accession negotiations has been substantially changed since the Eastern enlargement in the years 2004 to 2007. It has over time become more and more segmented, making accession more complex. New steps and conditions have been introduced, such as opening, interim and closing benchmarks, as well as decoupling the granting of candidate status from the setting of a date for opening accession negotiations. In order to make accession credible and to make it achievable within a reasonable period (10-15 years of accession negotiations is not a reasonable period), new instruments and a new approach will have to be introduced that bring stronger engagement in and commitment to the process, both from acceding countries and the EU itself.

The EU Enlargement Strategy envisages a more precise and detailed approach for the two countries that have already started the negotiations. To be truly credible, the EU Enlargement Strategy should have considered improving the overall methodology and opting for a bold political approach to the other WB countries.

Our proposal is to introduce roadmaps (RMs) with clear deadlines identifying key milestones for reaching the next phase in the accession process. The RMs should precisely prescribe the steps to:

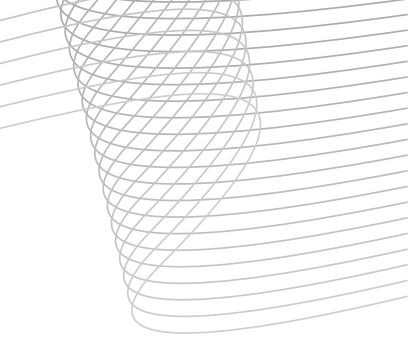
- obtaining candidate status;
- opening negotiations;
- ending the negotiation process successfully.

An accession period (calculated from receiving the *avis*/candidate status) that runs for four full terms in office of a government (a term in office is four years) is not a realistic timeframe. Enlargement is being displaced by other political events. It is not realistic to expect countries to maintain the momentum of reforms and to retain the requisite administrative capacities and expert professionals in the same jobs over such a long period.

Specific RMs would depend on the status of a country and its level of reform achievement. They would aim to provide clear guidelines and an estimated timeframe, thus facilitating both the reform process and tracking accession and reform progress.

This proposal relies on the positive experience of the visa liberalization process in 2009-2010. This project proved that where there are clear requirements for each step on the way to the abolishment of visas, countries act promptly to fulfil their obligations.

The design of an RM should not be the task of the EC alone; it should involve the acceding country as well. Jointly defining the timeline and milestones would make the enlargement process a joint endeavour of the EU and the candidate/potential candidate country at every stage. This method would strongly improve its credibility.



RMs, however, would in no way be a *carte blanche* or a shortcut. Nothing should change regarding the necessity of the acceding countries to fulfil criteria. The enlargement process should remain merit-based and the possible membership date would only be indicative, not cast in stone. Depending on the progress noted in the Annual Report, the indicative date could also be postponed, if necessary. RMs would be used to streamline the conditionality policy and to avoid different interpretations of the conditionality. In this way, the EU commitment and the acceding country's readiness for reforms would be strengthened. This would also make negotiations more transparent from the point of view of the general public, which is often confused by the language of accession that is sometimes too complex, technical, and open to political spin. More transparency is necessary if civil society is to play the role of watchdog by monitoring whether reforms are actually implemented or just simulated by the Government, while *laws remain just on paper, not in practice*.

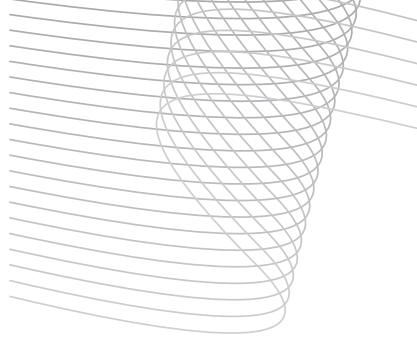
3.1.1. The roadmap towards candidate status and opening of accession negotiations

By jointly preparing a roadmap identifying the activities and milestones in obtaining candidate status within a reasonable timeframe, the EU and the acceding country are given the capacity to thereafter outline subsequent steps for beginning negotiations (e.g. setting the date of the opening of accession negotiations).

This proposal is intended to enrich the existing methodology, which tends to be quite precise and carefully prepared by EC expert teams. It does not, of course, substitute the preparation of the Responses to the Questionnaire, which provides a comprehensive assessment of the situation in a country and the level of compliance with EU membership criteria. It also includes a definition of the time necessary for the delivery of the questionnaire and preparation of responses. Since a number of countries during previous accessions have faced additional criteria for attaining candidate status (getting the so-called conditional *avis*) and only gradually approached candidate status, it would be possible to list the criteria for acquiring candidate status with the potential time needed for their realisation, identified in consultation with the acceding country.

The RM would also identify a jointly assessed deadline as a feasible date for obtaining candidate status. All dates provided would only be indicative and would not oblige the EU to accept candidacy if the conditions are not met. It would, however, enable both sides to plan ahead. On the one hand, the EU could substantiate its decision with concrete achievements/objections. On the other, the applicant would have a clear incentive to respect the timeline and deliver on conditions. The public in the applicant country would also be able to follow what the requirements are and how the government intends to fulfil them. The RM would identify key milestones and dates, such as preparing responses to the questionnaire, fulfilling additional political criteria, etc. So far, experience has shown that the key priorities in this phase usually refer to the political criteria and more specifically to the adoption of legislation, strategic documents and only to some degree to their implementation. The timeframe for obtaining candidate status would be defined once the Questionnaire has been successfully submitted, and once the next sequence of steps/reforms necessary by the acceding country has been defined by EC *avis*.

This approach would energise the process and prevent the unwanted and unnecessary delays experienced in an open-ended process without indicative timeframes. For instance, Serbia applied for membership in December 2009, received the Council decision in October 2010, and promptly received the Questionnaire from the EC in November of the same year. However, although the final set of replies was sent in April 2011, the Opinion provided by the EC was only made available in October 2011. It recommended candidate status and the opening of negotia-



tions once sufficient advance in the dialogue with Pristina was achieved. The opinion assessed compliance with political and economic criteria as well as obligations stemming from the SAA and noted sufficient progress for the next phase. Only in March 2012 did the European Council grant candidate status to Serbia. The proceedings lasted two and a half years. Negotiations then began in January 2014, almost two years after candidate status was granted, amounting to more than four years from application submission. In April 2013, the EC recommended the opening of accession negotiations in a report that assessed the degree of compliance with the membership criteria and notably the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo. The report assessed these steps, but also analysed essential reforms in the area of the rule of law; this includes judiciary reform, anti-corruption efforts, the fight against organised crime, the independence of institutions, media freedom, anti-discrimination and the business environment. The report concluded that Serbia had made significant steps in meeting the key priority – visible and sustainable improvement in relations with Kosovo – and recommended that negotiations for accession to the EU be opened. Based on this recommendation and the Council decision in June 2013, European leaders decided to start accession negotiations with Serbia in January 2014. The annoying delay was obviously closely connected to the somewhat indecisive nature of how “sustainable and visible normalization of relations with Kosovo” was interpreted in Brussels and the EU member state capitals at different stages.

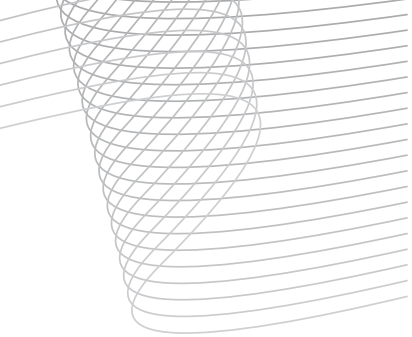
Montenegro is an example where the EC proceeded “by the book”. The application for membership was submitted in December 2008, the Questionnaire received in 2009 and candidate status granted in December 2010. For Montenegro to reach the next step (opening of membership negotiations), the EC identified seven key priorities in its November 2010 Opinion, declaring that their achievement would mark the *necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing the rule of law*. Already in the following year, in the then EU Enlargement Strategy, the EC concluded that Montenegro had achieved the priority obligations and that negotiations could begin. The recommendation was repeated in the 2012 spring report, and later (in June 2012) endorsed by the General Affairs Council and the European Council.

Macedonia applied for membership in 2004 and was granted candidate status in 2005. However, negotiations never started because of the Greek veto. Athens used the veto to extract concessions from Skopje in the bilateral dispute over the so-called name-issue.¹⁸ Albania applied for membership in 2009 and was granted candidate status in 2014. Both countries are, as of spring 2018, awaiting a date for accession negotiations to be set.

As seen from the examples of Serbia and Montenegro, the process is already highly segmented and conditioned. The EC puts a lot of effort into providing guidelines, which are more or less clear. Presently, some kind of timeline exists in the current methodology, since the Opinion on membership gives an assessment of when the criteria could be fulfilled defining which efforts need to be aligned with the EU *acquis* in a medium-term period (determined as a five-year period) or identifying issues where efforts are needed beyond the medium term.

It is now customary for the EU to grant candidate status without setting the date for accession negotiations, thereby introducing new steps into the process. The amount of time between applying for membership and the opening of accession negotiations was more than four years for Serbia and three and a half years in the case of Montenegro. Thus, in Serbia it took more than an entire government term of office (four years). The same applies in the cases of Macedonia and Albania. Therefore, a structured RM for reaching the next stage of accession would allow for a smooth transition of the reform agenda from government to government and thereby generate less distortion.

¹⁸ Geographically speaking, the term *Macedonia* also comprises territories in northern Greece and Bulgaria. Athens insists that Skopje designates its state with a different name than *Republic of Macedonia*.



If the EU decides to grant candidate status to a country without simultaneously setting the date for accession negotiations¹⁹, the RM should be reconfigured to clarify the requirements for opening accession negotiations. Progress towards the target date for opening accession negotiations would depend on the fulfilment of set criteria.

To conclude, in addition to the provision of the key priorities that need to be met for a country to be granted candidate status and/or begin negotiations, the EU should provide a reasonable timeframe in the RM, defined in cooperation with the country in question.

3.1.2. Roadmap towards the end of the negotiations

After the opening of the negotiations, an RM should be provided, indicating the end of accession negotiations (indicative dates of the closing of chapters, of the final Intergovernmental Conference, and finally, entry into the EU). The RM would provide guidelines and an estimated timeline for submitting particular negotiation positions, on the fulfilment of the key priorities in chapters 23 and 24, on interim benchmarks for addressing specific requirements within these chapters, and finally on the expected date of conclusion of the negotiations.

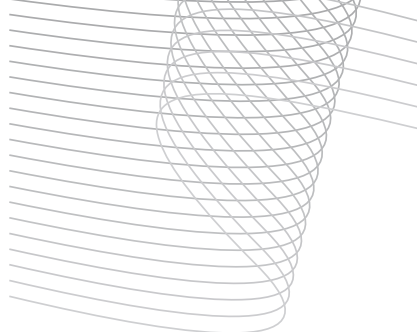
Once again, the predictability of the process would increase the motivation of the actors and make the process more credible. In some cases, the date of accession determines the steps in development of administrative capacities, such as employing thousands of people and training them for EU-related tasks. Examples are the Agency for Agrarian Payments and the structures necessary for accessing cohesion funds. Employing these civil servants too early before accession would be a waste of funds since they would have no proper tasks and would probably leave the service. Employing these civil servants too late would leave the country unequipped to use EU funds for years after the accession.

Strict conditionality should apply. The time perspective would be no guarantee that the country is ready for any individual step in the process if the conditions are not met in reality. Nevertheless, some delays can be avoided. For example, the screening process (namely, issuing and adopting screening reports by the EU) for all chapters ought to be finalised six months after its end. In the case of Serbia, it has usually taken more than a year, and for some chapters, a year and a half. In the spring of 2018, there was still no report 40 months after the two sides had dealt with Chapter 31 (Foreign, Security and Defence policy).

Textbox 1. Improving the screening process

- The pre-screening agenda (i.e. informal screening meetings) for all WB countries should be adopted before opening accession negotiations;
- The overall process of the official screening of the 33 chapters should not last longer than 18 months, plus six months for the screening Report, i.e. 24 months altogether;
- In order to achieve the abovementioned, the EC should strengthen its administrative capacities for dealing with bilateral screenings and chapter negotiations;
- Representatives from all WB candidates and potential candidates should be invited to follow (e.g. through live-streaming) explanatory screening sessions of other candidates. Civil society organisations should be allowed to follow the screening process as part of being equipped to closely monitor the entire negotiation process. This requires a higher level of transparency, particularly on the part of WB governments, but also from the EC.

¹⁹ This has been the practice of EU since 2004.



After finishing the screening process, the EU should set the date when the candidate country can submit its negotiation position. To submit credible negotiation positions, important political decisions must be made by a candidate country. This would demonstrate the country's level of political commitment, planning capability and administrative capacity. It would also allow the tracking of delays in the reform process in the acceding country. For example, in the current process with Serbia, negotiation positions and other relevant documents are heavily behind schedule: three years after the screening was finished in March 2015, Serbia submitted only 17 negotiation positions.²⁰ Yet, since there is no official schedule, nobody questions the speed of the process.

Based on an RM with a defined indicative date of closing negotiations, the candidate country would prepare negotiation positions containing concrete and detailed descriptions of steps/actions/measures necessary to close the negotiation chapters within the envisaged timeframe. This would allow for the development of an overarching accession strategy by a candidate country and for the delivery of all negotiation positions and other required documents (such as action plans where opening benchmarks have been set) at approximately the same time. This would be feasible if EU accession is genuinely a strategic goal of the acceding country and if the EC delivers screening reports in the prescribed time of six months.

Textbox 2. Opening individual chapters

- Chapters 23 and 24 should be screened for all WB partners before the formal start of accession negotiations;
- No candidate country should wait two years for the opening of the first chapters after the start of negotiations, as happened with Serbia;
- As was the case with enlargement before 2012, negotiations should start with chapter 25 opened and chapter 26 closed as a way to stimulate the process;
- Deadlines should be imposed on candidate countries for preparing documents needed for fulfilling opening benchmarks (i.e. action plans) and other documents;
- There should be no limits imposed on the number of chapters opened/closed during an Intergovernmental Accession Conference.

The design of the enlargement process puts additional pressure on the limited administrative capacities of the candidate countries. Therefore, on the one hand, the EU should pay particular attention to assisting the building of administrative capacities in the WB. On the other, acceding countries should adopt credible plans, followed by the necessary budgetary arrangements.

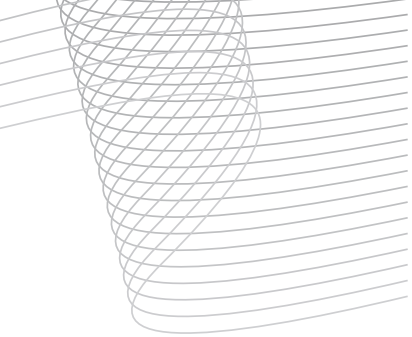
Textbox 3. Transparency

- The negotiation of individual chapters should be more transparent for outside observers and civil society, i.e. the EC should publish regularly, for instance every semester, a report on the negotiating progress for each opened chapter;
- Realistic deadlines for the opening and closing of chapters should be adopted.

After closing a chapter, a candidate country is considered ready for membership in this policy field. Therefore, the EC should invite the associated ministers and experts to participate as observers in meetings of the Council of Ministers and relevant working bodies of the Council.

Having RMs – designed and implemented as explained above – would allow direct and concrete tasks to be set before candidate countries. They would also bring more transparency to

²⁰ Situation in April 2018.



the process and enable civil society to better play its watchdog role. A semi-annual progress report on all chapters still open (as is the case with chapters 23 and 24 today) would also offer more transparency.

Textbox 4. Incentives

A system should be adopted whereby a concrete “bonus” is offered for the achievement of every major step in the negotiation process. Bonuses would be linked to specific financial and institutional incentives envisaged in the EU Enlargement Strategy, such as:

- Official status of candidate country leading to participation in some technical/working groups in the EU Council/EC;
- Closing of an individual chapter leading to participation at specific meetings of the EU Council of Ministers and its working groups;
- Closing of all chapters, but before formal accession, leading to informal participation at the European Council, in addition to informal participation in the meetings of the Council as an acceding country already introduced.

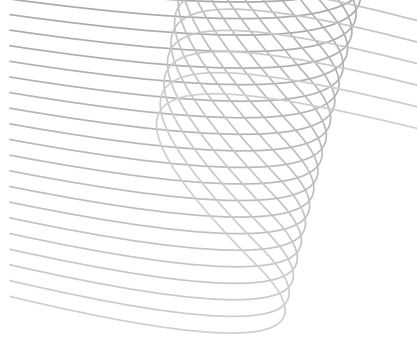
The language in the country reports and all other EC documents, such as the reports on chapters 23 and 24, should be less diplomatic and more straightforward. The vague and sometimes ambiguous language of these reports, despite being fact-based and perhaps comprehensible to experts, is often seen to leave room for different interpretations of certain failures/successes and for political spin. A clearer language would facilitate the domestic monitoring of the process – by media, CSOs and other interested parties – and would also provide clarity to the general public of candidate countries.

If the EU changes its approach and visibly embraces the candidate countries as future members, then the WB should be included, as much as possible, in the work of EU institutions, although obviously without voting rights. Such an approach would enhance the much-needed feeling of ownership of the process, of acceptance and equality, the lack of which is the strongest argument of anti-EU forces in the WB. This approach was used to positive effect with the countries of the Eastern enlargement, when the Constitution of Europe was discussed in the Convention on the Future of Europe in 2001.

This approach would, among other things, mean extending EU policies to include the WB as much as possible. Some of these ideas are already incorporated in strategies like Erasmus+, Digital Agenda and the initiative to increase transport and energy connectivity. Extending the Energy Union would be of particular importance to the WB due to its energy dependence. Through membership in the Energy Community, the WB has already taken on the obligation to adopt EU *acquis* in the energy sector and align its implementation with EU standards. The EU should extend other sectoral strategies, such as industrial policy, to include the WB as well and help in the reindustrialization of the region.

The EU Enlargement Strategy states that in order to ensure effective decision making in the EU it will be necessary to at least maintain and consider enhancing policy areas under qualified majority voting in the Council.²¹ President Juncker in his State of the Union speech of September 2017 proposed a move to qualified majority voting in external relations, concluding that it would not require amendments to Treaties to effect this change. The logic of enhancing policy areas under qualified majority voting in the Council should be used in the enlargement process as well. Extending majority voting to the decision-making process in the field of enlargement would significantly relax the negotiation process and enable faster progress. This would also

²¹ European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018 COM(2018) 65 final, *op.cit.*, 18.



reduce the possibility that individual member states use the enlargement process as a tool for pursuing their own national interest *vis-a-vis* candidate countries. The EU should strictly require that bilateral issues not related to the *acquis* or EU membership be resolved bilaterally, using the International Court of Justice and arbitrations if necessary, and not the accession process, and that existing judgments and arbitration decisions should be respected and implemented. However, unanimity should be maintained for the initial and final decision in the process, namely, to start and to close accession negotiations with an individual country.

Additionally, some recommendations given to the WB should be applied to EU member states as well. In the EU Enlargement Strategy presented by the EC it is stated that the EU will not accept the import of bilateral disputes of countries in the region and the instability they could cause. Definitive and binding solutions must be found and implemented before a country accedes. Some bilateral issues, particularly border issues, exist in the relations between (potential) candidate countries and EU member states, and were imported to the EU in the course of previous enlargements (e.g. border issues between Slovenia-Croatia, Croatia-Serbia, Croatia-Bosnia and Herzegovina, the Cyprus-Turkey dispute). The EU should strictly require that resolving open issues is a duty of acceding countries (among themselves) including those between EU members states and acceding states, and that problems should be resolved using international arbitration and/or the International Court of Justice as final instances in dispute settlement if they cannot be resolved bilaterally.

3.2. More funds for accession with effective conditionality

The discussion regarding WB accession often entails the issue of the availability of EU funds to the candidate countries before they are members. A majority of commentators consider it necessary to increase pre-accession funds for WB countries. Some authors proposed that the EU should find ways to open structural funds to the candidate countries even before membership.²² The current low level of economic development of WB countries and the slow pace of economic convergence with the EU are the major arguments for this position. The GDP per capita in the WB is roughly half that in Eastern European EU countries, one-third that of Southern EU members and a mere quarter of the richest EU members in Western Europe.²³ Additionally, between 2005 and 2015, WB countries recorded a trade deficit with the EU of 94 billion €, paralleled by increasing foreign debt²⁴. In the case that the economies of the WB region continue their current growth rates, it would take over half a century for them to converge with EU standards of living.²⁵ One of the key requirements for economic convergence and catching up with the EU is a boost to investment in the region – especially in all fields of infrastructure. Increased EU funds should be one of the major sources of these investments to ensure the economic convergence of the WB region.

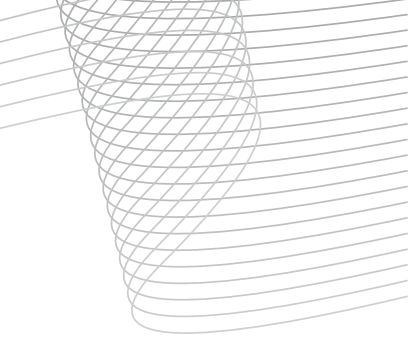
The new EU Enlargement Strategy stipulates that the implementation of the Strategy will require increased funding. The EC envisages a gradual increase of Instrument for Pre-Accession

22 Matteo Bonomi and Dušan Reljić, "The EU and the Western Balkans: So Near and Yet So Far Why the Region Needs Fast-Track Socio-Economic Convergence with the EU", *SWP Comments* 53, German Institute for International and Security Affairs, December 2017, https://www.swp-berlin.org/fileadmin/contents/products/comments/2017C53_rlc_Bonomi.pdf

23 Peter Sanfey, Jakov Milatović and Ana Krešić, "How the Western Balkans can catch up", *EBRD Working Paper No. 186*, 2016

24 Matteo Bonomi and Dušan Reljić, "The EU and the Western Balkans: So Near and Yet So Far Why the Region Needs Fast-Track Socio-Economic Convergence with the EU", *op.cit.*

25 International Bank for Reconstruction and Development / The World Bank, "Western Balkans: Regional Economic Integration Issues Notes", Washington, June 2017, <http://pubdocs.worldbank.org/en/471351498823233178/1-WB6-Regional-Economic-Integration-Issues-Notes-29-June-2017-final.pdf>



Assistance (IPA) support for the Western Balkans until 2020 in so far as reallocations within the existing IPA envelope allow. Increased funding in both the current and in the next Multi-annual Financial Frameworks (MFF)²⁶ should be linked to progress in implementing fundamental reforms and good-neighbourly relations.²⁷ Currently, WB countries receive pre-accession assistance from IPA II from 0.27%²⁸ of GDP (BiH) up to 1.48%²⁹ of GDP (Kosovo) per year.³⁰ There is room for a substantial increase in the current pre-accession assistance for WB countries without risk of endangering their macroeconomic stability. This increase should start with the new MFF 2021-2027 with the goal of reaching 2% of individual WB countries' GDP in the year of their accession to the EU.

It will be of the utmost importance to see how the new pre-accession instrument for the next MFF 2021-2027 is designed, and how WB countries will develop their absorption capacities. According to the findings of the External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014 to mid-2017), Albania, Macedonia, Montenegro and Serbia are managing allocated IPA funds partially under indirect management. Bosnia and Herzegovina and Kosovo are using IPA funds under direct management.³¹ Inefficiencies in the implementation system in the case of indirect management have generated chronic delays in the disbursement of the monies. The findings indicate that EU Delegations' performances are most often close to the planned benchmarks and are mostly dependent on the absorption capacity of beneficiaries.³² The absorption capacity of the WB countries is obviously underdeveloped, even at this level of EU pre-accession assistance, and still depends on EU administrative structures or technical assistance projects. The potential increase of EU funds without proper capacities to absorb available monies would create frustrations. A situation could be imagined in which funds could not be absorbed adequately so that results would not be delivered at a time of increased expectations outlined in the EU Enlargement Strategy. Taking into account lessons learned from previous enlargements, it is necessary to develop the absorption capacity of candidate countries in a timely manner in order to avoid this situation.

It is important to recall the joint initiative submitted by the National IPA Coordinators of the WB countries to the EC in 2011. They proposed a new design of the pre-accession instrument within the MFF 2014-2020.³³ The proposal was based on the idea that WB countries should receive increased EU funds early enough in the accession process (linearization of EU funds) to enable them to access international bond markets on more favourable terms. The proposal included the establishing of a Western Balkan Guaranteeing Fund (WBGf). As a result, WB countries would be better prepared to absorb these funds, with a fluid and continuous pipeline of

26 Commission proposed 20% increase for IPA fund in the MFF 2021-2027. See: European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Modern Budget for a Union that Protects, Empowers and Defends*, Brussels, 2.5.2018 COM(2018) 321 final, 19-30.

27 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018 COM(2018) 65 final, *op.cit.*

28 Own calculations based on data from Eurostat and DG NEAR (GDP and IPA II allocations for year 2016).

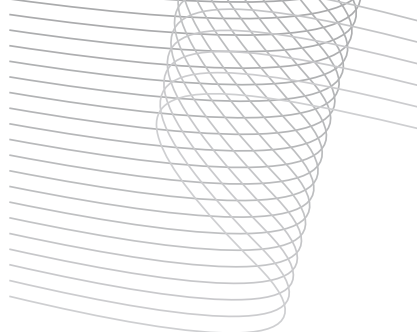
29 *Ibid.*

30 For example, the ceiling for cohesion funds for EU member states is 2.35% of GDP within MFF 2014-2020

31 Direct management: the European Commission manages funds through its departments, EU Delegations or through EU executive agencies. Indirect management: EU funds are implemented by national authorities, international organisations or development agencies of EU countries.

32 European Commission, "External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014 to mid-2017) Final Report Volume 2: Annexes", June 2017, 116, https://ec.europa.eu/europeaid/sites/devco/files/ipa-ii-eval-vol-ii-annexes_en.pdf

33 A document initiated and prepared by Office of the Deputy Prime Minister for European Integration, Mr. Božidar Đelić, Deputy Prime Minister for European Integration and NIPAC and Mr. Ognjen Mirić, Coordinator for EU funds.



projects, thus preparing for future Structural Funds management.³⁴ Proposals within the aforementioned initiative are even more relevant today for the planning of pre-accession assistance within the MFF 2021-2027 in light of the new EU Enlargement Strategy.

The linearization of EU funds is based on the experiences from previous rounds of EU enlargement, which showed the need for earlier access to more EU funds before accession, and better sequencing of EU funds to maximize absorption and impact. Additionally, it envisages that pre-accession assistance should increase significantly as accession approaches, while a compensatory reduction in the amount of structural funds available to the country after accession should follow. A gradual increase of EU funding in the pre-accession phase, within the MFF 2021-2027, would enable the WB countries to be much better prepared for accession by transforming their economies and in particular, by modernizing their infrastructures, thereby enabling the fulfilling of *acquis* standards. The linearization of pre-accession assistance funding, besides increasing national programs allocations, could also be achieved through:

- increasing funds for Cross-Border Cooperation Programmes (extremely important for regional cooperation among WB countries and for impact on living conditions at the local level);
- increasing funding through the Western Balkans Investment Framework;
- establishing new investment facilities for EU macro-regional strategies, such as a Danube Investment Framework to implement the Danube Strategy.³⁵

Flagship initiatives that have been annexed to the EU Enlargement Strategy do not emphasize rural development as a sector where additional funds should be allocated. However, considering the importance of the agriculture and rural development sector to WB countries, this sector should receive increased funding in the 2021-2027 financial plan.

In order to ensure that WB countries meet EU standards, large investments in infrastructure, such as environmental facilities, are needed. Taking into account how the fiscal balances of the WB countries deteriorated after the global financial crisis, leading to a significant increase in public debt, the aforementioned proposal of National IPA Coordinators of the Western Balkan countries for establishing the Western Balkans Guarantee Facility (WBGF) seems more than relevant today.³⁶ This facility would enable WB countries to access international capital markets on more favourable terms. Access to the WBGF would be granted to the WB countries only after they satisfy additional conditions related to fiscal discipline and sustainability of public finances.³⁷

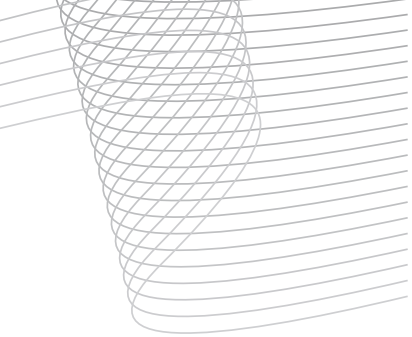
In addition to securing an increased amount of pre-accession funds to enable the countries to reach EU standards, it is necessary to build, strengthen and maintain their capacities to manage these funds according to EU standards and future membership requirements. Since it does not appear likely that there will be an increase in funding up to the end of the current MFF 2014-2020, it would be wise to use this time to prepare WB countries for efficient management of increased funds in the new MFF 2021-2027. Several conditions need to be fulfilled in relation to

34 The joint initiative of National IPA Coordinators of the Western Balkan countries consisted of the following five proposals: linearization of EU funds to Western Balkan beneficiary countries; greater NIPAC ownership over project identification; simplifying and aligning IPA fully with the Structural Funds model; early adoption of the strategic and institutional framework for 2014-2020; ensuring candidate countries are strongly positioned fiscally to enter the EU

35 Source: A document initiated and prepared by Office of the Deputy Prime Minister for European Integration, Mr. Božidar Đelić, Deputy Prime Minister for European Integration and NIPAC and Mr. Ognjen Mirić, Coordinator for EU funds.

36 International Bank for Reconstruction and Development / The World Bank, "Western Balkans: Regional Economic Integration Issues Notes", Washington, June 2017, *op.cit.*

37 Source: document initiated and prepared by the Office of the Deputy Prime Minister for European Integration, Mr. Božidar Đelić, Deputy Prime Minister for European Integration and NIPAC, and Mr. Ognjen Mirić, Coordinator for EU funds.



this issue. First, it is of the utmost importance to prepare the new financial pre-accession instrument in time for the MFF 2021-2027. The instrument will mirror more closely the requirements under future structural funds management (especially in programming, financial management and control). By using increased amounts of pre-accession funds according to the requirements of the structural funds modalities, WB countries could build and strengthen the absorption capacities necessary for the management of these funds upon accession. Second, it is important that WB countries secure a continuous pipeline of projects in order to absorb increased funds. This is especially important for the preparation of infrastructure projects, for which preparation is time- and resource-consuming.

Finally, WB countries should address one of the major issues in the efficient use of EU funds for the recruitment and retention of the staff qualified to manage EU funds. Management of the EU pre-accession and structural funds requires the timely availability of experienced, skilled and motivated staff. A decline in a country's absorption capacity will occur if the turnover of staff engaged in EU funds management within the administration is high. Therefore, beside conditions stipulated in the Enlargement Strategy regarding the amount of available funds, candidate countries should be required to define and implement an efficient and sustainable staff recruitment and retention policy aimed at reducing the turnover of staff dealing with EU funds management.

3.3. Better use of SAA as frameworks for the adaptation to single market rules and for economic development

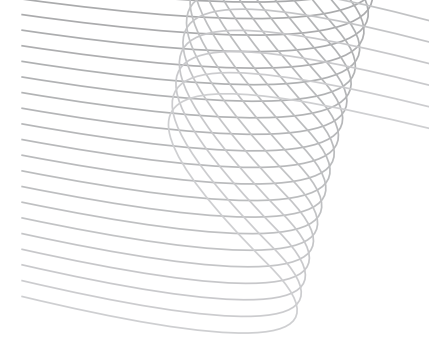
The EU Enlargement Strategy sets out an Action Plan with six Flagship Initiatives targeting rule of law, security and migration, socioeconomic development, transport and energy connectivity, digital agenda, reconciliation and good-neighbourly relations. The document complements the MAP for a Regional Economic Area agreed by the leaders of the Western Balkans Six in July 2017.³⁸ The Strategy suggests the strategic steps needed to be taken by Serbia and Montenegro to complete the accession process with a 2025 perspective, which is dependent on *the delivery of real and sustained reforms*.³⁹ It points to implementation of the SAA and legal approximation with the EU single market rules as tools for a progressive integration of the regional market into the EU's internal market, and for untapped growth potentials in the WB.⁴⁰ Indeed, certain remarks and initiatives in the EU Enlargement Strategy coincide with (or otherwise complement) the part of the SAA named *Approximation of laws, law enforcement and competition rules* (or the *Approximation Title*). In order to better utilize existing SAAs as tools for better approximation with single market rules and economic development, changes can be made to the policy approach of the EU and WB, particularly regarding implementation of the State aid policy and approximation with the internal market *acquis*.

The problems indicated by the EU Enlargement Strategy coincide with areas that are already regulated by the SAA (competition, state aid, and public procurement clauses) or anticipated through Approximation Title provisions, which prescribe progressive approximation pathways for further elimination of barriers to trade and free movement of services and investments between the EU and the region (approximation in the field of the internal market *acquis*, standardisation, metrology, accreditation and conformity assessment).

38 Regional Cooperation Council, "Consolidated Multi-annual Action Plan for a Regional Economic Area in the Western Balkans Six", Meeting document, Trieste, July 12, 2017, <https://www.rcc.int/docs/383/multi-annual-action-plan-for-a-regional-economic-area-in-the-western-balkans-six>

39 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018 COM(2018) 65 final, *op. cit.*, 2.

40 *Ibid.*, 5-6.



3.3.1. Extending benefits of the internal market to the region, prior to accession

Trade between the EU and the WB reached 43 billion € in 2016.⁴¹ The EU is the most important trading partner of the WB. However, there is significant room for further growth, particularly considering the large trade deficit the WB has with the EU.⁴² To realize this potential, the EC has proposed the development of mutual recognition programmes on the basis of CEFTA⁴³ and the Regional Economic Area.⁴⁴ Mutual recognition facilitates cross-border trade by benefiting industries with easier access to conformity assessment services.⁴⁵ Namely, the economic operators that wish to export to a country covered by a Mutual Recognition Agreement (MRA) can rely on the conformity assessment results of the export country, without going through the corresponding procedure in the importing country.⁴⁶ At the same time, mutual recognition can be used as a springboard for the growth of the conformity assessment industry's cross-border services.

The EU Enlargement Strategy is limited to the mutual recognition programmes within the WB region only. On the other hand, SAAs provide for the possibility of adoption of MRAs between the countries of the region and the EU on the basis of alignment of national legislations with the EU *acquis*. In particular, Title VI of all WB SAAs provides for *Agreement on Conformity Assessment and Acceptance of Industrial Products once the legislative framework and the procedures of [a WB country] are sufficiently aligned with that of the Community and appropriate expertise is available*. The latest research on trade confirmed that technical barriers to trade are the main obstacle when goods are exported from CEFTA parties to the EU.⁴⁷

In order to complement the initiatives under the Strategy and Regional Economic Area, the EC and WB governments could actively explore possibilities to extend the effects of the internal market by means of concluding bilateral Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAA) as envisaged by SAAs, a binding decision of the SAA Councils, or otherwise through the simultaneous adoption of unilateral measures with mutual recognition effect, prior to accession. Signing bilateral ACAAs would be the optimal solution. In other words, product areas where a sufficient degree of alignment and expertise is already available (or will become available in the near future) could be identified and subject to the mutual recognition programmes with the EU. In addition, the programmes could be coordinated with measures to liberalise the cross-border provision of services of the Conformity Assessment Bodies (CABs) in accordance with the relevant SAA provisions. This would open-up cross-border competition for CABs' services and create the possibility for EU and WB operators to use them, regardless of whether exporters intend to export their goods to WB/EU or not.

41 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018, COM(2018) 65 final, *op. cit.*, 12.

42 Dušan Reljić, "Why is the EU enlargement stuck?", *Confrontations Europe*, October 6, 2016, <http://confrontations.org/la-revue-en/revue-115-en/why-is-the-eu-enlargement-stuck/?lang=en>

43 Central European Free Trade Agreement.

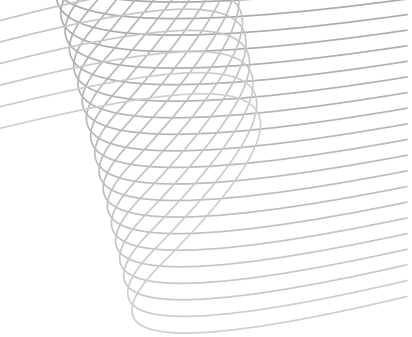
44 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018, COM(2018) 65 final, *op. cit.*, 12.

45 See European Commission, https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en

46 *Ibid.*

47 Organization for Economic Cooperation and Development, "Western Balkan survey (2004)", Internet: www.oecd.org/dataoecd/25/31/43892876, (04.06.2011.), Cited from: Predrag Bjelić, Radmila Dragutinović Mitrović and Ivana Popović Petrović "Administrative Barriers to Trade as Predominant Non-Tariff Barriers in the Western Balkans Trade" International Conference for International Trade and Investments (ICITI 2013), *Conference Proceedings*, University of Mauritius and World Trade Organization, 4-6 September 2013, pp. 0-26.





3.3.2. More state aid regulatory power where it matters balanced with more flexibility for national investment policies aligned with the EU agenda

Major improvements in WB competition policy are possible, especially in the field of state aid control.⁴⁸ Indeed, if there is a serious intention for markets to function in the pre-accession phase, a fundamental overhaul of the national state aid policy will be needed. In the case of Serbia, all benchmarks for opening the accession negotiations under Chapter 8 – Competition Policy – are linked to weaknesses detected in the implementation of the SAA's State aid rules.⁴⁹ The same stands for Montenegro.

Nevertheless, the approach of the EC so far has been rather formalistic, prescriptive and lacking in clear and affirmative policy guidelines to the WB public authorities.

In the case of Serbia, some advice given to the authorities was simply wrong. Namely, at the suggestion of the EC, and “in order to raise awareness of State aid rules among aid grantors and ensure their effective implementation”, Serbia decided not to introduce a system of block exemptions⁵⁰. All aid in Serbia must be notified to the Commission for State Aid Control.⁵¹ In addition, Serbia explained that it does not plan to introduce Guidelines on State Aid for Environmental Protection and Energy either, “since these rules concern [environmental] aid [...] with higher intensity [hence] [...] it is unlikely that Serbia will grant aid with such high intensities”.⁵²

As a result, no public money was spent in supporting environmental protection and research and development in 2015 (and close to nothing in the years preceding 2015), as reported by the public authorities granting aid.⁵³ Indeed, the policy advocated left the major state aid grantors blissfully unaware of the impact of state aid control on their policy choices. Furthermore, due to the lack of block-exemption tools, the already limited resources of the Serbian Commission for State Aid Control are often devoted to an assessment of the compatibility of measures developed by local authorities that have, at most, marginal effects on the trade between Serbia and the EU.⁵⁴ These resources could have been used more efficiently to investigate aid measures with higher intensities, with real distorting effect on the market and impact on trade. Finally, a lack of clear and sound block-exemption rules and policy guidelines on aid above the notification thresholds, coupled with an inability of the Serbian Commission for State Aid Control to exert any authority over the major state aid grantors, has created fundamental legal uncertainty and exposed the beneficiaries to unnecessary financial risks.

In other words, Serbia has lost the opportunity to use state aid control as a tool for the development of industrial policies compatible with the EU internal market. This is applicable to more or less to all the WB countries.

48 State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities.

49 European Commission, “Screening report Serbia Chapter 8 – Competition Policy”, WP Enlargement + Countries negotiating accession to EU MD 205/15, 23.11.2015, 15.

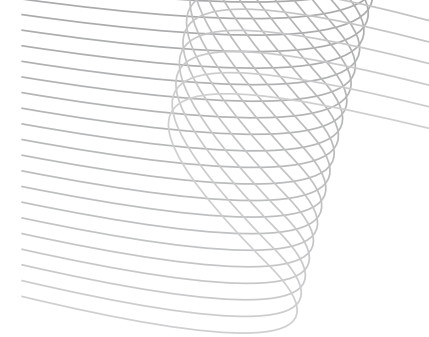
50 The block exemption refers to the EC's regulations declaring certain aid automatically compatible with the internal market (no need for prior notification of the measure to the EC). For example, app. 97% of newly implemented measures for which expenditure was reported by the Member States fell under the General Block Exemption Regulation in 2016. Namely, “a major reform package called State Aid Modernisation (SAM) was introduced in July 2014 allowing Member States to quickly implement state aid that fosters investment, economic growth and job creation, leaving the Commission to focus its state aid control on cases most liable to distort competition”. (http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html)

51 European Commission, “Screening report Serbia Chapter 8 – Competition Policy”, *op.cit.*, p. 6.

52 European Commission, “Screening report Serbia Chapter 8 – Competition Policy”, *op.cit.*, p. 7.

53 Serbian Commission for State Aid Control “Report on State aid granted in 2015” p. 26 available at: <http://www.kkdp.gov.rs/doc/izvestaji/Izvestaj%20o%20dodeljenoj%20drzavnoj%20pomoci%20u%20Republici%20Srbiji%20u%202015.%20godini.pdf>

54 See a list of decisions adopted by the Serbian Commission for State Aid Control from 20 January 2015 onwards <http://www.kkdp.gov.rs/odluke-komisije-20-01-2015.php>



In light of the above, the following changes to the EC approach are recommended:

- the EC should encourage Serbia/WB to mandate reformed State Aid Control authorities with the power to adopt block-exemption rules aligned with the General Block Exemption Regulation (flexibility);⁵⁵
- reformed authorities for State Aid Control should be given the power to issue guidelines and “safe harbour” notices aligned with the European Commission instruments (and adjusted to the pre-accession phase) coupled with simplified procedures for assessment of the compatibility of good aid (simplified procedures for good aid);⁵⁶
- the EC should advocate for leeway and safe harbour policies for the EU funds available to Western Balkans Investment Framework as well as for investments by International Financial Institutions supporting Flagship Initiatives (leeway and safe harbour rules for EU money);
- at the same time, state aid authorities in the majority of the WB should be entrusted with regulatory and investigative powers comparable to those given to the authorities responsible for the Protection of Competition, with a similar level of autonomy from state aid grantors (more power and control where it matters). State aid authorities in Macedonia and Montenegro have already been entrusted with these powers.

In short, more regulatory power *where it matters* should be granted but balanced with more flexibility for national investment policies aligned with the EU agenda. Therefore, state aid rules should be used as a policy tool to gradually redirect public funds from perpetuating economic inefficiencies toward supporting investments compatible with the internal market, while creating a predictable legal environment for grantors and beneficiaries. This approach would assist acceding countries to adapt and prepare for conditions on the EU internal market. Otherwise, state aid control will remain an obscure, misunderstood legal field, beyond the grasp of those it is supposed to regulate.

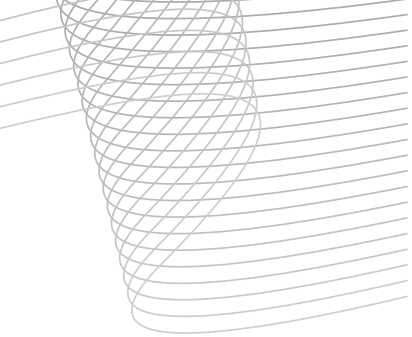
3.4. Rule of law as the ultimate test for EU accession

The main reason why enlargement is a successful EU policy and why countries aspire to join the EU is its ability to transform a country and its society and bring them closer to the fundamental values the EU is founded on and the prevailing living standards of the Union. This capacity for transformation is particularly important in the areas of rule of law. By honouring its own fundamental principles and values in the process of enlargement in the WB, the EU would be seen by the WB population as a promoter of the rule of law and thus an agent of change for the better. In turn, this would lead to a rise in pro-EU sentiment in the WB – a sentiment that is gradually diminishing. In the EU Enlargement Strategy, the EC mentioned the rule of law 24 times. It is stated that this would be the ultimate test of readiness for EU accession. The crucial political problem of the WB to which the EU Enlargement Strategy points is that the WB countries *show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests*. The wording of the EU Enlargement Strategy has been the strongest emphasis by the EU of this problem so far. However, in order to change

55 Commission Regulation (EU) N° 651/2014 of 17 June 2014 declares certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation – GBER)

56 For the purposes of the text, *good aid* is aid aligned with the EU policies (including the EU pre-accession policies) and with the applicable EC State Aid Guidelines.





the situation in the WB, this assessment has to find a concrete place in the country reports of WB countries (where applicable). Every state capture must be named – it involves certain leaders, political elites, people and elements of the society behind them, and does not occur by itself. If the agents of state capture are not identified, this assessment will remain little more than a declaration. There are widespread impressions that the EU is ready to accept delinquent behaviour by parts of the powers that be in the WB today (who have often been present for several years or even decades) in order to avoid security disruptions and maintain stability. The impression that the EU tolerates undemocratic behaviour in the WB for the sake of stability must be changed if the WB are to be transformed, truly stabilised, and properly integrated into the EU.

There is enough time before 2025 for the frontrunners to complete the task and reach the required level of rule of law if the political will to do so exists in both the EU and the WB. This stands for the other WB countries as well, which have more time. The EU should strongly push for change since breaking with old habits depends chiefly on the existence of political will and not considerably on the level of investments or administrative capacity in a given area of *acquis*, as is the case with environment or agriculture. Extending the rule of law advisory missions in the WB, as proposed by the Strategy, is a move in the right direction and mission reports should be made public in order to show that the EU is not negotiating about its fundamental values.

Strategically speaking, the fast accession of new member states, regardless of the achieved level of rule of law, would nominally be a victory for the EU, since it would demonstrate its capacity to transform societies for the better. It would also diminish the chances of external actors extending their influence in the region at the expense of the Europeanization project.

Even though it contributes to stability, such an enlargement could also have some potentially negative effects, both for the EU and for new members.

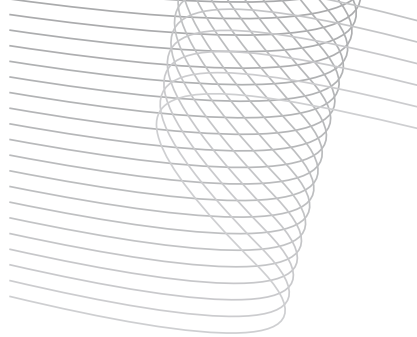
In this case, the new members would need surveillance and support for a while after entering the EU, especially if the rule of law is not followed through in the accession period. The conditionality policy of the EU has stronger impact on the readiness of governments to implement reforms before accession than after it, when these countries obtain voting rights (especially bearing in mind areas where unanimity is required by the Treaty of the European Union and the Treaty on the Functioning of the European Union); the conditionality policy of the EU would weaken, and in relations with third partners, the EU's leverage would lose its edge, particularly in enlargement and neighbourhood policy.

There could be potential negative effects on the accession countries themselves. Joining the EU without fulfilling the membership criteria would reduce the pressure for reforms within new members once the strategic goal of EU membership is achieved.

The first possible negative effect would be the absence of proper rule of law for some time to come, resulting in the persistence of corruption, less efficient public services and lower economic development.

Secondly, such an accession could lead to forms of limited membership for these countries, followed by at least one verification mechanism, such as in the case of Romania and Bulgaria. They would not be able to participate as full members in all areas of EU activities before they leave the verification mechanism. Leaving the verification mechanism would need the unanimity of other member states, reducing the negotiation capacity of a new member state in intra-EU negotiations.

Thirdly, without proper rule of law, the WB would not be genuinely stabilised and the initial consolidation effect of entry into the EU would have a time-limited duration. The lack of rule of law would inevitably lead to instability in a given country and the region, annulling the reasons for the initial trade-off.

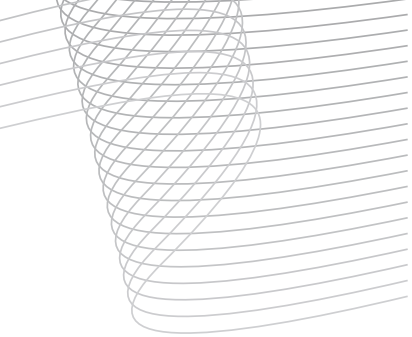


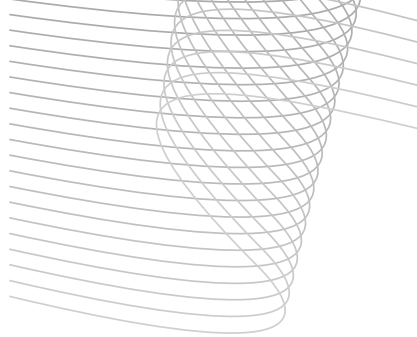
Fourthly, this would demotivate the citizens of the Western Balkans to demand and push for internal reforms. Consequently, membership would not become an impulse powerful enough to halt the already ongoing emigration tendencies from the WB to countries of the EU core. Younger generations in particular would continue searching for living conditions in which both economic progress and legal security prevail.

Therefore, the EU should show no leniency when it comes to rule of law. Enlargement should be accelerated, and the EU should put more efforts into making membership achievable without reducing requirements in the area of rule of law.

4. CONCLUSIONS AND RECOMMENDATIONS

1. The EC should boldly reform its enlargement strategy. The EU Enlargement Strategy has brought Enlargement back into the EU policy mainstream as part of its agenda for a new Europe in the year 2025. It should give a boost to pro-European and pro-reform forces in the WB region, in general, and in Serbia and Montenegro in particular. The inclusion of a potential date for further enlargement is a *première* for EU policy towards enlargement in the WB. However, there are reasons to assume that a strategic policy shift has not occurred in the EU's approach to enlargement as there has been no fundamental change to the way the accession process was conceived and conducted in the last decade. Even though the EC itself declared that a historic window of opportunity for enlargement now exists, it has missed the opportunity for a more assertive approach towards the WB to increase the credibility of the EU enlargement policy and the EU itself in the WB. After 19 years of talking about enlargement to the WB, with only one country joining, it is evident that change is needed if the process is to remain credible.
2. The EU should demonstrate the political readiness to make enlargement functional, putting it at the centre of its policy by devoting resources and funds, as was the case in the 1990s'. The EU should be ready to *put its money where its mouth is* as the flagship initiatives in the new EU Enlargement Strategy rely more on so-called *soft measures* (adoption of policies, new institutions etc.) while they are not so explicit on the issues of additional financing. Furthermore, the EFSI should include the WB in its programmes.
3. The EC reaffirmed the *merit-based* approach to enlargement because the gaps in the accession process among WB countries have become too wide. The EC is right to insist on three crucial conditions that are linked to WB progress towards accession: respect of the rule of law, further economic and social development and the advancement of regional cooperation. The insistence on the respect of rule of law and fundamental rights is one of the reasons why there is still large support for EU integration in the region. However, the EC should be straightforward in naming both concrete practices and those who practice state capture and undermine the rule of law.
4. The methodology of running accession negotiations should be altered in order to move quickly toward the opening of chapters and shifting the bulk of reforms needed for the period after the chapter is opened. Roadmaps, as a new instrument in the accession process, should be introduced in every phase of accession in order to streamline the reforms necessary for reaching the next step. Existing mechanisms should be enhanced to give better results. The proposals put forward in this paper would facilitate the achievement of the required political and technical standards without creating shortcuts or diluting the criteria.

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5. The qualified majority voting procedure in the European Council should be extended to the decision-making process in enlargement policy. This would significantly relax the negotiation process and enable faster progress. It would reduce the possibility for individual EU member states to use the enlargement process as a tool for accomplishing their own political goals *vis-a-vis* candidate countries. Unanimity should be maintained for the initial and final decisions in the process, namely, to start and to close accession negotiations with an individual country. The EU should insist that resolving issues is a duty of both (potential) candidate countries among themselves but also between (potential) candidate countries and individual EU member states. Issues should be resolved using international arbitration and/or the International Court of Justice as final instances in dispute settlement if they cannot be resolved bilaterally, and existing judgments and arbitration decisions should be respected and implemented.
 6. The EU should, in particular, devote more funds for enlargement to the WB. This increase would start with the new MFF 2021-2027, with the goal of reaching 2% of individual WB countries' GDP in the year of their accession to the EU. The increase in pre-accession assistance would enable the WB countries to be better prepared for accession, meeting *acquis* standards and improving the economic convergence with the EU. This could be done by the so-called linearization of EU funds through increasing national programmes' allocations and allocations for Cross-Border Cooperation Programmes, expanding investment facilities for the implementation of EU macro-regional strategies in WB countries, and increasing funding through the Western Balkans Investment Framework, as well as substantially increasing allocations for agriculture and rural development. Additionally, a Western Balkans Guarantee Facility should be established.
 7. It is necessary to develop, strengthen and maintain the capacities of countries to manage increased funds. Therefore it is necessary to ensure that the new financial pre-accession instrument for the MFF 2021-2027 is prepared on time and harmonised with the requirements of structural funds – especially in programming, financial management and control. WB countries should secure a continuous project pipeline and develop and implement efficient recruitment and retention policies for staff dealing with EU funds.
 8. The EU should extend the benefits of its internal market to the region prior to accession as much as possible. This should be done through the existing Stabilisation and Association Agreements as the legal frameworks for adaptation to single market rules and for economic development. Through the full exercise of possibilities envisaged in existing SAAs, some benefits of the EU internal market can be extended to the WB without the need to amend agreements.
 9. The EU should apply to its trade with the WB the same recommendations it gave to the WB in the EU Enlargement Strategy, and sign bilateral Agreements on Conformity Assessment and Acceptance of Industrial Products with WB countries to eliminate technical barriers to trade, which are currently the main obstacles when goods are exported from the WB to the European Union.
 10. The EU should guide the WB in using state aid rules within SAAs as a policy tool to gradually redirect public funds from perpetuating economic inefficiencies to supporting investments that are compatible with the internal market. However, the EU should also demonstrate flexibility for national investment policies aligned with the EU agenda, allowing for the reindustrialization of the region.
 11. The EU should start regarding the WB as if it were already a part of the EU. In particular, this should be done by including the WB in the internal work of EU institutions as much as possible (although without voting rights), as well as in discussions about the future of the EU. This approach would strengthen the much-needed feeling of ownership of the process, of acceptance and equality, the lack of which is the strongest argument of anti-EU



forces in the WB. Additionally, the EU should extend its internal developmental, regional and infrastructural strategies to include the WB as much as possible in all areas and policies where feasible, such as the Energy Union and EU Industrial Policy.

12. Developing the rule of law and reaching EU standards in judicial independence, in the fight against corruption and organised crime, and in the protection of fundamental rights by the WB should be the ultimate test of readiness for EU membership. No leniency should be accorded in this area. In order to change the situation of “state capture” in the WB, the EU should identify where such state capture exists and name the offending actors in the individual country reports.

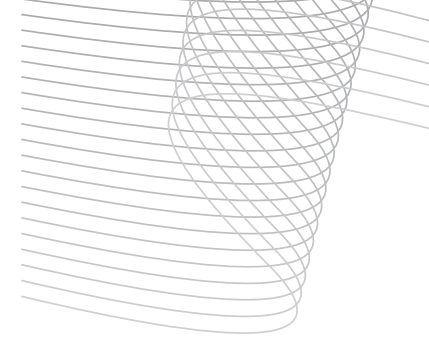


LIST OF ABBREVIATIONS

EC	European Commission
EFSI	European Fund for Strategic Investment
EIB	European Investment Bank
EU	European Union
IPA	Instrument for Pre-Accession Assistance
MFF	Multi-annual Financial Frameworks
RM	Roadmaps
SAA	Stabilization and Association Agreements
SAP	Stabilization and Association Process
WB	Western Balkans
WBGF	Western Balkan Guaranteeing Fund
MRA	Mutual Recognition Agreement
ACAA	Agreements on Conformity Assessment and Acceptance of Industrial Products
CABs	Conformity Assessment Bodies

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Appendix 1

Evaluation Questionnaire

The Questionnaire aims to evaluate the results of EMinS' work. It will take you around 10 minutes to fill it and thus help us collect information facilitating the evaluation process. We would be grateful if you would fill the Questionnaire and send it to the following address: European Movement in Serbia, Kralja Milana Street 31/II, 11000 Belgrade. You can also download the Questionnaire as a word document on the *Effects of Stabilization and Association Process instruments on WB6 European integrations and regional cooperation: what has been achieved so far and ways forward* page on the EMinS website www.emins.org and e-mail it to office@emins.org or fill it online by using the link on the above-mentioned project webpage.

EMinS would highly appreciate receiving your filled Questionnaires in any of these formats by end February 2019.

Please feel free to contact EMinS should you need any further information or clarification about the Questionnaire either by e-mail office@emins.org or by telephone +381 11 3640 174.

1. I have read the policy document provided by EMinS. This statement is:

- 1 - True
 2 - False

Please provide any additional comments that you think might be of use to EMinS.

2. The document has been used by my organisation/ agency in our discussions/ deliberations about the area of research. This statement is:

- 1 - True
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Please provide any additional comments that you think might be of use to EMinS.

3. The document was useful to my organisation/ agency in formulating policy or in thinking about legislation.

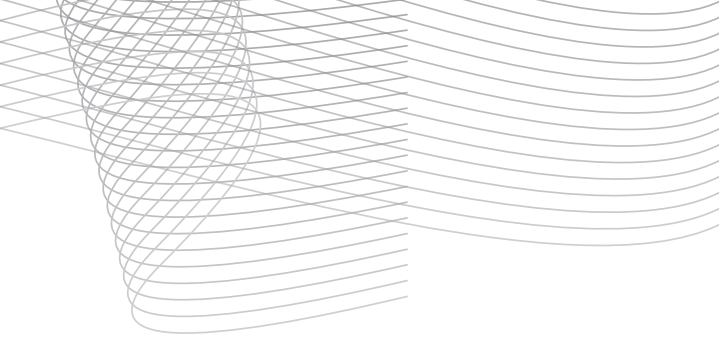
- 1 - Very useful
 2 - Somewhat useful
 3 - Neither useful nor unuseful
 4 - Not very useful
 5 - Not at all useful

Please provide any additional comments that you think might be of use to EMinS.

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