



WESTERN BALKANS
ACCESSION TO EU:
LESSONS FOR UKRAINE

Dmytro Naumenko

Oleksandra Bulana

Snizhana Diachenko

Dmytro Naumenko

Oleksandra Bulana

Snizhana Diachenko

WESTERN BALKANS ACCESSION TO EU: LESSONS FOR UKRAINE

Reviewers:

Borja Lasheras (Non-resident Senior Fellow with the Transatlantic Defense and Security program at the Center for European Policy Analysis (CEPA))

Adam Lazowski (University of Westminster)

Interviewed experts:

Florian Bieber (Director at the Centre of Southeast European Studies of the University of Graz, Coordinator of the Balkans in Europe Policy Advisory Group (BiEPAG))

Toby Vogel (Policy researcher, Centre for European Policy Studies)

Steven Blockmans (Director of Research, Centre for European Policy Studies)

Viola von Cramon (EP MP, Group of the Greens/European Free Alliance)

Srdan Cvijić (Senior Policy Analyst, Open Society European Policy Institute in Brussels)

Table of contents

4 **Executive summary**

7 **Introduction**

9 **Chapter 1.** Political background for EU enlargement and its impact on the Western Balkans' accession

16 **Chapter 2.** Procedural framework of accession negotiations: new EU methodology for the Western Balkans

29 **Chapter 3.** Accession lessons learned by the Western Balkans: progress in key EU acquis chapters

36 **Chapter 4.** Key conclusions for Ukraine from the Western Balkan's experience

41 **Literature**

Executive summary

February 2022 became a turning point in Ukraine's recent history when it applied for the EU candidate status, finding itself in the hottest phase of Russian uncovered full-scale invasion. Prompt granting of the candidate status for Ukraine at the EU Council meeting on the 23-24 of June opened the door for Ukraine's accession and raised a number of questions regarding the possible accession pathway for Ukraine given its (geo)strategic positioning and relevance, geographic size and economic importance.

The Western Balkans accession experience may provide useful lessons for Ukraine, which will only start its rocky path towards accession after fulfilling the seven accession requirements set by the European Commission¹. Moreover, the rapid (and in many respects unexpected) appearance of Ukraine on the EU's doorstep also gave a new boost to the need of critical rethinking and reshaping the EU enlargement policy itself taking into account geopolitical factors (i.e. whether Ukraine, Moldova and the six Balkan states be treated on a par?), procedural upgrades (whether the 'sticks-and-carrots' approach within the accession process should become more sophisticated?), and even the need for the EU itself to undergo a round of deep structural reforms to ensure sufficient absorption capacity and the block's internal cohesion. Moreover, Ukraine's candidate status brings renewed force to the ongoing debate on the future of the EU as a whole.

Therefore, the primary aim of this paper is to examine the relevant experience and lessons learned by four Western Balkan countries during their accession process and develop a set of recommendations for Ukraine applicable to its current stance and country-specific circumstances.

This paper covers four key Western Balkan countries (Serbia, Montenegro, Albania and North Macedonia) while other relevant cases of enlargement (i.e. Bosnia and Herzegovina and Kosovo) are excluded from the analysis based on several underlying criteria.

The paper describes the essence and the recent developments of the EU enlargement focusing on explanations of how the enlargement process works and what its recent trends are, as well as identifying the key stumbling blocks that impede successful progress of candidate countries on the way to signing the accession treaty. Issues such as conflicts with neighbouring EU member states and EU candidate countries, adherence of the EU to what some dub 'stabilitocracy' policy towards the Western Balkans region - that is, a preference of stability over democratic change -, and new geopolitical momentum for the EU enlargement policy that has been boosted again by war-inflicted Ukraine's candidacy are examined in detail.

The recent debates regarding the EU's internal reform are also covered in the paper with a focus on the main 'blockers' such as the unanimity requirement, the balance of representation in the sub-national EU authorities, and new initiatives like the new French proposal for a "European Political Community", etc. The paper also considers the composition of the enlargement consensus amid separate EU member states as an important factor in the candidate countries success, explaining it on the example of the EU's failure to open accession negotiations with North Macedonia and Albania in 2019.

¹ In particular, they include proper selection and vetting procedures for high-level judges, strengthen the fight against corruption, compliance with the EU anti-money laundering regulation, limiting the excessive influence of oligarchs in economic, political, and public life (incl. media), and completion of the reform of the legal framework for national minorities.

The second chapter of the paper pays attention to 'bureaucratic' (or procedural) aspects of the candidates' way towards EU membership. It describes the stages of the negotiation procedure, different elements of the negotiations, discusses the pros and cons of the revised enlargement methodology and explains its integration into the negotiating framework based on the example of North Macedonia, as well as elaborates on the implicit political influence of the most influential EU member states on the negotiation process and their power to block the entire accession process of a candidate country. To add a practical explanation concerning the formal negotiation process, the cases of Serbia and Montenegro are described (in a separate box) as they have been progressing with the fulfilment of the 'Fundamentals' cluster.

Chapter 3 of the paper focuses on the country-specific lessons learned from the accession experience of four key Western Balkan countries from our selection, which varies significantly depending on their historical conditions, political environment and cooperation with the EU. Based on the lessons that match the Ukrainian context we came up with the key recommendations for Ukraine on how to avoid the most common mistakes of the Western Balkan countries and which steps may be taken to stay on the right track to accession. The top ten of them were identified as follows:

1. Ukraine now enjoys an unprecedented level of public support in the EU, and there is an obvious once-in-a-lifetime opportunity for Ukraine to make a huge step forward towards EU membership. The strategic option for Ukraine would be to use this chance for confident accession and avoid 'enlargement fatigue' at any cost.
2. Rule of law chapters of the EU acquis must be the top priority for the political elites, civil society and ordinary citizens.
3. Political consensus regarding the strategic course of European integration of Ukraine and sustainable political environment must be sustained over the long-term as a key backing of the technical accession process.
4. Ukraine must organise direct, sustained outreach to sceptical EU member states and undergo dedicated diplomatic efforts, so as to ensure in advance that the opening of accession negotiations and further opening of the clusters is not endangered by a veto from member states.
5. Strong Ukrainian institutions, streamlining the technical processes with the Commission and EU member states' governments, as well as developing a positive image of Ukraine as a successful candidate for the EU membership would be crucial in overcoming the obstacles posed by the new EU enlargement methodology.
6. Administrative capacity development is a common benchmark for different chapters in the negotiation process. That is why Ukraine should be prepared to invest money and efforts in institutional capacity development: education and training of civil servants, modernization of state authorities' functions, technical facilities and equipment, and IT systems development.
7. By neglecting accession technicalities and sabotaging the EU-demanded reforms, Ukraine might do a disservice to itself. Ukraine's commitment to implementing the EU acquis agenda must be strong and the country must deliver tangible results as quickly as possible, at the very least it must improve the situation with the democracy institutes, the rule of law matters, combatting high-level corruption and strengthening civil service capacities.

8. Any non-democratic practices, even taking into account war emergency restrictions for the sake of national security, should be limited to the most possible extent, lest this political support could be spent while boosting EU enlargement sceptics.
9. Implementation of anti-corruption and judicial system reforms should demonstrate the (relatively) quick gains to persuade the EU in the seriousness of Ukraine's commitment to unlocking accession negotiations (especially keeping in mind its previous bad track record and European frustration with the progress of these reforms). Substantial progress in chapters 23 & 24 in the very beginning of the accession process would largely contribute to the smooth passage through the other stages and to receiving adequate financial and technical support from the EU.
10. Institutional and administrative capacities of governmental and parliamentary agencies that are currently dealing with European integration reforms should be adequately strengthened to address the challenges of the accession negotiations at political and technical levels.

Introduction

Upon being granted the EU candidate status in June 2022, Ukraine received a visible pathway towards becoming a new EU member state one day. However, it currently remains rather vague for both Ukrainian stakeholders and the EU, given Ukraine's current extraordinary circumstances, namely the devastating war with Russia and the need to seek for resources to keep its economy afloat. But even if we disregard this, Ukraine has always been a special case for the EU enlargement given its (geo) strategic positioning and relevance, geographic size and economic importance (comparable maybe only to Poland in the late 90s) and its being the largest country within the EU Eastern Partnership Initiative.

The official Ukrainian drive towards EU accession gained new impetus after its candidacy dream came true as the result of the nation's brave resistance in the face of Russia's full-scale invasion in 2022. After Ukraine received the long-awaited status of the EU candidate country, the previous discussions regarding the possible timeframe for Ukraine to ultimately join the EU flared up again. Ukrainian officials, in particular the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, expressed optimism regarding Ukraine's accession, though clearly realising that the candidate status is just the first step on the complicated and challenging procedural way, and Ukraine's accession now acquired a distinct geopolitical and historical framework that differs from other cases of EU enlargement. The accession period of 3 years was declared as a possible timeframe by the Ukrainian party (which is an extremely optimistic assumption, in our view, taking into account the experience of the other candidates, even the most successful

ones), arguing that the official start of accession talks will take place in 2023² (the EU, for its part, expects that the results of fulfilment of the relevant requirements will be available in the second half of 2023 according to the Head of the EU Delegation³). Ukraine thinks of itself as an 'advanced' player in the negotiations with the EU when it comes to fulfilling the chapters of the Accession Treaty. The importance of individual EU member states seems to be recognised and the Ukrainian Government is going to work systematically with the major EU capitals towards promoting Ukraine's accession efforts. However, even completion of the seven accession requirements set by the European Commission⁴ concerning the rule of law, human rights and anti-corruption matters as a prerequisite for accession negotiations to open would be a challenging task for Ukraine, not to mention the difficulties of accession and balancing between diverse (and often contradictory) interests of EU member states.

Therefore, in recognition of the fact that Ukraine sooner or later would enter the accession talks with the EU, the primary aim of this paper is to examine the relevant experience and lessons learned by four Western Balkan countries during their accession process, of which:

- Serbia and Montenegro that have about a decade long experience of accession negotiations to the EU;
- Albania and North Macedonia that have experience of being candidate countries for years (accession talks with them were opened just recently, in July this year).

Other acting and potential EU candidates' experience is disregarded in this paper due to

2) <https://www.eurointegration.com.ua/interview/2022/08/29/7145770/>

3) <https://www.eurointegration.com.ua/news/2022/08/24/7145507/>

4) https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

the reasons explained in Box 1 (below). Despite obvious historical and geopolitical background differences between the Western Balkan countries and Ukraine, the progress of the former ones towards the EU accession has had a number of similarities and reveals plenty of lessons that may provide a clear understanding which steps brought them closer to the EU, and which ones blocked and hindered the accession process. By comparing these lessons with the experience that Ukraine gained while fulfilling the Association Agreement with the EU, we came up with a number of complex findings that are relevant to Ukraine and worked out practical recommendations on how Ukraine should build its strategy to become a successful candidate for membership of the European Union and for the accession process to be swift and smooth by following the successful practices and avoiding impasses of the Western Balkans. Despite the recognition of the fact that the geopolitical and internal political considerations of the EU have had significant impact on the Western Balkans' accession progress, the focus of this paper has been on examining the 'bureaucratic' experience of the Western Balkans' accession as well as the impact of domestic politics and underlying accession reforms on the progress of the selected Western Balkan countries within the framework of the EU accession methodologies.

Box 1. Bosnia and Herzegovina and Kosovo: status-quo of accession and reasons for exclusion from analysis

Bosnia and Herzegovina (BiH) and Kosovo are potential candidate countries, and their progress towards the EU candidate status has now stalled due to poor governance and conflicts with their neighbours. In the case of BiH, a shift of focus to economic governance made it possible for the Stabilisation and Association Agreement (SAA) with the EU to enter into force on 1 June 2015. On 15 February 2016, BiH submitted its membership application. In May 2019, the Commission published its opinion – including a list of 14 key

priorities – on the basis of BiH's replies to the comprehensive questionnaire. On October 12, 2022, after the European Commission has finalised BiH (and Turkey) progress assessment, it has recommended that BiH is to be granted candidate status by the Council, on the understanding that a number of steps are taken to reinforce democracy, functionality of state institutions, rule of law, the fight against corruption and organised crime, guarantee media freedom and migration management in the country⁵, but its release appeared after this paper was actually drafted.

An SAA between the EU and Kosovo entered into force on 1 April 2016. The major problem of Kosovo is that five EU member states still do not recognize it as an independent state due to unresolved status conflict with Serbia, and to the conflict itself. Kosovo is now a part of the EU-facilitated dialogue with Serbia that should lead to a legally binding comprehensive agreement on the normalisation of their relations, a necessary condition for the successful integration of both Serbia and Kosovo into the EU.

It's also worth noting that Ukraine (and Moldova) is a relatively 'new case' for EU enlargement that emerged largely due to the fresh impetus of the EU's strategic relationship with Ukraine, in the aftermath of Russia's full scale invasion against Ukraine and democratic Europe in the broad sense. We believe that this paper would contribute to development of a pragmatic and balanced position by key Ukrainian stakeholders that are responsible for the country's accession to the EU and relevant domestic reforms.

5) See more details here: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6082

Chapter 1

Political background for EU enlargement and its impact on the Western Balkans' accession

Previous waves of EU enlargement

Since its establishment in 1958, the EU (back then the European Communities) has been designed as an open-to-expansion union, leaving its doors open to the European countries that share its values, as enshrined in the treaties, and could adopt swiftly the standards of the single market and related *acquis*. Over time, while expanding the block, enlargement served primarily the geopolitical mission of the EU – namely to consolidate the countries of the European continent in a peaceful, democratic, stable and prosperous political and economic bloc built around the Union's values. Enlargement has proven to have a huge transformative effect on countries striving for accession as it encourages them to implement in-depth political, economic and social reforms with the support of the EU and, therefore, brings them closer to the average EU level.

As far as the legal framework is concerned, the Treaty on European Union (TEU) specifies a clear-cut set of conditions the acceding country must fulfil:

- article 49 simply states that “any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”, and
- article 2 clarifies what the EU's founding values are (freedom, democracy and the rule of law).

Additional conditions emerge at the beginning of the negotiation process – from the moment of application for membership. In a broad sense, the candidate country must meet three key conditions known as ‘the “Copenhagen criteria” (adopted in 1993), which check the progress with regard to having (1) stable and democratic institutions, (2) functioning market economy, and (3) implementation of the accumulated legislation of the European Union (‘*acquis*’). The European Council, according to Article 49 of the TEU, can further develop these criteria.

Apart of this purely regulatory part of the story, enlargement also to a great extent depends on the EU integration capacity as the EU has to adapt its institutions and decision-making processes to the arrival of new Member States and ensure that enlargement would not come at the expense of internal cohesion in the EU⁶.

There have been 7 enlargement waves of the EU so far⁷, the biggest one occurred in 2004 when eight Eastern European countries from the former Soviet bloc plus Malta and Cyprus joined the EU. In 2007, the EU still had a sufficient enlargement impetus to integrate Bulgaria and Romania, though already with post-accession conditions like the ‘cooperation and verification mechanism’ in key areas – judicial reform, the fight against corruption and the fight against organised crime (the latter applying to Bulgaria and Romania)⁸. Afterwards, the accession conditions appeared to be much stricter – in

6) https://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf

7) The European Union has experienced seven waves of enlargement so far, in 1973 (Denmark, Ireland, United Kingdom), 1981 (Greece), 1986 (Spain, Portugal), 1995 (Austria, Finland, Sweden), 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia), 2007 (Bulgaria, Romania), and 2013 (Croatia).

8) https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

December 2006 the European Council agreed on a 'renewed consensus on enlargement,' and only Croatia was able to fulfil them and became the 28th member state of the European Union in 2013 so far (27 after the departure of the UK).

New momentum for the Western Balkans

Relations with the Western Balkans fall within the framework of the Stabilisation and Association Process (SAP) launched in 1999, based on bilateral stabilisation and association agreements (SAAs), and the Stability Pact, a broader initiative involving all key international players. The Stability Pact was replaced by the Regional Cooperation Council in 2008. The 2003 European Council in Thessaloniki reaffirmed that all Western Balkan countries were potential candidates for EU membership. This 'European perspective' was once again reaffirmed in the Commission's February 2018 Western Balkans Strategy and in the declarations following successive EU-Western Balkans Summits.

Each SAA established permanent cooperation structures. The Stabilisation and Association Council, which meets annually at ministerial level, oversees the application and implementation of the agreement concerned. It is assisted by the Stabilisation and Association Committee. Finally, a Stabilisation and Association Parliamentary Committee (SAPC) ensures cooperation between the Western Balkan countries' parliaments and the European Parliament. Since the entry into force of the SAA with Kosovo in April 2016, SAAs are now in force with all Western Balkan current and potential candidate countries. In the case of Kosovo, the SAA is an EU-only agreement, which Member States do not need to ratify). Trade and trade-related aspects of SAAs are included in interim agreements. They generally entered into force swiftly after they were signed, as trade policy is an exclusive EU competence. Once in force, SAAs also replaced Interim Agreements between the EU and Western Balkan countries.

Croatia's accession to the EU on 1 July 2013 constituted a significant incentive for other countries in the region. Building on the experience with Croatia, the Commission proposed further improvements to its negotiating approach in its 2011-2012 'Enlargement Strategy', including a stronger emphasis on rule-of-law issues. This means that negotiating chapters on judicial reform and fundamental rights (chapter 23 of the EU's acquis) and on justice, freedom and security (chapter 24) are opened at an early stage in all future negotiations and that they are the last to be closed. This approach was reaffirmed and reinforced in the Commission's communication of 5 February 2020 entitled 'Enhancing the accession process – a credible EU perspective for the Western Balkans'⁹⁾, which introduced a revised methodology for enlargement to the Western Balkans. It is also part and parcel of the Economic and Investment Plan (EIP) for the Western Balkans, which was published as part of the Commission's 2020 enlargement package.

Montenegro and Serbia became official candidates with the EU in 2010 and 2012 (respectively), accession negotiations are still ongoing. In June 2018, the Council agreed on the possible opening of accession negotiations with both North Macedonia and Albania in June 2019, provided the necessary conditions were fulfilled. However, both in June 2019 and October 2019 the Council failed to green-light the opening of accession negotiations. In March 2020, the Council finally decided to open accession negotiations with both countries (with a set of conditions for Albania). In July 2020, the Commission presented the draft negotiating frameworks – the first to take into account the 'revised methodology for enlargement to the Western Balkans' – to the Member States.

Then, since Brexit rolled out and the UK finally left the EU on 31 January 2020 coupled with economic hurdles caused by worldwide COVID-19 pandemic, the EU appetite for enlargement was significantly eroded including the Western Balkans region.

⁹⁾ https://neighbourhood-enlargement.ec.europa.eu/enhancing-accession-process-credible-eu-perspective-western-balkans_en

Unfortunately, this accession process has stalled and grown increasingly political. Serbia and Montenegro have seen their progress toward accession sputter for both political and economic reasons. Their progress has also been overshadowed by North Macedonia, even if it is a late arrival in the process, compared to the other two countries: with the name recognition issue with Greece solved, Skopje has overcome an immediate hurdle to Euro-Atlantic integration (and quickly afterwards it had to deal with the next dispute – this time triggered by Bulgaria’s concerns over historical and language issues – which has good chances to be resolved soon). Albania appeared to be a hostage to that as well, because the EU has linked both countries’ potential membership for the purpose of regional stability, even though officially the criterion for progress remains individual merit (every country to be assessed on its merits). The important lesson for Ukraine here is that contradictory bilateral issues (even the most absurd ones) with the neighbouring member states could significantly undermine or slow down the accession progress and effectively block the approval of other member states (for Ukraine as a candidate country this role can be played by the outstanding dispute with Hungary over the language and education issues of the Hungarian minority in Zakarpattia region).

Strategic competition with global non-EU actors (e.g. China and Russia) has partly driven Western complacency with the established leaders in the Balkans, who have tightened their patronage networks over two decades. These leaders have learned the “language of the West” – paying lip service to the need for reform (“talking the EU talk, without walking the walk”) – to ensure assistance continues to flow, slowing down or undermining reforms that go against their interests (good governance and rule of law measures threatens corrupt practices and clientelism). While Western leaders have acknowledged this credibility gap, a criticism often made of the EU’s role in the region is that they have sometimes prioritised the stability that these leaders seemingly provide

to the West, not to mention rhetorical support against strategic competitors. As a result, the enlargement process for all six Western Balkan countries gradually lost both efficacy and political momentum and reached the absolutely opposite outcome: the countries cemented their obvious democratic shortcomings at the same time claiming to work towards reforms and selling ‘regional stability’ as a trade-off with the EU. The recent Clingendael Institute research (Wouter Zweers et al)¹⁰ identifies the following flaws in the EU’s approach that contribute to the formation of so-called ‘stabilitocracy’ formation:

1. The EU’s overly technical approach to enlargement fails to foster deep political and societal transformation.
2. A lack of clarity in rule of law definitions hinders the adequate transposal of EU values.
3. Inadequate reporting on reform progress dilutes actual political realities in the WB6.
4. The EU often fails to speak out against and act upon standstill or backlash, implicitly offering tacit support to autocratic tendencies instead.
5. The EU regularly proves unable to reward progress because it is unable to find common understanding among its member states, thereby harming its credibility.
6. An overly leader-oriented approach towards the WB6 reinforces and legitimises the position of Western Balkan political elites who use the EU’s public endorsement to reinforce their grip on society.
7. Party political relations between political families in the EU and their WB6 counterparts lead to undue support for WB6 parties even when they display non-democratic behaviour.

¹⁰ Wouter Zweers et al (2022). ‘The EU as a promoter of democracy or ‘stabilitocracy’ in the Western Balkans?’, a report by the Clingendael Institute and the Think for Europe Network (TEN).

8. A lack of interim timelines leaves the EU unable to monitor reform progress and hold governments of the region accountable for not carrying out necessary democratic reforms.

However, devotion to ‘stabilitocracy’ is a short-term thinking; the region’s long-term stagnation would eventually lead to greater instability and create an outsized role for foreign malign influence.

In October 2021, the EU and Western Balkan countries attempted to set in motion the negotiation process in Brdo pri Kranju (Slovenia) summit where the Brdo declaration was signed but it also did not give a significant impetus to the accession talks. However, in this statement the EU underpinned its commitment for enlargement by a more detailed set of expectations that the Western Balkan countries must comply with to ensure progress in accession, concentrating on the proper functioning of the democratic system (incl. empowered civil society and media) as well as adherence to the rule of law and fundamental rights and values *de jure* and *de facto* (with special attention given to the proper implementation of reforms and tangible track record). This insistence stems largely from the perception of previous flaws in the EU engagement through enlargement (e.g. that ‘paper reforms’ do not essentially entail democratic transformation) and from democratic rollbacks in some candidate countries, as well as from the limits in conditioning political behaviour once a country joins (like in the cases of Poland and Hungary).

February 2022 brought dramatic changes to EU enlargement dynamics after Russia’s brutal, full-scale invasion into Ukraine. Ukraine’s application and the following granting of the EU candidate status to a fighting country shook the European Union’s approach to enlargement to the ground. Long seen as stacked in technicalities and lacking political will, the geopolitical dimension

of EU enlargement policy has been boosted again by Ukraine and is expected to trigger the EU’s efforts to become a truly geopolitical power finding the proper solutions for the numerous challenges for the peace, stability and economic prosperity of the entire European region.

Ukraine’s swift application to join the bloc has also rejuvenated the aspirations of other countries; Moldova and Georgia followed suit by submitting their own applications (Moldova got the candidate status as well, Georgia not yet), while the Western Balkans’ expectations for progress re-energised again after years of stalemate. Now the EU faces immense pressure to meet these renewed expectations while making it clear that enlargement requires ambitious reforms by the candidate countries.

Regarding the Western Balkans situation, the EU has finally decided to proceed further with the negotiations (i.e., with Albania and North Macedonia)¹¹ and sent a clear signal that Balkan countries’ accession is still on the agenda, though with mixed results. The bottom line is that even the best performing countries in the regions still face a long road to full membership, even given the visible progress with the numerous reforms in the area of the rule of law, freedom of press and corruption that both countries have made just to start talks. But recently Bosnia also received a positive assessment from the Commission to receive candidate status¹².

This shift has been to large extent provoked by the war in Ukraine that stirred the EU into action due to fears of possible Russia’s steps in the Western Balkans aimed at destabilising the region based on the perceived deep-seated frustration with the EU path’s ups and downs in the region itself, coupled with concerns that the Western Balkans have been relegated down on the EU agenda with Ukraine as the top priority now. As a result, known for their reluctance, Paris and Berlin have already sent strong signals on this issue, with Chancellor Olaf Scholz calling

11) <https://www.euronews.com/my-europe/2022/07/19/historic-moment-eu-opens-accession-negotiations-with-albania-and-north-macedonia>

12) See the details here: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6082

on the European Union to support the Western Balkans in their bid to join the bloc “as soon as possible,” and President Macron advocating for “giving them a clear perspective of accession to the European Union.” France is currently a strong advocate for clarifying the European perspectives of the Balkans, reinvesting in the region and defining a true common ambition for the decades to come, as explained by the French president¹³. A revived accession process would foster progress on much-needed governance and rule-of-law reforms in these countries. It could also serve as additional leverage to push Serbia to start aligning its foreign policy with the European Union, notably regarding sanctions against Moscow – a point of acrimony in Belgrade’s relations with the EU.

The EU’s internal reform puzzle

The recent Eurobarometer survey demonstrated large consensus among EU citizens in all EU Member States in favour of the EU’s response to Russia’s invasion of Ukraine. The majority of Europeans think that since the war started, the EU has shown solidarity (79%) and has been united (63%) and fast (58%) in its reaction. Respondents are widely in favour of the unwavering support to Ukraine and its people and, among other matters, 66% of the respondents agree that ‘Ukraine should join the EU when it is ready’, 71% believe that Ukraine is part of the European family and 89% feel sympathy towards Ukrainians.

But despite the revitalization of EU enlargement efforts, it again raised the issue of the long overdue need for reform in the EU itself, for it to be capable of managing the bloc if the Union expands to 30 or even 36 member states in total. Initiated by France – by the French President Emmanuel Macron – the discussion of the EU reform in the framework of the Conference on the ‘Future of Europe’¹⁴ now gained a new momentum after German chancellor Olaf Sholz shared his view on the main elements of such a reform on 29 August 2022. Specifically, the

German position has brought more clarity on how the EU must be reformed to be able to afford a new significant wave of expansion. This is part of long-standing policy tensions between enlarging the EU and deepening it (widening its mandate and powers), and whether to do one at the cost of the other, or in parallel. Now it seems that further waves of enlargement will be accompanied by intrinsic reforms of the EU institutions allowing to safely integrate the new member states while keeping the union sustainable from different dimensions.

The call for reforms reflects doubts about the EU’s absorption capacity or meeting the fourth Copenhagen criteria, for a new wave of enlargement. This wave is expected to absorb up to nine new members on the Eastern flank of the EU, namely the six Western Balkan countries, as well as war-torn Ukraine, neighbouring Moldova and isolated Georgia. However, there are fears that such EU expansion would also bring in millions of new citizens and possibly chaos into the already complicated consensus-based EU decision-making process stalling the compromises in the broad range of issues, from foreign policy to taxation.

For a start, there is an emerging consensus that the EU should revise its unanimity requirement to make many key decisions, not only on foreign policy and taxes but on how countries like Hungary and Poland can be held accountable for potential democratic backsliding. Also, large newcomers such as Ukraine would significantly shift the balance of representation in the EU institutions and a new model of such representation has to be discussed. Chancellor Scholz, for instance, proposed that the European Parliament must also not grow beyond its current size of 751 members – a number established in the EU’s treaties. He dismissed the notion of “bloating” the body’s size by just adding MEPs if a new country joins. The EU must similarly be wary of how the bloc’s executive branch, the European Commission, would respond to expansion.

13) However, despite France having raised some of its objections it still remains unclear whether it underlines the appearance of a new French position or just a new change of heart by Macron.

14) <https://futureu.europa.eu/en/>

Currently, the Commission has 27 commissioners – equal to the number of EU countries – with each overseeing one policy portfolio. Scholz said it would be “kafkaesque” to keep adding new policy portfolios each time a new country joins. Instead, he argued, the EU could move toward having two commissioners overseeing one area – agriculture or fisheries, for instance.

Then there is the French President Emmanuel Macron’s proposal to form a “European Political Community”, which would exist separately from the EU and be open to both EU aspirants and the post-Brexit U.K. Such a forum may have offered “... regular exchange at the political level... where we as EU leaders and our European partners can discuss once or twice a year the central issues that affect our continent as a whole”. This initiative, in parallel to the enlargement process, was launched in Prague on October 6 and included amongst other participants Ukraine, the UK and Turkey.

We believe that crystallisation of the internal EU reform would be one of the crucial factors for driving the EU’s eastwards enlargement efforts at the level of a truly global power. It would also give much more clarity to the way that the Western Balkans and 3 Eastern Partnership members, including Ukraine, have to pursue on their accession pathway to the EU.

Composition of the enlargement consensus among individual EU member states

However, the development of the EU consensus regarding the bloc’s enlargement is obviously shaped by the influence of diverse (and often contradictory) national interests of individual EU member states. This balance is extremely fragmented and volatile during every period when the EU makes strategic decisions, even though mediated by the European Commission with its arbitration and promotion functions. Different geopolitical interests of the member states, their informal level of influence inside the EU and even pragmatic economic interests considerable influence the decisions on the EU enlargement as well.

For our purpose, we can divide the EU MS in relation to their attitude to EU enlargement into the following three groups:

- 1. ‘Activists’:** that are active pro-enlargement supporters in the EU aka CEE region countries, plus Austria, Finland, Italy and Hungary (though it is virtually an open Russian ally in the EU), and lead initiatives to push it.
- 2. ‘Blockers’ or ‘foot-draggers’:** the countries that are not very favourable to enlargement for a variety of reasons: national interests, prioritisation of internal cohesion in trying to shield the EU from ‘bad practices imports’ (especially on rule of law and democracy) or political benefits, often of domestic origin (like neighbours’ clashes over disputed territories, language or historical issues). These are France, the Netherlands, Denmark, and, lately, Bulgaria (definitely with Northern Macedonia issue).
- 3. ‘Fence-sitters’:** can be generally for enlargement, but can shift their tactical positions in the circumstances, keen on maintaining EU consensus. These countries tend to be mainly Spain, Portugal, Sweden, and other smaller ones that are usually not intensely engaged in development of the EU external policy issues.

Other key countries such as Germany tend to be favourable, but conditionally and their position shift in the circumstances. These groups are not always fixed, and may change in the specific case, depending on the political context. Moreover, the (geo)political positions of EU member states may differ (i.e., ‘old Europe’ vs ‘newcomers from the former Soviet bloc’). Additionally, the attitude of the member states towards a specific candidate may also differ due to the unique set of perceptions and pragmatic interests. The EU’s failure to open accession negotiations with North Macedonia and Albania in 2019 may serve as a good illustration of the above EU member states’ contradictions, in particular:

- **'Blocking' position:**

[France]: EU enlargement is an element of its national political agenda (since 2005, even a referendum was required in France to give a 'green light' for all EU accessions). Moreover, from France's point of view the further enlargement of the Western Balkans had to be conditional not only upon:

- (a) implementation and transposition of EU legislation (internal preparedness in candidate countries);
- (b) reform of the accession process itself, but even;
- (c) reform of EU institutions and decision-making.

This more than precautionary approach has been applied by France largely to balance out the fears in society relating to the organised crime of Western Balkan origin, in a context of rising, anti-immigration far-right parties to mobilise their electorate.

[Slovenia, Greece, Bulgaria]: this is a case of blocking by neighbours, who use the accession efforts of neighbours to secure or receive their own additional gains. For instance, Slovenia blocked Croatia's EU accession talks because of a border dispute, while Greece and Bulgaria blocked North Macedonia negotiations with the EU because of the name of the country and historical controversies.

- **'Decoupling' North Macedonia and Albania:**

[Finland, the Netherlands and Denmark]: this idea was based on an initial Finnish proposal to decouple North Macedonia and Albania and treat their progress on the basis of the merit-based approach contrary to the prevailing opinion of the majority EU member states that these two Western Balkans countries should be considered as together.

During the October 2019 European Council Summit, the Netherlands and Denmark supported opening accession talks with North Macedonia but not Albania, citing persistent concerns over political stability, corruption, organised crime, and the rule of law in the case of Albania.

- **'Supporting' position for the opening of accession negotiations with both North Macedonia and Albania:**

[Italy, Poland, Slovakia, Czech Republic and Hungary]: based primarily on arguments such as 'proper geopolitical momentum' and fears that 'enlargement vacuum would result in an increased influence of other external actors as Russia, China, Turkey, and the Gulf states leading to internal de-stabilization of the Balkan candidate countries' or even that it would 'damage the EU's economic interests'¹⁵. Austria, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland and Slovenia also expressed the view, in contrast to the French position, that internal EU reform should not be a requirement for enlargement.

Therefore, the example of 2019 negotiations with North Macedonia and Albania clearly demonstrates that even the generally positive impetus for enlargement at the European Council level may be stalled by a bizarre mix of contextual factors (shattered confidence in the Western Balkans region in general, conflicts between neighbouring member states and candidates, general post-Brexit enlargement scepticism), procedural factors (increased influence of Member States' domestic politics on the enlargement process) as well as geopolitics (based on fears of losing the ground in the Western Balkans to other global powers like China).

¹⁵ Niamh Fallon (2020). 'Can EU Enlargement to the Western Balkans be revitalised?', a report by The Institute of International and European Affairs (Ireland). Ministerial meeting of the Intergovernmental Conference completing the opening of the negotiations on the Accession of North Macedonia to the European Union, General EU Position. Available at https://vlada.mk/sites/default/files/dokumententi/draft_general_eu_position.pdf

Chapter 2

Procedural framework of accession negotiations: new EU methodology for the Western Balkans

This chapter outlines the EU accession negotiation procedure that candidate countries are expected to undergo to obtain full EU membership. The first subchapter presents stages of the negotiation procedure, describing different elements of the negotiations. The second subchapter discusses the revised enlargement methodology and explains its integration into a negotiating framework on the example of North Macedonia. As the accession negotiation process has become increasingly more complicated with the enlargement waves and may be affected by the political context as well as the national interests of individual member states (MS), the chapter also provides examples of political influence on the negotiation process.

2.1. Stages and elements of negotiations

The accession negotiations are the next stage after obtaining the EU candidate status. It is the critical stage in the entire accession process as the candidate country needs to implement all EU acquis into its national legislation. The opening of the accession negotiations does not necessarily follow immediately after granting the candidate status. As in the case of Ukraine and the Western Balkans, the start of the negotiations may be conditioned upon the fulfilment of certain criteria. Once the Commission determines that the conditions have been met, the Council may decide to open accession negotiations with the candidate country and invite the Commission to draw up a draft negotiating framework. After unanimous approval of the negotiating framework by the Council of the EU and the final endorsement by the European Council, the negotiations can be opened.

The EU accession negotiation process consists of the following elements or phases:

- adoption of a negotiating framework;
- First Intergovernmental Conference (IGC);
- screening of the legislation;
- opening and provisional closure of clusters of chapters of the EU acquis (actual negotiations);
- signing and ratification of the Accession Treaty.

Negotiating Framework

A prerequisite for holding the first IGC, which signifies the official start of the negotiations, is the Member States' unanimous approval in the Council of the Negotiating Framework developed by the Commission. The adopted Negotiating Framework allows the Council to set the date of the first IGC. This document is a unilaterally developed general EU position that establishes the guidelines for accession negotiation with a candidate country. It consists of two parts – the EU opening statement for accession negotiations and the negotiating framework itself. The first part accounts for the substance of the negotiating framework underlining its essential points. Negotiating Frameworks for Albania and North Macedonia are of a new generation as they integrate the enhanced enlargement methodology adopted in 2020. In this case, the opening statement specifies the changes introduced by the new methodology, especially “a stronger focus on the fundamental reforms” the progress of which will determine the overall pace of the negotiation

process¹⁶. The actual Negotiating Framework outlines principles governing negotiations, the substance of the negotiations, negotiating procedures, the procedure for and organisation of the negotiations (i.e. chairmanship, frequency of meetings, organisation, etc.), and includes an annex with the list of chapters grouped into 6 clusters.

Apart from the procedural elements, the Negotiating Framework includes country-specific points (conditions), usually of a political nature, against which negotiation progress will be measured. For instance, the negotiating framework for Croatia, Montenegro, and Serbia included a commitment on good neighbourly relations which is a part of the Stabilisation and Association Process. The negotiating framework for Serbia additionally specified normalisation of relations with Kosovo¹⁷. The case of North Macedonia seems to be similar to Serbia as the draft negotiating framework for the country also contains specific provisions on neighbourly relations with Greece (implementation of the Prespa Agreement) and Bulgaria (implementation of the Treaty on Good Neighbourly Relations of 2017). However, in light of the Bulgaria-North Macedonia dispute over language and identity issues which are covered by the Treaty on Good Neighbourly Relations, the provision appears to be problematic¹⁸. In June 2022, France brokered a deal between Bulgaria and North Macedonia aiming to settle the dispute and unblock EU accession negotiations for North Macedonia. Bulgaria, however, lifted its veto demanding the incorporation of the protocol from the second meeting of the Joint Intergovernmental Commission under article 12 of the Treaty on Good Neighbourly Relations into the Negotiating Framework. Another condition,

proposed by France, was the amendment of the Constitution of North Macedonia, recognizing Bulgarians as a state-founding ethnicity¹⁹. Both demands were approved by the Council – first, it was agreed that actual negotiations with North Macedonia would start once the country amends its Constitution²⁰. Secondly, the Negotiating Framework made accession negotiation progress conditional to North Macedonia's implementation of the 2017 Treaty with Bulgaria²¹. Considering the different interpretations of Treaty provisions by both parties, Bulgaria's veto power still endangers the smooth accession process of North Macedonia²². Another issue is that the Commission will now have to monitor the implementation of a bilateral treaty dealing with historic issues which has nothing to do with EU accession criteria. In this vein, the provision contradicts the revised enlargement methodology which distinctly says "All parties must abstain from misusing outstanding issues in the EU accession process."²³

The case of North Macedonia reveals one of the deficiencies of the EU accession process – any EU member state can block the process at any stage and the revised enlargement methodology does not prevent this from happening.

First Intergovernmental Conference

The formal commencement of accession negotiations between the EU and a candidate country takes place at the first Intergovernmental Conference. This event represents an important political milestone in the accession process but is of rather ceremonial nature. At the first ICG, representatives of the EU and a candidate country exchange their

16) Ministerial meeting of the Intergovernmental Conference completing the opening of the negotiations on the Accession of North Macedonia to the European Union, General EU Position. Available at https://vlada.mk/sites/default/files/dokumenti/draft_general_eu_position.pdf

17) Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union, General EU Position, Brussels, 21 January 2014. Available at <https://data.consilium.europa.eu/doc/document/AD%201%202014%20INIT/EN/pdf>

18) Jordanova M., Kacarska S., (2020) 'EU - North Macedonia accession negotiations: the implications of the Bulgarian conditions', European Policy Institute, Skopje.

19) David L. Phillips, Bulgaria, North Macedonia Should Enhance Relations, July 21, 2022, <https://balkaninsight.com/2022/07/21/bulgaria-north-macedonia-should-enhance-relations/>

20) Council conclusions on Enlargement - North Macedonia and Albania, Brussels, 18 July 2022. Available at: <https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf>

21) General EU Position on the Accession of North Macedonia to the European Union.

22) Elephants in Skopje – Balkan turtle race and Ukraine, ESI Newsletter 6/2022, 15 July 2022, <https://www.esiweb.org/newsletter/elephants-skopje-balkan-turtle-race-and-ukraine#>

23) Enhancing the accession process – A credible EU perspective for the Western Balkans, p. 5.

Opening Statements (including the Negotiating Framework from the EU side), present negotiating teams and the timetable of the next meetings within the screening process.²⁴ The EU delegation consists of the Council and Commission representatives and is headed by the Minister of Foreign Affairs of the member state presiding over the Council (EU Presidency) and Commissioner for Neighbourhood Policy and Enlargement Negotiations. The candidate country is represented by the Prime Minister, Minister of Foreign Affairs, and the Head of the Negotiating Team²⁵.

The actual negotiations, i.e. opening of individual clusters and provisional closing of chapters, are conducted within such Intergovernmental Conferences usually twice a year²⁶.

Screening process

Screening is an analytical review of the legislation of a candidate country in terms of its alignment with the EU acquis. The purpose of the process is to identify the areas of the acquis in which a candidate country needs to undertake further steps to make its legislation compatible with the EU. The screening is also expected to identify areas of accelerated integration or 'phasing-in' into individual EU policies that were introduced by the revised methodology. It constitutes the first, preparatory stage of accession negotiations and is usually initiated after holding the First IGC. For example, the inaugural meetings of the screening process with Albania and North Macedonia were organised immediately after the First IGC²⁷. It is worth mentioning that in both cases the first stage of screening was conducted a few years ago in 2019. While it was a good idea in itself, the political stalemate with opening negotiations meant it was a wasted effort. Since

the negotiations were officially opened in 2022 and are being conducted in line with the revised methodology, the screening process has started a new round. Thus, on 15 September 2022, the EC began the screening of the Fundamentals cluster with Albania and North Macedonia²⁸. The screening process includes three stages:

1. explanatory screening;
2. bilateral screening;
3. screening report.

Explanatory screening is carried out at a meeting during which the EC presents the EU legislation to the candidate country in a given chapter or chapters grouped into clusters according to the new methodology. This meeting provides an opportunity for representatives of candidate countries to learn important information about EU law in a certain area²⁹.

Bilateral screening is conducted in the form of a similar meeting, but this time it is a candidate country that presents its national legislation in certain chapters/clusters, (based on screening lists and questions provided by the EC), along with the assessment of the level of alignment of a country's legal system with the EU acquis. The delegation of a candidate country also presents plans for achieving alignment with EU law by the time of its full EU membership.

Once screening meetings are held, the EC prepares the Screening Report for each cluster. This document contains the EC assessment of the level of alignment of the country's legal framework with the EU acquis and provides recommendations on further steps. The EC's findings presented in the Report largely determine the further accession negotiations process. The Council, after unanimously

24) <https://www.mfa.gov.rs/sites/default/files/inline-files/Accession%20negotiations.pdf>

25) Božović D., Babić J., et al., (2015) Guide for Monitoring the EU Accession Negotiations Process, Belgrade Open School, Belgrad, p. 19-20.

26) Ibid.

27) First Intergovernmental Conferences with Albania and North Macedonia to kick-start the accession negotiation, 19 July, 2022. Available at: https://neighbourhood-enlargement.ec.europa.eu/news/first-intergovernmental-conferences-albania-and-north-macedonia-kick-start-accession-negotiation-2022-07-19_en

28) Delegation of the European Union to North Macedonia, Screening of fundamentals cluster as part of negotiations process kicks off with North Macedonia, 16 September, 2022. Available at: https://www.eeas.europa.eu/delegations/north-macedonia/screening-fundamentals-cluster-part-negotiations-process-kicks-north_en

29) Božović D., Babić J., et al., (2015) Guide for Monitoring the EU Accession Negotiations Process, p. 21.

adopting the Report, acts on the basis of EC's recommendations and may decide to open negotiations on a given cluster if the EC decides that the candidate country's legislation has reached sufficient alignment. The Council thus invites the candidate country to present its Negotiating Position on a certain cluster³⁰.

Another scenario is when the Council concludes, based on the EC's assessment, that a candidate country is not prepared to start the negotiations on a given cluster and sets opening benchmarks the fulfilment of which allows opening negotiations. The opening benchmarks are formulated by the EC in the recommendations section of the Screening Report; these ones may include the adoption of legislation, strategy, or action plan in a certain area. Once the EC reports in the Opening Benchmark Assessment Report (OBAR) that the opening benchmarks have been met, it may recommend opening negotiations on a cluster. The negotiations are opened when the Council invites a candidate country to submit its Negotiating Position for the given cluster.

One should note that a candidate country can neither influence the substance of the opening benchmarks, nor can it negotiate to drop any. If there is no progress in the country's fulfilment of these benchmarks, no chapter from a cluster can be opened.

Negotiations

According to the enlargement methodology, the Fundamentals cluster³¹ should be opened first in negotiations and closed last. The sequence of the opening of the other clusters can hardly be determined in advance, as it depends on the screening results and the decision of the Council. The opening of negotiations on a cluster may take place after the Council decides that opening benchmarks have been met and thus invites a candidate country to submit its Negotiating Position for a given cluster.

In this document, a candidate country presents its level of alignment with the EU legislation, a plan for further alignment, and provides an overview of its administrative capacity for implementation. In its Negotiating Position, a country also defines transitional periods necessary for the transposition of certain EU *acquis* into its national legislation already after its full EU membership. The country is allowed to change its Negotiating Position in the course of negotiations by submitting the relevant addendum to the EU³².

Once the Council receives the Negotiating Position of a candidate country, the EC proceeds with the preparation of the EU Common Position, which is then adopted by the Council. The EU Common Position is prepared based on the position of a candidate country and determines the further course of action:

- provisionally closing of a chapter, if it is assessed that a country reached a sufficient level of compatibility with the EU *acquis*;
- laying down closing benchmarks, if a country needs to fulfil certain conditions to achieve a sufficient level of alignment with EU law before closing a chapter;
- laying down interim benchmarks for chapters 23 and 24 to monitor more closely the reform process and the progress of alignment; the closing benchmarks can be set, once interim benchmarks are met.³³

After adopting the EU Common Position, the Council organises the Intergovernmental Conference during which the negotiations on a cluster are opened. It should be emphasised, that according to the revised methodology, the cluster is opened as a whole with all negotiating chapters, but when it comes to provisional closure, each chapter is assessed individually.

30) *Ibid.*, p. 22.

31) Cluster of Fundamentals includes the following negotiating chapters: 23 - Judiciary and fundamental rights; 24 - Justice, Freedom and Security; Economic criteria; Functioning of democratic institutions; Public administration reform; 5 - Public procurement; 18 - Statistics; 32 - Financial control.

32) Božović D., Babić J., et al., (2015) Guide for Monitoring the EU Accession Negotiations Process, p. 22.

33) *Ibid.* p. 23.

The cluster of Fundamentals is the exception, as all chapters from this cluster should be opened and closed all at once.³⁴

Treaty of Accession

The final stage of the EU accession negotiations is the conclusion of the Accession Treaty. For it to happen, the European Council should confirm that a candidate country has fulfilled all the commitments, the negotiations on all clusters are completed, and the country is ready to undertake the obligations of EU membership. The EU Member States and a candidate country conclude the bilateral Accession Treaty and the Act of Accession which notes the date of accession, negotiation results, transitional periods, and the country's participation in the EU institutions. After being signed by the parties, the Treaty should be approved by the European Parliament and ratified by all EU member states.³⁵

2.2. Enlargement methodology

The EU accession process has become more complicated and demanding over the years. Currently, it is carried out in line with the new enlargement methodology adopted by the Council in March 2020. The proposal to revise the EU enlargement methodology came from France in November 2019 when the country suggested its non-paper "Reforming the European Union accession process". The purpose behind it was that "the existing accession process is too slow to deliver concrete benefits for the citizens of candidate states, thereby fuelling emigration".³⁶ However, by its proposal, France effectively blocked the opening of accession negotiations with Albania and North Macedonia in 2019. In December 2019, another non-paper was published by nine Member States (Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, Poland, and Slovenia) responding to the French document. The main point of the latter

was that the revision of the enlargement process should go "without prejudice to the decisions on opening the accession negotiations with Albania and North Macedonia which should be taken by March 2020 at the latest in order to live up to the EU's commitments".³⁷ In February 2020, the EC issued its communication on improved enlargement methodology which partly took into account French proposals.³⁸ This document was endorsed by the Council in March 2020.

Under the new enlargement methodology, 35 negotiating chapters are structured in 6 thematic clusters: Fundamentals (includes 5 chapters), Internal Market (9 chapters), Competitiveness and Inclusive Growth (8 chapters), Green Agenda and Sustainable Connectivity (4 chapters), Resources, Agriculture and Cohesion (5 chapters), and External Relations (2 chapters), and thus negotiations will be opened for the whole cluster instead of individual chapters. This, to a certain extent, may accelerate the procedure as the Council can decide on opening the negotiation on different chapters at once. In general, only 6 decisions are needed for opening all chapters instead of 35. The purpose behind clustering the chapters was "to inject further dynamism into the negotiating process and to foster cross-fertilisation of efforts beyond individual chapters".³⁹ In practice, it is supposed to allow identifying the most important reforms per cluster. The purpose behind the clustering approach has been "to inject more dynamism in the negotiations".

The methodology envisages a strong focus on fundamental reforms (rule of law, democracy, economic reforms). In addition, the revised methodology provides for stronger political steer and engagement from the Member States. Namely, the member states are invited to monitor the process on the ground via their experts and contribute to annual reports. Moreover, any member state can request that

34) General EU Position on the Accession of North Macedonia to the European Union.

35) Božović D., Babić J., et al., (2015) Guide for Monitoring the EU Accession Negotiations Process, p. 24.

36) Duff A., Setting the bounds of the European Union, Discussion Paper, European Policy Centre, 10 March 2020, p. 6.

37) Barigazzi J, 9 EU countries push back on French enlargement revamp, December 13, 2019 <https://www.politico.eu/article/eu-enlargement-reform-pushback/>

38) Barigazzi J, 9 EU countries push back on French enlargement revamp, December 13, 2019 <https://www.politico.eu/article/eu-enlargement-reform-pushback/>

39) Ibid.

the Commission propose the application of negative conditionality to a candidate country if there is a backsliding in reform implementation or breach of undertaken commitments. The reason behind the introduction of stricter negative conditionality in the revised methodology is to prevent or react to the rollbacks in reforms or rising authoritarianism and avoid damage to the EU's cohesion once the candidate country can join. Closer involvement of the Member States in the enlargement process is supposed to help avoid an unexpected veto from any of the members in the accession negotiations process. On the other hand, however, there is a danger of turning the accession process into a more politicised procedure.

The methodology also introduced positive conditionality – once a candidate country meets the negotiated conditions, the methodology provides for:

1. “Closer integration of the country with the European Union, work for accelerated integration and ‘phasing-in’ to individual EU policies, the EU market and EU programmes, while ensuring a level playing field.
2. Increased funding and investments – including through a performance-based and reform-oriented Instrument for Pre-accession support and closer cooperation with IFIs to leverage support.”⁴⁰

Negative conditionality includes:

1. “In the event of stagnation or backsliding in Fundamentals’ reform implementation, the Member States on the Commission’s proposal could decide to put on hold or suspend the negotiations;

2. provisionally closed chapters and thus the entire cluster can be re-opened (the principle of reversibility), if a country fails to implement reforms in a given area. The EU funding can be reduced, and the country’s access to EU programmes and markets could be paused or withdrawn.”⁴¹

The revised enlargement methodology has not yet been fully applied in practice. Its full application is still to be tested in the accession negotiations of Albania and North Macedonia. However, the application of some of its elements can be traced in the accession negotiations with Montenegro and Serbia as both countries agreed that changes brought about by the new methodology could be accommodated within the existing negotiating frameworks.⁴² Due to the fact that at the time the revised methodology was approved, Montenegro opened 33 out of 35 negotiating chapters and Serbia opened 18 out of 35 chapters (which included all chapters from the Fundamentals cluster and some chapters from other clusters), the clustering has been applied differently to each country. In the case of Montenegro, the clustering relates only to the identification of areas of possible accelerated integration (“phasing-in”). While Serbia continues accession negotiations according to a cluster-based approach, instead of a chapter-based. This means that negotiations will be opened on all chapters of a cluster. Thus, in December 2021, the Council greenlighted opening negotiations on the whole cluster 4 “Green Agenda and Sustainable Connectivity” for Serbia.⁴³

Negotiating framework for North Macedonia outlines how the revised methodology will be applied in negotiations. Negotiations on Fundamentals are subject to a specific procedure. The opening benchmarks for this cluster should be 3 government roadmaps – for the rule of law chapters, for the functioning of democratic institutions, and for public

40) Enhancing the accession process – A credible EU perspective for the Western Balkans, p. 5.

41) Ibid.

42) Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia, 6 May 2021. Available at: <https://data.consilium.europa.eu/doc/document/ST-8536-2021-INIT/en/pdf>

43) Serbia Opens EU Negotiating Cluster 4 – Green Agenda and Sustainable Connectivity, <https://europa.rs/serbia-opens-eu-negotiating-cluster-4-green-agenda-and-sustainable-connectivity/?lang=en>

administration reform, developed on the basis of guidance provided by the Commission in screening reports. These roadmaps must contain key reform priorities with a clear timetable. The implementation of these roadmaps is subject to constant monitoring by the EU and is to be addressed regularly at Intergovernmental Conferences.

Once the opening benchmarks are met, the Fundamentals cluster is to be opened by the unanimous decision of the Council. By the very same decision and on the basis of the Commission's proposal the Council would lay down interim benchmarks on the rule of law chapters. The interim benchmarks (closely linked to actions and milestones in the implementation of the roadmap and Action Plan) may envisage the adoption of legislation, establishment, and strengthening of administrative structures. To meet the interim benchmarks, a candidate country should demonstrate an intermediate track record of reform implementation. As it is stated in the Negotiating framework, "no chapter will be provisionally closed before these interim benchmarks are met"⁴⁴, which means that the pace of implementation of fundamental reforms would influence the whole negotiation process. Once the interim benchmarks have been met, the Council on the basis of the Commission assessment may decide on the closing of the cluster of Fundamentals as a whole.

Once the Fundamentals cluster is open, the Council may decide on the opening of negotiations on clusters the opening benchmarks of which have been fulfilled by the candidate country. Unlike the Fundamentals cluster, the negotiations on other clusters do not envisage laying down the interim benchmarks and closing benchmarks are set for each chapter individually. When the negotiations on all chapters of a cluster are closed, the cluster is considered provisionally closed automatically. In addition, the opening of a cluster and provisional closure of a chapter is conditioned by "the improvement of administrative capacity within the respective clusters and their component

chapters. Moreover, anti-corruption policies will be mainstreamed throughout all relevant chapters".⁴⁵ In other words, no chapter can be closed if there are no sufficient anti-corruption policies implemented.

As it was demonstrated, the EU accession negotiations are a complex process regulated by the established procedure. By the completion of the negotiations, a candidate country must fully align its national legislation with the EU *acquis* and demonstrate a track record of implementation. In addition, the process can be influenced by the political interests of member states which can result in the slowing down of negotiations.

Box 2. Fundamentals cluster – a key part of accession negotiations: cases of Serbia and Montenegro

"Fundamentals" is a key negotiation cluster of the EU enlargement negotiation process.

As already mentioned, according to the new EU enlargement methodology, this cluster opens first and closes last. This effectively means that until a prior candidate country starts to implement the Fundamentals cluster, no other clusters (including those dealing with free movement of goods, workforce, and capital) can be opened. Likewise, no other clusters can be deemed completed before the EU concludes that the Fundamentals cluster is closed.

The Fundamentals cluster includes five chapters:

- Public Procurement (chapter 5);*
- Statistics (chapter 18);*
- Judiciary & Fundamental rights (chapter 23);*
- Justice, Freedom & Security (chapter 24);*
- Financial control (chapter 32).*

44) General EU Position on the Accession of North Macedonia to the European Union.

45) Ibid.

This cluster also includes economic criteria, functioning of democratic institutions and public administration reform.

The new enlargement methodology focuses on the most essential reforms for the EU path. Negotiations on the Fundamentals cluster must include opening benchmarks (e.g. preparation of a roadmap for the rule of law chapters (chapters 23 & 24). Negotiations on the Fundamentals cluster also envisage development of a roadmap on the functioning of democratic institutions and public administration reform, as well as completion of an economic reform program.

Overall, there may be three types of benchmarks in this cluster:

- Opening benchmarks (if applicable) – to be achieved prior to start of the fulfilment of the cluster/chapter;*
- Interim benchmarks (if applicable) – to be completed for negotiations to continue, and closing benchmarks to be identified by the EU side;*
- Closing benchmarks (mandatory for each Chapter) – needed to demonstrate the outcome of reforms made by the candidate country.*

Note that the EU's approach to the procedure of negotiations has evolved over time. The most significant developments include:

- The EU Commission demands evidence of practical enforcement of the EU acquis, rather than formal incorporation of EU law into domestic legislation.*
- The Fundamentals cluster has a priority over the other clusters, i.e. no other negotiation chapter will be provisionally closed before the benchmarks are met⁴⁶.*

46) Enhancing the accession process – A credible EU perspective for the Western Balkans. Available at: https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-perspective-western-balkans_en

- The interim benchmark stage has been added to the negotiation process. These benchmarks have been first implemented during negotiations with Montenegro, and then later applied also to Serbia⁴⁷. The new methodology for the Western Balkans 2020⁴⁸ also provides interim benchmarks for the Fundamentals cluster.*

This is probably because of the paramount importance of the Fundamentals-related chapters for political development and providing reforms in other sectors.

There are various expert opinions on whether rigorous EU requirements on compliance with chapters 23 and 24 (e.g., justice matters) are justified.

On one hand, there is criticism of the fact that the EU requires higher standards from Montenegro and Serbia than from countries that previously acceded the EU, and even from the existing EU Member States⁴⁹.

Another point of view is that the extensive EU requirements are actually based on the lessons learned from the experience of 2007 EU enlargement (the joining of Romania and Bulgaria, which further suffered from considerable problems with the rule of law)⁵⁰. The other reason is democratic rollbacks in other new member states (Hungary and Poland).

For North Macedonia, the Fundamentals cluster may play a crucial role for the whole negotiation process. As mentioned above, no chapter can be provisionally closed before all the interim benchmarks

47) EU ACCESSION NEGOTIATIONS: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia. Available at: <https://www.gov.me/dokumenta/03715367-6039-47dd-8da2-0bdf3d3b6162>

48) Enhancing the accession process – A credible EU perspective for the Western Balkans. Available at: https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-perspective-western-balkans_en

49) EU ACCESSION NEGOTIATIONS: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia. Available at: <https://www.gov.me/dokumenta/03715367-6039-47dd-8da2-0bdf3d3b6162>

50) Lazowski, A. and Vlasic Feketija, M. 2014. The Seventh EU Enlargement and Beyond: Pre-Accession Policy vis-à-vis the Western Balkans Revisited. Croatian Yearbook of European Law and Policy. 10, pp. 1-37.

in the Fundamentals cluster are met⁵¹. Fulfilling all interim benchmarks for the whole Fundamentals cluster may pose a challenging task. For instance, even after 10 years of negotiations, Montenegro is not able to close 7 chapters from other clusters (which are technically completed), due to the fact that not all the benchmarks in the Fundamentals cluster are achieved.

Below we comment on the specific Chapters of the Fundamentals negotiation cluster.

Chapter 5 “Public Procurement” covers the country’s compliance with the general principles of transparency, equal treatment, free competition and non-discrimination. In addition, the candidate must implement specific EU directives on award of public contracts, dispute resolution and remedies⁵².

In the case of Montenegro and Serbia, there are no specific opening benchmarks for this chapter. To complete the Chapter, the candidate countries must meet the following closing benchmarks:

- Bringing domestic legislation on public procurement (including concessions, public-private partnerships, and defence procurement) in compliance with EU acquis.
- Ensuring adequate administrative and institutional capacity of the authorities, as well as proper implementation and enforcement of national legislation in this area.
- Demonstration of a track record (i.e., periodic monitoring and measuring of changes) of a fair and transparent public procurement system.

Montenegro started EU negotiations on the Public Procurement chapter in December 2013, whereas Serbia opened this chapter

in December 2016. Neither country has provisionally closed the chapter so far.

According to the EC Commission reports, as of 2021 the level of Montenegro’s preparedness in this sector was “moderate” (despite the good progress achieved in 2020)⁵³. For Serbia, overall assessment was also “moderate” (whilst only limited progress was observed over the preceding year)⁵⁴.

Chapter 18 “Statistics” requires that a candidate must have sustainable statistical infrastructure, demonstrating impartiality, reliability, transparency, confidentiality of individual data, as well as proper dissemination of official statistics.

There must also be relevant institutional capacity of national statistical authorities. EU acquis to be implemented cover methodology, classification and procedures for data collection in various areas.

There were no opening benchmarks for Montenegro and Serbia in this chapter. Montenegro has already received closing benchmarks for this chapter. Among them:

1. Montenegro submits key national accounts data (e.g., GDP, financial accounts, balance sheets etc.) in accordance with the European System of National and Regional Accounts (ESA) 2010 and other relevant requirements together with the required detailed description of the methodology used.
2. Montenegro presents to the Commission a road map for the transmission of the remaining tables from the ESA 2010 Transmission Programme and the pending methodological issues.

At the same time, the European Commission pointed out insufficient statistical

51) https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_4602

52) https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

53) Montenegro Report 2021. Available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en

54) Serbia Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2021_en

infrastructure and human resources of Montenegro's statistical authorities (e.g., only 50% of the needed staff is actually employed, poor condition of the building of Monstat etc.)⁵⁵. Accordingly, institutional and technical requirements are also on the table.

Note that insufficient state capacity (poor funding, lack of qualified personnel, absence of legal powers, low salaries, improper condition of infrastructure) is a common problem, which frequently arises in other chapters and clusters as well.

Chapter 23 "Judiciary & Fundamental Rights" aims to maintain and further develop the Union as an area of freedom, security and justice. The comprehensive task of all the reforms in the judiciary sector is to establish an efficient, qualitative and independent justice system. Equally, Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. Member States also must ensure respect for fundamental rights and EU citizens' rights, as guaranteed by the *acquis* and by the Fundamental Rights Charter⁵⁶.

The Chapter "Judiciary & Fundamental Rights" is one of the most important parts of EU negotiations both for Montenegro and Serbia. Considering an extensive list of benchmarks, commitments and reforms, progress in this chapter impacts the progress in the other chapters.

Opening benchmarks for Montenegro and Serbia in this Chapter include detailed action plans containing clear objectives, timeframes and necessary institutional set-up in the following areas:

Judiciary;

Combating corruption;

Fundamental rights.

For North Macedonia, a roadmap for the "Judiciary & Fundamental Rights" chapter also serves as an opening benchmark.

There is a significant volume of interim benchmarks (supplementing the commitment to implement EU *acquis*) in this Chapter. For instance, Montenegro has to implement 44 interim benchmarks (18 benchmarks in the area of justice, 14 in the area of anti-corruption, and 11 in the area of fundamental rights)⁵⁷. Serbia has even more – 50 interim benchmarks in this chapter. Some of these benchmarks are country-specific, whereas the majority of others are the same for Montenegro and Serbia.

Hence, Ukraine can expect similar benchmarks in further accession negotiations processes (see specific samples below).

For instance, interim benchmarks in the judiciary area include a lot of staffing and disciplinary requirements for judges and prosecutors (e.g., single, transparent and merit-based system of recruitment, performance evaluation, promotion, as well as effective enforcement of the disciplinary action for breaches of rules).

Reduction of case backlog during court litigation is one of the important interim benchmarks for Montenegro and Serbia. At the same time, it appears that such a backlog may be a common issue for judicial systems of many countries. For instance, estimated time needed to resolve civil, commercial, administrative and other cases in 2020 was more than a year in some EU member states (Spain, Malta, Italy, France, and Cyprus)⁵⁸. It can be an indirect indicator of the high level of case backlog in the court systems in these countries.

55) Montenegro Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en

56) https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

57) EU ACCESSION NEGOTIATIONS: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia. Available at: <https://www.gov.me/dokumenta/03715367-6039-47dd-8da2-0bdf3d3b6162>

58) EU Justice Scoreboard 2022 https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf

There is also a requirement to strengthen the administrative capacity of the judicial system. Serbia also has a number of country-specific interim benchmarks concerning the handling of domestic war crimes.

As regards anticorruption policy, Montenegro and Serbia have some common interim benchmarks. Including:

- establishment or strengthening of an anti-corruption agency;*
- effective implementation of the asset declaration and verification system;*
- recruiting and career management of civil servants on the basis of clear and transparent criteria, focusing on merits and proven skills;*
- implementing and assessing the impact of measures taken to reduce corruption in vulnerable areas.*

The fundamental rights area consists of 11 interim benchmarks for Montenegro and 15 benchmarks for Serbia. They include implementation of EU acquis and effective enforcement of human rights. Along with the general requirements for media independence, protection of LGBTI persons, preventing domestic violence and providing the necessary protection to victims, improving the living conditions of displaced persons etc, there are some country-specific interim benchmarks like implementation the Strategy for the Advancement of the Status of Roma and Egyptians in Montenegro or improvement of the situation of refugees and IDPs by providing permanent housing solutions and improving living conditions for Serbia.

As of 2020, Montenegro's level of preparedness in the Judiciary Chapter remains "moderate", with limited progress in this area. Serbia has some level of preparation in applying the EU acquis and the European standards in this area.

Chapter 24 Justice, Freedom and Security aims to improve border control, visas, external migration, asylum, police cooperation, the fight against organised crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters. Reforms in this chapter require a strong and well-integrated administrative capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards.

In this Chapter, both Montenegro and Serbia have only one (yet rather comprehensive) opening benchmark: "one or more detailed action plan(s), comprising related timetables and setting out clear objectives and timeframes and the necessary institutional set-up together with adequate cost evaluations and financial allocations, in the following areas:

- Migration;*
- Asylum;*
- Visa policy;*
- External borders and Schengen;*
- Judicial cooperation in civil and criminal matters;*
- Police cooperation and fight against organised crime;*
- Fight against terrorism;*
- Cooperation in the field of drugs;*
- Customs cooperation;*
- Protection of the euro against counterfeiting (aspects of criminal law)".*

There are 38 interim benchmarks identified for Montenegro, and 44 interim benchmarks for Serbia in this chapter.

As of 2020, the EU assessed Montenegro's level of preparedness in the area of justice, freedom and security as "moderate", with legislative and institutional frameworks overall being in place. In the meantime, the level of Serbia's progress is lower – "some level of preparation".

Economic criteria. Not being a part of any Chapter, these criteria still represent an integral part of the entire Fundamentals sector. Pursuant to the conclusions of the European Council in Copenhagen in June 1993, EU accession requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union.

Economic criteria are not specified as tangible economic indicators. For instance, Montenegro and Serbia have different levels of economic indicators (unemployment, general government debt etc.), but according to EU Commission reports both Montenegro and Serbia are "moderately" prepared in developing a functioning market economy⁵⁹.

The main document for economic criteria is the Economic Reform Programme (ERP). Since 2015, all EU candidate countries and potential candidates have prepared ERPs. The ERPs are a key element of the "fundamentals first" approach in the EU's enlargement strategy⁶⁰.

The European Commission and the European Central Bank prepare their assessments of the candidate countries' programmes. This forms the basis for a multilateral economic policy dialogue involving enlargement countries, EU Member States, the Commission and the European Central Bank⁶¹.

Chapter 35 Financial control relates to the adoption of internationally recognised frameworks and standards, as well as EU good practice, on public internal financial control (PIFC)⁶². This chapter also covers the protection of the EU's financial interests against fraud in the management of EU funds and the protection of the euro against counterfeiting.

Serbia and Montenegro did not have any opening benchmarks for this Chapter. At the same time, four closing benchmarks are the same for both countries. They include:

- *implementation of PIFC legislation and underlying policies and ensuring sufficient administrative capacity at the central and local levels, in social security funds and in the state-owned enterprises.*
- *compliance of the State Audit Institution with the standards of the International Organisation of Supreme Audit Institutions (INTOSAI).*
- *an effective and efficient coordination of anti-fraud activities to guarantee the fulfilment of future obligations arising from Article 325(3) of the TFEU and application of the provisions of Regulation (EC) No 2185/96.*
- *ratification and implementation of the 1929 Geneva International Convention for the suppression of counterfeiting currency, aligning its legislation with the EU acquis on medals and tokens similar to euro coins and ensuring sufficient administrative capacity for the technical analysis centre.*

59) Montenegro Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en Serbia Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2021_en

60) <https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-05/20180417-erp-factsheet.pdf>

61) <https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-05/20180417-erp-factsheet.pdf>

62) https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

Both Serbia and Montenegro are “moderately” prepared in this chapter.

Conclusions:

- Montenegro and Serbia had opening benchmarks only for two chapters (Judiciary & Fundamental rights (chapter 23); Justice, Freedom & Security (chapter 24)). Opening benchmarks usually envisage action plans for reforms in specific sectors and/or implementation of specific EU acquis.
- For chapters 5 Public Procurement, 18 Statistics and 32 Financial Control, Montenegro and Serbia have only closing benchmarks.
- Implementation of interim benchmarks in the Fundamentals cluster is a complicated task. Montenegro cannot meet them even after 10 years of preparation.
- Some interim benchmarks in the Fundamentals chapters are rather loosely defined, which allows for multiple interpretation/considerable discretion in assessment of the candidate country. For example, the wording of the requirement: “Montenegro substantially improves the capacity of the Ministry of Interior to run investigations into financial crimes” is vague – it is not clear what “substantially improves” means – which may allow for subjective judgement based on purely political considerations.
- There are many interim benchmarks in Fundamentals that require a check of the “track record”. To perform such benchmarks, long-term monitoring must be in place. This is the case with respect to the freedom of expression, merit-based human resource management of civil servants and judges, implementation of anti-discriminatory and asylum legislation.

- All the chapters contain requirements for administrative capacity improvement. Such improvement includes new buildings, specific IT development, employment and training of additional staff, increasing the budget of state organisations or authorities. For administrative capacity improvement, the government usually needs additional financial and other resources.

Chapter 3

Accession lessons learned by the Western Balkans: progress in key EU acquis chapters

SERBIA



Serbia applied for EU membership in 2009. In 2012, Serbia was granted EU candidate status. The next year, the EU and Serbia signed the Stabilisation and Association Agreement. And in 2014, Serbia started EU accession negotiations. As of now, the country has opened 22 negotiating chapters out of 35. According to the 2021 Commission report, after 8 years of negotiations, Serbia reached a good level of preparation only in 6 chapters, two of which have been provisionally closed (i.e., Chapter 25: Science and Research, and Chapter 26: Education and Culture). The other four chapters are Chapter 6: Company Law, Chapter 7: Intellectual Property Law, Chapter 29: Customs Union, and Chapter 14: Transport. In other chapters, Serbia is either moderately prepared or has some level of preparation. This implies that the pace of negotiations is slow, which is likely to be the consequence of the slow pace of reforms, even despite the opening of all four chapters within cluster 4 at the end of 2021. As the EC constantly reiterates in its yearly reports, the pace of Serbia's accession negotiations depends in particular on the implementation of rule-of-law reforms and on the normalisation of Serbia's relations with Kosovo⁶³.

The country has not, however, demonstrated substantial progress in either area. In addition, the lack of commitment to the enlargement process both on the part of Serbia's current nationalistic leadership and the EU has been stalling the pace of the negotiations⁶⁴.

In its 2021 report, the EC noted that Serbia had fulfilled the opening benchmarks in clusters 3 and 4 and thus recommended opening negotiations on these clusters⁶⁵. In December 2021, Serbia opened only cluster 4 "Green Agenda and Sustainable Connectivity", which includes 4 chapters (14 Transport Policy, 15 Energy, 21 Trans-European Networks, 27 Environment and Climate Change). Even though the EU's decision did not address chapters under cluster 3, the opening of negotiations on cluster 4 as a whole marked a reinvigoration of the negotiation process as no chapter opened in 2020.

The almost two-year-long impasse was caused by the lack of progress in the rule-of-law reforms and democratic backsliding. According to Freedom House reports, since Aleksandar Vučić assumed the post of Prime Minister, the ratings of Serbia's democracy has been declining. In the democracy rating, Serbia was classified as a semi-consolidated democracy during the reporting period of 2015–2018. In 2019, the country was downgraded to transitional or hybrid regimes⁶⁶. The same trend is observed in the ratings on political rights and civil liberties as Serbia was downgraded from "free" to "partly free" according to the results of the 2019

64) Bechev D., What Has Stopped EU Enlargement in the Western Balkans?, June 20, 2022, <https://carnegieeurope.eu/2022/06/20/what-has-stopped-eu-enlargement-in-western-balkans-pub-87348>

65) Serbia 2021 Report, p. 3.

66) Serbia: Nations in Transit 2019 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/nations-transit/2019>

63) Serbia 2021 Report, p. 3.

report⁶⁷. The situation did not improve in 2021, though, as pressure on political opposition, independent media and civil society continued⁶⁸.

Serbian experts attribute the revival of the negotiation process to the adoption of amendments to the Constitution concerning the independence of the judiciary which is an interim benchmark for Chapter 23. The reform is, however, far from being completed, the effectiveness of the constitutional change and thus elimination of political influence on the judiciary could be ensured only after the relevant judicial laws are amended⁶⁹. The experts criticised the accelerated procedure of amending the Constitution and the final draft law noting “that it is a matter of simply ticking off items for the sake of Serbia’s European integration, without any intention to really improve the independence of the judiciary⁷⁰.” In addition, Cluster 4 was opened against the backdrop of environmental protests in Belgrade related to an extraction industry project considered highly polluting. Under the pressure from the civil society, the government abandoned the project and the corresponding draft law on the expropriation of property and mining projects; however, pollution remain an acute problem in Serbia. The opening of the negotiations on cluster 4 thus may be considered as the EU’s “stick” used to make Serbia comply with EU legislation and standards in the environmental area⁷¹.

The reasons why cluster 3 seems to have remained unaddressed during the EU Accession Conference with Serbia may be the lack of progress in fundamental reforms. The Commission’s recommendation to open two

clusters left the member states divided over the issue. Opponents argued against a green light to opening two clusters citing abuse of power by the ruling party, problems with freedom of speech and lack of media pluralism, corruption, and inefficient fight against organised crime⁷². Given the fact that limited progress has been made in these areas, opening only cluster 4 could be a compromise decision by the member states so as to respond to Serbia’s efforts in fulfilling the Chapter 23 interim benchmark.

Another problem, that was highlighted by the European Parliament’s report, is Serbia’s low alignment rate with the EU’s CFSP statements and positions and continued cooperation with Russia, Belarus, and China. In 2020, Serbia aligned itself with 56% of EU CFSP statements and positions, this figure increased to 61% in 2021⁷³. Serbia did not align with the EU sanctions against Russia and Belarus, in particular following the Russian invasion of Ukraine, and its President is a vocal supporter of neutrality between the EU and Russia, which contradicts the essence of enlargement. Serbia has not closed its airspace for flights to and from Russia, creating a loophole for Russians to travel to Europe⁷⁴. The EP also voiced concerns over Serbia’s economic and military cooperation with Russia and military purchases from Belarus and China that call into question the country’s foreign policy orientation towards the EU. In this regard, MEPs recommended “that further negotiating chapters should only be opened when Serbia takes the necessary measures” on foreign policy issues along with the rule of law⁷⁵. In addition, in March, nine MEPs from the Renew Europe group signed an open letter calling Commission President Ursula Von der Leyen and

67) Serbia: Freedom in the Western World 2019 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/freedom-world/2019>

68) Serbia: Freedom in the Western World 2022 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/freedom-world/2022>

69) Nikola Burazer, Jovana Spremo, Sofija Popović, Serbia’s Progress in EU Integration 2020 - 2022: Constitutional Changes the Only Step Forward?, Friedrich-Ebert-Stiftung, May 2022.

70) PREUGOVOR ALARM: REPORT ON THE PROGRESS OF SERBIA IN CLUSTER 1, May 2022, p. 12.

71) Serbia / European Union: new stage in accession negotiations, <https://regard-est.com/serbia-european-union-new-stage-in-accession-negotiations>

72) EU-Serbia: A stagnation comfortable for both sides, <https://www.euractiv.com/section/enlargement/opinion/eu-serbia-a-stagnation-comfortable-for-both-sides/>

73) Ibid., p. 125.

74) Russians using Serbian loophole to avoid EU flights ban, <https://www.theguardian.com/business/2022/mar/11/wealthy-russians-using-air-serbia-loophole-to-avoid-eu-flights-ban>

75) European Parliament resolution of 6 July 2022 on the 2021 Commission Report on Serbia (2021/2249(INI)).

HRVP Josep Borrell to freeze the EU accession negotiations for Serbia citing the country's drifting towards Russia against the backdrop of the Russian invasion of Ukraine and the backsliding in the rule of law and democracy⁷⁶. However, technically, Serbia's non-alignment with the EU CFSP can hardly be the reason for the cessation of the accession negotiation as Chapter 31 (Foreign, Security and Defence Policy) is yet to be opened. However, the stagnation in fundamentals' reforms may indeed result in member states' decision to put on hold negotiations with Serbia. Overall, both patterns are weighing in the process of Serbia's accession negotiations: drifting toward Russia and away from the EU as well as democratic backsliding.

Amidst Serbia's sluggish progress towards EU membership, the public support for the country's European perspective is decreasing. The latest opinion poll revealed that the number of Serbians who are in favour of the country's EU membership (35%) is lower than of those who are against (44%)⁷⁷. It means that there is a low demand for European integration reforms, which may endanger the further progress of Serbia in accession negotiations.

MONTENEGRO



Montenegro applied for EU membership in 2008, and in 2010 the EU granted Montenegro candidate status. Negotiations on accession started in June 2012.

As for 2022 Montenegro has been the most advanced country in the EU integration negotiation process.

As of 2021, Montenegro has already opened all of its chapters, but provisionally closed just 3 chapters (25 Science and Research, 26 Education and Culture, 30 External Relations). Montenegro demonstrates a good level of preparation in the other 7 chapters (6 Company Law, 7 Intellectual Property Law, 14 Transport Policy, 15 Energy, 20 Enterprise and Industrial Policy, 21 Trans-European Networks, 31 Foreign, Security and Defence Policy). But none of these chapters can be closed because Montenegro has not met the interim benchmarks for chapters 23 and 24.

The path of Montenegro to the EU is slow and complicated due to the following reasons:

- Montenegro is a small country with a population of only 0.6 million inhabitants. It became independent in 2006 and in 2008 it already applied for EU membership. Montenegro conducts negotiations on EU accession simultaneously with the development of its own state institutions.
- The procedure for accession became more complicated and rigorous. Montenegro is the first candidate country that has to meet interim benchmarks in chapters 23 and 24 to have progress in other chapters.
- There are some doubts about Montenegro's economic competitiveness. The GDP per capita in Montenegro is just about 28% of the EU average. Montenegro has a big negative trade balance (USD 1.14 bn), which can be a sign of a low level of competitiveness of its economy⁷⁸. The public-debt-to-GDP ratio is high (103.28% in 2020). Montenegro's unemployment rate is also high (18.49% in 2021, a 0.59% increase from 2020).

76) MEPs Call on EU Heads: Freeze EU Accession Negotiations for Serbia Now, Until It Distances Itself From Russia, <https://www.schengenvisainfo.com/news/meps-call-on-eu-heads-freeze-eu-accession-negotiations-for-serbia-now-until-it-distances-itself-from-russia/>

77) PRVI PUT U ISTORIJI VEĆINA GRAĐANA SRBIJE PROTIV ULASKA U EU Veliko istraživanje Ipsosa: Ključni razlog za to su PRITISCI IZ BRISELA koje trpimo zbog Rusije, <https://www.blic.rs/vesti/politika/prvi-put-u-istoriji-vecina-gradjana-srbije-protiv-ulaska-u-eu-veliko-istrazivanje/71wnbr>

78) Holzner, M. (2016), 'Policy Options for Competitiveness and Economic Development in the Western Balkans: the Case for Infrastructure Investment', wiiw Policy Note/Policy Report, No. 16.

- Political tensions slow down Montenegro's progress in conducting European integration reforms. The last pro-European government worked just for three months.
- The slow pace of membership negotiations reduces incentives for implementing European integration reforms.

NORTH MACEDONIA



North Macedonia has a long and complicated European integration experience. The country signed the Stabilisation and Association Agreement (SAA) with the EU on 9 April 2001 (even before Croatia, which is already a member-state of the EU). The Macedonian Parliament ratified the Agreement on 12 April 2001, and it came into force on 1 April 2004. In 2005, the country became a candidate for accession. But it was only on 19 July 2022 that the enlargement negotiations began.

The accession talks for North Macedonia were blocked by Greece, which was dissatisfied with the name of the country. Then Bulgaria blocked the official start of negotiations because of a historical dispute. Also, President Macron (France) formally vetoed the start of negotiations with North Macedonia and Albania in 2018. He insisted that the EU's enlargement policy needs to be reformed before negotiations could begin.

Political instability is among other reasons for accession talks delays. Democratic rollbacks and corruption under the former prime-minister of North Macedonia Gruevski and massive protests in 2016 against his policies slowed down the European integration progress.

Despite the difficulties with the start of its accession talks, North Macedonia demonstrates progress in European integration reforms. It seems that North Macedonia is already better prepared for EU membership than, for example, Serbia, despite the fact that none of the chapters has been opened⁷⁹. The greatest progress in reforms was achieved under the governments of Zoran Zaev (2017–2020; 2020–2021), who conducted successful negotiations with Greece and began establishing cooperation with Bulgaria.

As of the start of accession talks, North Macedonia achieved a good level of preparation in five chapters (Chapter 6 Company Law, Chapter 12 Food Safety, Veterinary and Phytosanitary Policy, Chapter 21 Trans-European Networks, Chapter 25 Science and Research, Chapter 29 Customs Union). But according to the new enlargement methodology, these chapters can be opened only after the Fundamentals cluster opens first and is provisionally closed after meeting all the interim benchmarks in Fundamentals. That is why, despite the high level of preparation, North Macedonia cannot expect the opening of these clusters in the foreseeable future. The EU Commission finds North Macedonia moderately prepared in all the chapters from the Fundamentals cluster and at a good level of preparation in developing a functioning market economy⁸⁰.

As regards Cluster 2 on internal market, Cluster 3 on competitiveness and inclusive growth, Cluster 5 on resources, agriculture and cohesion and Cluster 6 on external relations, North Macedonia is moderately prepared in most of the areas.

As for Cluster 4 on the Green Agenda and sustainable connectivity, the country is moderately prepared, namely in the field of transport policy and energy; and in the area of

79) Bender, K., 2022. ESI Report – Balkan turtle race – a warning for Ukraine – on Montenegro, European Stability Initiative. Retrieved from <https://policycommons.net/artifacts/2621391/esi-report/3644063/> on 14 Sep. 2022. CID: 20.500.12592/ckq3zz

80) https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2021_en

environment and climate change it has some level of preparation.

The EU position on the opening of the negotiations on the accession of North Macedonia sets very strict conditions for the country's progress. Including, for instance:

- The European Commission can withhold its recommendations to open and/or close other negotiating clusters and chapters in case of prolonged stagnation or backsliding in reform implementation in the fundamentals' cluster.
- No cluster or chapter can be provisionally closed until all the interim benchmarks in the Fundamentals cluster are met.
- Provisionally closed clusters may be opened again if North Macedonia fails to continue meeting important benchmarks or to fulfil its commitments.
- Improvement of administrative capacity within the respective clusters will be taken into account by the Council for closing the chapters.
- The Council may lay down new or updated opening, interim or closing benchmarks throughout the process.

ALBANIA



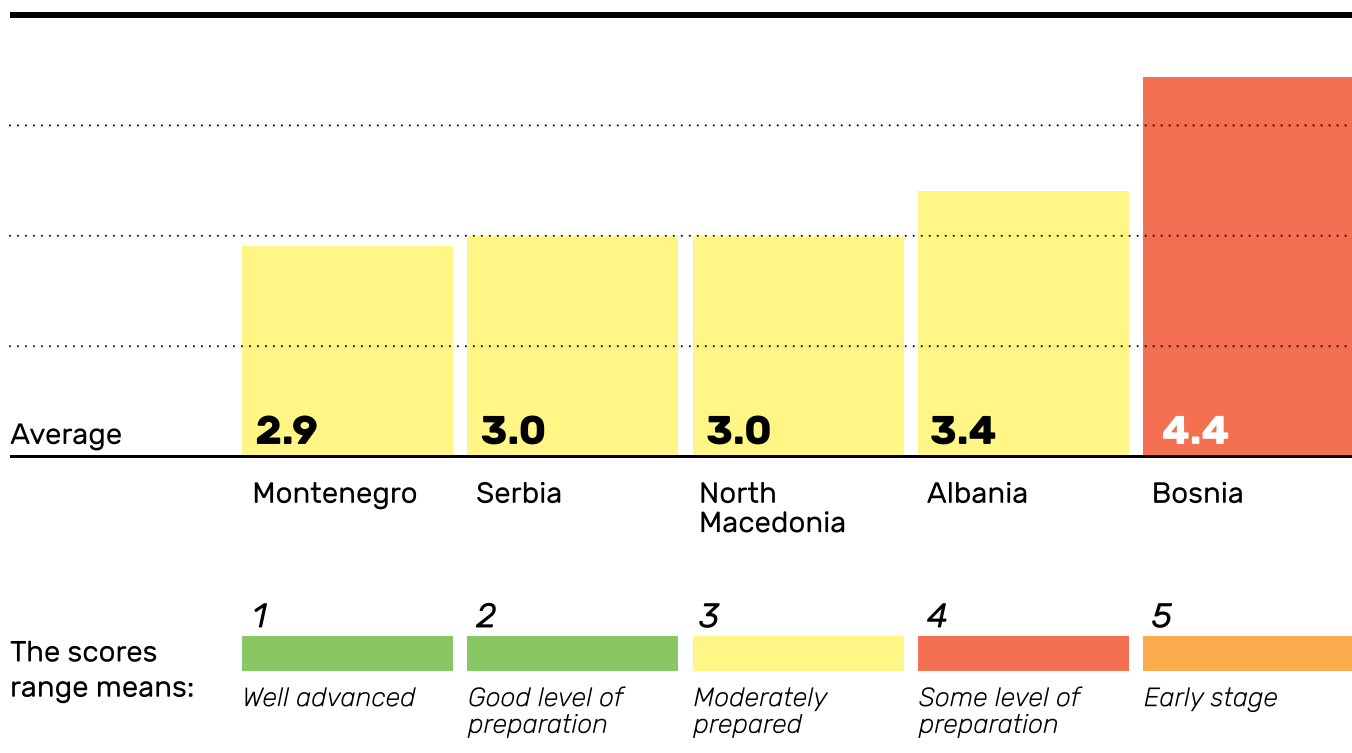
Albania applied for EU membership on 28 April 2009. The first application was in general negative as the Commission assessed that before granting candidate status to Albania it has to meet twelve conditions. In 2012, the Commission recommended that the country be granted candidate status, subject to the

adoption of pending reforms. In October 2013, the Commission unequivocally recommended granting Albania the status of candidate for EU membership, which it obtained in June 2014. In the light of the country's progress, the Commission recommended opening accession negotiations with Albania in 2016, 2018 and 2019. In June 2018, the Council agreed to the possible opening of accession negotiations with Albania in June 2019, provided the necessary conditions had been fulfilled. However, both in June 2019 and October 2019, the Council failed to greenlight the opening of accession negotiations mainly due to pressure from France. In March 2020, it finally decided to open accession negotiations, pending the fulfilment of a set of conditions. In July 2020, the Commission presented the draft negotiating framework – the first to take into account the 'revised methodology for enlargement to the Western Balkans' that was published in February 2020 – to the Member States. Finally, after a year and a half of a stalemate in July 2022 the accession talks with North Macedonia and Albania were launched recognizing the countries' reform efforts undertaken to receive the EU consent. In September the same year, the European Commission conducted the first explanatory screening meeting on Cluster 1 "Fundamentals".

It should be noted that Albania reached almost the same level of progress in fulfilling the EU acquis implementation demand being only a candidate country practically at the same level as other Balkan countries that started accession talks almost a decade ago.

Remarkably, most of Albania's progress was reached outside of the accession process, which is quite an unusual case for the entire region. It has been especially prominent for the 2 core chapters that trigger the whole accession progress according to the latest revised EU methodology – Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24).

Table 1. European Commission's average assessments of the implementation of the 33 chapters of EU acquis in 5 Western Balkan countries



Source: European Commission Western Balkans country reports

Albania, which opened negotiations only a month ago and drew up Chapter 23 and 24 action plans, is today as prepared as Montenegro on the “fundamentals” assessed under Chapters 23 and 24, and significantly outscores Serbia and Turkey.

Therefore, the opening of the accession procedure itself doesn't guarantee any boost in the progress in EU acquis implementation and receiving better Commission scores. Ten years of accession talks with Montenegro and eight years of talks with Serbia based on “fundamentals first” did not lead to better preparation than NOT having accession negotiations with North Macedonia and Albania.

Albania has reached remarkable achievements (compared with the other Western Balkan candidates) in re-organizing its justice institutions and reforming the selection procedures, resulting in appointments of new

judges to the Constitutional Court and High Court and amendments to ten judicial laws aiming to further strengthen the efficiency of the judicial system and its capacity to tackle corruption and organised crime. Under international monitoring, these rebooted institutions became fully operational and set up to resist capture, are manned by vetted individuals⁸¹, and are structurally independent from interest groups. After securing their legitimacy vis-à-vis the expectancies of the Albanian citizen and of EU partners, and completing the phase of set up, the next objective is to establish good governance mechanisms, implement solid internal processes, and deliver the expected outcomes. This proven success in a key chapter of EU acquis to a great extent contributed to a positive recommendation by Brussels to open the accession talks with Albania.

81) As an outcome of the vetting process - temporary re-evaluation of all judges and prosecutors under supervision of the EU-led International Monitoring Operation that delivered quite tangible results in cleaning of the rule of law system from non-diligent officials. 62% of the vetting dossiers processed have resulted in dismissals, resignations or termination of mandate as of September 15, 2021.

However, a 5-year pathway of reforming Albania's justice system has also revealed some threats to making it fully operational and the key lessons here are: any kind of accession reform must embed good governance and accountability practices to provide sustainable outcomes and, in the same time, not violate the legitimacy of the institutions. Focusing only on outcomes may have a negative effect on the legitimacy of the reform process and may result in potential institutions' malfunctioning.

At the same time, Albania has serious deficiencies in its political system that limits political competition and limits freedom of expression, incl. an unsatisfactory regulatory and operational environment for independent media and journalists, as well as for the proper functioning of civil society organisations. Deficiencies in democratic institutions did a disservice for Albania and were one of the major prejudices against Albania in some sectors within the EU over the recent decade.

Chapter 4

Key conclusions for Ukraine from the Western Balkans' experience

This chapter summarises the key conclusions from the above made analysis and some recommendations that follow, which may be structured into three main blocks, namely:

1. The recent trends in the EU enlargement policy and the political mood of the EU member states regarding the forthcoming wave of EU expansion;
2. The impact of the new enlargement methodology (or procedural aspects) on the success of a candidate country;
3. The country-specific lessons of the selected Western Balkan countries that are applicable to Ukraine (with appropriate relevance to Ukraine's realities).

4.1 Changes in the EU mood regarding enlargement

Key conclusions:

- The EU enlargement policy and EU approach to its enlargement have gained a fresh impetus based on geopolitics after the blatant Russian full-scale military attack on Ukraine (despite the fact that this discussion for the Western Balkans has been underway since 2015). Now the EU enlargement policy has reinforced itself on the grounds of (geo)strategic considerations of the EU that have to do with sufficient deterrence of Russia on Ukraine's battlefields and a proper response to Russia's systemic malicious attacks on the EU integrity and economic sustainability.
- However, even the shortest possible accession timeframe takes quite a long time, making extra-optimistic projections for Ukraine unrealistic. Even the shortest accession process took between three and almost five years in the case of Austria, Finland, and Sweden in 1995. As for the 2004–2007 wave of enlargement to Eastern European countries, the negotiations lasted over 10 years even taking into account the fact that all these cases differ from the Ukrainian one, and Ukraine is a very special case for EU enlargement due to its historically unique circumstances.
- During every political cycle, the official Brussels has managed to find a sophisticated balance between the variety of interests of separate EU member states regarding the bloc's enlargement. Through it all, the relative power of the member states in negotiations with candidate countries has been constantly growing both formally (due to the recent changes in the EU enlargement policy) and informally (increased political intra-EU power of the largest EU member states); and their decisions were driven mainly by political and security considerations. Meanwhile, the European Commission takes a position of an equidistant arbiter that usually remains 'pro-enlargement' and promotes the aspirant's efforts contrary to the blocking positions of individual member states based mainly on the technical assessments of the accession progress by candidates. The recent procedural changes into the enlargement methodology have provided

the Commission with more 'sticks' for candidate countries that stall reforms or demonstrate rollbacks in the functioning of democratic institutions.

- The EU has made its (geo)strategic choice: it's preparing for further enlargement, making the EU of 36, potentially. But to implement the current shifts into its enlargement policy, the EU seems to undergo the challenging stage of its own internal reform. There is an open debate in the EU regarding its de-facto ability to securely expand further without being reformed from the inside. It seems that an idea of 'EU inner reform first for the union to be capable of the next expansion on Western Balkans and Eastern border, and only then – enlargement' may prevail in the EU as it is supported by some of the most influential EU member states. The cornerstone problem is the unanimity principle, under which a single member state can block the accession progress of the entire region based on its own political considerations.
- Some of the currently acceding Western Balkans countries have been willing to employ the approach of 'quick political accession first, the painful domestic reforms afterwards' like it was with Bulgaria and Romania due to EU enlargement methodology deficiencies (at that time). But it seems not to be the case for the EU anymore, at least it will be very strict regarding proven reforms results in the rule-of-law acquis (chapters 23-24), as there is a consensus among member states to be stricter with candidates to avoid rollbacks at later stages of accession and even EU membership and damage to EU cohesion (though discussion in this regard is still ongoing).
- Sustainable political consensus among political elites of acceding countries and efficient governance of the accession-related domestic reforms is a key factor (but not the only one) for ensuring the

positive attitude of the EU institutions and individual member states throughout the accession pathway. Some cases of the Western Balkan countries prove that when initial enthusiasm at the beginning of the accession process changes to imitation and even rolling back of already started reforms – it leads to very painful deadlocks in their accession.

- To open the doors to accession negotiations, a successful candidate country should demonstrate good capacity and knowledge of EU acquis' implementation challenges in this country. Hence, political will should be also supported by appropriate technical expertise.

Recommendations for Ukraine:

- Ukraine has now an unprecedented level of public support in the EU and is treated as a truly European country that defends European values on the battlefields. There is an obvious chance of a century for Ukraine to make a huge step forward towards its development into a modern European country and we must not lose it because of domestic policy failures. The Western Balkans' experience demonstrates quite clearly that backsliding in the candidates' reforms and failures to implement EU laws in the country leads to 'enlargement fatigue' both in Brussels and in Member States. And vice versa, political stalemates with the EU over reforms can severely damage the efforts of politicians in candidate countries to sell EU-driven reforms at home.
- Rule of law chapters of EU acquis must be the top priority for political elites, civil society and ordinary citizens. Such things as state capture by oligarchs, organised crime networks, political corruption, biased judicial decisions, restrictions on media as well as failed reform cases due to weak institutions are key blockers of Ukraine's successful accession.

- Internal political unity regarding the European integration strategic course of Ukraine over long-term and stable political governance would be a plus for a positive perception of Ukraine in Europe, and to retain these levels of European support for Ukraine's EU path.
- Strong Ukrainian institutions and its leaders that are recognizable in Europe are crucial for keeping sustainable contacts with EU stakeholders, streamlining the technical processes with the Commission and EU member states' governments, as well as developing a positive image of Ukraine as a successful candidate in the EU. Simultaneously with entering the accession stage Ukraine also needs to keep on track the Association Agreement, agree with the EU upon the necessary upgrades of the Agreement agenda and use embedded market integration options to the fullest extent as a 'pre-accession facilitation tool'.
- Ukraine must manage to organise direct outreach to sceptical EU member states that are driven by their own political, economic and policy interests or simply do not have enough expertise in Ukrainian internal affairs. It would smooth the potential conflict zones before they are actually articulated at the Brussels level by sceptical member states.

4.2 New enlargement methodology issues

Conclusions:

- Compared to the previous enlargement waves, the current EU enlargement methodology has become more complicated and demanding for candidate countries and implies more involvement of the member states into negotiations with candidate countries (individual member states may even set their own benchmarks to each *acquis* chapter under negotiation!). EU accession negotiations are of rather technical nature, however, they are largely influenced by the political national interests of the member states. In other words, political factors (often based on purely internal domestic political problems of a member state) determine the methodology of accession and the latter is often used by the Commission to balance the interests of individual member states. However, it's still unclear whether this complexity can positively contribute to the candidates' progress or whether it will turn the EU accession negotiations into a never-ending process.
- New enlargement methodology for Western Balkans allows the official Brussels to apply negative conditionalities in case of backsliding in reforms, but it is still unclear whether it will be applied in practice.
- Rule-of-law charters (chapters 23 & 24) contain a significant amount of interim benchmarks. Their implementation is a nontrivial task. Montenegro has not met them even after ten years of negotiation.
- The longer the negotiation process lasts the less stimulus exists for further accession steps both for the candidate country and the EU.

Recommendations for Ukraine:

- In order to avoid EU member states' negative influence on its accession negotiation process, Ukraine should settle all possible bilateral disputes with EU member states. Ukraine must make dedicated diplomatic efforts so as to ensure in advance that the opening of accession negotiations and further opening of the clusters is not endangered by a veto from any of the member states. This could be a special problem with countries such as Hungary.
- Interim benchmarks in rule of law chapters are really difficult to meet both because of the complexity of these reforms and the vague wording that allows for ambiguous interpretations. Ukraine should make every possible political and negotiating effort

to make this list shorter, as well as start tackling rule of law related reforms as soon as possible (e.g. experience of Albania), to avoid hurdles later.

- Administrative capacity development is a common benchmark for different chapters in the negotiation process. That is why Ukraine should be prepared to invest money and efforts in institutional capacity development: public authorities staff education and training, new buildings for state authorities, technical facilities and equipment, and IT systems development.

4.3 Key lessons from the selected Western Balkans countries

Conclusions:

- The political elites of the country should be persistent in their commitment to the pro-European political course and determination to conduct complex, long-lasting and often unpopular domestic reforms aimed at the implementation of EU acquis inside the country. Changes of the ruling parties after elections that lead to abandoning or diminishing the scope and the role of such reforms involve serious damage to the cooperation with Brussels and growth of criticism among the EU member states. For example, political turbulence has transformed Serbia from the accession frontrunner into an almost authoritarian case. Therefore, the Ukrainian government should develop a well-elaborated strategic communications plan, so that popular support remains in the ups and downs.
- During the recent decades, the EU to a large extent tolerated the 'simulation' strategy employed by some Balkan countries, which involved benefiting from low trade barriers with the EU and influx of FDI but allowing for delays and gaps in the implementation of EU-demanded reforms (e.g. passing laws that were never to be implemented) because of embedded threats to local monopolies and informal

influence of oligarchs. But such avoidance is no longer tolerated, and this approach doesn't work with the EU anymore.

- Violation of the cornerstone principles of functioning of democratic systems usually lead to serious deterioration of the accession progress. Western Balkans' experience shows that backsliding to autocracy and media capture by ruling elites and manipulation of voters' perception as well as the existence of other non-democratic practices in the national political system plays a rather bad role in negotiations with the EU.
- Sustained dialogue with key EU Member States that, based on our above-mentioned analysis, have a substantial voice on the EU Council level regarding support or suspension of accession progress is another wise approach of a candidate country. Proactive prevention of possible vetoes by EU member states from the very start of conflict situations appearance. As the Balkans' experience shows once a single EU Member State decides to veto, it's extremely difficult or even impossible to change the situation and precious time is wasted until the next favourable occasion.
- Institutional capacity of government officials who are responsible for domestic acquis-linked reforms and negotiations about chapters with the official EU should be sufficient to pave the background to progress and talk with Brussels and EU member states at the same level. Any structural weaknesses undermine the accession process from the inside and may block negotiations with the EU for a quite long time. These personnel should have sufficient remuneration in order to reduce staff turnover, as well as to retain institutional memory.
- Demonstration of effective fight against the top-level corruption has an important impact on Brussels and sceptical member states helping to move the accession process forward. As Serbian experience

demonstrates, arrests of only small figures involved in national corruption scandals do not do the trick for the EU. Any tangible progress in accession is possible only when local political elites value benefits from EU accession more than revenues from corrupt practices.

- Judicial system reform is one of the key benchmarks that has a great blocking (and unblocking) power for accession progress. By setting up reasonable vetting procedures and involving Western experts in the cleaning of the national judicial systems to remove unscrupulous judges and malicious practices countries can achieve considerable progress (Albania). On the contrary, attempts to keep the current status-quo with insignificant changes (Serbia) thwart the progress of a candidate country not only in chapters 23–24 of the EU acquis but also in other negotiated chapters.

Recommendations for Ukraine:

- Ukraine may and should convert the current extra-positive European attitude towards the country and its European aspirations to gain political support of the most influential EU member states on its way to accession. Even the factor of war may serve as positive leverage for attracting political backing to swiftly open the accession talks with Brussels.
- However, by neglecting accession technicalities and sabotaging the EU-demanded reforms, Ukraine might do a disservice to itself and undermine even the most optimistic start of the accession talks.
- Ukraine's commitment to implementing the EU acquis agenda must be strong and the country must deliver tangible results as quickly as possible, at the very least it must improve the situation with the democracy institutes, the rule of law matters, combatting high-level corruption and strengthening civil service capacities.
- To begin with, implementation of anti-corruption and judicial system reforms should demonstrate the (relatively) quick gains to persuade the EU in the seriousness of Ukraine's commitment to unlocking accession negotiations (especially keeping in mind its previous bad track record and European frustration with the progress of these reforms). Substantial progress in chapters 23 & 24 in the very beginning of the accession process would largely contribute to the smooth passage through the other stages and to receiving adequate financial and technical support from the EU.
- Non-democratic practices or decisions related to war restrictions for the sake of national security, should be conditioned and limited to the most possible, engaging member states throughout.
- Institutional and administrative capacities of governmental and parliamentary agencies that are currently dealing with European integration reforms should be adequately strengthened to address the challenges of the accession negotiations at political and technical levels. These are efforts for years, they need to be sustained in spite of domestic political changes.
- Effective dialogue with individual EU member states at all levels (diplomatic, governmental, expert etc.) of communications should be set up and promoted by the central government in order to avoid clashes between Ukraine's accession goals and domestic political agenda issues of the member states.
- Complexity and rough edges of the accession to the EU shall be well communicated to Ukrainian society for not raising the false expectations of 'quick and vast gains' from EU membership and engage as many active citizens as possible into the process of country modernisation.

Literature

1. 2022 State of the Union Address by President von der Leyen. Available at: https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493
2. Enhancing the accession process – A credible EU perspective for the Western Balkans. Available at: https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-perspective-western-balkans_en
3. EU ACCESSION NEGOTIATIONS: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia. Available at: <https://www.gov.me/dokumenta/03715367-6039-47dd-8da2-0bdf3d3b6162>
4. Lazowski, A. and Vlasic Feketija, M. 2014. The Seventh EU Enlargement and Beyond: Pre-Accession Policy vis-à-vis the Western Balkans Revisited. Croatian Yearbook of European Law and Policy. 10, pp. 1-37.
5. Press statement by President von der Leyen with Prime Minister Fiala, Prime Minister Rama and Prime Minister Kovachevski on the start of the accession negotiations process and of the screening of the EU acquis. Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_4602
6. Chapters of the acquis. Available at: https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en
7. Montenegro Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en
8. Serbia Report 2021 Available at: https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2021_en
9. EU Justice Scoreboard 2022 https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf
10. ECONOMIC REFORM PROGRAMMES WESTERN BALKANS AND TURKEY Factsheet. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-05/20180417-erp-factsheet.pdf>
11. Holzner, M. (2016), 'Policy Options for Competitiveness and Economic Development in the Western Balkans: the Case for Infrastructure Investment', wiiw Policy Note/Policy Report, No. 16.
12. Bender, K., 2022. ESI Report – Balkan turtle race – a warning for Ukraine – on Montenegro, European Stability Initiative. Retrieved from <https://policycommons.net/artifacts/2621391/esi-report/3644063/> on 14 Sep 2022. CID: 20.500.12592/ckq3zz
13. North Macedonia report 2021. Available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2021_en
14. Wouter Zweers et al (2022). 'The EU as a promoter of democracy or 'stabilitocracy' in the Western Balkans?', a report by the Clingendael Institute and the Think for Europe Network (TEN). Available at: <https://www.clingendael.org/sites/default/files/2022-02/the-eu-as-a-promoter-of-democracy-or-stabilitocracy.pdf>
15. Albania report 2021. Available at: https://neighbourhood-enlargement.ec.europa.eu/albania-report-2021_en
16. Brdo Declaration, 6 October 2021, Available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/10/06/brdo-declaration-6-october-2021/>
17. Commission Opinion on Ukraine's application for membership of the European Union. Available at: https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en
18. Niamh Fallon (2020). 'Can EU Enlargement to the Western Balkans be revitalised?', a report by The Institute of International and European Affairs (Ireland). Available at: <https://www.iiea.com/images/uploads/resources/Can-EU-Enlargement-to-the-Western-Balkans-be-revitalised-compressed.pdf>
19. Gjergji Vurmo (2019). 'The uncertainty of EU Enlargement', analysis by Institute of Democracy and Mediation (Albania). Available at: https://www.academia.edu/39624507/The_uncertainty_principle_of_EU_enlargement_2015-2019
20. Steven Blockmans (CEPS), Ardian Hackaj (CDI). 'Securing the resilience of justice sector reform in Albania', a policy study of Cooperation and Development Institute (Albania), March 2021. Available at: <https://cdiinstitute.eu/wp-content/uploads/2021/03/Securing-the-Resilience-of-Justice-Sector-Reform.pdf>

21. Fjoralba Caka and Ardian Hackaj (CDI). 'Good governance of new justice institutions in Albania', a policy study of Cooperation and Development Institute (Albania), November 2021. Available at: <https://cdiinstitute.eu/wp-content/uploads/2021/11/Good-governance-of-New-Justice-Institutions-in-Albania.pdf>
22. Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union, General EU Position, Brussels, 21 January 2014. Available at: <https://data.consilium.europa.eu/doc/document/AD%201%202014%20INIT/EN/pdf>
23. Ministerial meeting of the Intergovernmental Conference completing the opening of the negotiations on the accession of North Macedonia to the European Union, General EU Position. Available at https://vlada.mk/sites/default/files/dokumenti/draft_general_eu_position.pdf
24. Jordanova M., Kacarska S., (2020) 'EU - North Macedonia accession negotiations: the implications of the Bulgarian conditions', European Policy Institute, Skopje.
25. Council conclusions on Enlargement - North Macedonia and Albania, Brussels, 18 July 2022. Available at: <https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf>
26. David L. Phillips, Bulgaria, North Macedonia Should Enhance Relations, July 21, 2022, <https://balkaninsight.com/2022/07/21/bulgaria-north-macedonia-should-enhance-relations/>
27. Elephants in Skopje – Balkan turtle race and Ukraine, ESI Newsletter 6/2022, 15 July 2022, <https://www.esiweb.org/newsletter/elephants-skopje-balkan-turtle-race-and-ukraine#e>
28. Božović D., Babić J., et al., (2015) Guide for Monitoring the EU Accession Negotiations Process, Belgrade Open School, Belgrad.
29. First Intergovernmental Conferences with Albania and North Macedonia to kick-start the accession negotiation, 19 July, 2022. Available at: https://neighbourhood-enlargement.ec.europa.eu/news/first-intergovernmental-conferences-albania-and-north-macedonia-kick-start-accession-negotiation-2022-07-19_en
30. Delegation of the European Union to North Macedonia, Screening of fundamentals cluster as part of negotiations process kicks off with North Macedonia, 16 September, 2022. Available at: https://www.eeas.europa.eu/delegations/north-macedonia/screening-fundamentals-cluster-part-negotiations-process-kicks-north_en
31. Duff A., Setting the bounds of the European Union, Discussion Paper, European Policy Centre, 10 March 2020.
32. Barigazzi J, 9 EU countries push back on French enlargement revamp, December 13, 2019 <https://www.politico.eu/article/eu-enlargement-reform-pushback/>
33. Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia, 6 May 2021. Available at: <https://data.consilium.europa.eu/doc/document/ST-8536-2021-INIT/en/pdf>
34. Serbia Opens EU Negotiating Cluster 4 – Green Agenda and Sustainable Connectivity, <https://europa.rs/serbia-opens-eu-negotiating-cluster-4-green-agenda-and-sustainable-connectivity/?lang=en>
35. Bechev D., What Has Stopped EU Enlargement in the Western Balkans?, June 20, 2022, <https://carnegieeurope.eu/2022/06/20/what-has-stopped-eu-enlargement-in-western-balkans-pub-87348>
36. Serbia: Nations in Transit 2019 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/nations-transit/2019>
37. Serbia: Freedom in the Western World 2019 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/freedom-world/2019>
38. Serbia: Freedom in the Western World 2022 Country Report, Freedom House. Available at: <https://freedomhouse.org/country/serbia/freedom-world/2022>
39. PREUGOVOR ALARM: REPORT ON THE PROGRESS OF SERBIA IN CLUSTER 1, May 2022, p. 12.
40. Serbia / European Union: new stage in accession negotiations, <https://regard-est.com/serbia-european-union-new-stage-in-accession-negotiations>
41. EU-Serbia: A stagnation comfortable for both sides, <https://www.euractiv.com/section/enlargement/opinion/eu-serbia-a-stagnation-comfortable-for-both-sides/>
42. European Parliament resolution of 6 July 2022 on the 2021 Commission Report on Serbia (2021/2249(INI)).
43. Russians using Serbian loophole to avoid EU flights ban, <https://www.theguardian.com/business/2022/mar/11/wealthy-russians-using-air-serbia-loophole-to-avoid-eu-flights-ban>
44. MEPs Call on EU Heads: Freeze EU Accession Negotiations for Serbia Now, Until It Distances Itself From Russia, <https://www.schengenvisa.info.com/news/meps-call-on-eu-heads-freeze-eu-accession-negotiations-for-serbia-now-until-it-distances-itself-from-russia/>
45. PRVI PUT U ISTORIJI VEĆINA GRAĐANA SRBIJE PROTIV ULASKA U EU Veliko istraživanje Ipsosa: Ključni razlog za to su PRITISCI IZ BRISELA koje trpimo zbog Rusije, <https://www.blic.rs/vesti/politika/prvi-put-u-istoriji-vecina-gradjana-srbije-protiv-ulaska-u-eu-veliko-istrazivanje/71wlnbr>



The **Ukrainian Center for European Policy (UCEP)** is an independent think tank for policy analysis and development, established in 2015.

Our mission is to promote reforms in Ukraine for sustainable economic growth and to build an open society in partnership with institutions at all levels.

Priority activity areas:

- development of expert-analytical materials to promote European integration reforms in Ukraine;
- promotion of European values among Ukrainian society;
- informing the public on opportunities and benefits of close cooperation with the EU;
- promoting enhanced economic, political, and trade cooperation between Ukraine and the European Union;
- informing the international community about the challenges and achievements of Ukraine's reform process under the EU-Ukraine Association Agreement.

