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The Western Balkans and EU Enlargement:

Lessons learned, ways forward and prospects ahead

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The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead

ABSTRACT

Twelve years after the Thessaloniki promise that the future of the Balkans is within the European Union, Albania, Bosnia and Herzegovina, Kosovo, fYRoM, Montenegro, and Serbia remain excluded with no foreseeable accession date in sight. Despite initial success, the current approach to enlargement has reached its limits, as it seems to be slowing down the integration process rather than accelerating it. In the meantime, in addition to the democratic and economic setbacks in the region, renewed tensions are threatening to undermine fragile regional stability. Moreover, the EU's unfinished business in the Balkans opens the door to various political, economic and security alternatives. This is precisely why the main message of this study is that the current autopilot mode of enlargement cannot continue.

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LIST OF ABBREVIATIONS

AFET	European Parliament Committee on Foreign Affairs
AFCO	European Parliament Committee on Constitutional Affairs
BiEPAG	Balkans in Europe Policy Advisory Group
CEEC	Central and Eastern European countries
CEFTA	Central European Free Trade Area
CIC	Conflict of Interest Commission
DPA	Democratic Party of Albanians
DUI	Democratic Union for Integration
ECOFIN	Economic and Financial Affairs Council
ECtHR	European Court for Human Rights
EEAS	European External Action Service
EPIO	European Parliament Information Office
EUROPOL	European Police Office
EU	European Union
FBI	Federal Bureau of Investigation
FDI	Foreign direct investments
fYRoM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
ICTY	International Criminal Tribunal for the Former Yugoslavia
INTERPOL	International Criminal Police Organization
ICJ	International Court of Justice
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
PAAC	Pre-Accession Actions Unit
PSD	Partnership for Development
PS	Socialist Party of Albania
RCC	Regional Cooperation Council
ReSPA	Regional School of Public Administration
SAO	State Audit Office
SDSM	Social Democratic Union of Macedonia
SFRY	Socialist Federal Republic of Yugoslavia
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
SEE	South East Europe
SEECP	South-East European Cooperation Process
TI	Transparency International
USKOK	Croatian Bureau for the Suppression of Corruption and Organised Crime
UN	United Nations

Executive Summary

At the 2003 Thessaloniki summit, the European Council declared that the future of the Balkans is within the European Union. However, apart from Croatia that entered the EU in 2013, twelve years after the Thessaloniki summit, Albania, Bosnia and Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia remain excluded with no foreseeable accession date in sight. The political messages coming from Brussels, which have largely been influenced by the perceived enlargement fatigue from inside the Union itself and the growing impact of Member States on the accession process, point to the conclusion that European integration of the Western Balkans is being slowed down rather than accelerated.

In the meantime, in addition to the democratic and economic setbacks in the region, there are also renewed tensions, which threaten to undermine fragile regional stability. Moreover, the EU's unfinished business in the Balkans, coupled with diminished economic membership incentives, opens the door to various political, economic and security alternatives. This is precisely why the main message of this study is that the autopilot mode of enlargement cannot continue. One of the bigger challenges in the six remaining Western Balkan accession countries in the years to come will be to keep elites and citizens motivated to continue the reform process. Further efforts are needed, both by the EU and the EU (potential) candidate countries, in order to replicate the transformative effect of the previous enlargement rounds.

A re-energized approach to enlargement should, in addition to conditionality, rely more on soft mechanisms, such as civil society promotion and interaction, that aim to transform the traditional top-down power structures in aspiring Member States. In such power structures, gatekeeper elites are at liberty to influence both reforms and EU integration through a set of clientilistic networks and/or methods of more or less open pressure. Such soft socialisation mechanisms would aim to transform these traditional top-down power structures into horizontally structured civil society networks. The empowerment of democratic forces in the region is crucial in order to increase the accountability of the elites and the transparency of the reform processes. The EU needs to focus on monitoring aspiring members on their paths towards stable and prosperous democracies governed by the rule of law, instead of trading this for regional stability. Secondly, the new approach should address the need for improving the economy in the Western Balkans. The key to reaching these goals is in re-focusing the use of the IPA II mechanism.

In addition, further efforts are needed to speed up the accession process. First, this study draws lessons from Croatia's accession to the EU, notably the necessity of an increased focus on the rule of law and anti-corruption, the need to tackle bilateral disputes at an early stage of an accession process, and the importance of completing economic and structural reforms prior to accession. Second, EU and Member State politicians should intensify lobbying and communication with their citizens in an effort to put enlargement higher on the EU agenda. The European Commission and the European Parliament should find a way to remove bilateral disputes between Member States and a (potential) candidate country from the accession negotiations. Finally, the proposed actions would not yield results without the credible promise of full EU membership. The immediate opening of Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security with all Western Balkan countries at once could serve not only as proof of the credibility of the EU promise, but would likely also replicate the success of healthy regional competition created within the recent visa liberalisation process. This scenario would move the region closer to the EU, as well as maintain the vigour of much needed reforms.

1 Introduction

The countries of South Eastern Europe (SEE) lag behind other European states in the process of consolidation of economy and democracy and accession to the European Union. While three countries joined the European Union -Romania and Bulgaria in 2007 as laggards of the 2004 enlargement, and Croatia in 2013- Albania, Bosnia and Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia (fYRoM), Montenegro, and Serbia remain in the EU's waiting room. Furthermore, state dissolution and the legacy of violent conflict shaped the transformation in the former Yugoslavia, which included the need for a long period of reconstruction of the state and economy, and reconciliation between peoples. In addition to the dual political and economic transformation from communist rule and a planned economy to democracy and market liberalism, most countries of SEE, and in particular the successor states of former Yugoslavia, are still weak states with dysfunctional institutions, notwithstanding the considerable diversity among these states. EU integration is also threatened by the perceived enlargement fatigue coming from inside the European Union itself. This is causing the EU to continue its Western Balkans enlargement on policy autopilot, focusing more on a tick box benchmark fulfilment exercise than on substance (i.e., actual progress on democratisation, implementation of rule of law reforms, creation of competitive markets, etc.). There is a sense that not only has momentum been lost when it comes to EU integration in the region, but "negative momentum has set in"[1] instead. In addition to the democratic and economic setbacks in the Western Balkans, we can observe renewed tensions in parts of fYRoM[2], in Bosnia and Herzegovina following the Srebrenica commemorations in July 2015[3], or between Serbia and Croatia surrounding the August 2015 commemoration of Croatia's military operation 'Storm'[4], and the ongoing refugee crisis.

These multiple challenges are crucial in explaining the delay in the EU integration process in the Western Balkan accession countries. Bearing this in mind, one of the bigger challenges in the six remaining Western Balkan countries in the years to come will be to keep elites and citizens motivated to continue the reform process. Further efforts are needed, both by the EU and the EU candidate countries, in order to replicate the transformative effect of previous enlargement rounds in the case of the Western Balkans.

The aim of this study is to provide an assessment of the EU's enlargement policy towards the Western Balkans based on the experience of the recent Croatian accession, to discuss potential shortcomings of the new negotiation methodology, and to analyse the way forward for continued EU enlargement in the region.

This study will provide a brief analysis of the progress of the Western Balkans towards membership in the European Union, as well as of the key obstacles that the region is encountering along the way. The author will attempt to provide an answer to the critical question of whether the current EU approach to enlargement in the Western Balkans is enough, and alternatively what are its main deficiencies. Particular attention will be dedicated to an analysis of the potential lessons learned from Croatia's 2013 accession to the European Union. This is then followed by innovative policy recommendations aimed at bringing the Western Balkans closer to the European Union, while at the same time maintaining the vigour of ongoing structural reforms in the region.

[1] F. B. Lasheras and V. Tcherneva. 2015. *Is the EU losing the Western Balkans? What local experts think*. European Council on Foreign Relations. Available at http://www.ecfr.eu/article/is_the_eu_losing_the_western_balkans_what_local_experts_think3093.
[2] Ethnic tensions in FYR Macedonia are re-ignited after weekend of violence 11.5.2015 Euronews. Available at http://www.euronews.com/2015/05/11/ethnic-tensions-in-fyr-macedonia-are-re-ignited-after-weekend-of-violence/.
[3] Serbian PM forced to flee Srebrenica massacre memorial, Reuters, 11.7.2015. Available at http://www.reuters.com/article/2015/07/12/us-bosnia-srebrenica-idUSKCN0PL00720150712.
[4] Croatia Celebrates Operation Storm Anniversary; Serbia Mourns, BalkanInsight, 5.8.2015. Available at http://www.balkaninsight.com/en/article/croatia-throws-a-military-parade-for-operation-storm--08-04-2015.

2 State of Play: Western or 'Restern Balkans'

At the Thessaloniki summit in 2003, the European Council declared, "the future of the Balkans is within the European Union"[5]. This political commitment of the heads of state and prime ministers of the EU countries was understood as a strong incentive and a promise that the future of the region, within the EU, will be stable and prosperous. However, twelve years after the Thessaloniki summit, the Western Balkan countries are still far away from full EU membership.

2.1 Democratic stabilisation

At present, the Western Balkan region has experienced more than a decade of peace. The region has become relatively stable, with no military conflicts, and free, if not always fair, elections. In the meantime, the international community has invested significant amounts of financial assistance and human resources in the Western Balkans.

Despite the initial steps taken, reconciliation after the violent conflicts of the 1990s has still not been fully achieved. In some cases a climate of revenge, fear and hatred still drives the decision-making of political elites along old ethno-national lines and, more importantly, continues to influence attitudes of common people. Past violence has not only left deep scars in terms of deaths and displacement, but has also had the consequence of delaying the region's ability to overcome historical controversies through political debate. Furthermore, the region has also been delayed in terms of democratisation and catching up with the rest of Europe. Bilateral relations, particularly between Serbia and Kosovo and fYRoM and Greece, remain overburdened by historical legacies, and threaten to export tension to the level of regional cooperation as well.

After the region lost the initial momentum of change gained following the democratic revolution in Serbia and the second democratic revolution in Croatia in 2000, the current situation can best be described as the "consolidation of unconsolidated democracies"[6]. The latest edition of the *Nations in Transit* report presents a record of backsliding and stagnation in all key governance indicators across all the countries of the region[7]. While liberal democratic Western Balkan governments seem to identify with the EU, they often remain overshadowed by the high number of domestic formal and informal 'gate keeper' elites that continue to control the state in an effort to preserve their private economic interests and their grip on political power[8].

While even the very survival of **Bosnia and Herzegovina** is regularly challenged by the Alliance of Independent Social Democrats, the ruling political party in the Republika Srpska led by Milorad Dodik, most structural reforms and conditions for closer ties with the EU remain unfulfilled due to uncompromising mono-ethnic political elites[9]. The Stabilisation and Association Agreement (SAA) with Bosnia and Herzegovina entered into force in June 2015, following the important British-German initiative of late 2014, which was aimed at unblocking the impasse by delaying Sejdić-Finci conditionality to a later stage of EU accession, and the written commitment of fourteen political parties to support the

[5] European Council. (Thessaloniki: 19 and 20 June 2003). *Thessaloniki Presidency Conclusions, 11638/03*. Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.
[6] F. Bieber. 2012. "The Western Balkans are Dead – Long Live the Balkans! Democratization and the Limits of the EU", and later in V. Džihić and D. Hamilton (eds). *Unfinished Business: The Western Balkans and the International Community* (Washington D.C: Brookings Institution Press): 3 - 10.
[7] Nations in Transit. 2015. Freedom House. Available at https://freedomhouse.org/sites/default/files/FH_NIT2015_06.06.15_FINAL.pdf.
[8] See in M. Kmezić, "Overcoming the Crisis of Enlargement", *Contemporary Southeastern Europe*, Volume 1.1. 2014.
[9] M. Vachudova. 24 February 2014. "The Thieves of Bosnia: The Complicated Legacy of the Dayton Peace Accords", *Foreign Affairs*. Available at http://www.foreignaffairs.com/articles/140966/milada-vachudova/the-thieves-of-bosnia.

reform process in February 2015. While Constitutional reform remains a potential problem on Bosnia's prospective EU path, as was correctly noted by MEP Eduard Kukan at the 24 February 2015 Committee on Foreign Affairs debate on the European Commission's 2014 Progress Report[10], it is the socio-economic problems that must be addressed urgently if the social contract with Bosnia's citizens is to be renewed.

In **Kosovo**, the Brussels agreement of April 2013 has, at least formally, resolved the issue of a separate Serb administration in the North of the country. Despite the fact that EU Member States do not have a common official position on Kosovo's legal status, the European Commission adopted the SAA proposal for Kosovo in April 2015[11]. The greatest problem in terms of Kosovo's EU integration perspective remains the fact that five EU Member States - Cyprus, Greece, Slovakia, Spain and Romania – have not recognised Kosovo's independence. As a result, Kosovo's membership perspective remains elusive, and the European Commission refers only to 'Kosovo*,' with the asterisked footnote containing the text agreed upon during the Belgrade–Pristina negotiations[12]. Thus, the entry into force of Kosovo's SAA, which is expected to take place in 2016, remains uncertain. Moreover, Kosovo is the only Western Balkan state whose citizens still require a visa to travel to the EU. Although the European Commission opened a visa liberalisation dialogue with Kosovo on 19 January 2012[13], the liberalisation of the visa regime might be further postponed in light of last winter's strain of immigration from Kosovo[14].

FYRoM managed to avoid a full-scale war and to reduce inter-ethnic tensions with the mostly successful implementation of the Ohrid Framework Agreement of 2001. As a result, fYRoM was the first country from the region to enter into contractual relations with the EU by signing the SAA back in 2001. However, despite gaining candidate status already in 2005, the country's Euro-Atlantic integration has since been consistently vetoed by Greece, due to the acrimonious name dispute. More than twenty years since the beginning of the efforts for the resolution of the name dispute led mostly by the United Nations (UN), a mutually acceptable solution seems as distant today as it was at the start of the process. In the meantime, the ruling VMRO-DPMNE party turned to authoritarian policies, misusing its position of power in order to mobilise citizens along nationalist lines via projects such as the controversial 'Skopje 2014.' Politics of state capture led to growing tensions in fYRoM, which resulted in the complete breakdown of legitimate institutions and enormous political polarisation[15]. In March 2015, the European Parliament via its resolution on the 2014 Progress Report on the fYRoM drafted by MEP Ivo Vajgl, called for a more active EU engagement and new initiatives to overcome the stalemate in the country[16]. In June 2015, the European Parliament, represented by MEPs–Ivo Vajgl, Eduard Kukan and Richard Howitt, played an important role in the European Commission-brokered deal between the ruling VMRO-DPMNE, led by Prime Minister Nikola Gruevski, and Democratic Union for Integration (DUI), led by Ali Ahmeti, and the opposition parties, i.e. the Social Democratic Union of Macedonia (SDSM) led by Zoran Zaev and the

[10] Kukan, E., 24 February 2015. Speech at the Committee on Foreign Affairs meeting. (AFET/8/02008) 2014 Progress Report on Bosnia and Herzegovina. Available at http://www.europarl.europa.eu/ep-live/en/committees/video?event=20150224-1500-COMMITTEE-AFET (at 17:51:40).
[11] European Commission. 30 April 2015. Adoption of the Stabilisation and Association Agreement proposal with Kosovo. Available at https://ec.europa.eu/commission/2014-2019/hahn/announcements/adoption-stabilisation-and-association-agreement-proposal-kosovo_en.
[12] "This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence".
[13] European Commission. Brussels. 19 January 2012. *Commission launches dialogue with Kosovo on visa free travel*. Press Release. Available at http://europa.eu/rapid/press-release_IP-12-32_en.htm.
[14] European Commission. 25 February 2015. *Commission reports on visa-free travel from the Western Balkans*, Brussels, Press release. Available at http://europa.eu/rapid/press-release_IP-15-4482_en.htm.
[15] Balkans in Europe Policy Advisory Group. 2015. *Unraveling the Political Crisis in Macedonia: Toward Resolution or Calm Before the Storm?* Available at http://www.suedosteuropa.uni-graz.at/biepag/node/158.
[16] European Parliament. 11 March 2015. European Parliament resolution of 11 March 2015 on the 2014 Progress Report on the former Yugoslav Republic of Macedonia (2014/2948(RSP)).

Democratic Party of Albanians (DPA) led by Menduh Thaci[17]. While the June agreement provides a much needed impetus for diffusing the political crisis in fYRoM, many details still remain unresolved pending the upcoming extraordinary elections that are expected to restore democracy in the country.

After the dissolution of the common state with Montenegro in 2006 and Kosovo's declaration of independence in 2008, **Serbia** is currently in the hands of 'reformed' Milošević allies who have turned pro-European. At the same time, its political elites are searching for a way to escape the dilemmas over state and nationhood issues. Despite the obligation taken within the SAA to gradually align its positions with the EU's Common Foreign and Security Policy (CFSP), Serbia refused to align itself with numerous EU declarations criticising Russia in the OSCE, and opted not to join EU economic sanctions introduced in response to Russia's destabilising role in Ukraine[18]. Nonetheless, acknowledging Serbia's efforts towards normalising relations with Kosovo, particularly within the framework of the above-mentioned Belgrade-Pristina dialogue, the European Council held the first Intergovernmental Conference with Serbia on 21 January 2014, thus marking the beginning of the official membership negotiations between Serbia and the EU. However, thus far, no negotiating chapters have been opened. Despite being internationally praised for achieving progress in the normalisation of relations between Belgrade and Pristina, the government of Prime Minister Vučić faces frequent criticism for its domestic authoritarian tendencies, particularly those concerning the control of the media and the judiciary[19].

Having gained independence in 2006, **Montenegro** has almost completed its state-building processes. However, the country's newly achieved independence did not result in a swift resolution of key challenges, such as weak governance and widely perceived corruption[20]. Moreover, the country has never witnessed an alternation of power. The current Prime Minister Milo Djukanović has been in a position of power since 1991, surviving numerous political affairs, including an international criminal investigation. Nonetheless, Montenegro is the regional frontrunner in European integration, as it is the only Western Balkan country participating in the accession negotiations process with the EU at the moment. On 15 October 2015, Montenegro had opened 20 out of 33 negotiating chapters, two of which have been provisionally closed. The biggest innovation introduced within the framework of Montenegro's accession negotiations process is the inclusion of safeguards and corrective measures, most notably an 'overall balance clause' intended to stop negotiations on other chapters if progress on the most difficult chapters, such as 'Judiciary and fundamental rights' and 'Justice, freedom and security,' begins to lag behind[21]. The overall balance clause, and other safeguard measures, will be applied to all other Western Balkan countries as well.

Albania did not take part in the violent ex-Yugoslav wars, and therefore had an easier path towards democratic consolidation than the countries analysed above. Nonetheless, Albania has undergone a very slow democratic and economic transition. Following a change of government after the 2013 general elections – which were by and large characterised by respect for fundamental freedoms, but also by a lack of public confidence in the electoral process[22] – the European Parliament recommended in its

[17] European Commission, 2 June 2015. Agreement. Available at http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_agreement.pdf.
[18] Marciacq, F. 2014. What does it mean that Serbia refuses to align itself with European sanctions against Russia?. *Balkans in Europe Policy Blog*. Available at http://www.suedosteuropa.uni-graz.at/biepag/node/125.
[19] See for example Human Rights Watch. 2015. Difficult Profession: Media Freedom Under attack in the Western Balkans. Available at https://www.hrw.org/node/279063.
[20] Transparency International. 2014. Montenegro: Overview of Political Corruption. Available at http://www.transparency.org/files/content/corruptionqas/Montenegro_Overview_of_Political_Corruption_2014.pdf.
[21] http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf.
[22] Organization for Security and Co-operation in Europe. 10 October 2013. *Albania: Parliamentary Elections, 23 June 2013. OSCE/ODIHR Election Observation Mission Final Report*. Available at http://www.osce.org/odihr/elections/106963?download=true.

12 December 2013 resolution that the Council grant Albania candidate status "without undue delay"[23]. Upon receiving EU candidate country status in 2014, the current government led by Prime Minister Edi Rama is facing a difficult task of breaking long-term patterns of political polarisation of the ruling elites, reducing the dominant influence of informal centres of power, and tackling systemic corruption, which have so far hampered substantial progress[24]. It is noteworthy that in 2014 the European Parliament once again played a decisive role in mediation and deal brokering, ending a five-month boycott of the Albanian Parliament by the main opposition Democratic Party of Albania (PD). The boycott was a response to an incident during which a governing Socialist Party of Albania (PS) deputy allegedly attacked a Democrat colleague in Parliament

2.2 Socio-Economic transformation

Despite rapid growth in the early 2000s, effective economic reform has often been delayed due to the fact that the Western Balkan economies are incapable of withstanding the competitive pressures of the EU common market. Throughout much of the region, economies have remained undeveloped, dependent on aid, loans and remittances, and prone to high levels of state intervention. Western Balkan economies also have poor institutional compatibility with the EU market. For years, the rate of consumption in the Western Balkans has been higher than the rate of production, which is primarily financed by draining foreign investments, remittances and credit.

Unemployment in the region is very high: 18 % in Albania, 27,5 % in Bosnia and Herzegovina, 30 % in Kosovo, 28 % in fYRoM, 19 % in Montenegro, and 17,6 % in Serbia[25]. Statistics are even more worrisome when it comes to unemployment rates among young people, aged between 15 and 24, as they show that in Bosnia and Herzegovina (57,5 %), Kosovo (60 %), fYRoM (55,3 %), and Serbia (50,9 %) more than half of the youth population is unemployed[26]. It is interesting to observe, however, that the issue of unemployment still does not feature significantly in the outcome of elections throughout the region.

In most Western Balkan countries, the private sector remains underdeveloped, while the majority of the active population continues to be employed by state-owned enterprises or the state administration. Closer regional trade and financial integration under the auspices of Central European Free Trade Area (CEFTA) could still be expanded, i.e. to include services and movement of people. The structural changes that have taken place have primarily favoured the expansion of the service industry over production. Particularly problematic is the lack of adequate road infrastructure within the region, with an obvious emphasis on the lack of a functional railway network. Hence, co-financing of energy and transport related investment projects in the Western Balkans within the 2015 Connectivity Agenda[27] is important for growth and job creation in the region.

The 2008 global and European financial and economic crisis has only worsened the existing economic problems in the region by adding two additional external shocks: a reduced influx of capital from abroad and the collapse of export demand. While the entire region experienced a rather modest decline in GDP

[23] European Parliament. 12 December 2013. European Parliament resolution on the 2013 Progress Report on Albania (2013/2879(RSP)).
[24] See T. Cierco. 2014. "Albania's Difficult Path towards Democracy", *Canadian-American Slavic Studies, Volume 48, Issue 4*: 468–91.
[25] Regional Cooperation Council. *Balkan Barometer 2015 Public Opinion Survey*, Sarajevo, 2015.
[26] Ibid.
[27] European Commission. 2015. Connectivity Agenda: Co-financing of Investment Projects in the Western Balkans in 2015. Available at http://ec.europa.eu/enlargement/pdf/policy-highlights/regional-cooperation/20150901_vienna_info_pack.pdf.

during the first years of the crisis, industrial production and exports sharply fell in most countries over the past couple of years[28].

Furthermore, the crisis has also had a negative social impact, resulting in increased poverty and lower living standards. According to the Western Balkans Barometer approximately half of the population is completely dissatisfied with the economic situation, while more than 80% of respondents are dissatisfied[29]. Consequently, the Western Balkans still remain a migrant region, regularly experiencing a problematic massive brain drain. For example 58% of citizens of Bosnia and Herzegovina would consider working abroad[30]. The current socio-economic situation has led to growing social discontent, as reflected in the 2014 protests in Bosnia and Herzegovina. Consistently weak investments in education, innovation, research and development, and culture, characteristic for most of the region, exacerbate this situation even further.

2.3 EU integration

The enlargement of the Western Balkans is also endangered from within the EU itself. EU institutions are increasingly preoccupied with the effects of the Eurozone financial and economic crises, while the EU is suffering from enlargement fatigue. In addition, many EU Member States seemingly pay lip service to enlargement, while making use of their veto powers to delay the accession process[31]. Opinion polls, which also serve as an important guide for political decision-making, display growing scepticism among European citizens in many Member States towards further widening. The latest Eurobarometer polls which investigated the support for further EU expansion in the spring of 2013, show that more EU citizens (53% to 37%) were against than in favour of enlargement. The highest levels of scepticism were found in Austria, the Netherlands, Finland, France and Germany, where roughly three quarters of the population opposed enlargement[32]. The perceived high levels of immigration from the states that joined in 2004, as well as refugees and asylum seekers arriving through and from the Western Balkan countries, are additionally shaping Euro-scepticism among EU citizens. It is possible that some of this disapproval is directed at Turkey, also languishing in the EU's waiting room. Finally, reports of legal uncertainty, corruption, and increasing poverty in the Western Balkans affect public perceptions in the EU countries, and these perceptions colour internal decision-making regarding potential enlargement.

Following the appointment of the new European Commission, led by Jean-Claude Juncker, the challenge of expanding the European Union further to the Western Balkans seemed to have been sidelined[33]. Despite all subsequent efforts, the enlargement policy of Juncker's Commission is often dubbed by the words of the Commission President when, at the start of his mandate, he said that negotiations would continue, but that no further enlargement would take place over the next five years[34]. Although he only stated the obvious, and regardless of the fact that this political message was primarily addressed to the citizens of the European Union who predominantly oppose further EU enlargement, such a downplay of

[28] International Monetary Fund. 2015. The Western Balkans: 15 Years of Economic Transition. Regional Economic Issues, Special Report. Available at https://www.imf.org/external/pubs/ft/reo/2015/eur/eng/pdf/erei_sr_030915.pdf.
[29] Regional Cooperation Council. *Balkan Barometer 2015, cit.*
[30] Ibid.
[31] See also R. Balfour and C. Stratulat. 2013. "Between engagement and cold feet: ten years of the EU in the Western Balkans" in E. Prifti (ed.), *The European future of the Western Balkans: Thessaloniki @10 (2003-2013)*, (European Union Institute for Security Studies). pp.: 19-25.
[32] *Standard Eurobarometer, No 79, Spring 2013, T84*. 2013. Available at http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_anx_en.pdf.
[33] L. Chiodi, *New Commission: More Neighbourhood, Less Enlargement?,* Osservatorio Balcani e Caucaso, Italy, 3 October 2014.
[34] Jean-Claude Juncker. 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the Next European Commission,' Opening Statement in the European Parliament Plenary Session, Strasbourg, 15 July 2014.

enlargement has had negative repercussions in the Balkans, undermining the credibility of the membership promise. In the medium term, this message could negatively influence the commitment of the region's political elites to implement the reforms that the EU has demanded, as well as negatively impact support for European integration among the population.

Moreover, Juncker appointed Johannes Hahn as Commissioner for the European Neighbourhood Policy and Enlargement Negotiations, thus abolishing the symbolically important position of Commissioner for Enlargement. Although part of Commissioner Hahn's responsibility remains continuing support for pre-accession countries in their EU membership negotiations, much of the responsibilities within his portfolio are now shifted to intensifying relations with EU neighbourhood countries.

Despite recent positive signals, most notably the continuation of the 'Berlin process' in August 2015, Western Balkans 6 meetings, the Western Balkans Connectivity Agenda and the Declaration on Bilateral Issues signed by the Ministers of Foreign Affairs of the accession countries on the occasion of the August 2015 Vienna Summit[35], the political messages coming from Brussels point to the conclusion that European integration of the region will not be accelerated.

The three sets of obstacles outlined in this subsection explain the current delay in the democratic and socio-economic transformation, and thus EU integration, in the Western Balkan countries. As a consequence, the phase of accelerated transformation, seen immediately after 2000, has been replaced with a phase of "stagnation and drift"[36] in EU – Western Balkans relations.

3 Limits of the Current EU Approach to the Western Balkans

In contrast to the previous 'southern enlargement,' when Greece, Spain and Portugal became full members on the basis of a feeling of 'solidarity' with those countries' efforts to stabilise new democratic regimes, and against the background of a deeper relationship between the EU and the Central and Eastern European countries (CEECs) in the early 1990s, the well-known Copenhagen and Madrid Council criteria linked accession and membership in the EU to a precisely defined set of economic and political conditions. The 'famous' Copenhagen criteria remain the blueprint for accession of the Western Balkans. They require candidates to have stable democratic institutions, a functioning market economy and the capacity to adopt and implement the ever-growing body of the *Acquis communautaire*[37]. These criteria are seen both as legal principles stemming from EU primary law, and as core values of the EU and prerequisites in the formation of a post-national European identity. The ability to fulfill the obligations of membership by the implementation of the EU legal order, i.e., the *Acquis communautaire*, is basically seen –in legal discourses– as a technical conditionality requirement. However, when examining the specific strategies and instruments used by the EU and posing the question of which of them is the most effective, it becomes obvious that rule adoption and the implementation of the *Acquis communautaire* are not only a technical matter, but also a highly political affair[38]. The *Acquis* is not only a formal body of law, but also a "framework in which shared policies and values are established and through which they are implemented"[39]. In addition, it has been stressed that the Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration for

[35] Final Declaration by the Chair of the Vienna Western Balkans Summit. 27 August 2015. Annex 3: Regional Cooperation and the Solution of Bilateral Disputes. Available at http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Addendum_Western_Balkans_Summit.pdf.
[36] C. Gordon, M. Kmezić and J. Opardija (eds). 2013. *Stagnation and Drift in the Western Balkans: The Challenges of Political, Economic and Social Change* (Bern: Peter Lang AG) at 22.
[37] European Council. (Copenhagen, 21-22 June 1993). *Copenhagen Presidency Conclusions*, SN 180/93.
[38] M. Kmezić, "Overcoming the Crisis of Enlargement", *Contemporary Southeastern Europe*, Volume 1.1. 2014.
[39] A. Magen. 2007. "Transformative Engagement Through Law", *European Journal of Law Reform* 9(3): 361-393: 363.

enlargement. Each of these conditions has acquired a very precise meaning for the Western Balkan countries by aiming to overcome the specific nature of enlargement to the region. As a result, this has led to a more complex mosaic of EU demands for the region.

3.1 Elements of the 'new approach'

First, **the EU's overall strategy for the Western Balkans is based on a regional approach** that is conceptualised in the Stabilisation and Association Process (SAP). The SAP aims to assist each Western Balkan country in meeting the relevant EU conditions for accession. It is structured with a bilateral dimension and a regional dimension. The bilateral component includes matters such as: enhanced trade liberalisation, financial assistance, cooperation in Justice and Home Affairs, and the SAA. In addition to the fact that the SAA produces a definite perspective on membership, it also provides a contractual framework by which the EU can ensure compliance with more precise conditions outlined for the aspiring Western Balkan countries. The regional dimension, on the other hand, fosters regional cooperation and good neighbourly relations between the Southeast European countries. In addition, the Western Balkan countries are also participating in the work of the Regional Cooperation Council (RCC), which replaced the Stability Pact for South Eastern Europe in 2008.

Second, **the Western Balkan aspiring members are facing an additional set of politically sensitive conditions**, often colloquially referred to as the 'Copenhagen Plus' criteria, which include the requirement of full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), refugee return, regional cooperation and reconciliation, and the resolution of bilateral disputes or of statehood dilemmas. Additionally, the 'Copenhagen Plus' criteria encompass a strong security dimension, which pertains to the respect for and implementation of various political and peace agreements stemming mostly from the armed conflicts of the 1990s, which distorted the region. They include the UN Security Council Resolution 1244, the Dayton, Kumanovo, Ohrid, and Belgrade agreements, and the Agreement on Normalization of Serbia-Kosovo Relations.

Third, **the EU has redefined its existing monitoring mechanisms**, becoming much more rigorous in the way it applies conditionality. It has introduced new mechanisms, such as intermediary benchmarks and the early screening processes. In addition, the European Commission has devised creative ways to keep the reform process going in situations of domestic or bilateral deadlocks in the Western Balkans. These include the High Level Accession Dialogue with fYRoM, the Structured Dialogue on Justice with Bosnia and Herzegovina, the Structured Dialogue on the Rule of Law with Kosovo, and the High Level Dialogue with Albania. The EU continues to borrow expertise from other international organisations during the monitoring of the implementation of the adopted policies, most notably from the Council of Europe, the OSCE, international financial institutions, and relevant Non-Governmental Organisations (NGOs).

Fourth, **conditionality for the Balkans features an increased focus on 'good governance' criteria**, particularly the maintenance of the rule of law, an independent judiciary and an efficient public administration. The new EU approach on Chapters 23 and 24, introduced for the first time in the Croatian negotiating process, is now fully integrated into the EU's negotiations with Montenegro and Serbia, and will most likely apply to all future accession talks in the region. In this novel approach, proposed in 2011 by the European Commission[40] and endorsed by the Council, Western Balkan countries are expected to get a head start on the most difficult aspect - rule of law reforms - in order to allow enough time to build solid track records of implementation before opening other negotiating chapters. Furthermore, the 'new

[40] European Commission. (Brussels, 12 October 2011). *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012,* COM(2011) 666 final.

approach' envisages an interim benchmarking system that would assess the country's preparedness to open and close a negotiating chapter, and introduces safeguard measures, most notably the overall balance clause, as referred to above. The Negotiating Framework for Montenegro's and Serbia's accession places a specific emphasis on Chapters 23 and 24, thus reflecting concerns about matters related to the rule of law, corruption and organised crime.

Despite all the novelties in its approach to enlargement, the EU still follows a strategy of reinforcement by reward in its relations with potential candidate countries from the Western Balkans. This means that the EU rewards governments that comply with its demands and, alternatively, withholds rewards from those that do not. The most powerful conditionality tool is still that of granting or withholding access to the different phases of the accession process, particularly once candidate status is achieved and negotiations begin. Clearly, membership remains the biggest, albeit the most distant, reward for countries that adhere to EU conditions on the rocky road toward accession.

3.2 Why the current EU approach to enlargement is not enough

So far, the prospect of European integration has played an important role in driving the Western Balkan countries to reconstruct post-war institutions and societies, to begin the process of reconciliation between states and people, and to start the process of democratic consolidation. Novelties in the EU approach to the region have brought into focus significant political issues, such as the reform of the system of rule of law. Equally important is the establishment of political dialogues with countries not yet able to start accession negotiations.

However, some sixteen years after the launch of the Stabilisation and Association Process with the EU, Western Balkan countries (apart from Croatia, which managed to join in 2013) are still far away from EU accession. The combination of aforementioned innovations in the EU approach to the integration of the Western Balkans has created an evermore-complex assortment of EU demands, followed by inflexible monitoring of the implementation of membership conditionality. The paradox of the current approach is that it foresees that the countries which have experienced the most difficult democratic and economic transformation process as a consequence of the ethnic conflicts of the 1990s and authoritarian regimes need to overcome higher hurdles in order to join the EU than countries from earlier enlargement rounds. Many politically sensitive reforms are demanded at the early 'pre- pre-accession phase' of the accession process. Before the opening of official negotiations with candidate countries, the EU's leverage is not strong, and candidate countries are not motivated to comply with such difficult demands. Thus, this format brings the risk that non-compliance at an early stage can jeopardise the overall accession process. Particularly worrisome is the trend whereby the EU overlooks important structural reforms and core EU conditions on account of its pursuit of the resolution of outstanding political issues, such as the normalisation of relations between Serbia and Kosovo. In addition, the involvement of Member States in the EU accession talks by way of imposing bilateral conditions is additionally threatening the already fragile credibility of EU conditionality.

This brings us to the greatest limit of the current EU approach to enlargement, namely the lack of transformative leverage for the current laggards of the accession process - Bosnia and Herzegovina, fYRoM, and to a certain degree Kosovo. As already mentioned, ever since fYRoM received candidate country status back in 2005, it has been unable to further progress in its EU integration due to the Greek veto and Bulgaria's threat to use its veto because of bilateral issues. In the meantime, fYRoM has seen a rise of nationalism, a breakdown of democratic consolidation, and an EU-led mediation of its internal political crisis.

Despite achieving little progress in most policy areas, apart from the recent breakthrough agreement with Serbia, Kosovo initialled the SAA with the EU in July 2014. As Kosovo is the first country to sign the SAA after the Lisbon Treaty, which conferred a legal personality to the EU, its SAA will be an exclusive

competency of the EU, thus avoiding ratification by all individual Member States, which would be impossible due to the lack of recognition by Cyprus, Greece, Slovakia, Spain and Romania. As long as EU Member States *de facto* block Kosovo's membership perspective, the potential for destabilisation and regression should not be underestimated.

Finally, the case of Bosnia and Herzegovina is specific since even the EU itself practically acknowledged that its conditionality toolbox has not functioned. For nine years, the EU has been unable to move this country forward, mostly due to the incapability of uncompromising domestic political elites to agree on any reform policies. As the question of how to proceed with Bosnia and Herzegovina became ever more relevant, the British-German initiative of late 2014 aimed at unblocking the stalemate by delaying Sejdić-Finci conditionality to a later stage of the accession process. This was done in exchange for a written commitment to reforms by the country's leading politicians. In February 2014, Stefan Füle, the former enlargement commissioner, said that implementing the ECHR ruling of the Sejdić-Finci case constitutes "an international obligation of Bosnia and Herzegovina that, following the will of the [EU] Member States, is now a key to progress on the EU path"[41]. When the SAA with Bosnia entered into force earlier this year, the EU de facto admitted that its conditionality does not always work, and decided to delay this condition in order to move the accession process forward. Now, it should be stressed that the revamped Member States' political will to engage with Bosnia and Herzegovina represents good news. The previous *status quo* could only have led to more hostile political disputes and a worsening economic situation, with considerable frustration among Bosnian citizens. This is why the EU's policy innovation in Bosnia and Herzegovina deserves to be praised.

However, the point here is that the transformative effect of the 'current EU approach' for the Balkans appears to be insufficient. In a nutshell, conditionality works well if membership criteria are clear, if the same criteria are applied to all applicants, if they are strictly but fairly monitored, if the findings are transparently communicated, and if there is no doubt that the reward will come once conditions are met. Currently, all this is not the case.

3.3 Latent risks on the horizon

The limits of the EU enlargement strategy signal the potential risk that **unresolved bi-lateral issues** between countries in the region and existing or future Member States will stall future enlargement. Furthermore, there is a risk of the creation of a two-tier EU integration process in the Western Balkans and the *de facto* abandonment of EU enlargement policy in the region, with the rise of political, economic and security alternatives[42]. While the resolution of bilateral issues will be treated separately later in this study, the prospects of the other two risks were elaborated earlier by the Balkans in Europe Policy Advisory Group (BiEPAG)[43], and will hence only be mentioned briefly at this point.

The risk of a **two-tier EU integration process in the Western Balkans** suggests new divisions in the region, this time around the varied EU membership perspectives. Under this scenario, some of the countries of the region would manage to move forward by sticking to the existing conditionality-rooted EU approach. However, the current laggards of the accession process – notably Bosnia and Herzegovina, Kosovo and fYRoM – are facing the risk of being blocked altogether, as they are not able (or willing) to resolve their bilateral and/or internal disputes. Moreover, as can be observed in the case of Montenegro

[41] *Bosnia-Herzegovina - EU: Deep disappointment on Sejdić-Finci implementation*, European Commission MEMO. Sarajevo, 18 February 2014. Available at http://europa.eu/rapid/press-release_MEMO-14-117_en.htm?locale=en.
[42] See for example in A. Vangeli, 'The New Kid on the Block: A Short Intro to the China-WB Relationship', *Balkans in Europe Policy Blog*, 20 January 2015, and D. Reljić, 'Does the EU Want to Bring Russia and Turkey into the Western Balkans?', *Politička misao (Croatian Political Science Review),* 2014.
[43] Balkans in Europe Policy Advisory Group. *The Unfulfilled Promise: Completing the Balkan Enlargement.* Policy Paper 5/2014.

and Serbia, even today's accession frontrunners exhibit features that could prevent forward movement. While Montenegro does not have substantial obstacles on its EU membership path, the country is facing a serious problem, as it continues to be governed by a consolidated authoritarian class with very limited opposition. Moreover, an unresolved border dispute with Croatia, now an EU Member State, could mean a potential veto in the final stages of Montenegro's accession bid. Similarly, Serbia's accession path remains less than certain, particularly with the prospect that it will be asked to recognise Kosovo's independence. In the end, countries that would find themselves in the second tier could potentially witness the consolidation of semi-democracies with strong clientelist control over the state, as well as severe economic consequences, while their key partners and competitors would move towards membership. This might raise a number of logistical questions of how to manage relations with countries of the Western Balkans that are in the EU and share close ties with countries still outside the EU and Schengen borders, as demonstrated by the ongoing refugee crisis.

Additionally, the lack of a clear prospect of accession opens up a number of **security risks in the region**, particularly since the US, Russia, Turkey, China and countries of the Gulf are increasingly competing for economic influence and sometimes even for political power in the countries on the outskirts of the EU. Frustration with the inability to progress in EU accession could easily translate the already growing Euro-scepticism into more blatant anti-Western sentiments, which could be followed by a further rise of populism, nationalism and possibly even religious fundamentalism in some of the countries in the region. Anti-Western sentiments are further boosted by the rise of populist, anti-immigration discourse in some EU Member States, and other unfortunate developments, such as the construction of an iron fence by the Hungarian government on the border with Serbia, and the border crisis between Serbia and Croatia in September 2015. In the long run, this scenario would not only reverse positive effects of democracy and the rule of law conditionality in the Western Balkans, but would even open questions about the security and future of the whole region.

In conclusion, despite the initial success of the current EU approach to the Western Balkans, enlargement remains incomplete and out of reach some thirteen years since the Thessaloniki promise and sixteen years after the launch of the Stabilisation and Association Process. Moreover, the EU enlargement policy is subject to the aforementioned limitations. Bearing in mind potential risks for the region and the EU itself, the time has come to take an open and honest strategic position on the 'European' future of the Western Balkans, which would go beyond current experimentation with conditionality, as seen in Bosnia and Herzegovina. This study aims to contribute to this debate, and will first look at potential lessons learned from the 2013 Croatian EU accession.

4 Croatia's EU Accession – Lessons Learned

Croatia managed to consolidate its democracy after its second democratic 'revolution' in 2000, but was delayed multiple times in the accession process, first by insufficient cooperation with the ICTY and later due to an unresolved border dispute with Slovenia[44]. Finally, in July 2013, Croatia became the twenty-eigh[th] Member State of the EU. It was the second country from the former Yugoslavia to enter the EU and the first country after Greece to join the Union in a single country enlargement. Two years after, this study identifies at least three important lessons to be drawn from Croatia's accession to the EU: (1) the necessity of an increased focus on the rule of law and anti-corruption reforms, (2) the need to tackle bilateral disputes at an early stage of the accession process, and (3) the importance of completing economic and structural reforms prior to enlargement.

[44] D. Winland. 2008. "Ten Years Later: The Changing Nature of Transnational Ties in Post-independence Croatia", in D. Kostovicova and V. Bojičić-Dželilović, *Transnationalism in the Balkans*, cit.: 79-93.

4.1 Focus on the rule of law and anti-corruption

Corrupt practice and bad governance are not uncommon in transitioning South East European democracies. Romania and Bulgaria, countries preceding Croatia in the EU accession, did not have to cope with violent state dissolution like that of the Socialist Federal Republic of Yugoslavia (SFRY). Consequently, they also did not have to undergo a phase of reconstruction and reconciliation, and experienced fewer challenges to democratic consolidation processes. Instead, these two countries were successful in their legal and institutional reform efforts and eventually joined the EU in 2007, which completed the fifth wave of enlargement. However, in order to ensure that the rule of law and anti-corruption reform efforts continue beyond accession, the Commission has established a package of transitional measures within the Cooperation and Verification Mechanism. This has served to ensure the smooth integration of Bulgaria and Romania. Hence, both countries are still subject to a specific post-accession monitoring system.

In Croatia, pronounced rule of law reforms had to contend with the political and economic complexities of the post-independence period. Wartime conditions and state building had allowed effective party control over the country's institutions. The situation in Croatia, which has continued well after the war ended, consisted of a lack of political accountability and transparency in party funding, the absence of an independent judiciary, fixed public tenders, the creation of monopolistic structures, tax fraud, etc. By taking an active part in these practices, a new Croatian elite, loyal to the ruling political party on the basis of mutual self-driven economic interest, emerged. One of the key demands Croatia had to meet during its EU membership bid was to strengthen its rule of law system and combat corruption.

Croatia managed to avoid the post-accession monitoring instruments concerning the improvement of rule of law imposed by the EU on Bulgaria and Romania. Nonetheless, bearing in mind the experience from the 2007 enlargement, the EU took a more austere negotiating position with Croatia in closing Chapters 23 and 24, which pertain to 'Judiciary and Fundamental Rights' and 'Justice, Freedom and Security,' respectively. The EU rule of law related demands focused mostly on judiciary, police and public prosecution reform under the assumption that the improvement in performance of public institutions is the most direct way to improve the legal certainty in the target country. Although the role of courts and public prosecutors is essential for the respect of the law, this approach, if applied in isolation, fails to deal with the problem of local cultural predispositions, to address the existence of informal institutions and centres of power, and to include the wider society in the reform process. With this in mind, this study presents a list of lessons concerning the rule of law reform to be learned from Croatia's EU accession.

An institutional approach is not enough. Despite the promise made by the former European Commissioner for Enlargement, Štefan Füle, that the accession negotiations will not involve simply ticking boxes about legislative approximation[45], the EU's rule of law promotion policy to candidate countries still primarily translates rule of law into an institutional checklist, with an emphasis on the judiciary. Moreover, actors promoting the rule of law frequently apply the terms 'judicial reform' and 'rule of law' interchangeably. Although EU practitioners define rule of law as their ultimate goal, they implicitly identify its institutional attributes as the most conveniently measurable ends. Additionally, the extension of law in the rule of law more often than not dissuades non-lawyers from engaging in study and criticism of the existing approach.

An argument against such an institutional approach in rule of law promotion is that it does not work beyond the norm adoption phase. Furthermore, such an approach might even have unintended

[45] Š. Füle. European Commissioner for Enlargement and Neighbourhood Policy. Presentation of Enlargement Package. European Parliament – Foreign Affairs Committee (AFET) (Brussels, 9 November 2010). Available online at http://europa.eu/rapid/press-release_SPEECH-10-638_en.htm.

consequences. Namely, in semi-consolidated democracies, which include all the countries of the region, an institutional approach to the rule of law promotion policy is intended to strengthen state institutions and their ability to implement laws and regulations. Although desired, this outcome does not necessarily contribute to the creation of an effective rule of law system. By strengthening institutions in unconsolidated democracies, the institutional approach actually fails to fulfill its purpose of creating a system in which citizens trust the law and the institutions that implement it, instead of a system in which they are dependent on the protection of predatory ruling elites. The outcome of the purely institutional approach actually might further stabilise clientelistic rulers by providing them with additional tools to exercise their authority, and giving them international legitimacy.

Hence, **civil society must be included in the rule of law reforms**. The EU accession negotiations are conducted with national governments, whose role in the implementation of legal and political reforms is without a doubt pivotal for the success of the whole process. As seen in the example of Croatia, the inclusion of civil society, notably media, citizens, civil society organisations such as Citizens Organize to Oversee Voting (GONG)[46], Partnership for Development (PSD), Transparency International (TI) Croatia, etc., has been key to overcoming the potential problems that accompany a governmental approach. Namely, governments are not always able or willing to implement the rule of law reform process. A high level of corruption prevalent among government officials in the Western Balkans, a lack of expertise, a lack of technical capacities, and a lack of cooperation between highly fragmented levels of government are some of the obstacles to sustainable rule of law reforms. Western Balkan governments, even in the countries that are most advanced in the accession process, fall short of providing a satisfactory level of political transparency in their work and accountability towards their citizens.

Under the 'rule-of-law orthodoxy,' civil society is at best adjunct to the institution building process. There is, however, a strong need for a more inclusive bottom-up approach to EU rule of law promotion, in which civil society actors are empowered to play a rights-holder's role vis-à-vis public authority. This would help to push for compliance of key laws, monitor their implementation and influence norm socialisation, both before and during negotiations. The broad inclusion of civil society in the accession process can help build a wider constituency in favour of EU accession in the Western Balkans, as well as keep negotiations on track.

Make the rule of law conditions clearer. Clarity of EU conditionality presupposes that the target governments know precisely what they are expected to do should they decide to comply with the EU conditions. Nevertheless, as seen in Croatia, the candidate countries experience uncertainty regarding the rule of law conditions set upon them by the EU[47]. Problems surrounding the clarity of EU demands may be found in the ever-growing body of EU law and the absence of a single European judiciary model. Additionally, the benchmarks related to the negotiations on the Judiciary and Fundamental Rights and Justice, Freedom and Security chapters, unlike those for any other chapter, place more importance on the political principles and constitutional values than on the 'hard' *Acquis communautaire*. Finally, the European Commission sometimes includes additional benchmarks even during the negotiations process. This all adds to the lack of clarity regarding the EU's rule of law demands, and consequently affects the effectiveness of the rule transfer.

There is no 'one size fits all' solution that can be appropriately used in any given candidate country regarding the rule of law accession criteria. Instead, a package solution based on two legs needs to be

[46] Građani Organizirano Nadgledaju Glasanje (GONG).
[47] See for example K. Turkalj. 29-30 April 2010. "Negotiations for the Accession of the Republic of Croatia to the European Union in the Area of Justice ('State of Play for Chapters 23 and 24')", Paper presented at the Conference 'Croatia on the Eve of EU Accession: The Path of Reform' (Zagreb: Croatia).

applied. First, the EU needs to have a better understanding of the situation of the rule of law in the candidate country ahead of the start of the accession process, and not only ahead of the opening of negotiations. This is particularly important when one takes into account legacies of the past that influence the independence of the judiciary. Historical legacies need to be taken seriously, not only because of their inherent significance in post-communist democratisation, but also due to their ability to shape the relationship between the candidate countries and the EU. Taking into account legacies of the past allows for a better understanding of the current problems in the field of the judiciary and enables the European Commission to prepare a specific country-tailored strategy to effectively export rule of law norms. Second, the Commission should elaborate rule of law related benchmarks in a way that is clear and predictable to the domestic actors in the candidate country ahead of the start of the accession process. Otherwise, the reforms are driven by an *ad hoc* country strategy that faces the potential risk of diminishing the progress that has already been achieved with every change of the ruling elite in the target country. This was witnessed in Serbia after the 2012 elections, when the newly elected government made the re-assessment of judicial reform its priority, thus further delaying an already slow transformation.

Support specialised independent state agencies. No matter how good the legislative solutions adopted by national parliaments are, they are not able to compensate for the lack of independence and quality of the implementing authorities. In other words, even the best laws make little sense if law enforcement bodies are not objective and competent. Alternatively, the lack of capacity to implement adopted legislation efficiently and effectively cripples compliance with the EU rule of law conditionality in both the pre- and post- accession periods.

The role of independent agencies was crucial in fulfilling Croatia's pre-accession rule of law reforms. First of all, Croatia has centralised the fight against corruption under the Bureau for the Suppression of Corruption and Organised Crime (USKOK), a specialised department of the State Attorney's Office of the Republic of Croatia. Established already in 2003, USKOK is equipped with a broad political mandate to investigate, prosecute and prevent corruption, particularly in high-level cases, such as the one involving the Croatian Privatization Fund, or the case of Ivo Sanader, the former Croatian Prime Minister. In 2011, the Conflict of Interest Commission (CIC) was established, which had as its primary goal to exclude companies from participating in tenders where the head of the procuring entity has a 0.5% or greater share in the company. Its mandate includes examination of asset statements by public officials. The State Audit Office (SAO) is the highest politically independent audit institution authorised to supervise financial transactions within the public sector, ownership transformation, and privatisation processes. The Office of the Ombudsman handles complaints from citizens when their constitutional and legal rights are breached in proceedings before state administration bodies vested with public authority. It is important to mention that independent state agencies in Croatia are well equipped to carry out investigations. They generally enjoy a high level of independence in work, and benefit from international cooperation with INTERPOL, Eurojust, Europol, OLAF, FBI, etc.

In order to replicate the success story of Croatian reforms in the rule of law sector, more attention should be given to capacity building of the rule of law sector and to strengthening the effectiveness of administrative mechanisms during the EU accession process in the remaining Western Balkan countries. Particular focus should be placed on the capacity building of independent state agencies, such as the office of the Ombudsperson, National Audit bodies, specialised prosecutorial agencies, Judicial Academies, etc. The role of non-state actors, local and international NGOs, should not be neglected during this process either. The effects of capacity building would be significantly increased through the inclusion of non-state actors in the process and through a mechanism of socialisation, which would complement the efforts invested in the conditionality.

Strengthen the credibility of conditionality and/or introduce intermediary rewards. There is no doubt that conditionality remains at the heart of EU relations with candidate countries. However, as observed in the case of Croatia, it was only the 'credible' prospect of full membership that enabled a broad consensus to form among the political, economic and social elites and the citizens. This consensus was necessary to implement tasks related to the rule of law reforms outlined within the Stabilisation and Association Agreement. The Croatian case proved the argument put forth by Bechev and Anastasakis that rewards attached to EU conditionality sometimes "provide an excuse for national governments to proceed with unpopular policies"[48]. Alternatively, incumbent gatekeeper elites continue to effectively block the rule of law reform.

A lack of commitment of the EU, reflected in the absence of a credible membership perspective for the Western Balkan countries, apart from Montenegro, is part of the problem, and not the solution, in the region. This problem is also reflected in the absence of interim rewards tied to a gradual prospect of rule of law implementation. In order to support pro-reform domestic actors, the EU should set up an intermediary system of rewards for the achievement of interim goals. The visa liberalisation in the region serves as a good example for the mechanisms of the 'soft pressure' the EU has at its disposal. There are three lessons to be learned from the visa liberalisation process: (1) the EU should motivate state institutions and civil society to take part in the reform process, (2) the EU has to set out an explicit and detailed conditions map, and (3) finally, the EU must create a comprehensive implementation strategy with a measurable interim system of goals and rewards, so that domestic actors have a clear and immediate rationalist-based motivation to adhere to the rule of law conditionality.

4.2 Tackle bilateral disputes at an early phase of the accession process

Upon the dissolution of former Yugoslavia, seven new countries emerged on the European continent. The internal borders between former Yugoslav republics were not defined based on a specific law, but rather by a legal-dogmatic interpretation of by-laws regulating administrative and judicial jurisdiction. In addition, maritime borders between ex-Yugoslav Republics were not regulated at all. This led to a fundamental dispute regarding border demarcation between Croatia and Slovenia, which still continues to disturb relations between these two countries. In addition, Slovenia and Croatia were in dispute over Slovenian lender Ljubljanska Banka in the last months prior to Croatia's accession. At one point, strained bilateral relations between Slovenia and Croatia threatened to disrupt Croatia's accession to NATO. The issue also led Slovenia to block Croatia's membership negotiations with the EU for almost a year. As a result, Croatian membership negotiations were closed only in June 2011. It was only after various EU actors became involved in the dispute resolution that a solution was found, but, even so, only regarding the successful closure of the Croatian membership negotiations. The resolution of the border dispute is still pending and will depend on the binding decision of the Arbitral Tribunal, which is expected to complete its work towards the end of 2015 amidst an alleged corruption scandal[49].

The Slovenia-Croatia border dispute was the first bilateral dispute among the countries of the former Yugoslavia that had a disruptive impact on the EU enlargement process. The prospect that the remaining Western Balkan states might accede to the EU in a 'caravan' amidst a number of looming bilateral issues between them reveals an imminent threat of new bilateral conditionality in the region, which might turn

[48] O. Anastasakis and D. Bechev. April 2003. *EU Conditionality in South East Europe: Bringing Commitment to the Process* (South East European Studies Programme, European Studies Centre, St Antony's College, University of Oxford). Available at https://www.sant.ox.ac.uk/sites/default/files/euconditionality.pdf, p. 11.
[49] A. Sarvarian, R. Baker. 2015. Arbitration between Croatia and Slovenia: Leaks, Wiretaps, Scandal, Blog of the European Journal of International Law. Available at http://www.ejiltalk.org/arbitration-between-croatia-and-slovenia-leaks-wiretaps-scandal-part-2/.

into an obstacle to accession. The potential for future disputes can be gauged by the fact that most of the border issues between Western Balkan states remain unresolved despite progress achieved at the Vienna Summit in August 2015. Moreover, a number of political questions related to statehood remain open, most notably the name dispute between the former Yugoslav Republic of Macedonia and Greece and Serbia's and Bosnia and Herzegovina's refusal to recognise Kosovo's independence. Finally, unresolved minority rights issues have the potential to escalate, particularly when legacies of the recent ethnic conflicts are taken into account. While some disputes concern two EU candidate countries, others involve EU Member States.

Regardless of the background, however, one thing remains clear: all unresolved bilateral disputes have actual or potential repercussions for the stability in the region and good-neighbourly relations between the countries. So far, this study has established that the EU has the ability to influence the resolution of seemingly deadlocked situations; the next section will look at the lessons learned from the Slovenia-Croatia border dispute, and how these can be translated into the ongoing accession talks with the remaining Western Balkan candidates for EU membership.

Proactive and early EU involvement. The EU reacted too late in the Slovenia-Croatia border dispute. Following an *ad hoc* dispute resolution attempt by the European Presidency troika, led by the former French President Nicolas Sarkozy, it was only when Slovenia blocked Croatia's accession talks that the EU included the bilateral dispute in the accession agenda. Such reactive EU involvement resulted in an escalation of tensions between the two contesting countries and damaged the overall accession credibility. Instead, the EU should have been more proactive. Had it anticipated the potential crisis, it could have motivated Slovenia and Croatia to resolve the border issue by a common set of incentives prior to 2004, when Slovenia entered the Union.

In line with the aforementioned analysis, the EU enlargement strategy for 2013-14 calls for early resolution of bilateral issues among the Western Balkan countries[50], before they turn into significant obstacles in accession negotiations.

Bilateral disputes between candidate countries. A recent policy study published by BiEPAG outlined the vast disrupting potential of unresolved bilateral disputes in the Western Balkans[51]. Moreover, the experience of the past teaches us that even seemingly trivial issues can evolve into politically sensitive problems, which can add further obstacles to the already difficult accession paths of the Western Balkan countries.

It is therefore crucial that the EU tackles looming bilateral issues between candidate countries as early as possible in the accession process, so as to avoid complicating the two processes in the long run. Furthermore, a delayed reaction might lead to additional bilateral conditionality, as some of the countries will reach EU membership sooner than others. Instead, a common membership perspective should be translated into a prevailing incentive for resolution that the EU can facilitate. In addition, the EU could initiate a common declaration of National Parliaments in candidate countries, whereby they would commit themselves not to impose bilateral conditions after they obtain EU membership.

Nonetheless, considering the difficult legacy of the past, the EU should continue to closely supervise the resolution process, and it should be ready to intensify the effects of its conditionality toolbox (i.e., name and shame, withhold the use of financial and technical assistance, etc.) in instances where escalations threaten to derail the accession process. Such a scenario requires a determined and continuous effort of

[50] European Commission. (Brussels, 16 October 2013). *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2013-2014*, COM(2013) 700 final, p. 2.
[51] M. Djolai. 2015. *From Bilateral Disputes to Bilateral Agreements: Pathways to EU Accession of the Western Balkans*. Balkans in Europe Policy Advisory Group.

the European External Action Service (EEAS), the European Commission, the European Parliament, RCC, the Member States, and other important international players.

Bilateral disputes involving a Member State and a candidate. As seen in the fYRoM name dispute, outstanding bilateral disputes become even bigger obstacles to enlargement once they involve a Member State and a candidate country. The Member States' veto power on a membership bid of a candidate country is a powerful tool in guiding the outcome of a bilateral dispute, thereby weakening the EU's potential for constructive involvement. The European Commission has no formal mandate through which it could confront bilateral disputes. However, its commitment in these disputes is crucial, particularly if the accession process is at stake.

First of all, the EU should address these disputes as European issues. By doing so, it will have greater leverage to guide their outcomes. The EU should pursue a two-track approach, first by providing proactive mediation, and then by securing resources for mediation and the relaxation of relations between the disputing parties. Mediation should include national level political elites and civil society representatives, particularly those living in a disputed territory or those most affected by the ongoing dispute. Encouraging the referral of border disputes to the International Court of Justice (ICJ) should, for example, become a regular practice. However, increased EU involvement is particularly indispensable in the mediation of political disputes. Finally, the EU should attempt to develop a common strategic framework with specific steps that need to be followed as part of the mediation and resolution process for future cases.

4.3 The importance of completing economic and structural reforms before accession

EU integration is traditionally seen as the main instrument of a pro-growth strategy, which includes enhanced trade and foreign investment liberalisation on the one hand, and economic cooperation within the framework of the SAP on the other. This is in line with the high expectations of citizens of the acceding countries about economic prosperity and welfare after the accession.

Croatia was the first country to join the EU amidst the global and European economic crisis and continued Eurozone recession. A persistently depressed labour market and Croatia's own internal recession led to lower welfare, incomes, and financial security of Croatian citizens even beyond accession[52]. Moreover, after becoming a member of the EU, Croatia lost the economic benefits of the regional free trade zone membership. As a consequence of the government's efforts to improve the poor economic situation, Croatia was placed in the Excessive Budget Deficit Procedure of the European Commission shortly after gaining EU membership. The aforementioned circumstances resulted in the lack of economic synergy effects seen in EU newcomers following enlargement.

Disappointment with the economic impact of enlargement is visible in the very first Balkan Barometer Public Opinion Survey[53]. Croatia-related findings of the Survey paint a grim picture of an economy that has not been doing well over the past years, and more importantly, an economy that is not likely to do considerably better in the future. For example, 59% of Croatian citizens expect the national economy to worsen in the next year, while only 9% believe that the national economy will improve. As high unemployment is still the main problem, it comes as little surprise that even after accession to the EU,

[52] V. Samardzija. 2014. *Croatia's First Year of EU Membership: Have the Expectations Been Fulfilled?,* TEPSA Policy Brief, July, Trans European Policy Study Association, Brussels: at 5.
[53] Balkan Barometer 2015 Public Opinion Survey. Regional Cooperation Council Secretariat. Sarajevo: 2015.

42% of Croatian citizens are still considering emigration. Indeed, the prognosis for recovery of the Croatian economy does not look bright in the years to come[54].

Despite the fact that Croatia was successful in achieving harmonisation with the *Acquis communautaire* and meeting political membership conditions, it seems that its economic and structural reforms remained largely unfinished. This situation highlights the significance of the emerging focus on economic governance during the accession process in the remaining Western Balkan countries.

Increase and Re-Focus Foreign Direct Investments. Foreign direct investment (FDI) inflows are crucial for the successful economic transition of the Western Balkans. The absence of opportunities for significant domestic investments and the lack of FDI, especially green-field investments, weaken the industrial sector, deepen the trade deficit, and negatively impact the unemployment rate in the Western Balkans. Ultimately this ruins the region's chances to catch up with the economically more advanced EU countries. Alternatively, FDI not only lead to an increase in GDP, but also produce a positive multiplier effect in the receiving economy, including the creation of new jobs.

As seen in the cases of the 2004 Big Bang and the 1980s southern enlargement, a strong FDI performance during the preparation for accession led to positive effects on economic growth in new Member States. Due to the already mentioned EU financial crisis, the structure of FDI in the Western Balkans is much different from what it was during previous accession rounds. The most attractive sectors so far have been the trading and banking sectors, telecommunication, and domestic market-oriented industries. Unfortunately, investments in these sectors have only led to rather modest economic growth in the receiving Western Balkan countries.

Now, the central question is how to boost FDI flows into the Western Balkans. While the role of the receiving state is crucial in attracting FDI, mostly by making the business environment more attractive for potential investors, there is still room for improvement in the EU's approach to the region.

First, the EU should make better use of the pre-accession funds to boost the quality of regional infrastructure. In comparison to other parts of the continent, infrastructure in the Western Balkans is highly underdeveloped. Investment in railways, highways and renewable energy should be treated as a priority. In order to support priority infrastructure projects, it would be necessary for European and international financial institutions to intensify their cooperation on key investments. In the long run, these investments will lower the costs for international companies and encourage other FDI. Regional investments in transport and energy were discussed last year at the Berlin Summit on the Western Balkans between the heads of states of the EU and the region. However, one year later, despite several Western Balkans 6 meetings, and a follow up Summit in Vienna, no tangible results can yet be observed.

Second, investment in education, skills, innovation and applied research also needs to be a priority for investors. Otherwise, there is a risk that the region may never become truly able to withstand the competitive pressure of the EU.

Third, the EU should reconsider whether IPA II funds could not be better used to boost investment across the region. Despite the fact that local training on how to best use IPA funds is booming, and that governments have established institutional capacity in order to be able to maximise the effects of the IPA II funds, the obstacles for receiving EU financial support still remain too high. This is mainly so for small actors, such as NGOs, farmers associations, small- and medium-sized businesses and regional level

[54] See for example International Monetary Fund. 2015. *Republic of Croatia: Concluding Statement of the 2015 Article IV Mission*. Available at https://www.imf.org/external/np/ms/2015/050615.htm.

government units. Particularly worrisome is the trend of unused IPA-related financial resources[55]. In order to address these issues, the EU should invest in tailor-made training of public officials, particularly those at the local and regional levels, for effective management of pre-accession assistance. Unused funds could be used to boost investment across the region and assist in the development of road infrastructure. Criteria for EU funds should be lowered; for instance, criteria that require an annual turnover of several million euros, which rarely any NGO or consultancy company from the region can meet, should be removed.

Assistance in adapting to the new economic reality after leaving CEFTA. After acceding to the EU, Croatia had to leave the Central European Free Trade Area (CEFTA) organisation, which was its main trade partner at the time. Leaving CEFTA and all its trade benefits was challenging for the Croatian economy, particularly when its inability to compete with other EU single market countries is taken into account. With the current regatta approach to enlargement, the remaining Western Balkan countries are expected to enter the EU at different times based on their pre-accession performance. This leads to the conclusion that they will also be facing the problem of adopting the EU trade regime concerning the remaining regional market.

In Croatia's case, the loss of a preferential position in regional trade mostly affected the private sector[56]. The EU should therefore play a more active role in preparing the private sector, and should assist in increasing its competitiveness on the EU market. This should be done via increased use of IPA II funds to improve innovation and the export orientation of small- and medium-sized businesses. At the same time, the EU should facilitate negotiations of its new Member States with the remaining CEFTA countries on how to overcome trade barriers in some key areas, such as agriculture and fisheries.

Include Negotiating Countries in the European Semester. As was already mentioned, shortly after becoming a Member State, Croatia was placed in the Excessive Budget Deficit Procedure of the European Commission. It is reasonable to expect that other Western Balkan countries will experience the same thing upon accession. This is why it is important to invest further efforts in preparing negotiating countries to face the upcoming economic and institutional challenges. The way forward is to expand the scope of the recently established National Economic Reform Programmes, which were assessed in May 2015 by the ECOFIN Council[57], and to include negotiating countries in the preventive surveillance of the economic and fiscal policies of the Member States, or the European semester.

Tackle Corruption and Misdirection of Public Funds at an Early Stage of Accession. Proper implementation of transparency measures regarding public funding distribution remains one of the main challenges in the current EU applicant countries. Although structural reforms are primarily an economic matter, these need to be accompanied by political transparency throughout the whole process. Namely, political institutions are of critical importance for economic policies, as they determine how public funds are created and spent. If these institutions are defective, or if they lack proper control mechanisms, public funds will be misdirected and public welfare will not ensue. Dušan Pavlović illustrates the waste of public funds by providing the following examples: 58 million euros of unaccounted public funds in fYRoM as

[55] EurActiv. 2014. *Serbia Lacks Experts for Use of Funds*. Available at http://www.euractiv.rs/english/7130-serbia-lacks-experts-for-use-of-funds.
[56] See in V. Samardzija. 2014. *What does the EU Membership of Croatia Mean for the Countries of Western Balkans?,* in: Cehulic´ Vukadinovic´ L. (ed.), *Yearbook Šipan 2013,* Zagreb, The Atlantic Council of Croatia, Center for International Studies, pp. 73–84.
[57] Joint conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey. 12 May 2015. The Economic and Financial Affairs Council. Available at http://www.consilium.europa.eu/en/press/press-releases/2015/05/12-ecofin-joint-conclusions/.

part of the controversial 'Skopje 2014' project, failure to collect concession fees totalling 19 million euros in Montenegro, one billion euros of non-performing loans given by the Serbian Development Fund, etc.[58]

Actions related to the establishment of an effective rule of law system that have already been addressed in this text must be coupled with appropriate measures aimed at preventing a conflict of interest when performing public functions, protecting whistleblowers, establishing E-government, and increasing transparency, responsiveness and the efficiency of all branches of government via the right of access to information and public procurement regulation. The EU could best assist in facilitating these measures by securing a significant part of the IPA II budget for appropriate actions, and also by working with local civil society organisations in tackling problems. What is clear in Croatia's accession is that corruption and misdirection of public funds needed to be addressed at an early stage of the EU integration process. Otherwise, these problems are likely to survive even beyond accession.

5 The Way Forward

A conclusion concerning the current state of play in the region (see section 2) and the lessons learned after Croatia's accession to the EU (see section 4) is that the top-down institutional approach employed by the EU, which is empowered by the 'golden carrot' of full membership, has generated unique and broad-based support for democratic and socio-economic reforms and progress towards EU membership in the Western Balkans. However, the technocratic, often vague and short-term nature of EU conditionality, coupled with the increasing lack of credibility of the overall enlargement process, leads to *at best* redistributive, capacity-related and short-term outcomes, rather than sustainable and transformative changes in (potential) candidate countries. In other words, while EU conditionality has an important role in prompting reforms, a sustainable results-oriented reform process, empowerment of democratic forces in the region, and a truly transformative effect of EU integration are missing within the current autopilot mode of enlargement. In the absence of transformative change, it seems as if the EU pretends to reform, while aspiring Member States pretend to be reformed in order to advance in the accession process. As stressed earlier within this study, none of the Western Balkan (potential) candidates will become EU members within the foreseeable future. For precisely these reasons, the current method of enlargement cannot continue.

In order to offer a set of solutions to the observed problem, this study will first address the main obstacles in the application of EU conditionality. First, on the *supply side* the EU should simply level the field: the EU should make its criteria in the different reform areas more explicit, apply the same criteria to all countries, assess them rigorously and clearly communicate the findings for every country. However, in order to function properly, EU conditionality requires certain conditions to prevail on the *demand side* as well. The most notable are the reduction of the number of veto players and the elimination of institutional obstructions exhibited in clientelistic relationships among the domestic political and economic elites. Furthermore, conditionality also requires that institutions prone to corruption and administrative obstacles, which are legacies of the wars and of the communist past, be eliminated as well. In addition, the current approach has a particularly limited reach in non-consolidated democracies, since it runs counter to democratisation by favouring semi-authoritarian ruling elites and depoliticising civil society. Why should the political and economic elites in the aspiring Member States give in to external pressure, particularly when membership is uncertain or attainable only in a more distant future? Could membership conditionality, if it is no longer fully credible, simply be supplemented by a more short-term

[58] D. Pavlović. 2015. *The Prospect of Job Creation in the WB6 Economies*. Balkans in Europe Policy Advisory Group.

oriented "policy conditionality"[59], as Florian Trauner recommends? Or does this approach remain trapped in the logic of intergovernmental negotiations, which stems from a "realist" international relations approach?

Scholars of Europeanisation have already created a framework with two analytically distinct approaches, namely "rationalist institutionalism" and "constructivist institutionalism"[60]. Rationalist institutionalism, based on cost-benefit calculations by both EU institutions and domestic elites, will thus deal with questions of the 'normative clarity' of EU demands and the credibility of conditionality in general. By studying previous enlargements, several scholars have already observed that the *Acquis*, as a strategic instrument, remain exclusively in the hands of the EU institutions, and that this allows for strategic content adjustment with regard to the scope, determinacy, and flexibility of the *Acquis*. As a result, these scholars claim that the EU practices a strategic game of conditionality by stretching or moving the goal posts. This suggestion will, of course, play into the hands of domestic elites who are not always interested in quick EU membership, such as those economic elites who are comfortable with a quick profit-maximising logic against EU rules that encourage more competition, or political elites who will avoid rule adoption and implementation if it threatens their power interests.

Constructivist institutionalism, which is based on the 'logic of appropriateness,' deals with the process of 'norm socialisation,' in which domestic elites and populations at large internalise those EU norms that they regard as legitimate. The constructivist approach considers the use of 'soft instruments' to have primary importance in persuading and socialising domestic ruling elites. It is precisely these bottom-up soft socialisation mechanisms that are not used equitably enough in order to strengthen the capacity of civic society organisations, the media, independent state agencies (Ombudsperson, Commission for Protection of Competition, Securities Commission, Republic Agency for Electronic Communications, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, etc.), and grassroots movements. These bottom-up mechanisms could also be used to create a consensus among the ruling and oppositional elites on the necessity of socialisation of the adopted norms. Along the lines of this theoretical approach, the following recommendations present a *way forward* for EU integration in the Western Balkans.

1) Empower and include democratic forces in the region

The EU accession negotiations are conducted with domestic political elites. The elites (formal and informal) make decisions that have consequences not only for the wider society, but for their self-preservation as well. In this regard, according to the rational-strategic logic, they calculate the costs incurred at the national level before they accept or block EU conditions. If the price for the elites is too high compared to the benefits, integration will not be pursued. If the expected costs are deemed insignificant, "integration will be considered a free lunch"[61]. The conviction of the former Croatian Prime Minister Ivo Sanader on corruption charges[62] serves as a striking example of the harmful effect EU reforms can have for established elites. Equally important, the Western Balkan region lacks a new generation of politicians following the period of political consolidation. At the same time the existing political elites are reluctant to support reforms that create competing centres of authority beyond their control.

[59] F. Trauner. 2009. "From membership conditionality to policy conditionality: EU external governance in South Eastern Europe", *Journal of European Public Policy*: 774–790.
[60] Sedelmeier first developed such an analytical framework in U. Sedelmeier. 2006. "The EU's role as a promoter of human rights and democracy: enlargement policy practice and role formation", in O. Elgstrom and M. Smith (eds). 2006. *The European Union's role in international politics: concepts and analysis* (London: Routledge): 118-135.
[61] J. Tolstrup. 2010. "When can External Actors Influence Democratization? Leverage, Linkages, and Gatekeeper Elites": 17.
[62] "Former Croatia PM Ivo Sanader convicted of corruption", BBC (11 March 2014). Available at http://www.bbc.com/news/world-europe-26533990.

Yet, an interactional dimension of the EU integration process, which could reach deeper beyond the institutional (state) structure to empower a wider public to hold the elites accountable, is still missing. This study has already identified a number of 'champions of change' in the Western Balkans (see page 26), who act as a "countervailing force against anti-reform elements"[63]. However, their voices are largely marginalised within the EU integration process and are dependent on the willingness of government incumbents to listen. Moreover, such organisations or individuals are often threatened by the ruling elites, who seek to exclude them from public debate[64].

In order for the continuation of the reform processes in the region to be successful, it is crucial that credible parts of the civil society complement the work of state institutions. Keeping in mind the potential impact and value civil society can contribute to the process of EU integration, the support for this sector should become the primary focus of some EU institution-building assistance programs and a component in most others. More precisely, future civil society empowerment should strengthen their expertise, capacities, technical organisation, and provide for regional and international networking possibilities. Furthermore, the EU should maintain its support for the inclusion of responsible civil society actors in an effort to create pressure on governments to do a better job.

Financial assistance through the Instrument for Pre-accession Assistance (IPA II) plays a key role in empowering democratic forces in the region. The European Parliament has a direct influence through its budgetary powers on the amounts allocated to the aspiring Member States. Now, based on the principle of a sector-based approach[65], IPA II takes national development plans as templates for programming its assistance. While this solution is successful in increasing local ownership of IPA assistance, it bears the risk of omitting support for non-government related projects. In this regard, it is important that, regardless of the principle of 'local ownership,' the European Parliament and Commission fine-tune the list of projects and institutions to be funded together with the beneficiaries. Moreover, it would be useful to include civil society in the monitoring of the implementation of IPA funded projects.

It needs to be said that over the last couple of years, the EU has demonstrated a growing understanding of the role that civil society has in pushing state institutions to cooperate. Since 2012, the Commission has held permanent consultations with civil society organisations in Bosnia-Herzegovina and Kosovo, within the framework of the Structured Dialogue on Justice with Bosnia and Herzegovina and the Structured Dialogue on the Rule of Law with Kosovo. These consultations are intended to guarantee that the voice of civil society reaches EU decision-makers. A positive signal comes from Montenegro, where civil society organisations are included in the accession negotiations. However, a long-term strategic orientation for including civil society is yet to be set. This could be a key tool in providing a satisfactory level of political transparency and elite accountability towards citizens.

2) Create Links to Gain Leverage

The proposed scheme would not be able to yield sustainable results without the credible promise of full EU membership. Where credibility of the EU promise is either weak or distant, as can particularly be observed in fYRoM, Kosovo and Bosnia and Herzegovina, achieving formal compliance with EU

[63] S. Golub, "The Legal Empowerment Alternative", in T. Carothers, *Promoting the Rule of Law Abroad*, Carnegie Endowment for International Peace, 2006: 161-187, at 169.
[64] See examples of smear campaigns targeting the anti-corruption activist Vanja Ćalović in Montenegro, pressure exerted by Serbian authorities on Ombudsperson Saša Janković, the continuous threats against independent investigative journalists throughout the region, etc.
[65] W. Koeth. 2014. *The New Instrument for Pre-Accession Assistance (IPA II): Less Accession, More Assistance?*, Working Paper 2014/W/01, European Institute of Public Administration. Available at http://www.eipa.eu/files/repository/product/20140507143645_WorkingPaper_2014_W_01.pdf.

conditionality has proven to be less complete. The theory of "leverage and linkage"[66] suggests that the success of the EU's influence on candidate countries is conditioned upon high leverage, as manifested in the asymmetrical power relationship between the EU and the target states, as well as upon linkages through the density of ties between the negotiating parties. Logic goes on to tell us that "the more a state becomes entangled in linkages with one external actor, the more vested interests will consolidate on both sides"[67], ultimately leading to the natural desire of negotiating parties to preserve such ties. In other words, moving forward in EU accession talks would produce a path-dependency that in the long run constrains the manoeuvrability of domestic elites. At the moment, newly-established mechanisms of the European Commission, the Structured Dialogue on Justice with Bosnia and Herzegovina, the Structured Dialogue on the Rule of Law with Kosovo, the High Level Dialogue with Albania, and the High Level Accession Dialogue with fYRoM aim to advance structured relations concerning the rule of law with aspiring member countries, in some cases even before the SAA enters into force. However, while socialising the elites, the Structured Dialogue solutions still do not provide the credibility of a membership perspective. This calls for greater determinacy and dedication of the EU in the Western Balkan countries.

3) Open Chapters 23 and 24 with all Western Balkan Countries

As already mentioned, the new EU strategy on the rule of law conditionality envisages that Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security should be opened early in the negotiations and be the last ones to be closed. Such an approach would allow for the maximum time possible for the establishment of the necessary legislation, institutions, and solid track records of implementation until the very end of the negotiating process. Moreover, the EU has established the Structured Dialogue, which is a new mechanism for countries that are not yet negotiating EU membership, in order to assist them in moving further along the path towards the EU. The focus of the Structured Dialogue falls precisely on the rule of law. However, thus far, it has had only modest success in Albania, Bosnia and Herzegovina, fYRoM and Kosovo. This study therefore proposes to start up the screening process and subsequently open Chapters 23 and 24 with all the Western Balkan countries on the basis of the new approach. The benefits are threefold. First of all, it replicates the success of the visa liberalisation process by opening simultaneous negotiations with all the countries of the region, which will develop competitive dynamics where no country wants to be left behind. This will in turn encourage faster reforms, particularly among accession laggards. Second, it will increase the density of ties and linkages between the EU and the domestic elites in the Western Balkans. Hence, the veto potential of obstructing elites will be weakened. Third, it would give the biggest possible leverage to the EU to influence the establishment of an effective rule of law system in its immediate neighbourhood.

6 Conclusions and Policy Recommendations

The main message of this study is that the current method of enlargement cannot continue. The EU has thus far failed to empower the wider community and particularly the expert public in order for them to become part of the cognitive convergence pressure group able to exercise bottom-up pressure on the political elites. Due to the weakened credibility of the enlargement perspective, the overall transformative effect of enlargement is evaporating. Finally, some of the countries of the region seem to be locked out of the enlargement process due to the increased ownership over this process by the EU Member States. Below are some policy recommendations to the EU institutions that could reinvigorate

[66] S. Levitsky and L. Way. 2005. "International Linkage and Democratization", *Journal of Democracy* 16(3): 20-34.
[67] J. Tolstrup, *When can External Actors Influence Democratization? Leverage, Linkages, and Gatekeeper Elites*, cit.: 22.

the accession process of the Western Balkans, regardless of the need for sincere reforms in the aspiring Member States.

Empower Democratic Forces in the Region. Western Balkan countries are predominantly characterised by traditional top-down power structures, whereby governments are at liberty to influence both reforms and EU integration through a set of clientilistic networks and/or methods of more or less open pressure. It is essential to transform these networks so as to increase the influence of horizontally structured civil society on policy making (i.e. NGOs, civil society organisations, independent investigative journalists, Ombudsperson, Commission for Protection of Competition, Securities Commission, Republic Agency for Electronic Communications, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, Judicial Academy, etc.). In addition, efforts should be made to support constructive grassroots initiatives in the region (i.a. Ne da(vi)mo Beograd[68], Mjehur na mreži[69], Student Plenums[70], Open University[71], and others). Civil society empowerment should strengthen their expertise, capacities, technical organisation, and provide for regional (regional Ombudsperson network, regional media outlets such as the *N1 TV* which broadcasts simultaneously in Serbia, Croatia and Bosnia and Herzegovina, etc.) and international networking possibilities. Furthermore, the EU should maintain its support for the inclusion of responsible civil society actors in an effort to put pressure on the government to do its job better, both before and during negotiations. Finally, EU officials and MEPs should regularly engage in direct communication with citizens, as this will allow them to name and shame those elites who do not follow up on their declaratory support for EU integration. The public nature of the November 2014 letter of the German-British initiative for Bosnia and Herzegovina very adequately illustrates such a practice[72].

Remove Bilateral Disputes from the Accession Agenda. The European Commission should keep bilateral disputes between Member States and a (potential) candidate country out of the accession negotiations. Such disputes should be resolved either through international arbitration (i.e., the ICJ) or mediation mechanisms (possible formulas include individually mandated MEPs or an EU troika which could be composed of the President of the European Parliament, the High Representative of the Union for Foreign Affairs and Security Policy and the European Commissioner for European Neighbourhood Policy and Enlargement Negotiations). In addition, the EU should provide financial resources for mediation and the relaxation of relations between the disputing parties (existing resources for cross-border projects are a good example).

Reenergize the Enlargement Process. The 2004 enlargement process was successful, *inter alia*, because it included a large number of countries all competing to join the EU. The current gradualist process lacks this dynamic, and countries are not in direct competition. Simultaneously opening Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security with all Western Balkan countries could create such healthy competition. This scenario would replicate the success of the visa liberalisation process (except for Kosovo), as it would encourage faster reforms, especially the

[68] Ne da(vi)mo Beograd is a grass roots initiative gathering organisations and individuals interested in sustainable urban development and equitable use of shared resources contesting the controversial and non-transparent Belgrade Waterfront project. See https://nedavimobeograd.wordpress.com/o-inicijativi/.
[69] The Mjehur na mreži initiative promotes the idea of independent internet radio broadcasting in the region amidst ongoing media freedom deterioration. See https://www.mixcloud.com/MjehurNaMre%C5%BEi/.
[70] Students in Skopje rallied around an informal movement called the Student's Plenum in early 2015, demanding the immediate suspension of a controversial law on higher education.
[71] Open University is a platform for public discussion of social, political and artistic alternatives and non-formal education in Bosnia and Herzegovina.
[72] Auswärtiges Amt, Foreign and Commonwealth Office. 4 November 2014. *German-British initiative for Bosnia and Herzegovina*. Available at http://infographics.economist.com/20141108_Letter/Letter.pdf.

establishment of an effective rule of law system, and increase the density of ties and linkages between the EU and domestic elites in the Western Balkans.

Closely Monitor the State of Democracy. Serious backsliding in terms of democracy and the freedom of media can be observed throughout the region over the past few years. Yet, the EU has remained rather silent on such developments, even when confronted with concrete evidence, as in the case of the recent wiretapping scandal in fYRoM. While the EU continues to focus on the smart design of formal institutions, it seems that it is also willing to shortchange the state of democracy for the sake of other reasons, most notably the stability of the region. The EU needs to focus on monitoring the aspiring members on their paths to stable and prosperous democracies governed by the rule of law. It should also pay greater attention to the whole forest and not just the trees along the way. This issue should be regularly addressed in the annual progress reports, as well as by the EU Delegations in the region, parliamentary delegations meeting counterparts in Brussels, Strasbourg or in the respective countries, Parliament's Committee on Foreign Affairs and the standing rapporteurs for (potential) candidate countries. Moreover, the European Fundamental Rights Agency could expand its scope of work to cover all the (potential) candidate countries by means of regular assessment on specific legal and political measures concerning democracy promotion. Finally, it is very important that the EU continues to use local expertise in this matter. Collaboration with credible civil society organisations from the region should be further institutionalised via regular channels of communication, for example through commissioning regular 'shadow' reports on the state of democracy.

IPA. The European Parliament has a direct influence through its budgetary powers on the amounts allocated to the aspiring Member States. Together with the beneficiaries, the European Parliament and Commission should fine-tune the list of priority projects and institutions to be funded. Civil society should be included in the monitoring of the implementation of IPA funded projects.

A particular focus of the IPA mechanisms should be directed towards strengthening the expertise, capacities, technical organisation and independence of previously listed credible regulatory agencies and civil society actors. In addition to continuing support for regionally established bodies, such as the RCC, the South-East European Cooperation Process (SEECP), the Regional School of Public Administration (ReSPA), etc., IPA funds should also foster the creation of regional and international networks of democracy promoters (i.e., regional network of anti-corruption agencies, regional network of Ombudspersons, etc.).

Second, IPA funds should focus on projects that have an economic multiplier effect. These include investments in the quality of regional infrastructure (railways, highways and renewable energy), as noted in the 2015 Western Balkans Connectivity Agenda. Most of these projects are extremely expensive, and this is why the EU and the beneficiary countries should coordinate these investments with grants and loans of other international donors, as well as the unused IPA II funds. Such coordinated efforts will be better able to efficiently complete priority infrastructure projects.

Third, particular attention should be dedicated to investments in education, skills, innovation and applied research. Special focus should be put on efforts to create a policy framework for facilitating and financially stimulating the return of young scientists from the region studying abroad, as well as on engagement with the diaspora. A good example of this practice can be seen in Croatia, where the Government of the Republic of Croatia is conducting a NEWFELPRO fellowship project that aims to reverse the brain drain process by encouraging outstanding Croatian researchers to return to Croatia. This project is co-financed through the Marie Curie program.

Finally, the EU should enhance the training of public officials, particularly those at the local and regional levels, for effective management of pre-accession assistance. It should also lower the criteria necessary for regional civil society actors to bid on EU funds.

Step up European Parliament's involvement in the mediation of disputes involving a (potential) candidate and a Member State. Bilateral issues become all the more difficult to address once they oppose a Member State and a candidate country, weakening the potential for productive involvement by most of the EU actors. However, it is important to prevent disruption of the accession process, and indirectly the overall credibility of the EU's enlargement policy, due to bilateral conditionality imposed by one or more Member States involved in a dispute with an aspiring Member State. This is why the European Parliament should assume more responsibility in order to mediate between disputed parties by actively engaging through creative dialogue with involved national parliaments. In order to assist in removing the obstacles, it would be important to maintain concerted action across various Parliamentary groups, as well as with other EU institutions, most notably the Commission. Furthermore, MEPs could bring more pressure to bear through the European 'mother parties' and/or political foundations.

Work to convince EU citizens to support further enlargement. Politicians in Member States are confronted with hostile public attitudes toward enlargement (see section 2.3 of this study). First, this problem is not new, since none of the three enlargement rounds as of 2004 had a strong backing of EU citizens. Second, a lack of popular support for enlargement to the Western Balkans is mostly expressed via public surveys that are often influenced by the way a question is phrased. For example, if the survey question relates to the practicalities of the European project (i.e., whether people see benefits of EU enlargement), the support is likely to be greater than if the question refers to the personal conviction of the surveyed citizens (i.e., whether people generally support enlargement). Third, the results of the latest Eurobarometer surveys[73] are not surprising given that it is easier for EU citizens to voice drawbacks (increased competition, diversification of EU resources, etc.) than potential benefits of accepting new Member States, especially in times of crisis. Finally, it is difficult for the individual citizen to see the full implications of enlargement.

This is precisely why EU and individual Member State politicians should intensify lobbying and communication with their citizens in order to push enlargement higher on the EU agenda. This process should start with an honest analysis of the reasons for enlargement fatigue among citizens. Perhaps the most important reason for the lack of support for further enlargement is the fear of negative economic repercussions and the loss of jobs. However, previous enlargement rounds have shown that it is difficult to back up such fears. Quite the contrary, a strong demand for import in the new Member States has even helped to safeguard jobs in the older EU countries. While similar patterns can be observed regarding the debate about transition periods for the freedom of movement, it should be noted that the latest demographic trends in the advanced EU economies will inevitably lead to an increased demand for the import of labour in the near future. Finally, politicians should also communicate closely with those who support enlargement in the Member States in order to form a network that is able to put enlargement higher on the EU agenda.

[73] European Commission. 2013. Standard Eurobarometer 79 / Spring 2013 - Public Opinion in the European Union - Report. Available at http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_publ_en.pdf.

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