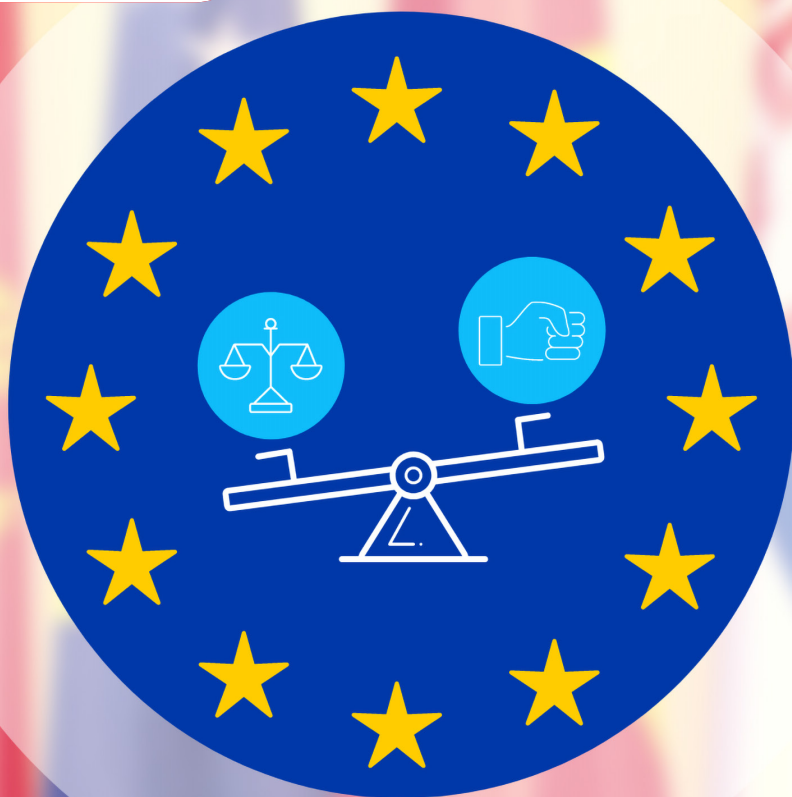


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# The EU as a promoter of democracy or 'stabilitocracy' in the Western Balkans?

A report by The Clingendael Institute and the Think for Europe Network (TEN)

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February 2022

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## February 2022

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# Executive summary

Through its enlargement policy, the EU seeks to foster democratisation in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia, also called Western Balkans six (WB6). Despite years of efforts, the EU's policies have not brought about the expected change. The enlargement process has lost both efficacy and political momentum. Instead of experiencing decisive democratic reform, the WB6 have slowly developed into 'stabilitocracies': countries with obvious democratic shortcomings that at the same time claim to work towards democratic reform and offer stability.

Stabilitocracy formation in the Western Balkans suggests that the EU's asserted transformative power is limited. Internal developments and a lack of political will in the WB6 are a significant factor in stabilitocracy formation. Several sources, however, assert that the EU's policies contribute to the entrenchment of autocratic tendencies in the region. This report researches how such unintended influence works and what measures should be taken to avoid the further entrenchment of stabilitocracy in the WB6. It makes a primary assessment of whether the revised accession methodology, as adopted in 2020, could provide a remedy, and considers what other options are available to the EU to reverse the trend.

The report identifies eight flaws in the EU's strategies, policies and their implementation that are believed to contribute to stabilitocracy formation:

1. The EU's overly technical approach to enlargement fails to foster deep political and societal transformation.
2. A lack of clarity in rule of law definitions hinders the adequate transposal of EU values.
3. Inadequate reporting on reform progress dilutes actual political realities in the WB6.
4. The EU often fails to speak out against and act upon standstill or backlash, implicitly offering tacit support to autocratic tendencies instead.
5. The EU regularly proves unable to reward progress because it is unable to find common understanding among its member states, thereby harming its credibility.
6. An overly leader-oriented approach towards the WB6 reinforces and legitimises the position of Western Balkan political elites who use the EU's public endorsement to reinforce their grip on society.
7. Party political relations between political families in the EU and their WB6 counterparts lead to undue support for WB6 parties even when they display non-democratic behaviour.
8. A lack of interim timelines leaves the EU unable to monitor reform progress and hold governments of the region accountable for not carrying out necessary democratic reforms.

In each of the WB6 countries, concrete cases exemplify how EU influence has unintentionally contributed to stabilitocracy formation and what factors have determined whether the EU approach has been constructive or not. The **technical approach** is the most prevalent flaw in the case studies. Examples range from the EU's inability to harmonise the interests of different ethnic groups in Bosnia and Herzegovina, structural weaknesses in the European Union Rule of Law Mission in Kosovo (EULEX), the failure of technical safeguards to counter blurred boundaries between branches of power in Montenegro, an overly technical focus in progress reports on democracy and rule of law reforms in North-Macedonia, and an overly technical fixation in the application of the revised methodology in Serbia.

The country analyses also show the negative effects of the EU's **leader-oriented approach**. Engagement with political leaders rather than civil society in Bosnia and Herzegovina, as well as within the EU-facilitated dialogue between Kosovo and Serbia, hampers effective democratisation. In Serbia, the EU's leader-oriented interaction frequently coincides with undue praise for national leaders.

The EU's **failure to act upon backlash** proved prevalent in the case studies as well. The EU was unable to call out unlawful use of personal data and voter surveillance during elections in Albania, showed itself hesitant to 'name and shame' politicians responsible for democratic backsliding in Serbia, and in its annual reports adopted a softer diplomatic language than facts on the ground necessitated. Lastly, the **lack of timelines** to meet EU benchmarks and its adverse ramifications for the accession process were highlighted in the cases of both Bosnia and Herzegovina and Montenegro.

Our preliminary assessment of the revised accession methodology shows that the adoption and partial implementation of the revised accession methodology has not yet succeeded in fixing the identified flaws in the accession process. The revised methodology's ambitions for an enhanced political steer and more genuine public appearances have not yet materialised. EU reporting on reform progress remains a tick-box exercise that fails to grasp the actual political dynamics in the WB6. We therefore conclude that the revised accession methodology bears more potential than its first months of implementation have shown.

To avoid the traps of further stabilitocracy entrenchment, we put forward recommendations and critical reflections on how to improve the EU's role in the region. Recommendations include focusing more on genuine feedback to WB6 governments, better reporting on the state of progress, enhancing communication with citizens, and specifying benchmarks while accompanying them with more tangible timelines.

However, fixing the technical process is a necessary but not sufficient condition for the EU accession process and its democratisation agenda for the Western Balkans. Therefore, the EU and its member states need to seriously consider proposals for a further overhaul



of the enlargement process in order to allow for a staged accession trajectory for the WB6. At the same time, the EU could speed up engagement with the WB6 beyond the enlargement framework in order to not lose grip in a region subject to increasing great-power competition. Lastly, it is recommended that the Netherlands takes further action to substantiate its ambitions as a critical but engaged member state.

# Abbreviations and acronyms

<b>AHC</b>	Albanian Helsinki Committee
<b>BiH</b>	Bosnia and Herzegovina
<b>CC</b>	Constitutional Court
<b>CEP</b>	European Policy Centre Belgrade
<b>CEPS</b>	Centre for European Policy Studies
<b>CSDP</b>	Common Security and Defence Policy
<b>CSO(s)</b>	Civil society organization(s)
<b>DPS</b>	Democratic Party of Socialists
<b>EC</b>	European Commission
<b>ECHR</b>	European Court of Human Rights
<b>EIP</b>	Economic and Investment Plan
<b>EP</b>	European Parliament
<b>EPP</b>	European Peoples' Party
<b>ERA</b>	European Reform Agenda
<b>EU</b>	European Union
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>HC</b>	High Court
<b>HR</b>	High Representative
<b>IGC</b>	Intergovernmental Conference
<b>IOM</b>	International Organization for Migration
<b>MEP(s)</b>	Member(s) of European Parliament
<b>MP(s)</b>	Member(s) of Parliament
<b>NGO</b>	Non-governmental organisation
<b>OSCE/ODIHR</b>	Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights
<b>PES</b>	Party of European Socialists
<b>SAA</b>	Stabilisation and Association Agreement
<b>SDMS</b>	Social Democratic Union of Macedonia
<b>SNS</b>	Serbian Progressive Party
<b>SP</b>	Socialist Party
<b>SPAK</b>	Special Anti-Corruption Structure

<b>SPO</b>	Special Prosecutor's Office
<b>SSR</b>	Security sector reform
<b>UK</b>	United Kingdom
<b>US</b>	United States
<b>VMRO-DPMNE</b>	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity
<b>WB</b>	Western Balkans
<b>WB6</b>	Western Balkans six (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia)

# 1 Introduction

Through its enlargement policy, the European Union (EU) seeks to foster democratisation in six southeast European countries that aspire to become EU members. Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia (in short, the Western Balkans six or 'WB6') have all been, albeit in different stages, in a long accession trajectory since 2003 that has since lost both efficacy and political momentum. Particularly in the spheres of democratisation and the rule of law, reform processes remain deadlocked or only move slowly.<sup>1</sup> A recent report from the European Court of Auditors firmly criticised EU investments in rule of law reforms in the Western Balkans – pointing to the absence of progress in the region and thus questioning the overall sustainability of EU financial support.<sup>2</sup>

Due to the lack of democratic consolidation in the WB6, more and more attention is being paid to the negative effects of EU policies. Several recent analyses argue that the EU unintentionally contributes to the formation of so-called 'stabilitocracies' in the region: Countries with obvious democratic shortcomings that nevertheless claim to work towards democratic reform and offer stability.<sup>3</sup> The paradox with such stabilitocracies is that the EU becomes increasingly dependent for its democratisation agenda on governments that have little democratic ambitions, and which largely simulate reforms to keep EU counterparts happy and reap the benefits of the special enlargement relationship.

Factors that contribute to the phenomenon of stabilitocracy formation include the insufficient application of EU conditionality, party political relations, and the legitimisation of incumbent governments through intensive cooperation with the

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1 See for example: Marko Kmezić, "[Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice](#)", January 2020. Gjergji Vurmo, "[Tailor-made laws in the Western Balkans](#)," May, 2020.

2 European Court of Auditors, "[Special Report 01/2022: EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persists](#)," January 2022; European Western Balkans, "[European Court of Auditors: EU support for rule of law in Western Balkans ineffective](#)," January 11, 2022.

3 See: Marko Kmezić and Florian Bieber, "[The Crisis of Democracy in the Western Balkans. An Anatomy of Stabilitocracy and the Limits of EU Democracy Promotion](#)," *The Balkans in Europe Policy Advisory Group*, March 1, 2017, 95; Florian Bieber, "[What is a stabilitocracy?](#)" *The Balkans in Europe Policy Advisory Group*, May 5, 2017; Solveig Richter and Natasha Wunsch, "[Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans](#)," *Journal of European Public Policy* 27, no. 1 (2020): 42.

EU. One consequence is that pro-democratic forces in the enlargement countries increasingly doubt both the intentions and the ability of the EU to promote deep and sustainable democracy. There may be some merit in their assessment, as the democratic impasse in EU enlargement cannot be seen in isolation from democratic decline within the EU itself. The fact that the rule of law is under threat in several EU member states also fuels hesitation among member states towards new enlargement rounds.

Notwithstanding differences among the WB6, the lack of reform progress in the region at large has not gone unnoticed by EU institutions and member states. The 2021 European Commission (EC) enlargement package, an annual update of the state of play regarding reforms in individual countries, provided the most detailed assessment ever of the state of democracy and rule of law. The European Parliament (EP) adopted a detailed resolution on EU relations with Serbia in 2021, which included strong language on deteriorating media freedom and negative public statements made by the country's leadership. The European Council has moreover denied Serbia the opportunity to open new negotiation chapters in 2020 because tangible reforms have not been pursued. Think tanks, non-governmental organisations (NGOs) and investigative media within the EU and the region itself have continued to draw attention to democratic deficiencies in the WB6.

In order to counter some of the dynamics that contribute to stabilitocracy formation, France furthermore called upon the EU to revise the accession methodology in 2019. The subsequently adopted revised methodology enhances political steer, emphasises the possibility to halt or even reverse negotiations, gives more attention to democracy and rule of law, and incentivises more engagement from EU member states.<sup>4</sup>

## 1.1 Main questions

This report examines the extent to which the EU contributes to the formation of stabilitocracies in the Western Balkans, asking whether the revised methodology holds enough potential to address the issue. Four main questions thereby form the core of this report:

1. To what extent does the EU unintentionally contribute to the formation of stabilitocracies, and in what way?
2. What challenges and opportunities do think tanks in the Western Balkans see in the EU's role in promoting democratisation in the different countries of the region?

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4 European Commission, "[Enhancing the accession process – A credible EU perspective for the Western Balkans](#)," COM(2020) 57 final, February 5, 2020.

3. What preliminary conclusions can be drawn from the recent application of the revised accession methodology with regard to the EU's ability to foster democratisation in the WB6?
4. How can the EU further address flaws in the design and implementation of its enlargement policies in such a way that its democratisation and rule of law objectives are more effectively pursued?

Notwithstanding the significance of local political developments in the current state of enlargement, our main aim is to provide constructive recommendations for enhancing the functioning of EU policies. As such, this report predominantly focuses on EU policies rather than internal developments in the WB6.

## 1.2 Methodology and structure of the report

The second chapter of this report provides a literature review of the effectiveness of EU enlargement policies on issues of democratisation and rule of law promotion. It specifically delves into the literature on stabilitocracies, EU transformative power, and the functioning of conditionality and state capture in relation to the WB6 and EU enlargement policy. For the purpose of this study, we define *effectiveness* as the EU's ability to foster democratic transformation in line with the values enshrined in Article 2 of the Lisbon Treaty and according to the Copenhagen Criteria, most notably those in the political area.

The third chapter comprises six country-specific assessments. They examine the way in which EU strategies and policies, and their implementation, can unintentionally have negative effects and what factors determine whether the EU approach is constructive or not in those cases. The aim is to gain a better understanding of the interaction between EU policy and (the lack of) reform in the WB6. The chapter builds on earlier research conducted by the Think for Europe Network.

The fourth chapter draws parallels between the individual country studies and provides a preliminary assessment of the effects of the EU's revised accession methodology. It also identifies further adjustments to be made in EU strategies and policies and their implementation, thereby also reflecting on several proposals for an overhaul of EU enlargement that research institutes have made in the past year. Chapter 4 builds on research conducted for the other chapters, but also on several interviews conducted with EU policymakers and law makers for the purpose of this study.

This report was written by Wouter Zweers, Giulia Cretti and Myrthe de Boon (all from The Clingendael Institute), except for Chapter 3, which was written by the Think for Europe think tank network.

## 2 EU effects on stabilitocracy formation in the Western Balkans

Scholars regularly describe political regimes in the Western Balkan countries as 'stabilitocracies'.<sup>5</sup> This term indicates hybrid, semi-authoritarian regimes with evident democratic shortcomings and autocratic tendencies which claim to offer pro-EU regional stability.<sup>6</sup> Albeit in different ways and proportions across the region, these countries suffer from 'elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests'.<sup>7</sup> This means that political corruption and clientelist networks are widespread and permeate the decision-making processes. Consequently, democratic institutions in the Western Balkans are fragile.<sup>8</sup>

The Covid-19 crisis has further contributed to the entrenchment of the status quo or even deterioration of the rule of law and democracy in the region.<sup>9</sup> During the pandemic, incumbent governments have seized the opportunity to strengthen the executive while legislative and oversight functions of national parliaments were weakened.<sup>10</sup>

The emergence of so-called stabilitocracies in the Western Balkans has not taken place to the same degree among all the WB6. Interestingly, since the term came into use, various long-standing governments generally assessed as (semi-)autocratic, such as the former Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE) government of Nikola Gruevski in North Macedonia or the former Democratic Party of Socialists (DPS) governments of Milo Đukanović in Montenegro, have moved to opposition after losing parliamentary

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5 See footnote 3.

6 Marko Kmezić and Florian Bieber, "[The Crisis of Democracy in the Western Balkans...](#)," 95; Florian Bieber, "[What is a stabilitocracy...](#)".

7 European Commission, "[A credible enlargement perspective for and enhanced EU engagement with the Western Balkans](#)," COM(2018) 65 final, February 6, 2018, 3.

8 Marko Kmezić and Florian Bieber, "[The Crisis of Democracy in the Western Balkans...](#)", 4.

9 Alban Dafa *et al.* "[The Western Balkans and the COVID-19: Effects on good governance, rule of law and civil society](#)," *Think for Europe Network Policy Brief*, July 2, 2020.

10 Beáta Huszka, and Tania Lessenska, "[Viral vulnerability: how the pandemic is making democracy sick in the Western Balkans](#)," *ECFR*, December 8, 2020; Alban Dafa *et al.* "[The Western Balkans and the Covid-19...](#)".

elections. Others, among which the SNS government of Aleksandar Vučić, under which Serbia's democratic rating deteriorated from a 'semi-consolidated democracy' to a 'hybrid regime' in the past decade, remain firmly in power.<sup>11</sup>

Democratic transfers of power in the WB6 put the level of autocratic grip in the region into perspective. But also in those countries where elections have led to transfers of power, decisive democratic reform has been hard to achieve. North Macedonia continues to struggle with freeing up its public administration from undue political influence and its Social Democratic Union of Macedonia (SDSM) government has not managed to avoid clientelist practices itself.<sup>12,13</sup> The Vetëvendosje government in Kosovo, elected in February 2021, has raised high expectations with its anti-corruption election campaign but faces a similar challenging democratisation task.<sup>14</sup>

These developments have taken place against the background of an EU accession process that has been in place since the 2003 Thessaloniki summit, which provided the region with an EU membership perspective after a period of severe conflict following the dissolution of Yugoslavia in the 1990s. The speed of the accession process and the current democratic state of play in the WB6 has not met expectations of a rapid integration of the region into the EU. Many scholars have analysed the causes of the limited success of EU enlargement in south-eastern Europe, leading to a rich body of literature on the EU's asserted 'transformative power', i.e., the power to spur reforms in the region. This chapter briefly discusses this concept, before pointing out eight flaws in the EU's enlargement policy that, according to the literature, have been central to its mixed results. Importantly, these factors are believed to have not only contributed to the ineffectiveness of EU policies and strategies, but also actively contributed – in different degrees – to stabilitocracy formation.

## 2.1 EU impact in the Western Balkans: transformative power or transformative flaw?

The EU's promotion of democratic reforms in the WB6 is based on the assertion that it disposes of 'transformative' power: the power to foster reforms in countries' administrative, legal, law making and policymaking domains as part of the accession process. EU transformative power results from the attractiveness of the EU itself, both in

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11 See Freedom House, "[Nations in transit 2021 – Serbia](#)," 2021; See also: V-Dem institute, "[Autocratization Turns Viral – Democracy report 2021](#)," March 2021, 19.

12 Misha Popovikj, "[Why the EU and North Macedonia should not rush reforms](#)," *Clingendael Spectator*, February 23, 2021.

13 Vlado Apostolov, "[Zoran Zaev – North Macedonia's Fickle Reformer](#)," *BalkanInsight*, June 1, 2021.

14 See Craig Turp-Balazs, "[In Kosovo, an electoral earthquake](#)," *Emerging Europe*, February 15, 2021.



economic terms and as a norm-setter.<sup>15</sup> This power is reinforced by the vast economic, political and cultural linkages between the EU and the WB6.<sup>16</sup> EU transformative power would be especially strong as a result of the EU membership perspective that countries in the accession process – at least in theory – enjoy.

EU transformative power is wielded through a mix of mechanisms comprising conditionality, socialisation and persuasion. The main mechanism through which the EU promotes democracy in the Western Balkans is conditionality. The EU rewards countries that comply with its conditions by offering a mix of attractive economic incentives and the promise of closer integration, with full membership as the final reward.<sup>17</sup> The EU can also induce domestic reforms through social learning; this means that Western Balkan countries would comply with EU conditions because they perceive EU norms as legitimate. Lastly, the EU can employ its economic and soft clout to persuade third countries to live up to EU conditions.<sup>18</sup>

In spite of the EU's asserted transformative power, since the beginning of the accession talks in 2003 the expected democratic transformation of the region has not become reality. In fact, independent indicators suggest that the democratic level of at least some countries in the region has deteriorated in the past decade,<sup>19</sup> suggesting that the EU's transformative power has proven weak.

The literature identifies state capture as the major impediment to democratic reforms in the Western Balkans.<sup>20</sup> Vested interests are often noted as significant impediments to implementation of EU rule of law conditions that would undermine the clientelist dynamics which keep WB6 political leaders in power.<sup>21</sup> In fact, EU intended reforms would threaten the rent-seeking interests of domestic leaders who would see a reduction of their power and grip over society – and perhaps even risk criminal conviction and imprisonment, such as happened in the case of the former Croatian

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15 The term was originally coined by Mark Leonard in a 2005 article for the Centre for European Reform. See Mark Leonard, "[Europe's transformative power](#)," *Centre for European Reform*, February 1, 2005.

16 Bieber, Florian and Nikolaos Tzifakis, "Introduction: the influence of external actors in the Western Balkans," in *The Western Balkans in the World – Linkages and Relations with non-Western countries*, ed. Florian Bieber and Nikolaos Tzifakis (Routledge, 2020), 5 – 10.

17 Antoaneta Dimitrova *et al.* "[Soft, normative or transformative power: What do the EU's communications with Eastern partners reveal about its influence?](#)," *European Commission*, September 21, 2017, 3.

18 Zhelyazkova, Asya, Ivan Damjanovski, Zoran Nechev, and Frank Schimmelfennig, "European Union conditionality in the Western Balkans: external incentives and Europeanisation," in *The Europeanisation of the Western Balkans*, ed. Jelena Džankić, Soeren Keil and Marko Kmezić (Palgrave Macmillan, 2019), 20.

19 See for example the [Nations in Transit reports](#) by Freedom House.

20 Solveig Richter and Natasha Wunsch, "[Money, power, glory...](#)," 42.

21 Maarten Lemstra, "[The destructive effects of state capture in the Western Balkans. EU enlargement undermined](#)," *Clingendael Institute*, September, 2020.

Prime Minister Ivo Sanader.<sup>22</sup> As a result, Western Balkan governments often express willingness to comply with EU membership conditions, but in practice adopt partial or simulated reforms through 'tailor-made laws'<sup>23</sup> that do not decisively alter democratic shortcomings. The EU has thus become increasingly dependent for its democratisation agenda on governments that have little democratic ambitions.

A crucial precondition for the EU's transformative power is its inner coherence. However, ideological divides between member states increasingly hamper the EU's ability to develop a common understanding and purpose of how the EU should move forward and on what value base. On the one hand, a group of member states continues to attach strong value to the EU as rule-based order, based on the democratic values enshrined in Article 2 of the Treaty on European Union (TEU). On the other hand, illiberal forces more concerned about national sovereignty and alleged traditional Christian European values have come to the fore, resulting in significant deterioration in the rule of law.<sup>24</sup> Such divisions directly translate into the functioning of EU enlargement, as they hamper adequate decision making. As a result, member states have diverging takes on the Copenhagen Criteria and the importance of rule of law and democratisation for candidate countries. Illiberal developments within the EU also directly harm EU credibility in setting democratic and rule of law standards, making candidate countries doubt their legitimacy. This is an important contextual factor when it comes to the flaws in EU enlargement that are outlined below.

## 2.2 Eight flaws in the EU enlargement policies

EU transformative power is not only less effective than expected in the WB6, but, on top of that, is also believed to unintentionally contribute to the consolidation of stabilitocracies. As Richter and Wunsch argue, 'EU conditionality is not only unable to effectively counter state capture, but ... has involuntarily entrenched informal networks in the Western Balkans and enabled them to strengthen their grip on power.'<sup>25</sup> The EU's reinforcement of undemocratic tendencies in the Western Balkans is believed to be partly the result of several shortcomings in its approach to enlargement. We identify eight flaws as listed in Table 1.

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22 Kmezić, Marko, "EU Rule of law Conditionality: Democracy or 'Stabilitocracy' Promotion in the Western Balkans?," in *The Europeanisation of the Western Balkans*, ed. Jelena Džankić, Soeren Keil and Marko Kmezić (Palgrave Macmillan, 2019), 105.

23 Gjergji Vurmo. "[Tailor-made laws in the Western Balkans – state capture in disguise](#)," *Centre for European Policy Studies*, May 11, 2020.

24 See Luuk Molthof, Nienke van Heukelingen and Giulia Cretti, "[Exploring avenues in the EU's rule of law crisis](#)," Clingendael Institute, August 2021.

25 Solveig Richter and Natasha Wunsch, "[Money, power, glory ...](#)", 2.

**Table 1** Eight flaws in the EU enlargement policies

 1 Technical approach	 5 Failure to reward progress
 2 Lack of clarity on rule of law	 6 Leader-oriented approach
 3 Inadequate reporting	 7 Party political affiliations
 4 Failure to act upon standstill or backlash	 8 Lack of timelines

First, the EU approach towards the Western Balkans to promote democratic reforms is **technical rather than political**. Instead of tackling the political dynamics of corruption and clientelism and fostering a societal and political transformation, Brussels has predominantly provided financial and technical assistance to the WB6 governments to transpose (on paper) the EU *acquis*. Instead of contributing to deep political and societal transformations, this has led to thin-surface norm adoption which does not alter the political realities of the region.<sup>26</sup>

Second, the EU has been criticised for **lack of clarity when it comes to the nature and scope of rule of law**. Rule of law is a fluid concept which is not precisely described in EU treaties but reflected mostly in general EU principles or values enshrined in the Lisbon treaty.<sup>27</sup> The Copenhagen Criteria require candidate countries to establish democratic institutions and respect the rule of law; but translating them into specific benchmarks is not straightforward.<sup>28</sup> The EU's *acquis* for example does not set out how countries should precisely arrange their judiciary in order to abide by the general principle of having a functioning independent judiciary in place. The lack of clarity also applies to media freedom for which there are only a few common regulations in the EU *acquis*.<sup>29</sup> This undermines the enlargement process because, in absence of a clear definition, the EU fails to stimulate and monitor compliance with the rule of law conditions.<sup>30</sup>

26 Maarten Lemstra, "[The destructive effects of state capture...](#)".

27 Wolfgang Nozar, "[The 100% Union: The rise of Chapters 23 and 24](#)," *Clingendael institute*, July 2, 2012, 2.

28 Antonaeta Dimitrova, "[The EU's Evolving Enlargement Strategies. Does Tougher Conditionality Open the Door for Further Enlargement?](#)," *Freie Universität Berlin*, MAXCAP 30, July 2016, 9.

29 See section 4 under "Media freedom, the EU accession process and political signalling" in: Wouter Zweers and Dragana Bajić, "[Declining media freedom and biased reporting on foreign actors in Serbia](#)," *Clingendael Institute*, July 2020.

30 Zhelyazkova, Asya, Ivan Damjanovski, Zoran Nechev, and Frank Schimmelfennig, "European Union conditionality...".

Back in 2012, the European Commission tried to address this problem through the so-called 'New Approach' by enhancing its role as a monitoring body of the rule of law developments in candidate countries through a benchmarking system that provides more detailed assessments and recommendations of the steps to be taken to ensure the adequate transposition of chapters 23 and 24 of the EU *acquis*.<sup>31</sup> Yet, such benchmarks are still considered rather general, unclear and lacking sufficient adaptation to specific country contexts.<sup>32</sup> They also lack outcome-related indicators that would better allow for tracking implementation. This gives ample discretion to Western Balkan governments on how they choose to frame and present their reform achievements.<sup>33</sup>

Third, the EU often proves incapable of **adequate reporting**. The country reports issued by the Commission focus on the formal adoption (on paper) of EU *acquis* rather than its implementation and enforcement. Even though reform benchmarks have been adjusted to measure progress beyond mere legislative requirements, the reports still fail to grasp democratic setbacks.<sup>34</sup> Instead of outlining backlash, they usually claim there was 'no progress'. Experts also criticise the Commission for shelving structural points of criticism only in the main text of these extensive reports. An overall assessment of reform progress or open criticism on Western Balkan leaders obstructing rule of law reform is generally lacking. The dilution of the actual situation in the WB6 misleads both EU and WB6 citizens.<sup>35</sup>

Fourth, **acting upon standstill or backlash** remains a problem. There is a general lack of determination within the EU to publicly name and shame Western Balkan leaders who fail to progress in rule of law reforms.<sup>36</sup> In their public engagements, EU and EU member state representatives, including from the Commission itself, do not resonate the findings of Commission reports regarding lack of progress. This discrepancy creates a communication gap that Western Balkan autocrats easily exploit to frame their version

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31 Zhelyazkova, Asya, Ivan Damjanovski, Zoran Nechev, and Frank Schimmelfennig, "European Union conditionality..."; See also: Sena Marić and Dragana Bajić, "[EU's Benchmarking within Chapters 23 and 24 in Accession Negotiations with Serbia - Effects and Challenges](#)," *European Policy Centre*, March 20, 2018.

32 Ardita Abazi Imeri, Aleksandra Ivanovska and Amela Hrasnica, "[Reforming from the Bench, Marking Offside - \(In\)Effectiveness of the EU Benchmarking Mechanism in the Western Balkans](#)," *European Policy Institute*, October 24, 2018, 37-39; and Simonida Kacarska and Ardita Abazi Imeri, "[Effective Benchmarking for Concrete Rule of law Reforms in the Western Balkans](#)," TEN, October 9, 2019.

33 Simonida Kacarska and Ardita Abazi Imeri, "[Effective Benchmarking for Concrete...](#)".

34 Sena Marić and Dragana Bajić, "[EU's Benchmarking within Chapters...](#)", 6.

35 For more detailed information on the Commission's country reports, see the BiePAG blogs on [Albania](#), [Bosnia and Herzegovina](#), [Kosovo](#), [Montenegro](#), [North Macedonia](#), and [Serbia](#), published just after the 2020 Enlargement package of the European Commission.

36 Kmezić, Marko, "EU Rule of law Conditionality: Democracy or 'Stabilitocracy' Promotion in the Western Balkans?" in *The Europeanisation of the Western Balkans*, ed. Jelena Džankić, Soeren Keil and Marko Kmezić (Palgrave Macmillan, 2019), 99.

of the facts to their citizens. The EU is also reluctant to use available instruments to act upon rule of law backlash, such as the 'imbalance clause'. By triggering it, the EU can suspend negotiations in the other chapters.<sup>37</sup> Instead of doing so, the EU has generally continued to offer financial support to the WB6 governments, thereby financially supporting stabilitocracy development.

Fifth, the EU regularly **fails to reward progress** because it is unable to find common understanding among its member states. Without the engagement of member states, it is hard to see how the accession process can foster adequate integration into the EU. However, compared to the 2004/2007 enlargement round, the introduction of intermediate veto points for member states at all stages of the negotiating process has increased the risk of abuse.<sup>38</sup> Member states have not shied away from using their power over (alleged) bilateral issues such as borders or minorities, which are unrelated to the accession criteria. Such blockades have strong adverse effects on the EU's credibility and Western Balkan citizens' attitudes towards EU membership.<sup>39</sup> Member states have also used their veto power over (alleged) reform progress concerns. A deviation from Commission assessments does not by definition imply undue political expediency of individual member states but indicates a lack of trust in the neutrality of such reports. As both former Commissioner Hahn and Commissioner Várhelyi have faced criticism for downplaying rule of law issues, such a lack of trust may not be fully misplaced.<sup>40</sup> However, the failure of EU institutions and member states to develop a common understanding of reform progress in the WB6 further undermines the credibility of the enlargement process.

Sixth, in its relations with the WB6, the EU adopts a **leader-oriented approach**, facilitating frequent interactions between high-ranking officials from the EU and its member states on the one hand, and representatives of WB6 governments on the other.<sup>41</sup> EU officials have publicly praised their WB6 counterparts despite a lack of progress or even backlash in democratic reforms. Notorious was the statement of former European Council President Donald Tusk who called Serbian President Aleksandar Vučić a 'soulmate' and 'strong patriot'.<sup>42</sup> German Chancellor Angela Merkel even praised

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37 Simonida Kacarska and Ardita Abazi Imeri, "[Effective Benchmarking for Concrete ...](#)".

38 Toby Vogel, "[Beyond Enlargement, Why the EU's Western Balkans Policy Needs a Reset](#)", *Friedrich Ebert Stiftung*, April 2018, 16.

39 Wouter Zweers, "[Between effective engagement and damaging politicisation Prospects for a credible EU enlargement policy to the Western Balkans](#)", *Clingendael Institute*, May 9, 2019, 4.

40 See: Zosia Wanat and Lili Bayer, "[Oliver Várhelyi: Europe's under-fire gatekeeper](#)", *POLITICO*, October 5, 2021.

41 Solveig Richter and Natasha Wunsch, "[Money, power, glory ...](#)", 43.

42 Wouter Zweers, "[Between effective engagement and ...](#)".

his 'very good reform record'.<sup>43</sup> Such endorsements have a much stronger effect on citizens than the country reports issued by the EU Commission, for which attention has generally waned. Local, politically influenced media can easily frame such high-ranking interactions as if the government is working to grant its citizens a future in the EU. As such, the leader-oriented approach indirectly reinforces and legitimises the position of Western Balkan leaders who use the EU's public endorsement to reinforce their grip on society.

A seventh flaw – concomitant of the sixth flaw – relates to the negative influence of **party-political affiliations**. Over the past decades party political families in the EU have formed party ties with their counterparts in the WB6. In North Macedonia, VMRO-DPMNE is, for example, an associate member of the European Peoples' Party (EPP) while the SDSM is an associate with the Party of European Socialists (PES).<sup>44</sup> Party political support has positively contributed to the professionalisation and networks of local parties. However, it has also resulted in seemingly unconditional support for WB6 parties even if they display non-democratic behaviour when in power – a dynamic that can be observed within the EU as well. This becomes problematic when it creates perverse incentives for EU politicians to defend Western Balkans autocrats in front of clear displays of undemocratic tendencies.<sup>45</sup> Moreover, party ties provide Western Balkan autocrats with undue public endorsement that they use to consolidate their power at home and gain citizens' support during elections.<sup>46</sup>

Finally, the enlargement process does not provide **clear timetables** to carry out reforms and align the Western Balkans with the EU *acquis*. The Western Balkan governments set reform timelines in their action plans, but the EU does not hold them accountable for meeting such timelines. This lack of interim deadlines leaves the EU unable to exert time-pressure on the governments of the region to carry out necessary democratic reforms.<sup>47</sup> At the same time, it prevents the EU from acting upon non-compliance such as by withdrawing financial support and putting negotiations on hold.<sup>48</sup> A final target date for eventual membership remains unrealistic and would divert attention from the necessary political and institutional transformation.<sup>49</sup> However, without interim deadlines,

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43 See: YouTube, "[Live: Merkel and Serbia's president hold joint press conference in Berlin](#)," *Ruptly*, April 13, 2018.

44 Marko Kmezić and Florian Bieber, "[The Crisis of Democracy in the Western Balkans](#)...", 4.

45 Wouter Zweers, "[Between effective engagement and ...](#)".

46 Solveig Richter and Natasha Wunsch, "[Money, power, glory...](#)", 53.

47 Stephan Renner and Florian Trauner, "[Creeping EU Membership in South-east Europe: The Dynamics of EU Rule Transfer to the Western Balkans](#)," *Journal of European Integration* 31, no. 4, July 2009.

48 Andreas Eisl, "[How would the EU accession procedure really improve?](#)," *Jacques Delors Institute*, March 2020, 6.

49 Wouter Zweers, "[Between effective engagement and ...](#)", 9.

the prospect of EU membership remains indefinite and the process does not create sufficient incentives for governments to comply with conditionality, leaving the EU unable to monitor progress and hold governments accountable.

The EU is hesitant to set target dates because they may have negative side effects. Incumbent governments could use the reform pressure as an excuse to bypass normal legislative procedures. In Serbia, for instance, in 2015, the government used the excuse of the required transposition of EU *acquis* to adopt more than 57 per cent of parliamentary acts under an urgent procedure.<sup>50</sup> In this way, the government could sidestep wider consultations in parliament. Rather than improving the quality of democracy in the region, this further undermines the transparency of legislative processes. Also, time pressure could lead to mere adoption of reforms on paper instead of implementation to achieve a real political change.<sup>51</sup> As such, introducing more tangible timelines would need to be done with concern for potential negative effects.

## 2.3 Conclusions

This chapter has outlined how flaws in the mechanisms of EU democracy support in the Western Balkans contribute both directly and indirectly to undemocratic tendencies in the region and to the formation of so-called stabilitocracies. EU strategies and policies have been quite effective in fostering the formal adoption of EU laws and reforming institutions on paper. Yet, they have not managed to bring about decisive democratic change able to alter domestic dynamics of clientelism and corruption in the WB6. In different countries, elements of state capture create unfavourable conditions for the EU to spur democracy, as incumbent governments face high domestic costs for the adoption of EU rule of law conditions.

This chapter has shown that domestic undemocratic tendencies can be reinforced by several flaws in the EU's enlargement policy. To arrive at a more tangible understanding of how EU policies to promote democratisation and the rule of law play out in practice, the next chapter takes a country-by-country approach. It assesses specifically whether the EU's revised accession methodology could be effective in addressing the shortcomings identified in this chapter.

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50 Solveig Richter and Natasha Wunsch, "[Money, power, glory...](#)", 43.

51 See for example Misha Popovikj, "[Why the EU and North Macedonia should not rush reforms](#)," *Clingendael Spectator*, February 23, 2021.

# 3 Stabilitocracy formation in practice: lessons from the Western Balkans

This chapter provides a country-by-country analysis of the EU's track record on fostering democratisation in the Western Balkans. The country sections focus on concrete examples of how EU influence unintentionally contributed to stabilitocracy formation and what factors determined whether the EU approach was constructive or not. The analysis is related to the flaws in EU enlargement strategies and policy as identified in Chapter 1. The country sections reflect on how the revised accession methodology might impact and/or correct unintentional adverse effects from EU policies and thereby affect the EU's ability to promote democracy and the rule of law. Lastly, they provide suggestions for further adjustments to standing strategies and policies that could enhance the effectiveness of the EU's democratisation and rule of law promotion efforts.

## 3.1 Albania: Conditionality policy as a tool for stabilitocracy

*Alban Dafa, Institute for Democracy and Mediation (IDM)*

The EU seeks to promote democratisation mainly through its conditionality policy, which seems rather straightforward: reward progress on good governance and the rule of law through progress in the accession process and punish democratic backsliding by halting the steps towards accession. In practice, however, this policy is unclear and even contradictory at times. On the one hand, the European Commission tends to favour enlargement and assist the Albanian government and other institutional stakeholders to overcome obstacles to institutional reforms. This approach enables the Commission to influence Albanian policy and expand the influence of European agencies.<sup>52</sup> On the other hand, due to their internal public safety concerns or foreign policy objectives, some

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52 The justice reform – the overhaul of the entire judiciary – is the most salient example of EU policy influence and oversight of its implementation through the International Monitoring Operation. See: Delegation of the European Union to Albania, “[Most frequently asked questions on the International Monitoring Operation \(IMO\)](#),” February 8, 2017; See also the agreement between [Albania and Frontex](#) (2018) as an example of the expansion of influence of European agencies.



member states have been more reluctant to agree that Albania progresses on the accession path and towards enlargement in general.<sup>53</sup>

In response, Albanian government stakeholders tend to take (short-term) measures, which are seen as successful by the European Commission and member states, to demonstrate reform commitment on the country's accession path. These dynamics have led the EU to paradoxically endorse 'reform' measures that threaten civil liberties and undermine good governance and democracy, as the cases in this country study illustrate.

### Tackling organised crime and corruption

The need for a strong track record of fighting corruption and organised crime in Albania was one of the key concerns that led the Netherlands to support the French veto of October 2019 on opening accession talks with Albania and North Macedonia.<sup>54</sup> To respond to this concern, on 31 January 2020 the Council of Ministers adopted, through a *normative act*,<sup>55</sup> an amendment package to standing law enforcement legislation that sought to improve the country's fight against organised crime and corruption. Taken ahead of the 24 March General Affairs Council vote on the opening of accession talks with Albania, this measure was intended to signal to member states that Albania was committed to addressing their concerns.

The Albanian Helsinki Committee (AHC), however, criticised the Albanian government for overstepping its constitutional boundaries by enacting amendments that needed

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53 For example, even though the Albanian Assembly unanimously approved the constitutional changes for the implementation of the justice reform in July 2016, Gunther Krichbaum of the CDU/CSU group and Chairman of the European Union Affairs Committee of the German Bundestag was against opening accession negotiations before the parliamentary elections of June 2017 and thus give an advantage to the governing Socialist Party. The proximity between the CDU/CSU and the Albanian Democratic Party (DP) was in full display during the 2017 elections as the group's foreign policy adviser, Hans Joachim Falenski, campaigned for the DP. See: Albanian Newsroom, "[Germany decides to vote against the launch of negotiations between the EU and Albania](#)," *Independent Balkan News Agency*, November 25, 2016; and Miranda Blaceri, "[Merkel's adviser: Basha's economic plan, the solution](#)," *Albanian Telegraphic Agency*, June 13, 2017. In the case of the Netherlands, there have been public safety concerns related to the presence of more Albanian citizens in the country. See: Alban Dafa and Wouter Zweers, "[Together or alone?: The need for increased Albanian-Dutch cooperation to fight transnational organized crime](#)," *Clingendael Institute*, August 6, 2020.

54 Parlementaire Monitor, "[Verslag van een schriftelijk overleg over de geannoteerde agenda Raad Algemene Zaken van 18 juli 2019 - Raad Algemene Zaken en Raad Buitenlandse Zaken](#)," [Report of a written consultation on the annotated agenda General Affairs Council of 18 July 2019 - General Affairs Council and Foreign Affairs Council], July 17, 2019.

55 A normative act is a government decree with the power of law for 45 days, unless it is approved by the Assembly before the 45-day deadline.

parliamentary approval for undermining the independence of the prosecution – since the package envisioned that the Special Anti-Corruption Structure (SPAK) was part of a task force headed by the minister of interior – and for undermining civil liberties through its preventive measures of confiscating suspects' property and restricting their freedom of movement.<sup>56</sup> Nevertheless, the EU Delegation and the United States (US) Embassy praised the measures.<sup>57</sup> Their endorsement signalled to the Albanian government that the Assembly could be bypassed if expeditious results towards EU accession were at stake. This can be regarded as a clear example of the **technical approach** focused on law adoption instead of deeper societal transformation. Moreover, bypassing parliamentary procedures for the sake of reform constitutes one of the risks associated with the **time-pressure effect** discussed in Chapter 1.

### Unstable governance through preconditions

The risks related to the time-pressure effect were also at play with regard to three key preconditions (out of a total of 15) which Albania had to fulfil before holding the first intergovernmental conference (IGC): (1) ensure the functionality of the Constitutional Court and (2) the High Court, and (3) approve electoral reform in accordance with the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) recommendations.<sup>58</sup> Imposing these preconditions further illustrates the focus of the Commission and the member states on process over substance regarding their implementation.

Requiring the Albanian government to ensure the functionality of the Constitutional Court and the High Court was rather redundant as the selection process for the judges had been ongoing, but made difficult because the process of re-evaluating judges and prosecutors (vetting process) had led to the dismissal of virtually all Constitutional and High Court judges. In the case of the Constitutional Court, the selection process for new judges has been adversely affected by the preconditions imposed by the EU. In December 2020 three Constitutional Court judges were appointed: one by the Assembly and two by the president of the Republic. It is clear that they were appointed in haste because for two of the three vacancies there was only one nominee; for the

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56 Albanian Helsinki Committee, "[Oponencë ligjore për aktin normativ me fuqinë e ligjit të Këshillit të Ministrave nr. 1, datë 31.1.2020.](#)" [Legal opposition to the normative act with legal power of the Council of Ministers no.1, date 31.1.2020], March 4, 2020.

57 Voice of America, "[Paketa 'Anti-KÇK', reagon SHBA dhe BE.](#)" [Anti-'KÇK' package, US and EU react], February 2, 2020.

58 See: Council of the European Union, "[Council Conclusions on Enlargement and Stabilisation and Association Process. The Republic of North Macedonia and the Republic of Albania.](#)" March 25, 2020.

third vacancy there were two nominees.<sup>59</sup> These appointments, however, are not in line with the relevant legal provisions, which require at least three candidates to be nominated for each vacancy.<sup>60</sup> Nevertheless, they were praised by the EU as successes.<sup>61</sup>

The EU took a similar approach regarding the electoral reform issue. It considered the agreement reached on 5 June 2020 by the Albanian political stakeholders – but with extensive mediation by the EU, the United States (US) and the United Kingdom (UK) – as fulfilling the third precondition. This agreement, however, did not address any of the substantive points raised through the OSCE/ODIHR recommendations such as campaign and political party financing, vote buying, and the misuse of public resources for political purposes.<sup>62</sup> The agreement merely ensured that the opposition would not boycott the upcoming parliamentary elections, which were held in April 2021. The EU's approach towards this key principle was to restore political stability rather than contribute to democratic transformation in Albania.

### Silence on the unlawful use of personal data and voter surveillance

During the parliamentary election of 25 April 2021, a database with the personal data of more than 910,000 voters<sup>63</sup> was used to unlawfully influence voter behaviour. The content of the database suggested that it was being used by the Socialist Party (SP) because the citizens were assessed as to whether they were potential SP voters. Party officials initially denied they were using the leaked database,<sup>64</sup> but in an interview with France

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59 A2 CNN, "[Altin Binaj zgjidhet anëtar i ri i Gjykatës Kushtetuese](#)," [Altin Binaj appointed to the Constitutional Court], December 17, 2020; Gjergj Erebara, "[Përparim Kalo emërohet anëtar i gjashtë i Gjykatës Kushtetuese](#)," [Përparim Kalo appointed as the sixth member of the Constitutional Court], *Reporter.al*, December 23, 2020; Vladimir Karaj, "[Presidenti dekretoi Sonila Bejtjan si anëtare të Gjykatës Kushtetuese](#)," [The President decrees Sonila Bejtja as a member of the Constitutional Court], *Reporter.al*, December 29, 2020.

60 Article 7/b (paragraph 4), Article 7/c (paragraph 5), and Article 7/ç (paragraph 4) of [Law no. 8577, date 10.2.2000 \(amended\) "On the organization and functioning of the Constitutional Court of the Republic of Albania"](#).

61 *Albanian Daily News*, "[EU sees Albania's C. Court functionality as 'considerable achievement'](#)," December 24, 2020.

62 The agreement focused mainly on restructuring the Central Electoral Commission and other technical matters concerning vote counting. It also included a provision to implement voter biometric identification measures in all voting centres, in line with one of the OSCE/ODIHR recommendations. See ABC News, "[Dokumenti/12 pikat që nënshkruan palët për marrëveshjen e Reformës Zgjedhore \[sic\]](#)" [The document/12 points agreed by the parties on electoral reform], June 5, 2020.

63 The data included phone numbers, personal identification numbers, date of birth, job position, and political party preference. See: Gjergj Erebara, "[Albania prosecutors investigate Socialist's big-brother-style database](#)," *Balkan Insight*, April 16, 2021.

64 Gjergj Erebara, "[Albania prosecutors investigate...](#)"

24 after the election, SP Chairman Edi Rama did not deny that the leaked database was indeed used by the Party; his position was that personal identification numbers do not constitute sensitive data.<sup>65</sup> In addition to the illegal use of personal data, the leaked database revealed an infrastructure of surveillance that included over 9,000 so-called 'caretakers'.<sup>66</sup>

The post-election joint statement by High Representative (HR) Borrell and Commissioner Várhelyi did not mention the unlawful use of personal data nor the surveillance system established. The main message of the statement was: accept the results of the elections and submit concerns on election irregularities, such as the misuse of state resources and vote buying, to the Central Election Commission.<sup>67</sup> In this case, EU officials failed to hold a principled position by condemning the failures of the electoral process.

### **'Western Balkans leaders must deliver more credibly on their commitment to implement reforms'**

The above sentence features both in the revised methodology and in the Economic and Investment Plan (EIP) for the Western Balkans and highlights the continuation of the EU's **leader-oriented approach** towards enlargement. This approach, however, has produced a precarious stability that requires continuous EU intervention to be maintained, as exemplified by the cases outlined in this country section. It is thus important that the EU fosters a more sustainable approach towards enlargement that is centred on a whole-of-society approach, substantive conditionality and sustainable development.

The EU should ensure that citizens, civil society organisations and government institutions are involved in the design and implementation of reform measures. The EU should provide financial and technical assistance for the reforms, but the Albanian government should match that funding within an equitable level. Such an approach would ensure public support and local ownership of the reform effort. Substantive conditionality means that the EU outlines clear and strict standards for reforms that seek substantive and sustainable institutional and regulatory changes. These principles would

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65 France 24, "[Edi Rama, Premier ministre albanais: 'La corruption laisse la place à l'État de droit en Albanie'](#)," [Edi Rama, Albanian prime minister: 'Corruption is replaced by the rule of law in Albania'], June 18, 2021.

66 The word in Albanian is "patronazhist". They were SP volunteers and some state employees tasked with gathering information on the party preference of the citizens under their surveillance. See: Gjergj Erebara, "[Nëpunës, policë dhe ushtarakë në listën me mbi 9,000 "patronazhistë" socialistë](#)," [Employees, police and military personnel in the list with over 9,000 Socialist 'caretakers'], *Reporter.al*, April 19, 2021.

67 European Commission, "[Albania: Joint Statement by the High Representative Josep Borrell and Commissioner for Neighborhood and Enlargement Olivér Várhelyi on the parliamentary elections](#)," April 27, 2021.

produce a decision-making process on the reform agenda that is **participatory** rather than confined largely to the executive level.

The third principle – sustainable development – has been partially addressed through the EIP. The Plan, however, focuses mostly on green and digital transition, and does not include education, healthcare and labour policies as key pillars of the action. These policy areas are important not only for the quality of life of Albanian citizens, but also for the successful implementation of the EIP, as well as prevention of migratory pressures and other associated security risks to the EU.

### 3.2 The EU way of (mis-)handling the Bosnia and Herzegovina integration process

*Emina Kuhinja and Hata Kujraković, Foreign Policy Initiative BH (FPI)*

Bosnia and Herzegovina (BiH) has been stalling on its progress towards the EU since 2016 when it submitted its application for membership. After setting requirements for the country, the European Commission issued its Opinion<sup>68</sup> on BiH in 2019 and confirmed its commitment to guide and support the country in undertaking the necessary reforms on its path towards European integration. However, implementation of necessary reforms has been slow and without clear deadlines. Although the complex institutional structure of the country, its flawed constitution, and a lack of rule of law have contributed to the failure to establish a stable and consolidated democracy, one could bring into question the effectiveness of the EU approach to tackling the situation in BiH.

#### What has gone wrong?

The EU has a **'leader-oriented approach'** and often fails to include the national parliament and civil society organisations from BiH in the accession process talks. Most of the meaningful dialogue takes place with presidents and representatives of political parties rather than with state institutions, giving leading figures additional legitimacy, even though they are the people obstructing the reform process.<sup>69</sup> These meetings are mostly held behind closed doors, away from the public eye, and thus cannot be scrutinised by the public and civil society organisations (CSOs). Moreover, meetings are sometimes organised in an informal setting to discuss highly

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68 European Commission, "[Commission Opinion On Bosnia And Herzegovina's Application For Membership Of The European Union](#)," COM(2019) 261 final, May 29, 2019.

69 Majda Ruge, "[Hostage State: How To Free Bosnia From Dayton's Paralysing Grip](#)," *European Council On Foreign Relations*, November 18, 2020.

salient topics. One such example was when the former Head of the EU Delegation in BiH and EU Special Representative, Lars-Gunnar Wigemark organised a meeting in a restaurant in East Sarajevo with the leaders of the two biggest parties in BiH, Milorad Dodik (Alliance of Independent Social Democrats) and Bakir Izetbegovic (Party of Democratic Action). They discussed the mechanism for coordinating the EU integration process of BiH and the credit arrangement with the International Monetary Fund.<sup>70</sup> Another example is the recent visit of Ursula von der Leyen,<sup>71</sup> who met with the members of the BiH Presidency to discuss regional integration, the role of the Berlin process, further EU and BiH cooperation, and support for the integration process. However, the meeting was not followed by a press conference and left more doubts than solutions for the country's prospects. This type of meeting is a practice that many other EU leaders engage in, disregarding the potential role of other state actors, institutions and experts. Such practice further obstructs the process and diminishes the institutions' role in working on reforms and leading BiH's integration process.

The EU approach to BiH's democratic reforms is **'technical rather than political'**, failing to grasp the necessity of maintaining and balancing the interests of the country's three ethnic groups – Serbs, Croats and Bosniaks. The requirement to balance interests is a legacy of the Dayton Peace Agreement, but often produces inconsistencies on both sides with failed attempts by BiH political representatives to make significant progress. The European Commission Opinion<sup>72</sup> on BiH's application for membership points out the country's complex institutional set-up connected with ethnicity-related procedures, which creates structural issues and disrupts the functionality of the system. For this reason, the Commission persists in pushing for improvements in the electoral framework and the judiciary. Still, the EU's approach to defining the necessary adjustments often incorporates the model of a system that fits within a specific EU member state but not BiH. Moreover, what often occurs is that the international community and its experts work on drafting new reforms for BiH,<sup>73</sup> on which the country's leaders subsequently fail to reach a consensus. The EU has been insisting on an inclusive process of election law reform<sup>74</sup> that would encompass the European Court of Human Rights rulings, BiH Constitutional Court's rulings and the EU's conditions for accession. However, the issue among the three ethnic groups remains. To push reforms forward, the EU Delegation in

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70 Mladen Dragojlovic, ["Another "Historic" Day For BiH,"](#) *Independent Balkan News Agency*, August 1, 2016.

71 Hina, ["Von der Leyen u Sarajevu ostavila dvojbe kod članova Predsjedništva BiH,"](#) [Von der Leyen leaves doubts among BiH presidency members in Sarajevo], *N1 HRV*, September 30, 2021.

72 European Commission, ["Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union,"](#) COM(2019) 261 final, May 29, 2019.

73 European Stability Initiative, ["Abandon clichés about Bosnia: Push EU-related reforms instead of arbitrary conditions,"](#) November 5, 2017.

74 Council of the EU, ["Press statement following the 4th meeting of the Stabilisation and Association Council between the EU and Bosnia and Herzegovina,"](#) July 13, 2021.

BiH is willing to negotiate the reforms with political parties who oppose implementation of the rulings and undercut democratic values.<sup>75</sup>

In addition, the EU turns to the security sector reform (SSR) programmes in achieving objectives such as fostering 'peace and stability, inclusive and sustainable development, state-building and democracy, rule of law, human rights and principles of international law'.<sup>76</sup> In BiH, the EU focused on establishing a functional state and security system with the required reforms. However, its approach towards the SSR in the country remains unclear, as the requirements for a functional security sector have not been defined. For example, police reform in BiH started in 2005 and was one of the conditions for signing the Stabilization and Association Agreement (SAA) between the EU and BiH. Although the agreement was reached after a two-year stalemate, the European Commission did not have any justification for the criteria imposed in an undue manner as 'European principles' and required: (1) all legislative and budgetary competences vested at state level; (2) no political interference with operational policing; and (3) functional police areas determined by technical policing criteria.<sup>77</sup> Furthermore, the reform failed to produce meaningful results. One of the products was the establishment of the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina, which has not played any significant role in what it was tasked to do – increasing coordination among the different police forces. This shows that, in some instances, the EU cares more about the form rather than the substance – that is, the successful implementation of the necessary reforms.

Over the years, the EU has been allocating significant financial aid to BiH to meet the humanitarian needs of refugees and migrants.<sup>78</sup> Although BiH has been provided with nearly €90 million<sup>79</sup> to address the migrant and refugee crisis and strengthen its migration management capacities, almost €77 million of the total funding from the EU has been allocated to and through the International Organization for Migration (IOM),<sup>80</sup> and not directly to BiH institutions. Having a situation where an international organisation sponsored by the EU fulfils the state's role is highly problematic because

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75 Toby Vogel and Bodo Weber, "[The EU's perverse agenda in Bosnia](#)," *EU Observer*, March 4, 2021.

76 Ana E. Juncos, "[EU security sector reform in Bosnia and Herzegovina: Reform or resist?](#)" *Contemporary Security Policy* 39, no. 1 (2018): 95-118.

77 Ana E. Juncos, "[Europeanization by decree? The case of police reform in Bosnia](#)," *Journal of Common Market Studies* 49, no. 2 (2011): 367-389.

78 European Commission, "[European Civil Protection And Humanitarian Aid Operations – Bosnia and Herzegovina](#)," January 14, 2021.

79 European Commission, "[Bosnia And Herzegovina: EU Allocates Additional €3.5 Million To Support Vulnerable Refugees And Migrants](#)," January 3, 2021.

80 International Organization for Migration, "[Information on the implementation of the projects related to Emergency Response to the Migrant and Refugee Situation in Bosnia and Herzegovina funded by the European Union](#)," January 13, 2021.

the IOM, unlike BiH authorities, cannot be held accountable to the BiH public.<sup>81</sup> Therefore, the focus of the EU is placed on short-term stability instead of actual capacity building with BiH institutions to provide an adequate crisis response. This approach transfers state responsibilities to an international organisation, instead of limiting its role to an overseeing body or a body that only contributes to the state's strategy on migration regulation. Furthermore, the violent<sup>82</sup> and illegal<sup>83</sup> pushbacks on the border between BiH and Croatia came with a strong backlash against the EU for not calling out Croatia and putting measures in place to prevent further human rights violations.<sup>84</sup> Strengthening the role of IOM, rather than fostering better internal coordination and domestic capacities for crisis management, as well as foregoing sanctions on Croatia as a reaction to reoccurring border violence, shows how the EU foments stabilitocracy in BiH.

## Making it work

The aforementioned aspects display the need for a more guidance-driven EU approach, considering the politicised nature of policymaking in BiH and the overall lack of consistency and effort in following up on recommendations made by the EC. Existing support mechanisms have proved less effective than expected and have managed to tackle only the general framework of necessary changes prior to gaining the candidate status. By repeatedly avoiding the need for a more involving approach, the EU has indirectly supported the undermining of the country's integration process, invoking non-interference as an excuse for the state to practise its sovereignty.

To make it work, the EU should be clearer and more vocal when it comes to conditions and directions in which reforms should go, so that its guidance remains not only technical but is also applied in practice. The unlocked potential lies in empowering CSOs' contribution to advocacy for EU integration among the general public and relevant stakeholders, as well as their significant contribution in monitoring activities. Demanding transparency in the allocation of funds and actions involving bilateral relations and foreign policies of both the EU and BiH could be the key step towards ensuring credible financial reports and distribution of activities when it comes to crisis management. Also, taking responsibility for specific violations of international law at the EU border and addressing them among the wider public will set up a more trusting

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81 Gorana Mlinarević and Nidžara Ahmetašević [“People on the Move in BiH in 2018: Stuck in the Corridors to the EU.”](#) *Heinrich-Böll-Stiftung*, February 21, 2019.

82 Amnesty International, [“Pushed To The Edge: Violence And Abuse Against Refugees And Migrants Along Balkan Route,”](#) March 13, 2019.

83 Border Violence Monitoring Network, [“Balkan Region Report - January 2021 – Border Violence Monitoring Network,”](#) February 17, 2021.

84 Amnesty International, [“Pushed to the edge: Violence and abuse against refugees and migrants along Balkan Route,”](#) March 13, 2019.



environment and provide a clear response to the backlash from the bottom up. The main responsibility for the current internal situation lies with the BiH's domestic leaders, but the European Commission and the European Delegation should take greater part in investigating the ongoing political crisis and impose sanctions on those who hinder internal progress.

### 3.3 Entrenched between enlargement fatigue and domestic obstacles: Kosovo's bumpy road towards the EU

*Arber Fetahu, Group for Legal and Political Studies (GLPS)*

#### Introduction

Currently Kosovo ranks last in terms of future membership in the European Union among the WB6. It holds the status of a potential candidate, alongside Bosnia and Herzegovina, and is the country with the poorest overall progress towards accession so far.<sup>85</sup> Although the keystone underscoring the path of Kosovo towards accession remains the SAA signed in 2015 and entered into force in 2016,<sup>86</sup> several key hurdles remain: in particular, the weak functioning of the rule of law system, lack of crucial reforms in the public administration, political instability, poor implementation of the European Reform Agenda (ERA),<sup>87</sup> and the dialogue with Serbia affecting overall socio-political developments countrywide.

With such issues at hand, this country section analyses the EU's failure to: bring about tangible results to speed up Kosovo's accession path and grant visa liberalisation to its citizens; improve the rule of law system despite EULEX; and speak with one voice. The need to urgently address these shortcomings is of paramount importance considering the EU's influence in Kosovo in the political, judicial, economic and security spheres. Concretely, its role is characterised by a dual involvement in the country: state building through its largest and most expensive Common Security and Defence Policy (CSDP) mission – i.e., the EU Rule of Law Mission (EULEX) – and the European integration process.

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85 European Commission, "[2020 Communication on EU enlargement policy](#)," COM(2020) 660 final, October 6, 2020.

86 European Commission, "[Stabilisation and Association Agreement \(SAA\) between the European Union and Kosovo signed](#)," April 1, 2016.

87 Alejandro Esteso Perez, "[Renewing hope? An analysis of the new EU enlargement methodology and its implications for Kosovo](#)," *Group for Legal and Political Studies*, April 2020.

## The multi-layered flaws

In the rule of law sector, EULEX is the example *par excellence* of the EU's mismanagement in the sphere of justice and security. Evidence of corruption inside the EU rule of law mission<sup>88</sup> was a major setback for the state-building process in Kosovo and its European path. In fact, the allegations of corruption within EULEX, made public in 2014, damaged its image significantly.<sup>89</sup> In 2017 EULEX's chief judge Michael Simmons accused the mission of corruption. EULEX, however, responded that Simmons himself was under investigation for alleged serious wrongdoings.<sup>90</sup> The accusations of covering up corruption cases, along with no indictments for high-ranked politicians, despite the initiation of investigations from the prosecution, contributed to stabilitocracy formation.

The EU's independent report on EULEX<sup>91</sup> points out several weaknesses in its own management yet dismisses the main charge of the mission itself covering-up cases.<sup>92</sup> On the one hand, the report confirms the omnipresence of corruption in Kosovo. On the other hand, it acknowledges that its complete eradication would not have been feasible. At the same time, the report states that 'it should nevertheless, have been possible to lay the foundations of a system capable of fighting corruption'.<sup>93</sup> The document further concludes that as such bases have not been provided for, the mission should be either reformed or withdrawn.<sup>94</sup> Considering the structural flaws mentioned above, one might conclude that EULEX has failed to strengthen the judicial system, combat organised crime and bring Kosovo closer to the EU.<sup>95</sup> Peculiarities of this kind reveal the flaws of the EU's enlargement process which were, as in the case of Kosovo, **'more technical rather than political'**. In other words, they did not tackle corruption, clientelism and the political dynamics that would trigger transformations. On the contrary, the EU through EULEX contributed indirectly to the consolidation of state capture.

The EU's security reform efforts in Kosovo have been characterised by the achievements and drawbacks of EULEX. Since February 2008, EULEX has been responsible, pursuant to Council Joint Action 2008/124/CFSP dated 16 February 2008,<sup>96</sup> of developing and

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88 Julian Borger, ["EU accused over its Kosovo mission: 'Corruption as grown exponentially'"](#) *The Guardian*, November 6, 2014.

89 Julian Borger, ["EU's biggest foreign mission in turmoil over corruption row,"](#) *The Guardian*, November 24, 2014.

90 Valerie Hopkins, ["EU courts trouble with Kosovo scandal,"](#) *POLITICO*, November 17, 2017.

91 Jean-Paul Jacque, ["Review of the EULEX mission's implementation of the mandate with a particular focus on the handling of the recent allegations,"](#) *Eulex Kosovo*, March 31, 2015.

92 Andrea Capussela, ["Eulex report exposes EU failure in Kosovo,"](#) *EU Observer*, April 16, 2015.

93 Andrea Capussela, ["Eulex report exposes..."](#)

94 Jean-Paul Jacque, ["Review of the Eulex..."](#)

95 Naim Rashiti, ["Ten years after EULEX key principles for future EU flagship initiatives on the rule of law,"](#) *Centre for European Policy Studies*, May 10, 2019.

96 Official Journal of the European Union, ["Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO,"](#) February 16, 2008.

strengthening a multi-ethnic justice system, mentoring the Kosovo Police, and boosting the custom services countrywide. The mission has provided valuable assistance and training to the Kosovo police. Yet it faced considerable obstacles in terms of follow-up. This can be partially attributed to the local population's lack of trust and credibility towards EULEX. Despite considerable technical assistance, the transformation of the security sector in Kosovo was weakened due to multiple deficiencies in the mission's own functioning.<sup>97</sup> Besides that, the unresolved issue of Kosovo's status, coupled with its non-recognition by the EU5 (i.e., Cyprus, Greece, Romania, Slovakia, Spain), rendered the mission a mere technical one.<sup>98</sup> The 2012 European Court of Auditors report<sup>99</sup> attributed shortcomings in EU assistance to the rule of law and the security reform in Kosovo to the ineffective coordination of policy instruments.<sup>100</sup>

Along with its state-building commitment via EULEX, the EU has a special focus on the EU integration process through the EU-facilitated dialogue. Yet, the dialogue hindered *de facto* democratic consolidation, as the negotiation process at large lacked transparency. Concretely, key important institutions and stakeholders including parliament, civil society and the local population were virtually excluded from the entire process. In addition to that, linking Kosovo's EU integration path to the dialogue with Serbia has allowed the government to avoid criticism of the poor results in the fight against corruption and the lack of the necessary reforms. The EU's approach to the Dialogue has been '**overly leader-oriented**'. In other words, Kosovo's leaders used the EU's endorsement to hold on to power and free themselves from criticism, which consequently prompted stabilitocracy formation.

On top of the aforementioned issues, another flaw hindering Kosovo's European perspective is the '**failure of the EU to speak with one voice**'. A practical example is the holdup of the visa liberalisation process which leaves Kosovo as the only country among the six whose citizens need a visa to travel to the Schengen zone. Despite the fulfilment of technical benchmarks for visa liberalisation,<sup>101</sup> the process is blocked due to the unwillingness of some member states to follow up on the European Commission's conclusion.<sup>102</sup> In this respect, the EU '**failed to reward progress**' because it was unable to find common understanding among member states. Yet, this blockade has adverse

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97 Eva Gross, "[Assessing the EU's approach to security sector reform \(SSR\)](#)," *European Parliament*, January 23, 2013.

98 Eva Gross, "[Assessing the EU's approach...](#)".

99 European Court of Auditors, "[European Union Assistance to Kosovo related to the Rule of Law](#)," Special Report No.18, December 19, 2012.

100 Eva Gross, "[Assessing the EU's approach...](#)".

101 European Commission, "[Visa liberalization: Commission confirms Kosovo fulfils all required benchmarks](#)," July 18, 2018.

102 *Balkan Insight*, "[Kosovo must be patient over visas – EU representative says](#)," August 4, 2021.

effects on EU credibility, by diminishing its conditionality policy. Also, it has a negative impact on Kosovo's democratisation's process, while at the same time fostering the *status quo*.

## The final take and recommendations

In short, EU policies towards Kosovo have paved the way to the formation of a stabilitocracy. In other words, technicalities have not fostered political transformation. Rather, they have indirectly helped corrupted political elites to stay in power. For this to change, the EU should initiate new projects in the rule of law area requiring local ownership and professionalism in compliance with EU standards. In addition, the EU should lessen the ambiguous modalities surrounding the dialogue with Serbia. Finally, for more tangible benefits of Kosovo's EU path to become visible and to showcase that it keeps its initial commitments, the EU should deliver on its promise to grant visa liberalisation.

### 3.4 Montenegro: 'Unconditional' rule of law

*Milena Muk, Institute Alternative (IA)*

#### Introduction

Alignment with the EU's foreign policy, good neighbourly relations and the process of legislative harmonisation with the EU *acquis* in the last decade have made Montenegro the EU Enlargement frontrunner, although many reforms were simulated and circumvented the clientelist privileges of those in power.<sup>103</sup> Reforms did not address prevailing corruption and organised crime, which is why the country has closed only three chapters in nine years of accession negotiations. Yet, despite the obvious reluctance of the Democratic Party of Socialists (DPS), which lost power in the 2020 parliamentary elections after 30 years of rule, to endanger its own position with painful reforms, the EU's criticism was limited. It was concentrated mainly on the Commission's annual country reports and non-papers, which lacked clear messages and measurable benchmarks.<sup>104</sup>

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103 See the following papers: Institute Alternative, Centre for Civic Education, Center for Monitoring and Research and Centre for Development of NGOs, "[Montenegro: Between Reform Leader and Reform Simulacrum](#)," April 14, 2018; Milena Muk, "Public Administration Against Clientelism: Montenegro's Missed Expectations", in *Political Clientelism in the Western Balkans: Collection of Papers*, Institute for Sociological, Political and Juridical Research, Ss. Cyril and Methodius University in Skopje (ISPJR-UKIM), 2021.

104 Milena Milosevic, Dina Bajramspahic and Ivana Bogojevic, "[Unravelling Montenegro's Frontrunner Status in the EU Accession Process](#)," Institute Alternative, April 13, 2018.

The revised EU enlargement methodology pledged to change the approach by addressing structural weaknesses in the countries, particularly with regard to the fundamentals, which include interconnected issues of rule of law and judiciary reform.<sup>105</sup> However, the methodology did not elaborate how exactly such weaknesses would be addressed. Meanwhile, the ongoing transition of power has reiterated Montenegro's efforts in the realm of rule of law. The DPS has held a firm grip on institutions, which is why the new, albeit heterogenous, power structures have pledged to 'liberate' them. The remainder of this section illustrates the ways in which the flaws of the EU enlargement policy had unintended consequences on detangling a complex situation regarding the country's prosecution.

### Analysing the key flaws

The key cure for Montenegro's prevailing corruption is considered to be an independent judiciary, especially in prosecution. However, the challenges posed to the judiciary were so complex that the technical safeguards pushed by EU conditionality were not enough to address them. These safeguards, consisting of institution-building efforts, and constitutional and legal provisions, have not produced tangible results. One of the key flaws of the EU's approach in the country is its '**overly technical orientation**', which is closely intertwined with an '**insufficient specification of the rule of law**'. In other words, when technical safeguards within the judiciary proved to be ineffective against the increasing allegations of political instrumentalisation of the country's prosecution and judiciary, the poor specification of rule of law standards got in the way of detangling this complex situation. A brief historical overview of prosecutorial reform substantiates this thesis.

In 2013 the Montenegro parliament adopted constitutional changes aimed at judicial reform as a condition to opening key negotiation chapters. However, the composition and performance of the Prosecutorial Council resulted in corporativism and the absence of accountability for poor results.<sup>106</sup> On top of that, the special prosecution for organised crime, high-level corruption, terrorism and war crimes, established in 2015 with EU backing, soon made controversial moves against the political opposition, which raised

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105 European Commission, "[Enhancing the accession process...](#)".

106 Prosecutors had a majority in Prosecutorial Council: five out of the ten members were prosecutors, while the body was additionally chaired by the supreme state prosecutor, making their voices predominant against the four voices of so-called 'prominent lawyers' and one government representative. Regarding accountability, the European Commission noted that 'there are strong indications that not all cases that give grounds for disciplinary liability (of judges and prosecutors) are being followed up'. It raised doubts about the objectivity of the evaluation of prosecutors, as all of the assessed prosecutors received excellent grades. See: European Commission, "[Non-paper on the state of play regarding Chapters 23 and 24 for Montenegro](#)," June 11, 2020.

concerns that it was being politically instrumentalised. The chief special prosecutor even overstepped his legal competences by publishing transcripts of the phone conversations of some politicians which were not related to any known criminal case.<sup>107</sup> Special prosecutors, alongside other public officials, were even granted housing loans by the government. This affair disclosed the extent to which the boundaries between branches of power were blurred despite the technical safeguards and qualified parliamentary majority for top judiciary appointments.<sup>108</sup>

Against such a background, the new parliamentary majority tried in 2021 to pass two laws which would bring immediate termination of the mandate of the chief special prosecutor. They would further result in a different Prosecutorial Council with more members nominated or elected by the government and parliament. The EU warned against such provisions.<sup>109</sup> Subsequently, members of parliament (MPs) decided to amend only the law on prosecution, with the aim of introducing a new structure to the Prosecutorial Council as well as additional clauses for prevention of conflict of interest for its prospective members, who now cannot be spouses or relatives of MPs, ministers or presidents of the government. In addition, reputable lawyers cannot be appointed from among party members, officials or former prosecutors active in the past eight years. Some of these situations pertained among the members of the then existing Prosecutorial Council, including appointment of the spouse of a minister in the 2016-2020 government. Still, the amendments retained the intention to terminate the mandate of the existing Prosecutorial Council. The Venice Commission, a body of the Council of Europe based on which the bulk of EU conditionality in the field is formed, advised against the termination of mandate,<sup>110</sup> despite the close involvement of some Prosecutorial Council members with the former regime of DPS.

Making other concessions to the EU, MPs nevertheless passed the legal solution to change the Prosecutorial Council. In their public statements, the heads of ruling parties used examples from EU member states of the government's role in prosecutorial appointments to justify choosing new reputable lawyers by simple parliamentary majority.<sup>111</sup> On the other hand, by making mutually non-aligned

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107 See: RTCG, "[Katnić prekoračio ovlašćenja objavljivanjem snimaka](#)," [Katnić overstepped his authority by releasing recordings], February 16, 2021.

108 MANS, "[Najmanje 175 funkcionera dobilo stanove od države, utrošeno oko 25 miliona eura](#)," [At least 175 functionaries received apartments from the state, about 25 million euros spent], April 21, 2021.

109 Radio Slobodna Evropa, "[EU upozorava Crnu Goru zbog namjere da mijenja zakone o tužilaštvu](#)," [EU warns Montenegro over intention to change prosecution laws], February 5, 2021.

110 European Commission for Democracy through Law (Venice Commission), "[Montenegro: Urgent Opinion on the Revised Draft Amendments To The Law On The State Prosecution Service](#)," May 10, 2021.

111 Ditan Abazovic in Talk-show "[Načisto](#)" April 15, 2021.

statements,<sup>112</sup> EU officials unintentionally provided both the DPS and the new power structures with an argument to substantiate their own positions: the DPS in depicting parliamentary majority as 'anti-EU' and 'anti-democratic', and the new majority for delaying implementation of the reform and delivering tangible results in the fight against organised crime and corruption.<sup>113</sup> However, in October 2021, a European Commission country report reiterated that not all recommendations of the Venice Commission had been followed up, including what was seen as unjustified termination of the mandate of the Prosecutorial Council. The report dedicated much less space to the allegations of politically motivated actions by the Special Prosecutor's Office (SPO) or controversial loans allocated by the government to prosecutors and judges.<sup>114</sup> The EU has not clearly weighed all structural weaknesses in the country's prosecution. It continued to insist on formal preconditions while neglecting the instances of chief special prosecutor overstepping his legal competencies and certain prosecutors being over-reliant on government financial support through housing loans.

## Final remarks

Montenegrin experience with prosecutorial reform shows that 'technical' independence safeguards promoted by the EU were indeed just a thin-surface solution to accumulated problems. This is best illustrated by the mechanism through which prosecutors solved their housing needs through the government based on the law on maintenance of

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112 Vladimir Bilcik, chair of the European Union-Montenegro Stabilization and Association Parliamentary Committee, stated that after the adoption of the revised law he has questions about the nature and quality of rule of law reforms. Oliver Varhelyi, Enlargement Commissioner, was more neutral, as he welcomed the fact that Montenegro has twice requested the Venice Commission's opinion, stressing that he trusts that it 'will address all the remaining issues as highlighted in this opinion, both through legislation and through its implementation'.

113 Beta, "[Vlast i opozicija različito tumače mišljenje Venecijanske komisije](#)," [Montenegro's government and opposition interpret the Venice Commission's opinion differently], *Danas*, May 10, 2021.

114 The report contains only one sentence, without singling out specific instances and actions regarding the alleged political moves of chief special prosecutor. The sentence reads: 'The allegations of politically motivated actions by the SPO require credible, independent, transparent and effective institutional response.' Regarding the controversial housing loans for judges and prosecutors, the report also contains just one sentence, which reads: 'Reports on state-sponsored apartments or loans under favourable conditions granted by the previous governments to members of the judiciary and prosecution, including senior ones and those dealing with politically sensitive cases, continue to raise concerns.' None of these challenges has been accompanied by clear recommendations for authorities. See: European Commission, "[Montenegro 2021 Report](#)," SWD(2021) 293 final/2, October 19, 2021.

residential buildings, while the focus of judiciary reform was elsewhere.<sup>115</sup> On the other hand, prosecutors used formal independence to shield themselves from accountability for poor results. When the new power structures tried to instigate further reform, the **lack of clarity of the rule of law** concept prevented both the new majority and the EU from using that momentum to promote deeper transformation. Neither the EU nor domestic elites addressed the underlying clientelism and politicisation which prevented prosecution from delivering results.

There is no ready-made solution to such a complex problem. Still, Montenegro provides good lessons on why implementation of the revised EU enlargement methodology should take a more holistic approach, and should consider all formal and informal influences hampering progress in key fundamental areas. Moreover, the EU should be aware that insisting on certain technical solutions, while neglecting the wider political and social context, can unintentionally result in reinforcement of deeply entrenched clientelist networks. Therefore, the incidents of clear political instrumentalisation of key institutions should have specific weight in the overall assessment of specific area, along with legal standards and technical preconditions.

### 3.5 EU accession disrupted: lessons from North Macedonia

*Ardita Abazi Imeri, European Policy Institute (EPI)*

#### Introduction

In 2021, North Macedonia marked 20 years since the signing of the SAA with the EU and 16 years of being a candidate country for EU accession. Yet, accession negotiations have not commenced largely due to bilateral disputes with neighbouring countries, first with Greece and currently with Bulgaria. The current sitting government has been making efforts since 2017 to reverse democratic backsliding, using EU accession as an anchor, while making difficult concessions such as renaming the country with the Prespa Agreement in 2018. North Macedonia therefore provides an almost perfect example for the EU to 'confirm' the effectiveness of EU conditionality by supporting democratic change under a pro-European elite in power, in order to overcome the prior period of

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115 Institute Alternative filed the Initiative to the Constitutional Court of Montenegro for the assessment of the constitutionality of provisions of the Law on the Maintenance of Residential Buildings, which the government uses as a basis for issuing decisions on resolving the housing needs of public officials. IA argued that the by-laws regulating issues beyond this Law are being artificially kept alive as a 'legacy' of the old system, but the initiative still did not get an official response. See: Stevo Muk, "[Constitutional Court to abolish basis for allocating apartments to the officials](#)," *Institut Alternativa*, June 5, 2019.



backsliding. Yet, the failure to (re)start accession negotiations weakened the potential of EU conditionality as a tool for supporting democratic transformation.

### Compromised EU approach

Looking at the case of North Macedonia during a decade-long VMRO-DPMNE rule, there are several linked factors which, explained through the identified flaws of EU enlargement policy, have created a fertile ground for stabilitocracy formation.

First, the name dispute with Greece threw the country's Euro-Atlantic integration into limbo and undermined the power of the EU to lock in domestic change.<sup>116</sup> Notwithstanding progress in democracy and rule of law areas by 2009, the country could not move forward in its Euro-Atlantic path because it was being blocked by Greece and thus the EU.<sup>117</sup> This blockade, in turn, enabled the VMRO-DPMNE government to spur nationalism and populism, best illustrating the EU's '**failure to reward progress**'. Member states' positions thus provoked a political gain for VMRO-DPMNE at low cost, compared to the costly reforms for a non-existent EU perspective.<sup>118</sup>

Second, the lack of an EU perspective contributed to backsliding in democracy and rule of law which culminated with state capture, as revealed by the wiretapping scandal in 2015.<sup>119</sup> Behind the democratic façade, the political elite relied on informal structures, clientelism and control of judicial structures and the media to undermine democracy.<sup>120</sup> Furthermore, progress in democratic and rule of law reforms was focused merely on monitoring the implementation of '**more technical issues rather than on politically sensitive issues**' – such as judicial independence and politicisation in public administration in general.<sup>121</sup> Yet the increasingly technical grading in the European Commission's annual reports did not reflect the state of affairs on the ground, which was more severe than portrayed.<sup>122</sup> The 'softer language' in the annual reports only legitimised anti-reformists' practices<sup>123</sup> and pointed to a system of

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116 Simonida Kacarska, "[Freeing the Captured State in Macedonia: What Role for EU Accession?](#)," *Freedom House*, November 2017.

117 Heinrich Böll Stiftung, "[International Community](#)" and [the Limits of External Intervention](#)," November 2016.

118 Heinrich Böll Stiftung, "[International Community](#)" and [...](#)".

119 The wiretapping scandal in 2015 showed massive abuse of state apparatus and led to the most serious political crisis in the country since 2001.

120 Marko Kmezić, "[Rule of law and Democracy in the Western Balkans: Addressing the Gap between Policies and Practice](#)," *Southeast European and Black Sea Studies* 20, no.1 (January 2020): 1.

121 Milena Milošević and Stevo Muk, "[Back to Basics: Re-Affirming the Rule of law in the Western Balkans](#)," *Institute Alternativa*, December 2016.

122 Ardita Abazi Imeri and Aleksandra Ivanovska, "[The Western Balkans' Bumpy Quest for EU Integration](#)," *European Policy Institute*, December 14, 2017.

123 Heinrich Böll Stiftung, "[International Community](#)" and [...](#)".

monitoring and assessment too simple for a long process such as accession. In fact, it presented a system unable to serve its purpose<sup>124</sup> because it cannot fully depict 'state capture' and 'politicisation'.<sup>125</sup> In this case, instead of using the stick, the European Commission **'failed to recognise backlash'**, and 'froze' the accession status of North Macedonia.<sup>126</sup> The inability to capture the political landscape of the country<sup>127</sup> due to an overly 'technical' approach, the ineffectiveness of the existing rule of law negotiation framework and ultimately the failure to recognise backlash, enabled further democratic backsliding and ultimately led to the attack on the parliament in 2017.

Third, democratic concerns were overshadowed by the turning of a blind eye for the sake of government responses to 'higher sensitive issues'.<sup>128</sup> The role of North Macedonia in the geopolitical situation of global migration and refugee-related problems was met with praise and pan-European party solidarity. Such solidarity did, however, damage the EU's 'fundamentals first' approach.<sup>129</sup> EPP support for VMRO-DPMNE<sup>130</sup> without visible steps to condemn democratic backsliding but instead endorsing authoritarian gatekeepers,<sup>131</sup> highlighted the potential to endanger the EU approach to the region.<sup>132</sup> Moreover, the EU member states' tactic to 'dance with the girls on the dancefloor'<sup>133</sup> by allowing Gruevski to remain in power as well as a reluctance to use 'the stick', mainly due to security concerns and **'solidarity between local dominant parties and relevant European political families'**, compromised the conditionality policy.<sup>134</sup> The discord between the EU's member states and its institutions in this aspect also did not help the credibility of EU conditionality.

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124 Later, the pressure to set the SPO proved that rushed solutions due to time pressure work against the objectives of sustainable rule of law reforms.

125 Ardita Abazi Imeri, Aleksandra Ivanovska and Amela Hrasnica, "[Reforming from the Bench...](#)".

126 Malinka Risteska Jordanova *et al.* "[Flying on the Spot or a Free Fall - Commentary on the EC Progress Report for Macedonia](#)," *European Policy Institute*, November 6, 2016.

127 Ardita Abazi Imeri, Aleksandra Ivanovska and Amela Hrasnica, "[Reforming from the Bench...](#)".

128 Ardita Abazi Imeri and Aleksandra Ivanovska, "[Sitting on the bench and marking - how effective? Benchmarking in Macedonia](#)," *European Policy Institute*, October 24, 2018.

129 Milena Milošević and Stevo Muk, "[Back to Basics: Re-Affirming the Rule of law in the Western Balkans](#)," *Institute Alternativa*, December 2016.

130 Sinisa Jakov Marusic, "[Austrian FM Defends Decision to Back Macedonia Ruling Party](#)," *Balkan Investigative Reporting Network*, November 28, 2016.

131 Sinisa Jakov Marusic, "[Austrian FM Defends Decision...](#)".

132 Georgi Gotev, "[European Parties Add Fuel to Fire in Macedonia](#)," *Euractiv*, May 18, 2015.

133 This term was used by high-level government representative from an EU member state to describe continuation of work with VMRO, then prime minister Gruevski and hesitance to use individual sanctions, to the questions of civil society representatives as to why they continue to meet with Gruevski, 2016

134 Ardita Abazi Imeri and Aleksandra Ivanovska, "[Sitting on the bench...](#)".

## New methodology old approach

On 5 February 2020 the European Commission adopted the Communication *Enhancing the accession process – A credible EU perspective for the Western Balkans*, which aims to make the accession process more predictable, credible, dynamic and subject to stronger political steering, all while underlining the importance of a merit-based accession process. However, unilateral action by a single member state can still prevent the opening of accession negotiations, and therefore undermine the conceivable effects of the new methodology. In fact, the veto by Bulgaria in 2020 for issues that once again have nothing to do with the Copenhagen Criteria paved the way for another 'Greek-blockage scenario' for North Macedonia. As long as the enlargement policy is misused for domestic political purposes, the potential benefits that could be derived from the revised enlargement methodology will be zero. The Commission's annual reports continue to provide a useful barometer of the reform record, alas with little impact in the broader scheme of things,<sup>135</sup> as demonstrated by the high corruption levels and politicisation of the public administration which remain a pertinent problem.<sup>136</sup> Moreover, the annual reports continue to work with the old approach without any apparent adaptation to the changes of the new methodology.<sup>137</sup> For one, the cluster approach is not visible and the structure is becoming more and more complex.<sup>138</sup> Moreover, the new methodology has failed to provide ideas on how existing measurements of levels of progress and preparedness will be modified in line with the need for the overall enhancement of the process.<sup>139</sup> Without introducing improved monitoring and assessment mechanisms, it is unrealistic to expect any significant changes and a transformative effect of the revised methodology.<sup>140</sup>

## Conclusion: the way forward

The case of North Macedonia and its accession saga clearly illustrates the pitfalls of the EU approach towards the Western Balkans – no carrots, no sticks, no EU credibility and a blurred EU perspective as a result of compromising the conditionality instrument

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135 Erwan Fouéré, "[The EU's Enlargement Agenda Is No Longer Fit for Purpose](#)," *Centre for European Policy Studies*, January 21, 2021.

136 The EU has placed all its bets on a nominally pro-EU government in Skopje, although that government in practice has not managed to dismantle deep-rooted clientelism and corruption, see Wouter Zweers and Iris van Loon, "[The limits of EU transformative power in the Western Balkans](#)," *Clingendael Spectator*, June 2, 2021.

137 Simonida Kacarska *et al.* "[EC 2020 Report: Case for Launching Negotiations Strengthened](#)," *European Policy Institute*, October 22, 2020.

138 Simonida Kacarska *et al.* "[EC 2020 Report: Case...](#)".

139 Simonida Kacarska and Ardita Abazi Imeri, "[Effective Benchmarking for Concrete...](#)".

140 Working Group J, Draft input paper for Civil Society Think Tank Forum 2021.

in two interrelated ways. First, in the specific case of North Macedonia, the bilateral disputes among member states has paralysed the country accession process. In this respect, the start of EU accession negotiations has the potential to be the game changer in undertaking deep reforms, as shown by the Prespa Agreement and the country's name change.<sup>141</sup>

Second, the EU and its institutions have compromised EU conditionality by prioritising security and stability at the expense of democracy in the last term of the VMRO-DPMNE government, thus creating fertile ground for democratic backsliding. In this respect, the new methodology would need to create the political momentum to encourage a better structure for negotiations and more comprehensive conditioning on the fundamentals, even in cases of politically sensitive issues. In this respect, EU instruments on rule of law have shown to be particularly weak. They are in need of reinforcement and consistent implementation through active engagement by EU institutions and member states, which need to speak with one voice.

### 3.6 Serbia as a textbook example of a stabilitocracy

*Strahinja Subotić, European Policy Centre (CEP)*

#### Introduction

The prospect of joining the EU has been the key defining feature of Serbia's last two decades, as it has required the country to mature into a consolidated democracy prior to becoming a full member of the Union.<sup>142</sup> Yet, if one fast-forwards to 2021, Serbia is widely perceived as a textbook example of a stabilitocracy. With such a situation at hand, one finds Serbia in a permanent state of limbo, with only 18 out of 35 chapters opened (the last one almost two years ago) and only two chapters closed (the most recent of which was closed as long as five years ago). In fact, as incumbents keep failing to showcase credible commitment to comprehensive rule of law reforms, and with the continuing deterioration of Serbia's democratic institutions and media freedoms,<sup>143</sup> this Western Balkan country was downgraded in 2020 to the status of 'hybrid regime' in

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141 Wouter Zweers and Ardita Abazi Imeri, "[Avoiding Another Déjà vu for North Macedonia](#)," *Clingendael Institute*, October 4, 2019.

142 This process started with much enthusiasm, as the country started to align its legislation with the EU *acquis* in 2004, signed the Stabilisation and Association Agreement (SAA) in 2008, acquired visa liberalisation in 2009, became a candidate country in 2012, started accession talks in 2014, and opened the first negotiation chapters in 2015.

143 Strahinja Subotić, "[Serbia's Progress and Preparation for EU Membership – 2020 Assessment by the European Commission](#)," *European Policy Centre*, October 8, 2020.

Freedom House's 'Nations in Transit' ranking,<sup>144</sup> worse than at the time of the opening membership negotiations in 2014, when it was considered to be a 'semi-consolidated democracy'.<sup>145</sup> Considering such a paradoxical situation, it would be worthwhile investigating whether and how EU (in)action has contributed to the current status quo, with the aim of providing recommendations for overcoming it.

## Key flaws in the EU approach to Serbia

The key issue with regard stabilitocracy entrenchment in Serbia lies in the fact that the EU has been willing, strongly driven by its desire to resolve the disputed status of Kosovo,<sup>146</sup> to give support to the government in Belgrade (or at least not to openly undermine its legitimacy), even at the cost of principles of fair political competition, electoral level playing field, and institutional division of power among the branches of government.<sup>147</sup> So far, the democratic deficiencies stemming from the increasing accumulation of power have been repeatedly and explicitly forewarned by local civil society organisations,<sup>148</sup> and implicitly in the European Commission's annual reports.<sup>149</sup> Yet, what has allowed incumbents to avoid blame is the fact that these developments have never been called out directly by the highest EU officials and notable leaders of EU member states. In this way the EU has failed to send a clear message to the citizens of Serbia about the underlying issue causing their country's stagnation. Such reluctance to 'name and shame' those who are responsible for the lack of reforms or even backsliding has rendered the EU **'incapable to recognise and act upon backlash'**.<sup>150</sup>

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144 Freedom House, "[Serbia Report](#)," Nations in Transit, 2020.

145 Freedom House, "[Serbia Report](#)," Nations in Transit, 2015.

146 Solveig Richter and Natasha Wunsch, "[Money, power, glory...](#)," 52.

147 Since the change of power in 2012, from Democratic Party rule to the Serbian Progressive Party rule, power has become gradually centralised in the hands of Aleksandar Vučić, who first became the Vice Prime Minister and Defence Minister in 2012, then, Prime Minister in 2014 and, lastly, President in 2017. Now in 2022 he is running for a second presidential term.

148 Center for Research, Transparency and Accountability (CRTA), for example, goes as far to argue that '[a]lthough Serbia has the formal characteristics of a democracy, over the past decade it has in practice ceased to be one'.

See: CRTA, "[Undermining Democracy - Processes and Institutions in Serbia 2010-2020](#)," 2021, 9.

149 The implicit recognition of the growing political imbalances was best seen in the European Commission's 2020 Serbia Report, where it says the following in the context of the 2020 parliamentary elections: 'While contestants were able to campaign and fundamental freedoms were respected, voter choice was limited by the governing party's overwhelming advantage and the promotion of government policies by most major media outlets.'

See: European Commission, "[Serbia 2020 Report](#)," SWD(2020) 352 final, October 6, 2020, 4.

150 The bolded and quoted terms in this paper refer to the terms presented by Clingendael in Chapter 1 of this policy study.

What is more, some leaders go so far as to give credit to the current regime, thus assisting incumbents in acquiring external legitimacy for their undemocratic rule. The most recent case of such behaviour was seen during the then outgoing German Chancellor Angela Merkel's visit to Belgrade (whose party also belongs to the EPP) during which she publicly stated that President Vucic is a person 'who does not make false promises but tries to implement them'.<sup>151</sup> The fact that many other EU leaders have opted for an '**overly leader-oriented approach**',<sup>152</sup> often defined by a predominantly glorifying tone when interacting with the establishment of Serbia, has made it more difficult for civil society organisations to convey the message to citizens that the situation in Serbia is all but praiseworthy when it comes to the pace and depth of rule of law reforms.<sup>153</sup>

Considering the gravity of the previously identified flaws contributing to the entrenchment of a stabilitocracy, a window of opportunity was nevertheless created in 2020, when the Commission introduced the revised enlargement methodology, aiming to reinvigorate the accession negotiations and 're-establish a credible EU perspective'.<sup>154</sup> Yet, soon after its adoption, it became clear those ambitions were rather limited. The shortcomings of the new methodology are best illustrated by the fact that it has fallen short of providing insight into how existing measurements of progress and preparedness will be modified.<sup>155</sup> This is concerning, especially given that existing research already warns that most rule of law benchmarks have tended to be general, often lacking specificity and adaptation to context, which has made measuring results difficult.<sup>156</sup>

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151 European Western Balkans, "[Merkel in Belgrade: Berlin Process has achieved a lot, Kosovo issue will not disappear](#)," September 14, 2021.

152 An infamous case of such unconstructive behaviour is best exemplified in the remarks made by the President of the European People's Party (EPP) and former European Council President, Donald Tusk, who wished the best of luck prior to the 2020 parliamentary elections to his fellow 'friend' (as he once referred to Vucic), by arguing that his 'strong leadership' is the essential element of his governance. To make things worse, this congratulatory note was addressed to an individual (i.e., Vučić) who personally ran a parliamentary campaign even though he already occupied the position of head of state. See: Donald Tusk (@donaltduskEPP), "[Prijateljska diskusija sa @avucic uoči izbora u Srbiji. Dragi Predsedniče, imate puno pravo da budete ponosni i zadovoljni postignutim tokom svog mandata. Ekonomski uspeh i snažno liderstvo čine obeležje Vaše vladavine. Srećno u nedelju.](#)" *Twitter*, June 15, 2020; and see: Strahinja Subotic, "[With great power comes great responsibility](#)," *European Policy Centre*, July 2, 2020.

153 As a result, citizens remain unaware of the actual state of reforms, particularly as domestic leaders are left free to shape the public discourse in a direction that would drive away any debates from any rule of law-related issues.

154 European Commission, "[Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology](#)," February 5, 2021.

155 Think for Europe Network (TEN), "[The Future of the EU in the Western Balkans... and the Future of the Western Balkans in the EU](#)," July 1, 2021.

156 Simonida Kacarska and Ardita Abazi Imeri, "[Effective Benchmarking for Concrete...](#)".

As long as the accession negotiation process is burdened with an **'insufficient specification of the concept of rule of law'**, it is unrealistic to expect milestones in the following period by the incumbents.

Meanwhile, application of the revised methodology in the case of Serbia has so far only resulted in insubstantial changes that are unlikely to change the course of action of the incumbents. One example of such changes is the re-ordering of chapters into clusters,<sup>157</sup> based on which the Serbian government accordingly adopted a new negotiating structure in April 2021. In fact, it has used this opportunity to officially abolish the position of Head of the Negotiating Team, originally occupied by an independent and renowned expert,<sup>158</sup> thus causing further politicisation of the negotiating structure by strengthening the position of the Chief Negotiator – the Minister of European Integration.<sup>159</sup> Another example of a negligible change resulted in a first 'political' IGC held in June 2021. Although the 'political steer' was meant to be a crucial element of the revised enlargement methodology, there was a consensus among local civil society that the aforementioned IGC had failed to live up to expectations, as it left the public guessing what EU member states actually expect of Serbia.<sup>160</sup> Although the EU has tried to portray these two cosmetic examples as successes, it may be concluded that it has rather missed the opportunity to change the approach it has taken – which has been **'technical rather than political'**.

## A way forward

Despite the current stabilitocracy entrenchment, the EU's hands are not completely tied. As difficult challenges require out-of-the-box thinking, EU stakeholders should lend an ear to the existing cross-European initiative aimed at breaking the enlargement impasse by introducing the idea of 'staged membership'.<sup>161</sup> The idea of introducing accession

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157 Strahinja Subotic, "[Accession negotiations according to the revised Methodology of the EU](#)," *European Policy Centre*, February 10, 2021.

158 This position was originally occupied by Tanja Miscevic whose seat has been vacant since September 2019. See: European Western Balkans, "[Tanja Mišćević to leave the position of Head of Serbia's EU negotiation team](#)," September 23, 2019.

159 Strahinja Subotic, "[New negotiating structure](#)," *European Policy Centre*, May 14, 2021.

160 European Western Balkans, "[Conference with Serbia: The public left guessing what exactly Member States make of reforms](#)," June 28, 2021.

161 Think for Europe Network (TEN) and the Centre for European Policy Studies (CEPS), "[Overcoming the enlargement impasse – some ideas for the Slovenian presidency](#)," July 5, 2021.

in 'stages' (two accession stages, and two membership stages),<sup>162</sup> is to extend the carrot – by envisioning a graduation of degrees of participation in the institutions (policy dialogue, observer, participation with speaking rights but without voting, all voting rights except the veto right, and full voting rights) and access to structural funds (50%, 75% and 100%) for those who meet stringent conditions – and the stick – enhancing the reversibility mechanism by reducing the level of institutional access and funding by qualified majority voting instead of unanimity. For this proposal to produce substantial changes in practice, any decision to increase or reduce the level of participation or share of funds would need to be based on a more detailed, coherent and quantifiable methodology for properly monitoring and assessing the political and rule of law reforms.

This innovative model allows for overcoming the existing 'in/out' approach to enlargement, while dispensing with the legitimate fears of many in Western Europe that new members with veto powers will further undermine the functioning of the Union. Meanwhile, it also provides stronger incentives for the political elites in Serbia and the rest of the Western Balkans to genuinely engage in reforms while providing the acceding country with benefits along the way to the full or conventional membership. In short, the implementation of this proposal has the potential to restore reform and integration incentives, while retaining safeguards for key concerns of existing member states. If the EU and Western Balkans were to launch a debate at a strategic level on this matter, so that the institutions could work towards defining a formal proposal, the phenomenon of stabilitocracy could well become a matter of the past.

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162 I – Initial accession stage; II – Intermediate accession stage; III – New Member State stage; and IV – Conventional membership.

The crucial passage from Stage II to Stage III for new member states, especially given their access to qualified majority voting (QMV) rights in the Council and right to have elected members of the European Parliament with voting rights, would require a Treaty of Accession based on Article 49 TEU. This would provide a sufficient legal basis for such institutional steps, as the Treaty of Accession has the same top-level legal status as the EU's founding treaties (Lisbon). See: Michael Emerson, Milena Lazarević, Steven Blockmans, and Strahinja Subotic, "[A Template for Staged Accession to the EU](#)," *Centre for European Policy Studies*, October 1, 2021; and Michael Emerson, Milena Lazarević, Steven Blockmans and Strahinja Subotic, "[A Template for Staged Accession to the EU](#)" *European Policy Centre (CEP - Belgrade)*, October 1, 2021.



## 4 How the EU can avoid supporting bad politics in the Western Balkans

Despite its endeavours, the EU's enlargement policy has proven incapable of preventing the Western Balkans from slouching towards stabilocracies. To avoid the traps of further stabilocracy entrenchment, this chapter puts forward recommendations and critical reflections on the EU's role in the region, suggesting ways it could address the flaws in the design and implementation of its enlargement policy so that its democratisation and rule of law objectives are more effectively pursued.

### 4.1 Flaws in EU democracy promotion

The country case studies in Chapter 2 have outlined several cases in which the EU has unintentionally contributed to stabilocracy formation. The **technical approach** has been the most prevalent flaw, ranging from an inability to harmonise the interests of ethnic groups in Bosnia and Herzegovina, structural weaknesses in the EULEX mission in Kosovo, and the inability of technical safeguards to counter blurred boundaries between branches of power in Montenegro, to progress reports on democracy and rule of law reforms being overly focused on technical issues in North Macedonia, and the revised methodology being too technically fixated in Serbia.

The EU's **leader-oriented approach** equally fuelled semi-authoritarian trends in its concentration on presidents and representatives rather than on state institutions, civil society and other stakeholders in Bosnia and Herzegovina in general, and within the EU-facilitated dialogue between Kosovo and Serbia more particularly. This leader-oriented interaction frequently coincided with undue praise for national leaders, as shown in the case of Serbia.

The EU's **failure to act upon backlash** proved prevalent as well. The EU was unable to call out on unlawful use of personal data and voter surveillance during elections in Albania, showed itself hesitant to 'name and shame' politicians responsible for democratic backsliding in Serbia and adopted a softer diplomatic language in its annual reports than facts on the ground have necessitated.

Last but not least, **the lack of timelines** to meet the EU benchmarks and its adverse ramifications for the accession process were highlighted in the cases of both Bosnia and Herzegovina and Montenegro.

## 4.2 The revised methodology: a panacea for enlargement?

The EU's revised accession methodology, implemented only recently in negotiations with Serbia and Montenegro, held the premise to strengthen the enlargement process and the EU's democratisation agenda. While it might be too early to provide general conclusions on its impact, the Commission's country reports of these two countries allow us to engage in preliminary reflections. Although the revised enlargement methodology introduced the first 'political' IGC with the Serbian authorities, it nevertheless left the Serbian public in the dark on EU expectations, as did the visits of Commission President Von der Leyen and outgoing German Chancellor Angela Merkel. The ambition of the revised methodology for both sides to 'show more leadership and live up to their respective commitments in public, while coming in more directly on matters of concern',<sup>163</sup> has thereby so far not materialised. The methodology as such has not yet brought about constructive adjustments to the EU's **leader-oriented approach**.

Furthermore, the introduction of the revised methodology has not yet led to substantial changes in monitoring which would diminish the negative effects of the EU's **technical approach**. The country sections on North Macedonia and Albania highlight how the EU continues to monitor formalistic progress instead of substantive political changes. Other analyses confirm that the EU's 2021 country reports still constitute a tick-box exercise and fail to grasp the situation on the ground, suggesting that the **specification of the concepts of rule of law and democracy** in the EU's monitoring benchmarks needs further improvement.<sup>164</sup>

## 4.3 Incremental improvements or a full overhaul of the process?

There is still a shared belief among EU officials that the methodology could positively affect the functioning of enlargement. They highlight that combining the revised accession methodology with other instruments in the region, like the Green Agenda for the Western Balkans and the Covid-19 funds, could potentially yield a fertile ground for human and political capital to safeguard democratic institutions in the long run.<sup>165</sup>

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163 European Commission, "Enhancing the accession process...".

164 See for example: Srdjan Majstorović, "BiEPAG's Experts React: EC 2020 Progress Report on Serbia," *BiEPAG*, October 2021.

165 Interviews with EU policy makers, October 2021.

However, the question is whether continuous incremental adjustments to the accession process alone, of which the revised accession methodology is the latest example, will make the consolidation of democracy in the region more effective.

Our initial assessment shows that fixing the technical process is a necessary but not sufficient condition for the EU accession process and its democratisation agenda towards the Western Balkans. Or, as succinctly put in the conclusions of an expert meeting in Thessaloniki in October 2021,<sup>166</sup> 'In the absence of political will, the best designed mechanism will continue to not be able to deliver.'

Therefore, throughout 2020 and 2021, research institutes have floated ideas for a more substantial overhaul of the accession process that would significantly affect the more-for-more (or carrot and stick) principle on which the conditionality mechanism in EU accession is based. The idea is that creating interim integration objectives would alter political cost-benefit calculations and foster enhanced political will to engage in democratisation reforms.

As reflected upon in the Serbia country section of this report, the European Policy Centre Belgrade (CEP) together with the Centre for European Policy Studies (CEPS) propose a model of **staged accession**, breaking up the accession process into four phases in contrast to its current binary 'in or out' set-up.<sup>167</sup> Not only could this lead to reinforced safeguards for concerned member states, but for the candidate countries it would equally fast-track some of the benefits of accession that in the current policy loom only as a spot on the eventual enlargement horizon. Even with this proposal, it remains to be seen whether incumbent governments ruling by stabilitocracy will be sufficiently motivated to change course, as well as whether the absorption capacity of the WB6 allows for the processing of enhanced funding with adequate safeguards for misuse in place. Nevertheless, the proposal carries serious potential merits that could provide enlargement with much-needed new impetus.

## 4.4 Recommendations

Although some may warn that enlargement is over, this report considers such a conclusion premature.<sup>168</sup> Sidelining enlargement has risky implications as it could spur already growing instability in the region as well as third-power influences with potentially serious repercussions for the EU. Moreover, at least theoretically, the

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166 BiEPAG, "Key takeaways from the Thessaloniki gathering of EFB, BiEPAG and guests," October 2021.

167 Michael Emerson, Milena Lazarević, Steven Blockmans, and Strahinja Subotic, "A template for Staged...".

168 Gjergj Vurmo, "The EU and the Western Balkans – Serving the purpose of enlargement," BiEPAG, September 20, 2021.

potential to improve the functioning of conditionality in the accession process is vast. While this report has described several weaknesses in the design of EU policies, most identified flaws relate to their implementation. Put simply, better implementation still has the potential to lead to better outcomes.

Rather than rejecting the enlargement process at large, the report brings forward several recommendations to further enhance the functioning of the process as it stands. At the same time, this report acknowledges the current impasse in enlargement, with both a lack of momentum on the EU side as well as generally low political appetite for decisive reform in the WB6. Therefore, the report also articulates recommendations on a) exploring alternatives for the current accession methodology and b) wider engagement beyond enlargement.

Regarding the overall political steering in the accession process and the implementation of the revised accession methodology, this report considers that the revised accession methodology has more potential than its first months of implementation have shown. More efforts to enable enhanced political steering, monitoring and reversibility would show that the EU is sincere in its democratisation agenda. Specific recommendations in line with this overall recommendation are outlined below.

When it comes to the EU's **leader-oriented approach**, the lack of public communication on the reform challenges creates a gap in information and expectations for citizens in the WB6. This is important as the EU should not give the impression it is imposing reforms, which would risk backlash after membership is obtained. Rather, it needs to ensure popular support for the process by engaging with WB6 citizens. While we acknowledge the need for EU institutions and member states to pursue a functional working relationship with WB governments, the public appraisal of non-existent or surface-thin reform by EU leaders is detrimental to the effectiveness of the enlargement process and the credibility of the EU. We make the following recommendations:

- Press conferences to local media could be organised more frequently after EU interlocutors (EU heads of delegation, ambassadors of EU member states, Commission representatives, MEPs, etc) have paid formal and informal visits to the WB6. This goes for IGCs as well as more ad-hoc exchanges.
- EU interlocutors, especially heads of state and/or high-profile representatives of EU institutions, could be more sincere in their public assessments of the state of play of reforms, while refraining from generalist comments that lack substantive assessments, in line with the ambitions of the revised accession methodology. They ought to make it clear that accession negotiations are in fact not negotiations, as joining the EU means accepting all its rules.
- EU interlocutors could continue to search for creative solutions to engage in more direct dialogue with citizens in the WB6, e.g., through stepping up engagement with civil society organisations and think tanks in the region.

- EU interlocutors might more often consider critically scrutinising public statements from local government representatives on the contents of the country reports or closed-door meetings with EU counterparts. If public statements from incumbent leaders to domestic audiences go against messages from the EU as conveyed in country reports or closed-door meetings, EU interlocutors should not hesitate to speak out.

When it comes to the **specification of the concept of the rule of law**, the EU's **technical approach**, and the **lack of timelines** and **acting upon backlash**, this report identified several shortcomings in the country reports of the European Commission.

We thereby formulate the following recommendations:

- Technical reporting is no simple calculation. Commission reports should be factual, but technical assessments should be combined with central conclusions making a sincere overall assessment of the pace and vastness of the reform efforts made in the WB6. The monitoring of progress could be more holistic, enhancing the centrality of assessments that go beyond mere rule adoption.
- The inclusion of third-party indicators related to the status of democracy, good governance and the rule of law in candidate countries and potential candidates in the EC 2021 Communication on Enlargement is a welcome development. Such indicators should also be included in individual country reports, not only showing the annual score but also providing insight into the development of scores over time. A better insight into the change of Commission scores on levels of progress and preparation over time would likewise be welcome.
- More tangible and practical recommendations on how to reach given benchmarks could be made, while benchmarks themselves could benefit from enhanced specification. As outlined in the country section on Albania, the EU would do well to formulate clear and strict standards for reforms that seek substantive and sustainable institutional and regulatory changes.
- The EU should hold the WB6 accountable for the (lack of) progress on the basis of timelines set by themselves. It needs to better communicate what it expects and what happens if timelines are not met.
- Making country reports available in local languages would help to counter waning attention for the annual country reports among politicians, civil society and media in the WB6, and could empower civil society organisations, the general public and other relevant stakeholders in the monitoring of reforms. In addition to literal translations, executive summaries in local languages could be provided, using understandable and relatable language, not written with policy as the starting point of the reflections (e.g., 'in chapter 20, country x made moderate progress'), but with understandable language and tangible examples at their core. Infographics on levels of progress and preparation that are currently being made by think tanks could serve as an example for infographics to be included in Commission reports.<sup>169</sup>

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169 See European Policy Centre, "[Serbia's progress and preparation for EU membership](#)," October 22, 2021.

- For the same purpose, EU delegations and member state embassies could search for creative pathways to promote country reports upon their publication. Public media campaigns through advertorials in written (online) media, television, radio, etc are all viable options for a more visible promotion of the country reports.
- The EU needs to reconsider its credibility on the rule of law issue, both internally and externally. It is important that future EU Commissioners responsible for enlargement cannot be questioned with regard to their own commitment to the rule of law. Reports about alleged undue political influence in the European Commission that would downplay rule of law assessments in the WB6 should be noted with great concern.

Regarding proposals made by think tanks for a **further overhaul of the accession process** and **engagement beyond enlargement**, we articulate the following recommendations:

- The EU and its member states are advised to seriously consider a renewed enlargement procedure, such as the model of staged accession proposed by CEP and CEPS. On the one hand, it introduces an effective incentive structure for the applicant states throughout the accession process from the early to the final stages, to engage in credible and comprehensive reforms. On the other hand, it retains safeguards in relation to existing member states' concerns over further enlargement by dispensing with their legitimate fears that new members with veto powers may experience backlash in terms of rule of law and could potentially further undermine the functioning of the Union. Fast tracking the benefits of enlargement by introducing multiple accession levels has the potential to alter the political calculations of incumbent governments in the WB6 and show the benefits of enlargement for societies at large. By making the accession perspective more tangible, this approach could raise EU credibility in the region and potentially even restore positive momentum to the European project itself.
- The EU and its member states are advised to step up their foreign policy game in the WB6 beyond mere enlargement in coordination with international partners like the United States. Especially in countries with a low accession perspective and simmering security challenges, a firmer political approach with a stronger toolkit, including instruments such as targeted sanctions, could enhance the EU's impact.
- The EU could look for enhanced cooperation with the WB6 in policy areas beyond EU enlargement. Novel and existing EU instruments and investments could provide for a renewed geopolitical engagement in the region, leaving it less dependent on the influence of third actors. Exemplary in this regard is the Green Agenda for the Western Balkans, wherein the decarbonisation of economic structures in the WB6 could lead to a more diversified energy sector, reducing energy dependency on third actors. Considering further engagement beyond the EU's enlargement policy could potentially establish a more stable region and strengthen ties between the WB6 and the EU.

- The EU is advised to explore pathways to creating more local ownership for reform processes in the WB6, e.g., through requesting the matching of EU financial support with an equitable level of funding from incumbent governments, as discussed in the Albania country section of this report.

Regarding the **role of The Netherlands**, the efforts of The Hague in the promotion of the rule of law and media freedom are not going unnoticed. During the latest Belgrade Security Forum, the Netherlands was praised for its critical and at the same time constructive stance. However, there is a fine line between taking a critical but constructive view on reform progress and being an unconstructive veto player. For the Netherlands specifically, we make the following recommendations:

- The Netherlands has made good efforts to establish a reputation as an engaged member state. The visit of Prime Minister Mark Rutte to Albania and North Macedonia in November 2021 is the latest example. The Netherlands would do well to continue engaging in efforts that could solidify bilateral relations and signal that, despite its critical position, the country is concerned with the future of the WB6.
- The image of the Netherlands as a critical but fair member state in the accession process is structurally undermined by its past position on visa liberalisation for Kosovo. A better investment in articulating its current position could lead to enhanced understanding and perhaps resolve (some of the) Dutch concerns. The Council would do well to reassess whether requirements for visa liberalisation have been met. Moreover, the Netherlands could potentially invest more support through its bilateral support programmes – called MATRA<sup>170</sup> – to contribute to the resolution of these concerns.
- Political will is an important element in making enlargement succeed. Within the Netherlands, a majority of parliament and the population are hesitant about further EU integration and accepting new member states – often based on simplified presuppositions. The Dutch government could make more effort to inform the public on the enlargement process in general and the current negotiations in particular.

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170 See Government.nl, “NFRP/Matra: Grants for strengthening democracy and the rule of law in Europe,” accessed November 22, 2021.