

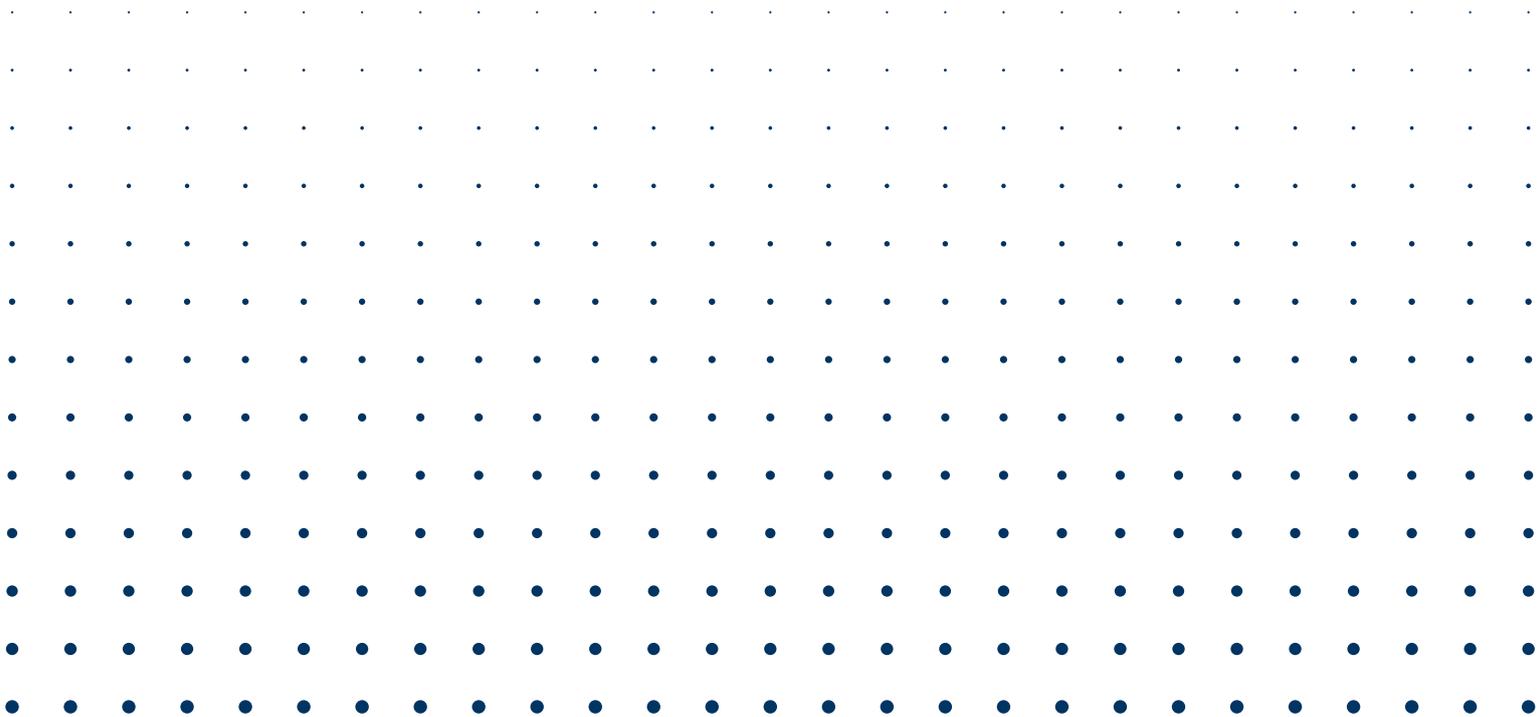


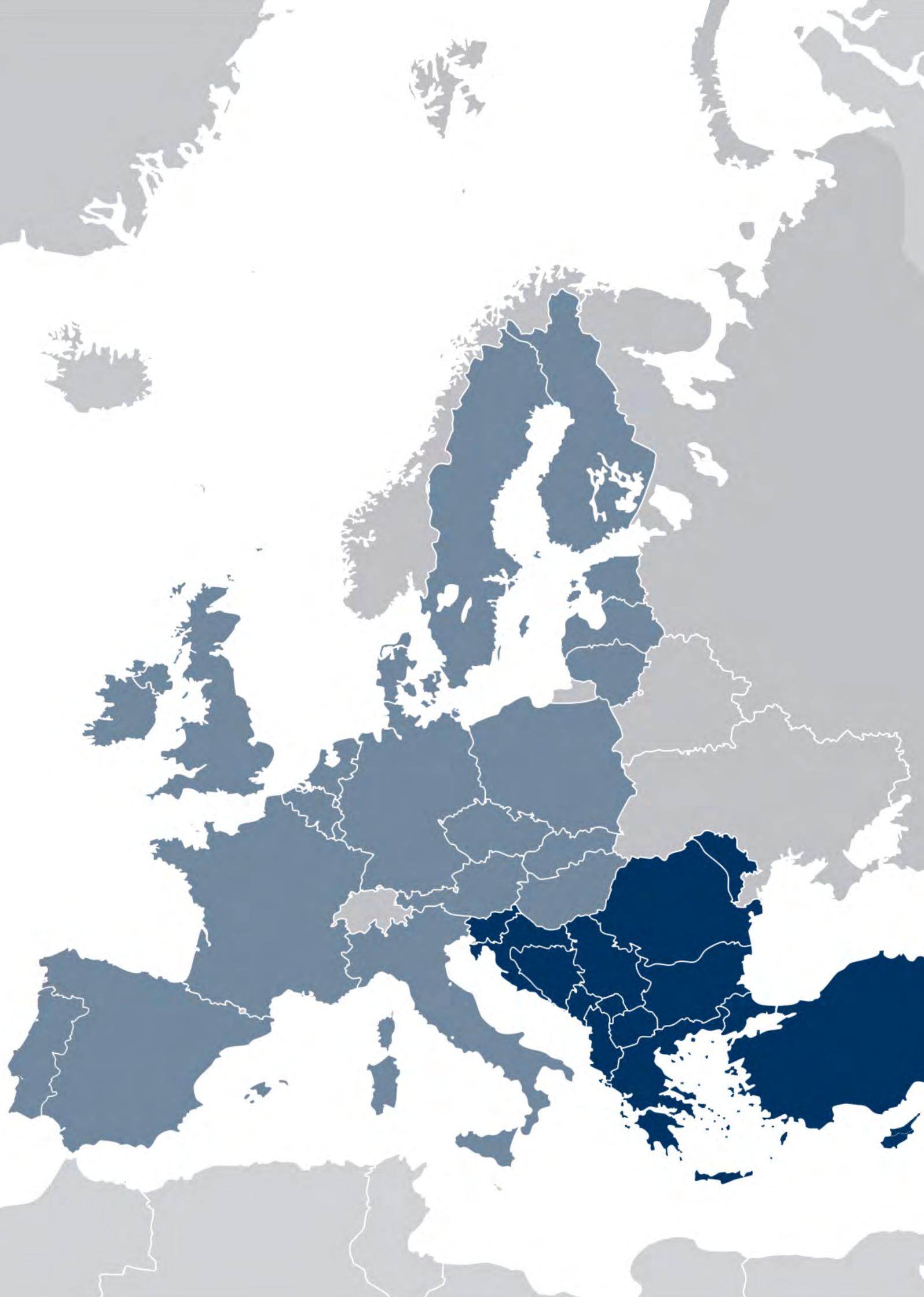
Toby Vogel

## **Beyond Enlargement**

Why the EU's Western Balkans Policy Needs a Reset

April 2018





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# Preface

Brussels has pledged that the next round of EU enlargement may begin as early as 2025. First in line are Serbia and Montenegro, but EU officials claim all the “Western Balkan Six” (WB6) are potential candidates; the ball, in short, is in the court of national governments.

But is the EU’s own enlargement and accession methodology not in crisis, when democratic standards have been in continuous decline in the two “frontrunner” states? What happened to the idea that a credible accession perspective is the key driver of transformation, or that the EU’s influence would spike the closer a candidate country got to accession?

In this provocative report, Toby Vogel of the Democratization Policy Council argues that the existing enlargement model is in need of a major rethink. The heart of Vogel’s argument concerns the position of the EU itself, as well as the US, with respect to the entire Euro-Atlantic project in the Balkans. Namely, that both Brussels and Washington have become “agents of the status quo” in seeking

to shore up the stability of the region at the expense of its democratic transformation.

A reset, Vogel continues, is needed, a means of restoring the credibility of the EU (and NATO) enlargement processes in the region in a manner that will buttress rather than undermine these societies’ democratic foundations. This can only happen if membership in both organizations is re-conceptualized not as a final destination but only a step in a broader process of democratization.

This paper offers the contours of such a programmatic reset for both the EU and those in the Western Balkans who remain committed to using the accession process as a vehicle for genuine social and political change. It is a piece that seeks to both help identify flaws with the existing EU approach and offer concrete suggestions for policy intervention. Vogel’s paper proposes the kind of sober, constructive and forward-thinking analysis that is required not least for policy-makers within the EU, who are faced with continuing public opposition to enlarging the European Union.

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# Executive Summary

For the past 15 years, Euro-Atlantic integration was supposed to drive the democratic transformation of the Western Balkans. Yet the prospect of membership in the European Union and NATO has proven insufficient for incumbent elites to undertake meaningful democratization, and the EU and the U.S., out of fear of instability and a failure to imagine alternatives, have turned into agents of the status quo. As a result, democratic politics has been in decline.

The EU now recognizes that the continuation of current policies will not deliver on the democratic promise, nor safeguard the stability of the six countries of the Western Balkans (WB6). Russia's increasing assertiveness in the region has generated a sense of urgency among Western liberal democracies about a policy rethink. This momentum should be used for a truly transformational agenda for the WB6, an agenda that will have to contend with endemic corruption and state capture.

Several elements are coming together to make this a favorable moment for a reset of EU-WB6 relations. A sense of unease in EU capitals about looming instability in the region might translate into a more strategic and political approach. The European Commission will be under new leadership in 2019 and should be tasked

with a comprehensive enlargement policy review. The U.K. might use Brexit to act outside the constraints of the EU in supporting the region's Euro-Atlantic integration. The Commission's WB6 Strategy adopted in February 2018 provides useful building blocks for a new approach and a diagnosis of what has gone wrong in years of declining democratic standards across the region. The EU, its member states, and other liberal democracies must refocus their efforts in the region towards democratic transformation.

A reset would also help reframe the enlargement narrative in favor of a transformation narrative and loosen the fixation on dates and deliverables. The moment of accession is not the end-point of processes of democratization and political and institutional reform, nor should it be the end-point of EU support and conditionality.

An enormous investment of resources, policy attention and political capital made over more than two decades is at risk; indeed, for the EU, failure to help the WB6 achieve their full democratic transformation would undermine the central narrative of Europeanization – of a societal, political, and economic transformation driven by the prospect of EU membership.



# Background

*There is nothing more difficult to execute, nor more dubious of success, nor more dangerous to administer than to introduce a new system of things. For the innovator has for enemies all those who have done well under the old condition, and lukewarm defenders in those who may do well under the new.*

Machiavelli, *The Prince*, chapter VI.<sup>1</sup>

The European Union and the United States have together been the main factors of stabilization in the Western Balkans since the end of armed conflict in the region in the early 2000s. However, they have failed to build on this role and advance an agenda of democratic transformation. A basic division of labor has emerged over the past 15 years: the EU has been focusing on consolidating peace and – at least in theory – on supporting democratic change through its integration toolbox, while the U.S. has been acting as the main external security provider. This division was not absolute, with the EU deploying EUFOR to Bosnia and Herzegovina and EU member states providing the bulk of NATO’s KFOR troops in Kosovo, but it fed into the EU’s self-image as a “soft power,” as well as lining up with the American distaste for “nation-building.”

On the surface, this setup – underpinned by the prospect that all Balkan nations will one day be able to join the EU and NATO – has delivered what it was supposed to. Despite minor flare-ups, there has not been major violence anywhere in the region. Moreover, all the countries of the region (Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia – the so-called WB6) have democratic institutions, such as regular competitive elections and a nominally independent judiciary. In

addition, power has passed peacefully and repeatedly between government and opposition in every single country with the exception of Montenegro. All of these countries have made progress toward their professed goal of one day joining the EU. Both Serbia and Montenegro have started membership talks, and Albania and Macedonia are close to opening negotiations as well.<sup>2</sup> On the surface it would appear that Europeanization has worked.

However, this appearance of progress masks deep fragilities. Democracy and the rule of law are extraordinarily brittle across the region, and the EU is struggling to persuade, or compel, local leaders to undertake the kinds of reform required to move closer to the EU, let alone anything truly transformational.<sup>3</sup> All of the WB6 countries have the basic

1 As quoted in Philippe C. Schmitter, “From transitology to consolidology,” in Mohammad-Mahmoud Ould Mohamedou and Timothy D. Sisk (eds.), *Democratisation in the 21<sup>st</sup> Century*, Routledge 2017, p. 167.

2 In the case of Macedonia, this will require a solution to the name dispute with Greece. The European Commission is expected in April, on presentation of its annual country reports, to make a recommendation to the Council of the European Union (the body that gathers national ministers) to open accession talks with Macedonia and Albania. The European Council – the summit of member states’ leaders – is expected to decide on the Commission’s proposal at its June meeting.

3 The March 2017 European Council discussed the “fragile situation in the Western Balkans,” an implicit acknowledgment that enlargement policy had not delivered on its transformation promise. “Conclusions by the President of the European Council,” Brussels, 9 March 2017, available at <http://www.consilium.europa.eu/media/24113/09-conclusions-pec.pdf>. The European Commission likewise noted that reform in Bulgaria, which had joined in 2007, remained “fragile,” in its report on Bulgaria under the Co-operation and Verification Mechanism of January 2014, raising the question of what six full years of post-accession monitoring had actually achieved.

institutions of democracy in place, yet they are often hollow, a state of affairs that is captured well by Philippe C. Schmitter's description of "unconsolidated democracy":

*They are stuck in a situation in which all the minimal procedural criteria for democracy are respected, but without the mutually acceptable rules of the game to regulate the competition between political forces (...) Whatever formal rules are enunciated in the constitution... are treated as contingent arrangements to be bent or dismissed when the opportunity presents itself.*<sup>4</sup>

This is most obvious in the widespread practice of shifting between offices of the state where power always shifts with the person and never rests with the office, regardless of constitutional set-up.<sup>5</sup>

Over the years, instead of driving political transformation in the Balkans, the EU's legitimate stability concerns have hardened into dogma and at the same time served as a short-term expedient. In the current and potential candidate countries, the failure to generate the promised prosperity and address rising inequality has weakened the enlargement narrative as well, which in the popular imagination is bound up with the drive towards free markets (in turn associated with predatory privatization and factory closures). The social unrest in Bosnia and Herzegovina in early 2014 is a harbinger of things to come if the EU continues this status quo approach, in effect siding with incumbent elites against the general population.<sup>6</sup>

This failure has very serious implications for both the WB6 and the EU. For the WB6, it means that domestic reform constituencies cannot rely on support from the EU, and where that support is in fact forthcoming, they cannot rely on it being effective. For the EU, it means that its claim to be a normative power that leads by example and attraction – a cornerstone of its foreign policy, especially in the immediate neighborhood – is vastly diminished. In the decade leading up to 2016, the three top recipients of EU governance and civil society support in the world were Turkey, Kosovo, and Serbia – three countries that saw a marked decline in democratic practices along many parameters dur-

ing that period.<sup>7</sup> If the EU cannot effect meaningful change in candidate countries that are politically and economically dependent on the EU, what are the chances this approach will work further afield?

At the same time, the EU has had difficulties in recent years to curb authoritarian or anti-liberal tendencies in its midst, most notably in Poland and Hungary, and to some extent in Romania and Croatia as well. This risks undermining the EU's insistence that would-be members adhere to its values, such as democratic politics and the rule of law. Freedom House wrote the following about the Western Balkans in its *Nations in Transit* report for 2017:

*With democratic values under attack in several Central European member states, the question of whether the EU is actually capable of consolidating democracy through harmonization has pushed its way to the top of the agenda. Continuing assaults on civil society and the media, grand corruption, and flawed elections across the Balkans show that despite the opening of chapters and progress on paper, democratic norms are not taking root.*<sup>8</sup>

The democratic decline in some member states is more than simply a problem for the EU's deteriorating ability to serve as a model or its foreign policy credibility. Together with an apparent rise in populist politics following Donald Trump's election in the United States and the Brexit vote, there is an increasing notion that institutions and the rule of law might not be as resilient, even in established democracies, as previously thought. In fact, the cases of Hungary and Poland are instructive in this regard: both countries were frontrunners in the democratic transformation that swept the ex-Communist world after 1989, and in both countries this change was driven by broad and strong domestic constituencies rather than primarily stimulated from the outside, as tends to be the case in the Balkans. Yet even here, democratic achievements have turned out to be reversible. President Trump's attacks on law enforcement, the intelligence services and diplomacy, meanwhile, are a severe test of the resilience of established institutions in the face of an office-holder who is determined to shake off all constraints on his power.

4 Schmitter, "From transitology to consolidology," p. 171.

5 Serbia, Kosovo, and Montenegro have all repeatedly experienced this, as has, to some extent, Bosnia and Herzegovina.

6 See Jasmin Mujanović, *Hunger and Fury: The Crisis of Democracy in the Balkans*, Hurst 2018.

7 Figures from Ionel Zamfir, *Democracy support in EU external policy*, European Parliamentary Research Service Briefing, March 2018, p. 8.

8 Nate Schenkkan, "The False Promise of Populism," *Freedom House Nations in Transit 2017*, available at <https://freedomhouse.org/report/nations-transit/nations-transit-2017>.

## Background

All these factors have set firm limits to the EU's, and the wider West's, effectiveness and credibility in supporting democratic transformation. Underperformance in democracy promotion, in turn, has become a self-fulfilling prophecy: lowered ambitions have produced poorer results, which is then taken as proof that democracy promotion has inherent limitations. For that reason, the shortcomings of democratization assistance in the Western Balkans have failed to provoke an evidence-based policy debate on the limits of external democracy promotion, or the recalibration of support policies.

As a result, the EU and the U.S. have turned into agents of the status quo, and even of illiberal appeasement, shoring up incumbent political and economic elites out of fear of instability and a failure to imagine alternatives. There is some awareness among policymakers that these elites are a part of the problem; yet this awareness has failed to translate into a review of current policies, which continue on bureaucratic autopilot.



# Enlargement: The Status Quo

Following the election of Donald Trump and the U.K.'s decision to leave the EU, the division of labor between the EU and the U.S. in the WB6 is broken. Without the political and military backing of the U.S. and the U.K., the EU will struggle to fill the role as a credible security actor in the Balkans and elsewhere even though 22 of its current 28-member states are NATO members, and despite recent steps towards enhanced military and security capabilities. This potential deterrence failure is most evident in Bosnia and Herzegovina, where several member states, led by Germany and France, have been pushing for EUFOR, the EU's peacekeeping force, to relinquish its Chapter 7 enforcement mandate from the United Nations Security Council, but it is also visible in Kosovo. Even with the Chapter 7 peace enforcement mandate still in place, EUFOR has since 2011 been performing below its operational threshold and therefore unable to fulfill its mandate.

Yet security in all its forms is crucial in providing confidence and leverage to would-be reform constituencies. In fact, democratic transformation cannot take place in the absence of an effective security umbrella. Local leaders such as Republika Srpska President Milorad Dodik, have recognized this and keep reminding local audiences that the 'international community' in Bosnia and Herzegovina no longer has a credible deterrence capability.

The EU has failed to articulate its strategic security interest in the Western Balkans, in part because leading member states have de-emphasized enlargement in the face of indifferent or hostile public opinion at home. This has given rise to a dogmatic interpretation of EU integration based on 'local ownership' and a weakening of its strategic commitment to enlargement. Irrespective of the ups and

downs of popular or elite support for enlargement in the member states, the EU has not been able to constructively question and develop its transformation agenda, nor has it made enlargement a priority policy for at least the past decade as the policy debate turned ever more inward, prompted by the Eurozone crisis and constitutional debates.

Even on the surface level of political communication, the EU and its member states have failed to convey the strategic imperative of enlargement to their own domestic constituencies. Only in recent months, with Russian influence on the region becoming ever more evident by the day, has a certain sense of urgency set in among the Western capitals. For the first time, this urgency is focused on popular constituencies rather than just political elites in competition for soft power – the very constituencies that the EU has made to feel abandoned when it systematically sided with incumbents against calls for reform.

One episode that encapsulated this dynamic was the EU's migration crisis of 2015-16, when hundreds of thousands of people, the bulk of them asylum-seekers from Syria, Iraq, and Afghanistan, used the Western Balkans route to get from Greece to Central and Western Europe.<sup>9</sup> The EU's panicked and contradictory responses need no rehashing here, except to stress two points. First, the EU, in effect, ceased to function as a community of laws and values in the field of migration and asylum when several Central European member states openly defied a majority decision to relocate asylum-seek-

9 See Bodo Weber, *The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route*, Friedrich-Ebert-Stiftung Dialogue Southeast Europe, June 2017, available at [library.fes.de/pdf-files/bueros/sarajevo/13436.pdf](http://library.fes.de/pdf-files/bueros/sarajevo/13436.pdf).

ers across the EU, thereby demonstrating that even foundational values such as solidarity were negotiable. The Commission's response merely highlighted that the instruments at its disposal were inadequate to the task of making recalcitrant member states stick to agreed rules. The subsequent refugee deal with Turkey underscored the message that human rights, solidarity, and dignity were expendable.

Second, the EU's response was marked by a deal-making logic that seems to take hold in the EU whenever issues of domestic political importance are concerned; it traded longer-term concerns for short-term gains. This transactional approach was evident, for example, in the apparent support that Chancellor Angela Merkel of Germany gave to Turkey's President, Recep Tayyip Erdoğan, in the run-up to a controversial constitutional referendum in 2017 that cemented his power. It was also apparent in the direct campaign support that Austrian Foreign Minister Sebastian Kurz (now the country's Chancellor) gave to Macedonia's autocratic Prime Minister at the time, Nikola Gruevski.<sup>10</sup> The EU's stability approach was encapsulated by a statement by Enlargement Commissioner Johannes Hahn, who said the following after talks in Skopje:

*Despite all the talk about new elections, we should not forget that there is a very serious migration crisis in Europe... it is also about the European, Euro-Atlantic perspective, where I believe a strong, decisive government, which can take decisions, is important.<sup>11</sup>*

As a region, the Western Balkans has witnessed a pronounced deterioration in democratic life over the last several years. While there have been exceptions – notably the largely peaceful handover of power in Macedonia in 2017, following a protracted power struggle – the overall picture is one of declining democratic practices. This is variably described by observers as a “deconsolidation” of democracy, “democratic backsliding,” a “crisis of democracy,” or “regression.”<sup>12</sup> It is clearly visible in the overall

10 Sinisa Jakov Marusic, “Austrian FM Defends Decision to Back Macedonia Ruling Party,” *Balkan Insight*, November 28, 2016, available at <http://www.balkaninsight.com/en/article/critics-slam-kurz-s-support-for-macedonia-s-ruling-party-11-28-2016>.

11 Quoted in Natasha Wunsch and Nikola Dimitrov with Srđan Cvijić, *The migrant crisis: a catalyst for EU enlargement?* Balkans in Europe Policy Advisory Group, June 2016, p. 12.

12 Dimitri A. Sotiropoulos, *How the quality of democracy deteriorates: Populism and the backsliding of democracy in three West Balkan countries*. Sciences Po LIEPP Working Paper nr.67, June 2017; Milada Anna Vachudova, “Party Positions, EU Leverage and Democratic Backsliding in the Western Balkans and Beyond,” presentation at European University Institute, May 2017, available at <http://hooghe.web.unc.edu/files/2017/04/Vachudova-Party-Positions-Backsliding-May-2017.pdf>; *The*

score assigned by Freedom House to the countries of the region (see Figure 1).

The picture is more nuanced in specific issue areas, but even there, the aggregate picture is one of decline. By way of example, Figure 2 and 3 are providing the scores assigned by the Bertelsmann Transformation Index to three select WB6 countries for the independence of their judiciary and freedom of expression.

This generalized decline in democratic politics casts a doubt on the notion, generally accepted in the academic literature, that the EU's influence is higher the closer a candidate country gets to accession, and that “a credible accession perspective is the key driver of transformation in the region,” as the European Commission's Enlargement Strategy adopted on February 6, 2018, put it.<sup>13</sup> If countries at very different stages of the accession process – Serbia and Montenegro are the current frontrunners in accession talks while Kosovo does not even have a clear membership prospect in principle – all become less democratic, this would seem to eliminate the accession prospect as an independent variable in explaining democratic decline.

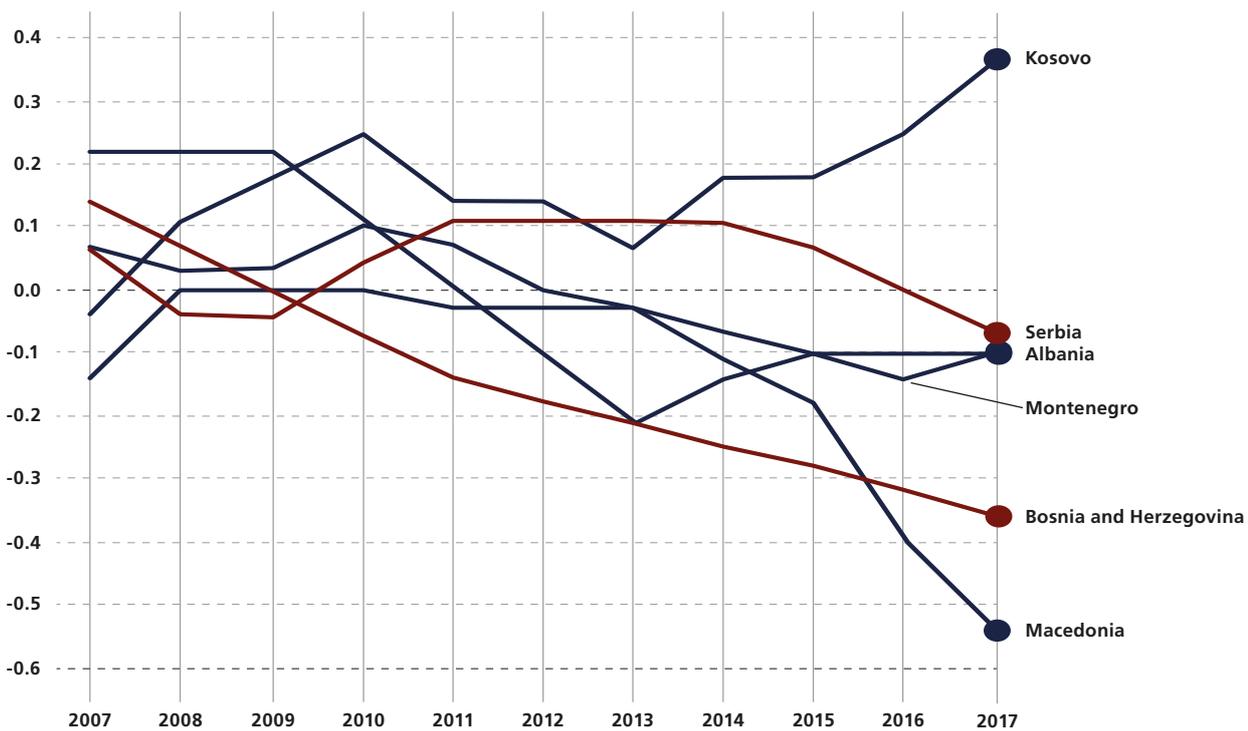
Unfortunately, in response to this perceived lack of credibility of the membership offer, European Commission President Jean-Claude Juncker decided to drop the EU's decade-old policy of not setting accession dates, however tentative they may be. This was a political move apparently undertaken without much analysis as to what its implications might be, and without full consultation with DG NEAR (the Commission's department in charge of enlargement). By putting forth the 2025 date (which appeared first in supporting documents to his State of the Union speech of September 13, 2017), Juncker was overcompensating for the damage caused by his first statement on enlargement on becoming Commission President in 2014, when he noted that no new member would be admitted to the EU during his term in office. Now, with the end of his term in office in sight, Juncker appears to have felt compelled to correct the mistake.

However, it would be a profound misunderstanding to think that the credibility of the accession process hinges on target dates – especially if, as is the case here, they are overly ambitious and very

*Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy*, Balkans in Europe Policy Advisory Group Policy Paper, March 2017, available at <http://www.biepog.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf>. On the broader diagnosis of “deconsolidation,” see Roberto Stefan Foa and Yascha Mounk, “The Signs of Deconsolidation,” *Journal of Democracy* 28 (1), pp. 5–15.

13 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, February 6, 2018.

Figure 1: Freedom House democracy scores of WB6 in 2007–2017



Data: Freedom House, *Nations in Transit 2017*. Graphic: Armina Mujanović/DPC

likely to be missed. The Commission’s justification for returning to the policy of setting tentative accession dates was that this would increase pressure on domestic authorities to reform. However, the experience with previous enlargement rounds, especially 2004 and 2007, suggests that this will have the opposite effect, creating incentives for recalcitrant governments to sit out the process and undertake the bare minimum of required reforms. This is the reason why the Commission, up until this point, has refused to give in to demands by WB6 elites to set a date. The Commission promptly found itself on the defensive for dropping its longstanding policy of not giving accession dates, and Juncker himself found it necessary to obfuscate what the 2025 date was all about during his first WB6 trip in late February 2018.<sup>14</sup>

That being said, time is indeed one factor shaping popular perceptions of accession and how tangible and politically meaningful the process of Europeanization is in a candidate country’s domestic affairs. From this angle, the fundamentals are troubling. Even in the very best case, 25 years will have passed between the fall of Slobodan Milošević and the accession of Serbia and Montenegro to the

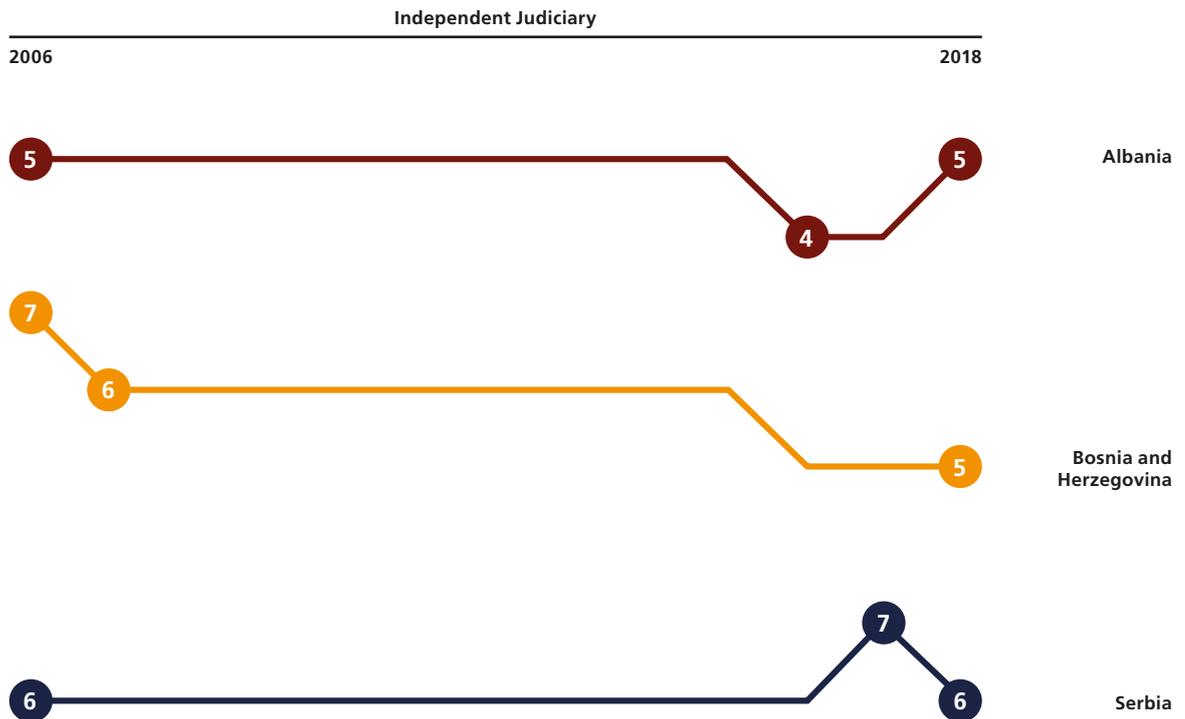
<sup>14</sup> Benet Koleka, “EU tells Balkan states 2025 entry possible for all,” Reuters, February 25, 2018, available at <https://uk.reuters.com/article/uk-eu-balkans-albania/eu-tells-balkan-states-2025-entry-possible-for-all-idUKKCN1G90XU>

EU. In the case of Bosnia and Herzegovina – the WB country in which the EU has had more leverage than in any other save Kosovo – the time lapse is even more dramatic: 28 years from the end of the war in 1995, to the opening of membership negotiations, assuming this takes indeed place in 2023, as indicated in the Commission Strategy’s first draft. If the same time period is needed for Bosnia and Herzegovina’s negotiations as for Serbia’s (11 years), it will have taken 39 years from the end of the war until the country joins the EU. A Bosnian who reached adulthood during the war will be approaching their pension age by the time the country joins. By comparison, it took Poland 15 years from the demise of Communism in 1989 to accession in 2004.

The credibility of the accession process has suffered far more from other, earlier policy decisions by the EU than from an absence of target dates. Perhaps the most emblematic of these was the EU’s decision to drop conditionality on police reform in Bosnia and Herzegovina, in 2005–2007, after resistance from incumbent leaders proved intractable to an EU that was visibly divided over the question.<sup>15</sup> After much international political capital was spent on brokering a compromise acceptable to the main

<sup>15</sup> For an account of the episode, see Ana E. Juncos, *EU Foreign and Security Policy in Bosnia: The Politics of Coherence and Effectiveness*, Manchester University Press 2013.

Figure 2: BTI scores of 3 select WB countries in 2006–2018: Independent Judiciary



Data: Bertelsmann Transformation Index 2018. Graphic: Armina Mujanović/DPC

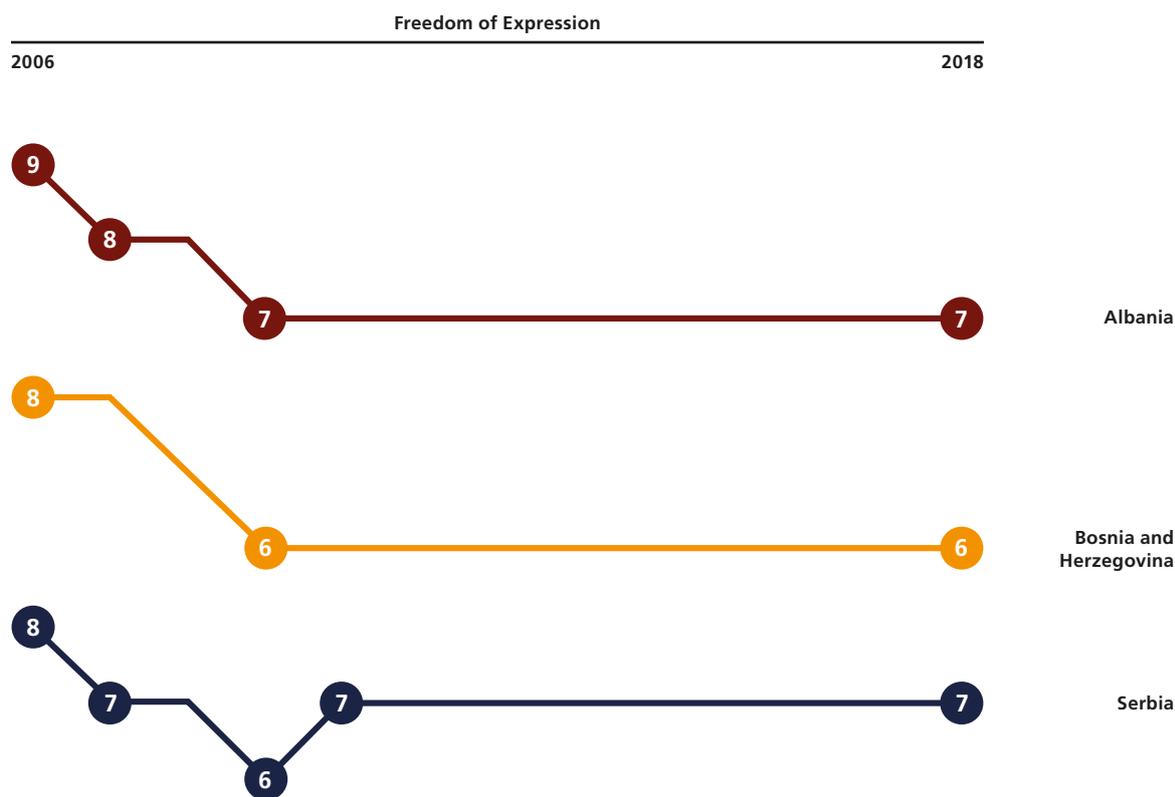
political forces in the country while preserving the reform's core principles, such as functional police regions (to replace the current police regions that follow inter-entity boundaries), the EU abruptly abandoned the whole endeavor, going as far as claiming that reshaping the police regions had never been an integral part of the reform and allowing the country's leaders to sign the Stabilization and Association Agreement (SAA) in exchange for their commitment to police reform – a commitment that the EU subsequently all but disregarded. The episode signaled to local politicians that they could simply outwait the EU on matters that really mattered to them – something they have done repeatedly since then, and to which the EU's response tended to be further wavering on conditionality. This, for example, occurred with the Sejdić-Finci ruling in Bosnia and Herzegovina, whose importance was drastically downgraded by the EU once it became clear that no solution was forthcoming. Unlike the EU, local politicians appear to be willing and able to learn and adapt to the political environment as it actually exists, which in turn enables them to shape it, forcing the EU to accept their terms – a perfect reversal of conditionality.

Similar patterns are evident elsewhere in the region; among the latest examples is an attempt by

parts of Kosovo's ruling elite to block the EU's *ad hoc* court in The Hague, that is supposed to prosecute war crimes committed by Kosovar Albanians. While that attempt appears to have been deflected, at least for now, it suggests that nearly 20 years of close EU involvement in Kosovo's politics, the deployment of the EU's largest-ever rule of law mission, EULEX, and financial assistance worth billions of euros appear to have generated little leverage for the Union when it comes to issues seen as politically sensitive by Kosovo's leaders. In Kosovo, Bosnia and Herzegovina, and elsewhere, weak or inconsistent conditionality has time and again provided an opening for local politicians to pursue their own agendas.

Another way in which local elites game the EU is to act constructively on issues of importance to the EU and to use this accumulated political capital to advance antithetical domestic agendas, including those that threaten the rule of law. A classic example is the dialogue between Belgrade and Prishtina mediated by the EU's foreign policy chief (currently Federica Mogherini, but launched by her predecessor, Catherine Ashton). At different points in time, both sides demonstrated 'constructive engagement' – whether genuine or otherwise is immaterial to this discussion – only to use this

Figure 3: BTI scores of 3 select WB countries in 2006–2018: Freedom of Expression



Data: Bertelsmann Transformation Index 2018. Graphic: Armina Mujanović/DPC

as diplomatic cover to clamp down on civil society and the free media domestically.

The EU’s fixation on stability, on process, and on its own non-prescriptive role as a mediator rather than an arbitrator, creates the space for local leaders to act without fear of consequences at home. This dynamic was especially evident during the migration crisis of 2015–2016, when putting an end to the uncontrolled migration through the Western Balkans topped the EU agenda in the region. It exposed how the EU was reluctant to criticize the respective governments’ handling of the crisis since they needed their cooperation in order to achieve the goal of containing the flow of migration.<sup>16</sup>

It is ironic that the EU, which prides itself on its soft power, seems to be losing the soft power competition in the WB6 to Russia, Turkey, and China – all authoritarian states whose illiberal agendas are more palatable to the ruling elites across the region. While the actual influence and importance of these external actors should not be overstated, they do occupy a mental space in the public’s imagination which, while largely symbolic, nevertheless

16 See Bodo Weber, *The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route*, Friedrich Ebert Stiftung, June 2017.

might create the impression that there are alternative alliances for the countries of the region and that the EU is not the only option for them.

### The Current Enlargement Process and Its Drivers

The EU’s enlargement process is supposed to ensure that membership candidates meet the political and legal requirements for accession, and that they respect the principles underpinning them. The procedures are based on the approach used for the ‘big bang’ enlargement into Central and Eastern Europe in 2004/2007, supplemented by the Stabilization and Association Process (SAP) that was adopted in its current form at the EU’s Thessaloniki Summit of June 2003, and intended to reflect the specificities of the Western Balkans. It was later adapted by the ‘New Approach’ and the ‘Fundamentals First’ strategy.<sup>17</sup>

17 Tanja Mišević, Mojmir Mrak, “The EU Accession Process: Western Balkans vs EU-10,” *Croatian Political Science Review*, vol. 54 nr. 4, 2017, pp. 185–204. For an overview, see Velina Lilyanova, “The Western Balkans and the EU: Enlargement and challenges,” European Parliament Research Service, September 2016.

The SAP is more detailed and prescriptive than previous approaches to enlargement, and it does, in principle, focus on democracy, market integration, and regional issues such as reconciliation and good-neighborly relations. In a sense, this was a refocusing on the Copenhagen criteria, which require the stability of institutions guaranteeing democracy, the rule of law, human rights, and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

The New Approach of 2012, placed the chapters concerning the rule of law (23 and 24) at the center of the accession negotiations. This was ensured by opening them early and keeping them open throughout most of the process, and by introducing interim benchmarks (in addition to opening and closing benchmarks) to assess progress. This marked a shift from a legalistic approach, of simply registering the adoption of legislation, towards monitoring and measuring implementation. Moreover, lack of progress in the two core chapters could now trigger a freeze in negotiations on all other chapters as well.

However, the EU is still effectively in denial about the qualitative difference between the 2004/07 enlargement rounds and the transformational challenge in the Western Balkans.<sup>18</sup> In response to the shortcomings of reform in Romania and Bulgaria, which were generally perceived to have been admitted prematurely and based on a promised accession date that would have been politically difficult to reverse, the accession process was made more political, with multiplying veto points for member states along the way. This added a political dimension that had previously been missing, and also tied the member states into a procedure that had been the Commission's alone to manage. The member states tended to focus on the political criteria set down at Copenhagen, which did help refocus attention away from technical compliance with the *acquis* and toward a more overtly political dimension of accession.

However, this ended up adding complexity and unpredictability to a process that was supposed to be based on straightforward conditionality – progress on the road to accession in return for

meeting the Copenhagen criteria and the requirements of the EU's body of law, the *acquis communautaire*. The process was still organizationally in the Commission's hands but now had various intermediate veto points for the member states, opening the space for extraneous concerns to enter the process. At the same time, while the member states could, in principle, have acted as enforcers of conditionality, some used this opening to weaken conditionality instead, allowing the governments of would-be member states to go forum shopping and enlist particular member states as champions of their cause.

As a result, the accession process became less clear-cut and the connection between meeting conditions and advancing to the next stage was weakened. The most notable example is Macedonia, which became a candidate for membership in 2005, but was blocked immediately by Greece over their bilateral name dispute. Another example is Slovenia's blocking of Croatia's negotiations over a border dispute.

## The European Commission

The European Commission is the central actor on anything to do with accession negotiations and with existing EU legislation (*acquis communautaire*) that accession countries are required to comply with. As a result, the Commission's directorate-general for neighborhood and enlargement negotiations (DG NEAR), is the pivotal bureaucratic player in the enlargement game, while the European Commissioner to whom it reports is the key advocate in Brussels for enlargement in general and for the candidate countries in particular. Unfortunately, the current commissioner, Johannes Hahn of Austria, has been criticized as a weak figure who lacks credibility both in Brussels and with core constituents in the region. Among other things, this is due to his perceived closeness to incumbent leaders and his unwillingness to engage with civil society, which the Commission prefers to treat as service providers rather than eye-level interlocutors. On numerous occasions, Hahn would appear at meetings with civil society representatives simply to deliver a speech and leave before any genuine exchange could take place.

The Juncker Commission's indifference toward enlargement and the fact that no candidate country is expected to join even during the next Commission's term in office has also led to recruiting problems, since qualified, ambitious officials or contract staff are inclined to choose other DGs.

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 18 This includes Croatia, which joined in 2013 and immediately went into an excessive deficit procedure, where it remained until mid-2017 – a new member state that raised considerable anxieties regarding its backsliding on political reform, especially during the Orešković government.

### The European External Action Service (EEAS)

The EEAS under High Representative Federica Mogherini, continuing the work of her predecessor, Catherine Ashton, was fully focused on the Prishtina-Belgrade dialogue in its work on the Balkans, as its flagship initiative. The dialogue has demonstrated the EU's penchant for process over substance and form over implementation; it was allowed to drag on for too long without tangible results. It also provided diplomatic cover for Aleksandar Vučić, first as Prime Minister then as President of Serbia, and Hashim Thaçi, who made the same progression through offices in Kosovo, to seek to tighten their grip on domestic politics without fear of being called out by the EU. In its counterproductive grasping for deliverables (in the form of an ongoing process and sectoral agreements that often lacked substance), the EEAS was complicit in the unwinding of democratic development in Serbia and Kosovo over the last several years, and in effect put itself in a position of dependence on the two leaders, who were in a position to manipulate the process by being more or less constructive.

### The EU Member States

The accession process has increasingly been opened up to member state involvement through the use of benchmarks for policy chapters, requiring a debate in the Council of a candidate country's progress. While this was necessary both as a corrective to the Commission's overly optimistic views regarding reform in the candidate countries and its impulse to strike deals in order to maintain momentum, it has also widened the gap between the inherent political nature of EU integration and the technocratic nature of the mechanism by which compliance with the *acquis* is secured. Moreover, it has provided additional opportunities for member states to block progress of candidate countries for extraneous reasons, notably as pressure in bilateral disputes (Greece vis-à-vis Macedonia, Slovenia vis-à-vis Croatia). It is unclear how this problem will be resolved in terms of various bilateral disputes between current member state Croatia and its two WB6 neighbors; Serbia and Bosnia and Herzegovina. More worryingly, it is unclear how the EU could prevent Serbia from blocking Kosovo, assuming the two countries do strike a normalization deal and all EU member states recognize Kosovo, thereby paving the way for it to become a membership candidate. The only apparent

solution for this would be to use Serbia's accession treaty, or its normalization deal with Kosovo, to deny Belgrade the right to veto Kosovo's accession *for any reason*.

In 2014, and out of a feeling that the enlargement process had lost momentum, several member states launched the Berlin Process, an initiative to supplement the accession process of the WB6 and to provide political momentum. The process, which has seen annual summits in Berlin, Vienna, Paris, Trieste and – on 9–10 July, 2018 – in London, was “instrumental in keeping on the radar key issues marring progress made by Western Balkan states on their way towards the European Union,” in the words of Florian Marciacq, who describes this achievement as “anything but insignificant, as the ‘business-as-usual’ modus through which the EU previously pursued its enlargement policy had led it to turn a blind eye on issues looking over the region.”<sup>19</sup>

However, the Berlin Process lacks coherence as each summit host puts on the agenda those items that it feels most strongly about, often shunning anything too political or potentially contentious and focusing instead on connectivity or youth issues that no one will oppose. The civil society component has been equally disappointing – a missed opportunity to give a platform to civil activists to confront their governments in the presence of Western policymakers. Overall, the Berlin Process appears redundant as it repeats the same mistakes of the EU's elite-focused approach, based on the same failed philosophy.

### Reporting Shortfalls

The Commission's technocratic approach to fostering democracy is evident in its annual progress reports on candidate and potential candidate countries (at present, the WB6 plus Turkey). In their narrow focus on deliverables across the 35 negotiation chapters, the reports fail to provide a clear account, let alone analysis, of broader trend lines. Simply reading the reports on a single country over the last several years would provide a very incomplete and overly positive image of the situation in that country. Moreover, the diplomatic language in which the accounting of deliverables is set to make them unsuitable as a tool for civil society or the media to monitor the reform record of their governments, or as an advocacy instrument for the EU. The specific

<sup>19</sup> Florent Marciacq, *The EU and the Western Balkans after the Berlin Process: Reflecting on the EU Enlargement in Times of Uncertainty*, Friedrich Ebert Stiftung, Sarajevo, 2017, p. 5.

shortfalls of the Commission's reports have been discussed in numerous other places and need no summary here.<sup>20</sup>

The EEAS's reports provide no corrective to the overly positive view that the Commission tends to take in its reports. Even though the EEAS is supposed to be the more political of the two services, employing career diplomats as opposed to Commission officials, its reports are equally anodyne. For example, the EEAS-drafted *EU Annual Report on Human Rights and Democracy in the World in 2016* contains, in its chapter about candidate and potential candidate countries, the following general but accurate description of the state of play of democracy in the WB6 and Turkey:

*The proper functioning of democratic institutions remains a key challenge in a number of countries. The central role played by national parliaments in terms of safeguarding democracy needs to be embedded in the political culture. Parliamentary scrutiny is often undermined by insufficient government reporting, weak parliamentary committee structures and the excessive use of urgent parliamentary procedures. While the conduct of elections as such is broadly without major incidents, important deficiencies, including with respect to election management and political interference in media reporting, have an impact on the integrity of the overall pre-electoral and electoral process. Elections often continue to be seen as an opportunity to gain political control of the broader administration, including independent institutions.*<sup>21</sup>

However, the country summaries that follow this introductory passage focus exclusively on funding lines and particular projects and are bereft of any wider political analysis, failing to give substance to the general diagnosis, much less a remedial prescription.

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20 See, for example, "Experts react: EU Enlargement and EU progress reports 2016," LSE European Politics and Policy blog, available at <http://bit.ly/2hyqb12>, and "Experts react: EU progress reports 2015," LSE EUROPP, available at <http://bit.ly/1HU1VtD>. There were no annual reports in 2017.

21 *EU Annual Report on Human Rights and Democracy in the World in 2016*, p. 40, available at [https://eeas.europa.eu/sites/eeas/files/annual\\_report\\_on\\_human\\_rights\\_and\\_democracy\\_in\\_the\\_world\\_2016\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf).

# Beyond Enlargement: Transcending the Enlargement Narrative

If the EU, with the support of the U.S. and other liberal democratic allies such as Canada, Switzerland or Norway, is serious about meaningful democratic change in the Western Balkans, it will have to refocus – rather than merely recalibrate – the enlargement process and redesign the web of supporting or complementary policies that are supposed to underpin accession-related reform and the full democratization of the polities of the region. As one observer commented:

*The EU and its member states have been insufficiently critical of the decline of democracy in the region and offer few solutions to the structural weaknesses and sources of fragility (...) This would require a new approach that reasserts the role of the EU as a normative and transformative actor.<sup>22</sup>*

This reset will also help reframe the enlargement *narrative*, which is necessary to regain the support of EU member states and their domestic constituencies and to provide meaningful support to constituencies in the WB6 demanding genuine reform. This is more than mere packaging: Reframing would imply shifting the focus away from accession – the actual fact of a candidate joining the EU on a particular date – and the notion of an enlarging Union and its capacity to ‘absorb’ new members, towards

the *process of political transformation* and democratic consolidation. De-emphasizing *enlargement* in favor of *transformation* would loosen the fixation on dates and deliverables, evident at present both in the EU and in the WB6, and underscore that democratization is a process that has to take its course before, as well as after, accession.

The moment of accession (the signing of the accession treaty followed by actual membership) is not the end-point of processes of democratization and political and institutional reform, nor should it be the end-point of EU support and conditionality. This more fluid understanding of the accession process, with accession itself being just one point along a continuum rather than a rupture between ‘before’ and ‘after’, could help better conceptualize the various challenges that attend to this process both on the EU and the WB side. A particularly important challenge is how to extend conditionality beyond accession.

Irrespective of the nature of the accession process and its supporting policies, the EU will have to enact robust measures to deal with reform backsliding once an accession country has joined the Union. These mechanisms should apply to all member states, as suggested by the 2018 Enlargement Strategy: “Being a member of the European Union means accepting and promoting its values. When considering the future of the European Union, a more effective mechanism needs to be put in place to ensure that effective measures can be taken to tackle a systemic threat to or a systemic breach of these values by any one of the EU’s Member States.” The Commission, in its Strategy paper,

22 Florian Bieber, “Too much resilience? Getting used to crises,” in Sabina Lange, Zoran Nechev and Florian Trauner (eds.), *Resilience in the Western Balkans*, European Union Institute for Security Studies, 2017, p. 69.

pledged to present an “initiative to strengthen the enforcement of the Rule of Law in the European Union” in October 2018.

The redesign of the EU’s approach to the WB6 will have to address the shortcomings identified in the previous section, and hence:

- Focus on democratic transformation and the rule of law rather than being fixated on stability.
- Consider the substantial quality of politics in the WB6, in addition to its procedural aspects, and in consequence, systematically support organic demand for transformation by empowering various segments of society, including opposition forces, independent media and civic groups, and ensure their inclusion in all aspects of political, social and economic transformation, among other things, by providing unvarnished reporting that can be used for monitoring and advocacy.
- Take account of the unintended consequences that the current accession procedure has had – strengthening incumbent elites and disempowering civil society, creating a culture of make-believe compliance with EU rules, etc. – and ensure that these are eliminated or mitigated, and that the EU’s approach is not undermined by opportunistic initiatives of individual member states, or EU institutions, or by political expediency, such as that witnessed during the migration crisis of 2015/16.

This reset of relations with the WB6 should be endorsed by EU institutions and member states alike, and they should undertake a concerted effort to present it to the WB6 – not just their governments and ruling elites, but directly to citizens, their civil society, and the media.

The current Commission-managed accession process, divided into policy chapters offering the Council close involvement, up to and including the right of veto, through opening, interim, and closing benchmarks, is not in need of a complete overhaul insofar as it delivers implementation of the EU’s *acquis*. What it needs is a systematic political undergirding through complementary policies that would deliver on those dimensions which are incompletely served by a purely *acquis*-focused approach. And a mechanism to provide political momentum at moments when accession negotiations are stalling. The Berlin Process was, in some respects, supposed to be just such an instrument, but it has largely failed to deliver on its promise, despite meaningful efforts for substantive civil society involvement.

## The Basics: EU Values

At its most basic, a reset of EU-WB6 relations would call for a renewed commitment on the part of the EU to the fundamental values spelled out in Article 1a and Article 2 of the Lisbon treaty – respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. A Union that violates or disregards, or lets its members violate or disregard, its foundational values out of political expediency, or because its officials feel they lack the power to enforce them, will have a diminished, even damaged, normative credibility vis-à-vis others. The idea of Europeanization, which underpins the Union’s enlargement policy, rests on its normative credibility.

The need to strengthen the EU’s internal democracy – both at Union level and at the level of member states – and to involve citizens more directly in the Union’s EU’s politics is pressing and has implications for its capacity to act outside its borders. However, this debate is not dependent on enlargement but needs to be conducted for the sake of the Union itself, and of its citizens. The migration crisis of 2015–2016 and the breakdown in EU solidarity over refugee relocation, when the Union ceased to function as a community of values and rules in the field of asylum and migration, demonstrated the pressing need to discuss what the EU’s various constituencies expect of it, and what values they think it ought to embody.<sup>23</sup> This would require a transnational, inclusive debate about the future of European integration, which, in view of enlargement, should also include citizens from candidate and potential candidate countries. Given the weight of the EU in European politics, a case could be made for involving citizens from Norway, Switzerland, and Ukraine, to name but a few, whose accession prospects are non-existent or very remote, as well as citizens of the U.K.

However, this paper takes a different line in articulating policy recommendations for the development of a new strategy – an approach that does not require as a precondition an idealistic re-foundation of the Union (as welcome as that may be) and that does not rest on the assumption that member

23 Especially corrosive was a statement by Robert Fico, Slovakia’s Prime Minister, challenging the EU’s refugee relocation scheme, which had been adopted by a weighted majority of member states in September 2015. “As long as I am prime minister, mandatory quotas will not be implemented on Slovak territory,” Fico told the Slovak parliament. This was an unprecedented attack by a national leader on a piece of binding EU legislation. See Ian Traynor and Patrick Kingsley, “EU governments push through divisive deal to share 120,000 refugees,” *The Guardian*, September 22, 2015.

states and particular EU institutions will always act in full accord with their professed values. Nevertheless, the recommendations offered here start out from a recommitment to the EU's fundamental values as a logical first order of business. They then focus on assembling the policy mechanism required to articulate, enact and implement a new approach to the WB6 and enlargement, before offering a few points of substance on the new approach. This paper cannot, and does not aspire to, anticipate the outcome of a comprehensive policy review but rather suggests how such a review could be initiated and what it should focus on.

### Policy Reset: Assembling an International Constituency

As a first step toward a new approach, external stakeholders in a stable, liberal democratic Western Balkans should assemble a coalition of like-minded governments – a contact group of countries that recognize the Union's collective interest, and their own national interest as liberal democracies, in the WB6 and are prepared to act on it. Its members should consider asking the President of the European Council to participate in, and possibly chair, the group's proceedings, formally or informally, to give it the necessary weight. Freed from the bureaucratic and institutional constraints of the EU, this group could be more nimble and political in responding to enduring or emerging issues in the Balkans.

Conceptually, this 'Friends of the WB6' group could build on the Berlin Process – a format that has failed to deliver on its objective of providing renewed momentum for the accession process by offering the WB6 additional actions, including on regional connectivity, youth issues, and reconciliation. The Berlin Process is probably irretrievable, but its basic format could be a template for a new approach, if undertaken by a different cast of governments leading it.

Assembling this group could prove challenging since not all EU member states should be represented. The 'Friends of the WB6' group would have to include Germany and France but also, crucially, the UK, which is set to leave the EU in the spring of 2019 but has indicated its intention to increase its engagement in the WB6. At the same time, it would have to exclude a number of EU member states: Croatia, which has used the enlargement process to advance its own narrow agenda in neighboring Bosnia and Herzegovina; member states such as Austria that have acted as uncritical champions

of particular candidate countries with little regard for the integrity of the enlargement process and the credibility of conditionality; other member states whose interest in the WB6 is fleeting; and member states whose commitment to EU values appears dubious, notably Poland and Hungary.

The merits of including non-EU member states other than the U.K., such as Norway, Switzerland, and Canada, are worth further consideration. The group should act as a high-level interlocutor with the U.S. administration and NATO to ensure coherence of approaches.

In addition to assembling a different cast of national governments, it will also need more thematic and policy continuity than the Berlin Process, which has been driven by the agendas of the annual summit host. The Civil Society Forum should be integrated into its policy work, and annual summits should be used as an opportunity for activists to confront their national governments in a public space shared with outside actors.

### The Timeline: a Window of Opportunity in 2018–2019

One of the first tasks of the new contact group should be to ensure, by enlisting the European party families, that a strong candidate is nominated to the Commission's enlargement portfolio and the Union's foreign policy chief, and to initiate a serious policy review of the existing Commission-led approach once the new leadership is in place. The groundwork for this should be laid now, in 2018, taking advantage of a confluence of factors that could provide a positive environment for a reset. An additional element are the ongoing negotiations over the Union's next Multi-Annual Financial Framework, which sets priorities and ceilings for EU budget spending in 2019–2024. Ensuring support for enlargement priorities as well as complementary actions (e.g., infrastructure spending in the WB6) should be a priority for the 'Friends of the WB6' countries.

A series of events during the first half of 2018 should be used to prepare the ground for a transformational agenda for the WB6. While the Commission's Enlargement Strategy adopted in February was a missed opportunity, it nevertheless contains elements that could be used as building blocks for a deeper, more serious engagement with the region, for example, the idea of rule of law review missions (which should be headed by independent figures rather than Commission officials.) The assembly of these building blocks will realistically have to be

postponed until the next Commission takes office. The same probably applies to the need for more realistic and forthright progress reports on candidate and potential candidate countries; their 2018 publication, currently scheduled for April 17, comes after almost a year and a half without formal reporting and could, therefore, have been used to relaunch them – but this is quite probably going to turn into yet another lost opportunity.

An EU-WB6 summit in Sofia on 17 May and a Berlin Process summit in London on 9-10 July could be occasions to reaffirm the EU's commitment to the region and start preparing the ground for a new approach.<sup>24</sup> A sense of urgency has been growing in national capitals as well as in Brussels in the face of ever more blatant Russian interference in local affairs, especially in the wake of a murky coup attempt in Montenegro in October 2016, which Montenegrin officials blamed on Russia in February 2017. The episode appears to have focused minds in the West on the threat of 'hybrid warfare' by Russia and the opportunities for Russia to stir trouble in the Balkans. While it is important not to overstate Russian influence in the region, it is nevertheless worth noting that Moscow, together with Beijing and Ankara, seem to be on the ascendant as far as soft power competition is concerned.<sup>25</sup> The Russian-backed militarization of Republika Srpska's Interior Ministry and increasing links of the Dodik regime with Russian-trained paramilitaries in the run-up to elections in October, highlight the potential for Moscow to act as a spoiler in the region.

## Putting Together the Bureaucratic Drivers for Change

Following the elections to the European Parliament in late May 2019, EU member states (the U.K. having exited the Union immediately before the elections) will nominate their representatives in the college of European Commissioners; the Commission President-designate will assign them their portfolios and the Commission as a whole will then be confirmed by the European Parliament, which has in the past used this power to force the withdrawal of national candidates.

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24 The Sofia summit could well turn into a demonstration of the EU's divisions: Spain appears determined to block Kosovo's participation, and it also objected to Kosovo's inclusion in the WB6 for the purpose of the Commission's WB Strategy. See Lucía Abellán, "Rajoy plantea ausentarse de una cumbre europea para esquivar al líder de Kosovo," *El País*, March 15, 2018.

25 See Dimitar Bechev, *Rival Power: Russia in Southeast Europe*, Yale University Press, 2017.

This procedure offers several windows of opportunity for shaping the Commission's approach to enlargement and ensuring that the next Commissioner has the profile required for the development of a new approach towards enlargement and the WB6. National governments should treat the enlargement portfolio with the seriousness that the policy demands, rather than treating it as a bureaucratic backwater. Furthermore, they should nominate qualified figures, with the requisite political weight, to act as advocates for enlargement and as credible messengers of the EU's position vis-à-vis the accession countries. These governments, the European party families, and senior MEPs should subsequently ensure that the President-designate nominates a qualified political figure who has the full backing of their government to the enlargement portfolio. The European Parliament should take the confirmation hearing of the Enlargement Commissioner-designate very seriously, given that it is likely that accession negotiations with Serbia and Montenegro will enter a decisive phase during the next Commission's five-year term in office. All these steps also apply to the High Representative for Foreign Affairs and Security Policy, who as a Vice-President of the European Commissioners will also need confirmation by the European Parliament.

The choice of the next Commissioner for enlargement will be far more important than last time around, in 2014. The Commission's recent Strategy Paper sets the end of 2025 as an indicative accession date for Serbia and Montenegro, which means that the Commission taking office next year will be in charge of the last, decisive phase of membership talks.

## Building Blocks for Correcting the Course: The 2018 WB6 Strategy

The incoming Commission President and Enlargement Commissioner, together with the next High Representative for Foreign Affairs and Security Policy should, without delay, order a comprehensive policy review to be undertaken by the Commission's enlargement department and the EEAS concerning both EU policy towards the WB6 as well as enlargement policy in general. While more plain-spoken than previous Commission documents, the Enlargement Strategy of February 6, 2018, was a lost opportunity for such a policy review at all levels of international engagement with the WB6.

Unfortunately, the Commission's enlargement department and the EEAS both lack a culture of ro-

bust policy review, perhaps because most of their work is of a non-legislative nature. The absence of a robust policy process with all that implies, from mandatory and meaningful stakeholder consultation to impact assessments, opens the space for improvisation, policy freelancing or inertia. This was clearly apparent when the Commission, in its Strategy Paper of February 2018, drafted by DG NEAR and adopted by the college of European Commissioners on February 6, 2018, abandoned its decade-old policy of not setting accession dates for candidate countries, however tentative they may be. This was a policy it had adopted after Bulgaria and Romania joined the EU prematurely in 2007 (despite a safeguard clause that would have made a delay perfectly possible). The 2007 accession demonstrated that dates, no matter how tentative, develop a life of their own and are difficult to disregard once they are in place.

The Commission's policy U-turn on indicative accession dates was not the result of a policy review, nor even a response to an *ad hoc* identification of the shortcomings of the previous policy, nor was it driven by DG NEAR or the EEAS: it was a decision taken by Commission President Jean-Claude Juncker, presumably out of a political concern to undo the damage he had done with his one statement on enlargement on taking up his post in 2014, in which he had stated bluntly, accurately and completely unnecessarily, that there would be no further accessions during his five-year term in office. While Juncker merely stated the obvious in 2014, that statement nevertheless provided space for autocrats to slow down reform even further and to take even deeper control of their societies.

*"The absence of a political momentum in EU enlargement... showed that the EU's membership carrot is illusory," Srdjan Cvijic noted, adding: It simultaneously weakened the stick that could be used to enforce reforms, thus leaving the region's civil society vulnerable to increasingly intolerant ruling elites. This is how the Western Balkans ended up in a vicious circle, a perennial status quo of Pax Junckeriana.*<sup>26</sup>

Indeed, Juncker's statement fed a sense of resignation and short-termism across the region, most acutely felt by those who had been looking to Brussels to support their quest for democratic reform.

It now appears that Juncker has decided to manage this fallout by offering an arbitrary target

date of 2025 to Serbia and Montenegro, the deteriorating situation in the WB6 having been brought to his attention and in light of geopolitical competition with Russia, Turkey, and China. However, this was done without any analysis of the dynamic that it would create with the two candidate countries, let alone the other candidate or potential candidate countries in the region.<sup>27</sup>

The Enlargement Strategy contained elements of unusual, if implicit, self-criticism by the Commission of its track record in spurring and supporting transformational change in the accession countries.<sup>28</sup> The Strategy sets out from the notion that enlargement is "a geostrategic investment in a strong, united Europe, based on common values, and a powerful tool to promote democracy, the rule of law and the respect for fundamental rights." It then states that the EU "must remain credible, firm and fair, while upgrading its policies to better support the transformation process in the region." This implicitly acknowledges that the current approach is insufficient in helping the WB6 along the way to full democratization, as evidenced by the state capture and deeply corrupt nature of politics across the region referenced in the Enlargement Strategy. The repeated use of the term "transformation," rather than the weaker and more common "reform," is also significant, and the Strategy is correct to point out that "strengthening the rule of law is not only institutional" but "requires societal transformation."

The Strategy follows up these points with various recommendations and action points that could strengthen the accession process and help the WB6. It calls on the WB6 to "unequivocally commit, in both word and deed, to overcoming the legacy of the past, by achieving reconciliation and solving open issues well before their accession to the EU". In addition, it advocates for Serbia and Kosovo to conclude a comprehensive and legally binding normalization agreement. The Commission's initiative to strengthen the rule of law is especially significant: "Existing negotiation tools, such as detailed action plans, will be expanded to all Western Balkan countries. Assessment of reform implementation will be enhanced, including through new advisory missions in all countries. Greater use will be made

<sup>26</sup> Srdjan Cvijic, "No open society – no resilience," in *Resilience in the Western Balkans*, p. 73.

<sup>27</sup> Senior officials in DG NEAR were unaware of the 2025 date until it showed up in supporting documents to Juncker's 2017 State of the Union address. Likewise, the singling out of Serbia and Montenegro as frontrunners had not been coordinated with DG NEAR.

<sup>28</sup> Many of the more interesting observations were toned down or cut entirely during inter-service consultation, as is evident from a draft containing tracked changes made during a meeting of chefs de cabinet on February 2 (on file with author).

of leverage provided in the negotiating frameworks with Serbia and Montenegro.” If employed properly, these measures could help strengthen the EU’s credibility on core issues of democratization and the rule of law.

The Strategy’s failure was twofold. First, it failed to present a proper, comprehensive policy review taking stock of past shortcomings. Second, where it did present a proper diagnosis, it failed to follow up by articulating a coherent remedy. Instead, the strategy included astute observations and useful policy guidance mixed in with affirmations of the current approach – testimony to a doctrinaire attachment to the main tenets of the accession strategy. This was a missed opportunity for a full-blown reconsideration of what had gone wrong in years of declining democratic standards across the region, suggesting that any serious policy review will have to wait until the next college of European Commissioners takes office in 2019.

## Recalibrating the Accession Process

The next Commission’s policy reset must be based on an unvarnished assessment of what went wrong over the past several years. If a country such as Serbia, which is frequently referred to by the EU as a “frontrunner” in the accession process, regresses on democratic standards, what implications does this have conceptually, politically and policy-wise, for the accession process?

The Commission’s latest Strategy contains elements of welcome, if implicit, self-criticism that a proper policy review could build on. “For its part, the EU must remain credible, firm and fair, while *upgrading* its policies to *better support* the transformation process in the region,” it states (author’s emphases). This recognizes that the current policies provide insufficient support to genuine societal and political transformation – but the Strategy then fails to analyze the implications of this for policy-making and puts forward fairly mundane (if often reasonable and welcome) additional measures. Nevertheless, it sets a tone that could be useful in pushing for a serious policy exercise under the new leadership, and it offers elements that could be strengthened in a truly strategic review. These include, among other things:

- Increased participation of WB6 ministers and other officials in informal Councils and other ministerial meetings, as well as technical committees and working groups.

- Enhanced technical assistance to public administrations, including exchanges with the administrations and other people-to-people formats such as partnerships between municipalities; while there has been plenty of this in the past, it could, if used smartly, contribute to stronger local and regional politics in the WB6, stemming the sweeping centralization that has taken place in Serbia, for example.
- Deepened WB6 involvement in EU foreign and security policy, including CSDP missions and full alignment with EU sanctions.<sup>29</sup>
- More detailed and unvarnished rule of law assessments and advisory missions.
- Indicators for reform implementation in the rule of law.

In addition, the Strategy also references the need for post-accession instruments to deal with rule of law issues:

*When considering the future of the European Union, a more effective mechanism needs to be put in place to ensure that effective measures can be taken to tackle a systemic threat to or a systemic breach of these values by any one of the EU’s Member States. The Commission will present an initiative to strengthen the enforcement of the Rule of Law in the European Union in October 2018.<sup>30</sup>*

The EU has shifted its response to the challenge of sustaining reform post-accession. The experience of the 2004 enlargement and the pre-accession difficulties of halting reforms in the countries that were to join in 2007, especially in Romania, prompted the EU to place a safeguard clause that would allow it to delay accession. In addition, it created a transitional Cooperation and Verification Mechanism (CVM) on judicial reform, corruption and, in the case of Bulgaria, organized crime. While the CVM reports, issued twice a year, were useful in highlighting shortcomings, the Mechanism was successful in compelling reform primarily in cases where doing so was in the ruling party’s electoral interest or where a political link to Schengen acces-

<sup>29</sup> As proposed in a non-paper by Sweden and Finland on the Enlargement Strategy, CFSP alignment should take place early in the accession process. This could be a straightforward test of a candidate country’s adherence to shared EU values. See “Swedish-Finnish input to the Commission’s strategy paper on the Western Balkans,” no date, on file with the author.

<sup>30</sup> Commission Strategy, p. 15.

sion or structural funds was created. In other words, the CVM lacked enforcement mechanisms such as sanctions and, therefore, required the provision of external incentives. The mixed experience with the CVM prompted Enlargement Commissioner Štefan Füle to oppose its application to Croatia, which The Netherlands had demanded, since Croatia was supposed to be fully ready for membership on joining.

The CVM demonstrated that monitoring and reporting alone are insufficient. What is required are more robust instruments for the European Commission to act in case of a threat to fundamental values in a member state, as alluded to in the Strategy Paper.

### Building a Constituency: Civil Society in the WB6

The EU and its member states tend to view civil society in the WB6 as a service provider, most notably on communications, rather than an expression of an organic domestic demand for democratic transformation. Millions of euros in grants have created a culture of dependency among local non-governmental organizations, only the most developed and professional of which (i.e., those most removed from the grassroots) tend to be eligible for direct project funding. The latest example of this attitude is a call for project ideas on the dialogue between Prishtina and Belgrade published by the EEAS on March 13, 2018, which sets out three aims:

1. *Communicate more and better to the larger public the benefits and the potential of the EU-facilitated Dialogue on the normalisation of relations between Belgrade and Pristina and how it positively impacts on lives;*
2. *Encourage public debates at all levels on how the Dialogue can further advance the normalisation of relations between Belgrade and Pristina and between the two societies;*
3. *Sharpen the interaction and peer-to-peer exchange between various actors from Kosovo and Serbia, relevant for a better understanding of the Dialogue, thus acting as agents of normalisation of relations.*<sup>31</sup>

With this call, the EU is in effect, outsourcing the critical task of building a local constituency in Ser-

31 Available at [https://eeas.europa.eu/delegations/kosovo/41212/call-project-ideas-eu-facilitated-dialogue-between-belgrade-and-pristina\\_en](https://eeas.europa.eu/delegations/kosovo/41212/call-project-ideas-eu-facilitated-dialogue-between-belgrade-and-pristina_en).

bia and Kosovo for a future normalization deal – the EU's single most important deliverable in the region in the coming years. It also underscores how the EU, or at least the EEAS, views constituency-building as a mere communications job. Even more worryingly, the EU might be capturing civil society, by buying up the pool of potential critics of a future normalization deal. Civil society, in the framing of this call, is a marketing contractor as well as a potentially hostile party that might need to be co-opted. The EU clearly does not see civil society as an ally and a messenger of an organic demand for better government, mirroring the attitude of many WB6 governments.

With this attitude, the EU is depriving itself of natural allies in the region. The danger is not simply that the EU is failing to use a vector of potential influence but that it is alienating a segment of the population that should be a natural constituency. As Bieber points out:

*Citizens, especially those active in social movements, and other pro-reform civil society actors note that declaratory commitment to EU principles and reform by local political elites appears to suffice to receive external support. The danger is that the pro-reform movement might become increasingly anti-EU, as they see EU support for governing elites as ultimately an obstacle to reform.*<sup>32</sup>

The Commission's Strategy seems to acknowledge the importance of civil society but once again reduces its role to that of interlocutors of governments in structured processes, instead of as autonomous actors whose activism may well take place outside the realm of formalized politics but nevertheless shape it: Governments should ensure stakeholders can actively participate in the reform and policy making process, for example by establishing inclusive structured dialogues on reform priorities with the involvement of an empowered civil society. An enabling environment for civil society organisations is therefore crucial.<sup>33</sup>

If the Commission were serious about supporting civil society as independent actors in the enlargement process, it could, at practically no cost, provide full access to negotiating documents and mission reports concerning candidate countries, enabling civil society to meaningfully monitor accession negotiations. This could even serve as a shortcut to achieve the sort of oversight that, in a functioning democracy, would be exercised by parliaments. As Cvijić notes:

32 Bieber, "Too much ...," p. 70.

33 Commission Strategy, p. 5.

*The task of creating independent parliaments, courts and other institutions cannot be achieved overnight. But empowering civil society requires relatively little effort in comparison. All the EU has to do is publicly stand in its defence and increase the transparency of the EU enlargement process.<sup>34</sup>*

In that way, civil society, domestic reform and EU support could mutually reinforce each other.

## Formation of Political Will: Parliaments

Just as with regards to civil society, the EU approach to parliaments and political opposition is not very sophisticated nor strategic. (The same applies to the media, which are merely seen as a messenger or spoiler.) The Commission's Strategy has this to say about the political opposition – the only occurrence in the text of the terms “parliament” and “opposition”:

*Strengthening the functioning of democratic institutions is essential. This includes ensuring constructive dialogue across the political spectrum, notably within the parliaments. The government needs to ensure that the opposition has the possibility to fully perform its role. And the opposition needs to engage constructively in the democratic process.<sup>35</sup>*

This is in line with the EU's standard approach to the fairly frequent boycotts of parliamentary work by opposition parties in several of the WB6 countries – a call for them to return to the chamber and “take responsibility.” However, this is premised on the notion that WB6 parliaments are functioning as part of a democratic system, which is not the case. Incumbent government parties consistently try to rig the electoral process, for example through intimidation, patronage, and media manipulation, even where they do not resort to outright fraud.

Party systems in the WB6 are intensely polarized and polarization typically occurs not along ideological lines, but on what could be termed ‘national issues,’ that is, identities and values that are bound up with particular views on the nation. For example, in Serbia, there is not that much in terms of *actual policies* to distinguish the current ruling party, the SNS, from the previous ruling party, the DS, although the SNS is nominally center-right and

an associate member of the European People's Party while the DS is nominally center-left and an associate member of the Party of European Socialists, the two main European party families. Yet their enmity is intense, and their constituencies are socially and politically quite different. They are both nominally pro-EU; with the exception of Kosovo's Vetëvendosje, there are practically no sizeable parties anywhere in the region that are openly opposed to the EU. (Vetëvendosje is also an outlier in that it has a strong *ideological identity*.)

As Vachudova notes with regards to post-Communist party systems:

*Political competition on socioeconomic issues has been almost entirely eclipsed by competition on identity and values. It is by claiming to defend ‘the nation’ that the leaders of these ruling parties build the political cover to concentrate power and dismantle liberal democracy in a deliberate way.<sup>36</sup>*

It should be noted, however, that the “competition on identity and values” has a strong mobilizing aspect to it, and identity and values may serve to camouflage particular interests. Political parties in the WB6 are also united by their relative lack of intra-party democracy, and they are often focused on a charismatic leader such as Albania's Sali Berisha and Edi Rama, or Milorad Dodik in RS. This tendency is reinforced by the proportional representation and party lists systems.

In response to these systemic deficiencies, the EU and the U.S. often resorted to strongman politics – that is, cultivating particular leaders who were seen as ‘people we can do business with’ or who opposed corrosive nationalism. The list of such experiments that ended in failure is too long for this paper; suffice to say that both Dodik and Gruevski figure on it.

The EU and its liberal democratic allies should seek to put in place the conditions for political systems that eschew the current zero-sum approach between government and opposition, by tackling some of the systemic shortcomings. The Strategy's call for “substantive reform” of party-financing is a good first step.

At the same time, the EU should also take seriously its own, often repeated criticism of the dominance of urgent procedures in parliamentary pro-

34 Cvijić, “No open society ...,” p. 74.

35 Commission Strategy, p. 5.

36 Milada Anna Vachudova, “Party Positions, EU Leverage and Democratic Backsliding in the Western Balkans and Beyond,” paper presented at the conference *Rejected Europe. Beloved Europe? European University Institute*, May 2017.

ceedings. While annual progress reports across the board criticize urgent procedures, the EU in fact relies on them to get EU-related legislation adopted. The legislative element of the Reform Agenda in Bosnia and Herzegovina relied almost entirely on urgent procedures – that is, on the denial of proper parliamentary scrutiny:

*When the Reform Agenda was agreed on, it was submitted to parliaments as a fait accompli. MPs were told that the Agenda had been agreed with the EU and the International Financial Institutions, and that they needed to support it through their vote for the good of the country. Most Reform Agenda-related legislation submitted to parliaments have been subject to an urgent procedure adoption mechanism, leaving little room for MPs to file amendments and with almost no prospect of them getting adopted by the ruling coalitions.<sup>37</sup>*

This is profoundly undemocratic and sends the signal that the EU puts deliverables above due process when it comes to its own priorities. What is needed instead is an on-the-ground, meaningful engagement with political parties and individual politicians, as well as attention to the systemic shortcomings of parliamentary democracy in the WB6.

### Resistance

Powerful political and bureaucratic interests are at work against any redesign of the EU's policy towards the WB6, however putative. Political elites in the EU, at institutional or national level, will be reluctant to invest much political capital in the accession process with its uncertain outcome and a timeline that far exceeds most elected office-holders' time horizon (i.e., well beyond the next election cycle, and in most cases even the election cycle after that).

Enlargement is not a vote-getter and making a serious case for it will not help elected office-holders with their constituencies. EU officials, meanwhile, will be reluctant to admit that their past actions may have contributed to policy paralysis. Collectively, EU institutions will be loath to acknowledge the failure of enlargement in the Western Balkans, one of the Union's flagship policies of the past couple

of decades, and to reorient entire departments and procedures. National leaders in the WB6 will lobby hard against any policy change that will threaten to undermine the business model that they have been using to cement their power, control their societies, draw profit from their economies, and in general, put their particularistic interests above those of their citizens. The accession process as it is currently being managed, has provided an important source of external stabilization, even legitimacy, to the regimes of the region; they understand that the EU is as vested in the continuation of the accession process as they are – although they have little interest in it actually leading to membership any time soon.

At the same time, a serious, thorough and comprehensive policy review that confirms the basic outlines of the preceding analysis would be hard to ignore for EU institutions and member states. It could serve as an advocacy tool towards reluctant member states as well as internally, within the EU's bureaucracy, and hence it is of paramount importance to get it right. It would also signal to incumbent elites in the WB6 that they will no longer be shielded by the EU from domestic contestation.

### Immediate Steps

Even though the EU's approach to the WB6 is in need of a reset, there are a variety of helpful measures that, while not transformational, would nevertheless contribute to a more realistic and outcome-focused policy without requiring fundamental change, new instruments or legal change. These include:

- The European Commission should use more straightforward language in its annual progress reports. The current reports are written in diplomatic language that makes them ill-suited to a proper policy debate or public outreach. Moreover, they obfuscate trend lines that are clearly visible in other reports such as Freedom House's Nations in Transit reports or more sectoral monitoring (e.g., on media freedom). Clearer reports could serve as a tool to empower local civil society to scrutinize their government's performance in meeting accession conditionality.
- The 2018 reports, scheduled for April, are an opportunity for a fresh start as they follow a gap of one and a half years – albeit it an opportunity that is likely to be missed. The Commission could invite WB6 civic actors to re-

37 Bodo Weber, "Substantial Change on the Horizon? A Monitoring Report on the EU's New Bosnia and Herzegovina Initiative," Democratization Policy Council, March 2017, p. 34, available at [http://www.democratizationpolicy.org/pdf/DPC\\_EU\\_BiH\\_Initiative\\_Monitoring\\_Report.pdf](http://www.democratizationpolicy.org/pdf/DPC_EU_BiH_Initiative_Monitoring_Report.pdf).

view final drafts before release, to share their assessment in an on-the-record forum in each country, and integrate them in a quality control capacity ahead of the next reporting cycle. At a minimum, the Commission should communicate identified shortfalls and concerns much more widely in the WB6, by reaching out to civil society actors, parliamentarians (including from the opposition), and the media, for example by using the annual reports as an occasion to engage in citizens' consultations across the WB6 countries.

- The Commission should discourage the use of accelerated parliamentary procedures in adopting legislative acts required by, or linked to, the accession process, and instead favor an open, democratic approach even when this means slower overall progress.
- The Commissioner for Enlargement and the Heads of Delegation in the WB6, and where necessary the High Representative, should without ambiguity condemn attacks on media freedom and restrictions on civic groups. Too often, the Commissioner has taken a very weak stance, for example when reacting to concerns about media freedom with demands for more information.
- The EU must, in concert with the U.S., Canada, post-Brexit U.K., Norway, and other liberal democratic allies, systematically confront bad-faith actors when they seek to undermine the established democratic order of their countries, including through the use of restrictive measures such as asset freezes and travel bans. This would apply most urgently to frequent provocations by RS leader Milorad Dodik, which could easily accelerate in the run-up to elections in October. RS is assembling greater firepower in the entity's Interior Ministry and deepening ties with Russian-trained paramilitaries – violations of the Dayton Accords that have so far remained without a Western response.
- The Commission should follow up on its February 2018 Strategy, and develop meaningful indicators for implementation of rule of law measures, to be applied with immediate effect to Serbia and Montenegro, including the suspension of accession talks if benchmarks remain unmet over a certain period of time. An in-depth rule of law scoreboard could be developed in cooperation with other Directorates-General to

be applied to member states and non-member states alike, building on existing (but underutilized) instruments. These scoreboards should be made public and communicated proactively to civil society in the respective countries.

Collectively, these measures could mark a real change to the EU's relations with the WB6, and especially their citizens.

# Recommendations

- The European Union's member states should explicitly recommit themselves to the values set out in the Lisbon Treaty, and, together with the European Commission, refocus their approach to the Western Balkans towards democracy and rule of law under the political guidance of the European Council.
- The EU and NATO should provide unambiguous, credible security guarantees backed up by reinforcements to bring EUFOR and KFOR back to operational strength. EU missions should keep their executive mandates as long as warranted by objective conditions on the ground, and credible reserves should be put in place. The EU must state unambiguously that unilateral secession (RS) and negotiated land swaps (Serbia/Kosovo) will not be tolerated.
- Interested parties including France, Germany, and the U.K. should launch a contact group to ensure coherence between the Commission-led accession process and more political processes involving leading EU member states and other liberal democracies; this should happen before the London summit in July. This 'Friends of the WB6' group should take the lead in reinforcing the EU's transformational approach and messaging to the region; it should lean on EU member states that are impeding the current accession process (Spain in the case of Kosovo, Greece in the case of Macedonia). Externally, it should act as a political-level interlocutor with the U.S. and NATO. It should consider inviting the President of the European Council to participate in, or even chair, its proceedings.
- Member states with an interest in the region should nominate qualified, senior political figures to the next European Commission, and, together with the European party families and Members of the European Parliament, ensure that the President-designate of the incoming Commission assigns the enlargement portfolio to the most qualified person. The same procedure should be applied to the next High Representative.
- Under new leadership, the EU institutions should undertake a comprehensive policy review to systematically identify the shortcomings of enlargement policy and of other EU instruments in supporting the democratic transformation of the WB6 and propose and adopt new approaches that aim to help transform the quality of democratic politics in the WB6. The new approach should complement the focus on technical accession criteria with a serious political engagement with democratic transformation, abandoning the current fixation on stability. It should streamline and strengthen the use of conditionality with the goal of fostering democratic politics and the rule of law in the WB6 and fighting state capture, with the systematic inclusion of actors other than WB6 executives.
- The European Commission should use more straightforward language in its annual progress reports and communicate its concerns much more widely on the ground, by reaching out to civil society actors, parliamentarians, and the media, which should be empowered to scrutinize their government's performance in meeting

accession conditionality. The Commission and the Delegations in the WB6 should actively involve local initiatives and individuals, for example in town hall settings in provincial locations.

- The Commission should discourage, in word and deed, the use of accelerated parliamentary procedures in adopting legislative acts required by, or linked to, the accession process.
- The Commission should make the findings of its rule of law missions public and seek input from civil society, and it should recruit senior independent figures rather than Commission officials as mission heads.

In order for these recommendations to work, the EU and its member states as well as other interested parties must understand the urgency of the situation. An enormous investment of resources, policy attention and political capital made over more than two decades is at risk; indeed, for the European Union, failure to decisively help the Western Balkan Six achieve their full democratic transformation would undermine the central narrative of Europeanization – of a societal, political, and economic transformation driven by the prospect of EU membership.

## The Friedrich-Ebert-Stiftung in Southeast Europe

After more than two decades of engagement in southeastern Europe, the FES appreciates that the challenges and problems still facing this region can best be resolved through a shared regional framework. Our commitment to advancing our core interests in democratic consolidation, social and economic justice and peace through regional cooperation, has since 2015 been strengthened by establishing an infrastructure to coordinate the FES' regional work out of Sarajevo, Bosnia and Herzegovina: the Regional Dialogue Southeast Europe (Dialogue SOE).

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- Social Democratic Politics and Values
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