

# Prospects for Integration in the Western Balkans

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## I. Introduction

The term Western Balkans has geopolitical rather than geographical meaning and it refers to Albania and the territory of former Yugoslavia with the exception of Slovenia and Croatia. Originally, this term also referred to Croatia, but Croatia joined the European Union in July 2013. In fact, the EU institutions have generally used the term Western Balkans to mean the Balkan area that

includes countries that are not members of the European Union. Currently these are: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia.<sup>1</sup>

The European Union and its Member States have consistently, since the Thessaloniki Summit in June 2003, expressed their support for the European perspective of the Western Balkans.<sup>2</sup>

However, since then, only one country from the Western Balkans region became an EU Member State. It was the Republic of Croatia that joined the EU in July 2013. Therefore, at the Council's meeting in November 2019, there was a common understanding of the usefulness of examining the effectiveness of the accession negotiation process.

Consequently, on 5 February 2020, the European Commission issued the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions proposing a new enlargement methodology named "Enhancing the accession process – A credible EU perspective for the Western Balkans".<sup>3</sup>

A new enlargement methodology may be considered as a step towards overcoming the impasse in the EU enlargement process triggered by the inability of the Council to open accession negotiations with North Macedonia and Albania in October 2019. France opposed starting negotiations with North Macedonia and Albania, while Denmark and the Netherlands opposed opening negotiations with Albania.

Nevertheless, the reasons for adopting a new enlargement methodology go much deeper than the Council's inability to open accession negotiations with North Macedonia and Albania. Since the economic crisis of 2008, the European Union has been facing economic, political and legal difficulties that threaten to undermine the fundamental values achieved by the Community, such as the peace and stability in the European Communities over the past almost 65 years. In addition, the European Union has been facing a certain

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<sup>1</sup> The term Western Balkans also refers to Kosovo. However, the Constitution of the Republic of Serbia defines the Autonomous Province of Kosovo and Metohija as an integral part of Serbia, but with "substantial autonomy". Therefore, Kosovo is not included in this analysis.

<sup>2</sup> Thessaloniki Declaration, 21 June 2003, <[https://ec.europa.eu/commission/presscorner/detail/en/PRES\\_03\\_163](https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163)>.

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Enhancing the accession process – A credible EU perspective for the Western Balkans, COM/2020/57, 5 February 2020.

*enlargement fatigue* ensuing from the most recent enlargement waves in the first decade of the 21<sup>st</sup> century. Therefore, the willingness of the EU Member States to accept the Western Balkans countries into the European community of nations should also be taken into account.<sup>4</sup> All these factors also affect the efficiency of the EU enlargement process.

“Ever since the process of enlargement itself started, it has been gradually altered due to both EU-related internal issues (for ex. the economic crisis of 2008, Brexit, the 2015 refugee crisis and most definitely the current global COVID-19 pandemic) as well as Western Balkans countries’ fulfilment of requirements for accession as set forth in the Treaty of the European Union. During these years of aspirations for European integration of the Western Balkans, the process itself has undergone some changes. Every past enlargement was accompanied by a self-learning process wherein the EU rethought and improved its approach. Their application is observed in the enlargement process of the Western Balkans.”<sup>5</sup>

On 6 May 2020, at the EU-Western Balkans Zagreb summit, which took place via video conference on 6 May 2020, EU leaders agreed on the Zagreb declaration. This declaration once again reaffirms the European Union’s unequivocal support for the European perspective of the Western Balkans. The European Union is determined to strengthen its support to the region’s political, economic, and social transformation. Western Balkans partners reaffirmed this perspective as their firm strategic choice. They also recommitted to carrying out and effectively implementing the necessary reforms towards European values and principles and the primacy of the rule of law.<sup>6</sup>

This paper presents an attempt to examine prospects of integration in the Western Balkans. After short introductory notes ([Part I](#)), the paper gives a brief overview of the position of Western Balkans countries in the European integration process ([Part II](#)). Thereafter, the paper focuses on a new enlargement methodology, its criteria, and instruments for achievement of these criteria ([Part III](#)). Finally, the paper examines the novelty of the instruments provided by a new enlargement methodology and their feasibility as well. Special attention is given to the instrument of closer integration ([Part IV](#)).

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<sup>4</sup> Rabrenovic/Ceranic Perisic, 312.

<sup>5</sup> Lula Lutjona, Commenting on the New Enlargement Methodology: Implications to the EU Integration Process of the Western Balkans, <<https://www.institutegreatereurope.com/single-post/2020/05/06/commenting-on-the-new-enlargement-methodology-implications-to-the-eu-integration-process>>.

<sup>6</sup> Zagreb Declaration, 5 May 2020, <<https://www.consilium.europa.eu/media/43776/zagreb-declaration-en-06052020.pdf>>.

## II. An overview of the position of the Western Balkan countries in the European integration process

As for the current position of Western Balkans countries in the European integration process, three different groups of countries can be distinguished. The first group consists of countries that have already opened accession negotiations. These are Serbia and Montenegro, and they are considered front runners in the region. In the second group are countries that have recently started accession talks (March 2020), but no chapters have been opened so far. These are North Macedonia and Albania. The third group includes only one country that has not yet achieved the status of a candidate country. It is Bosnia and Herzegovina that is still considered a potential candidate for EU integration.

### i. Serbia

Negotiations with the Federal Republic of Yugoslavia (later the State Union of Serbia and Montenegro) were intensified following the democratic changes in October 2000.<sup>7</sup> The State Union of Serbia and Montenegro started the process of accession to the EU in November 2005, when negotiations over a Stabilization and Association Agreement began. After the dissolution of the State Union (2006), Serbia continued with the existing negotiations.

In November 2007, Serbia initiated a Stabilisation and Association Agreement (SAA) with the EU. The European Commission recommended making Serbia an official candidate in October 2011. In March 2012 the European Council granted Serbia official candidate status for EU membership. In January 2014 negotiations were officially opened.<sup>8</sup>

Serbia currently has 18 opened accession chapters, two of which have been provisionally closed.

### 2. Montenegro

In May 2006, Montenegro voted for independence from Serbia in a referendum. Consequently, the State Union of Serbia and Montenegro was dissolved.<sup>9</sup> While Serbia continued with the existing negotiations, separate negotiations were launched with Montenegro in September 2006. A Stabilization and Asso-

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<sup>7</sup> Ceranic Perisic(2014), 290.

<sup>8</sup> <[https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en)>.

<sup>9</sup> Ceranic Perisic(2014), 292 et seq.

ciation Agreement was officially signed in October 2007. In December 2010 Montenegro received official candidate status. In June 2012 accession negotiations began.<sup>10</sup>

After almost nine years of accession negotiations all of the 33 screened chapters have been opened, of which three are provisionally closed.

### 3. North Macedonia

North Macedonia (formerly the Republic of Macedonia) began its formal process of rapprochement with the European Union in 2000. It was the first non-EU country in the Western Balkans to sign a Stabilisation and Association Agreement in April 2001. The SAA came into force on 1 April 2004.

North Macedonia received official candidate status in December 2005. However, negotiations could not be opened for more than a decade due to the naming dispute with Greece. Namely, Greece vetoed Macedonian accession until the resolution of the naming dispute. Greece argued that its constitutional name of the Republic of Macedonia implied territorial ambitions towards Greece's own northern province of Macedonia. Therefore, the European Union, in acknowledgment of concerns raised by Greece, maintained a practice of recognizing the country only as the "former Yugoslav Republic of Macedonia".<sup>11</sup>

In June 2018, an agreement on the naming dispute was finally reached. According to the Prespa Agreement the country is to be renamed the "Republic of North Macedonia". As part of this deal, Greece explicitly withdrew its previous opposition, allowing the European Union to approve a pathway to start accession talks with North Macedonia.

After the resolution of the naming dispute with Greece, accession negotiations with North Macedonia were expected to start immediately. However, the Council decided to postpone the decision to October 2019 due to the objections from certain EU Member States. In October 2019 France vetoed the opening of accession negotiations with North Macedonia.

Finally, after a new enlargement methodology was issued (February 2020), the Council decided to open accession negotiations with North Macedonia (March 2020). However, in November 2020 Bulgaria blocked the official start

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<sup>10</sup> <[https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/montenegro\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/montenegro_en)>.

<sup>11</sup> <[https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/north-macedonia\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/north-macedonia_en)>.

of negotiations with the Republic of North Macedonia. Bulgaria demanded further guarantees from North Macedonia regarding a friendship treaty between these two countries. This friendship treaty from 2017 refers to some complicated issues from the history of these neighboring countries.

#### 4. Albania

Albania started negotiations on a Stabilisation and Association Agreement in 2003. The Agreement was signed in June 2006 and Albania applied for EU membership in April 2009. However, it was not until 2014 that Albania became an official candidate for EU accession. Again, it took time to start negotiation talks.

It should be noted that Albania's EU accession is bundled with North Macedonia's EU accession. Although it was agreed in June 2018 that negotiations would begin by the end of 2019, the decision was vetoed in October 2019.<sup>12</sup>

Accession negotiations with Albania finally started in March 2020, after a new enlargement methodology was issued. The screening process is under way and no chapters have been opened so far.

#### 5. Bosnia and Herzegovina

Bosnia and Herzegovina has been recognized by the EU as a potential candidate country for accession since 2003. However, it was not until February 2016 that the country submitted its application for joining the European Union. Due to constitutional reforms and engagements with the Dayton Peace Agreement, it took more than a decade for Bosnia and Herzegovina to apply for membership in the EU.<sup>13</sup>

In December 2016, Bosnia and Herzegovina received the accession questionnaire from the European Commission. After Bosnia and Herzegovina submitted its latest response (March 2019), twenty-two policy and political criteria questions remained unanswered. Therefore, Bosnia and Herzegovina remains a potential candidate country until it successfully answers all of the questions of the questionnaire.

In a meantime, Bosnia and Herzegovina's trade relations with the European Union are regulated by an Interim Agreement.

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<sup>12</sup> <[https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania_en)>.

<sup>13</sup> <[https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina_en)>.

### III. A new enlargement methodology

On 5 February 2020, the European Commission issued the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions proposing a new enlargement methodology named “Enhancing the accession process – A credible EU perspective for the Western Balkans”.<sup>14</sup>

At the very beginning of the Communication, the Commission stated that the firm, merit-based prospect of full EU membership for the Western Balkans is in the Union’s very own political, security and economic interest. “In times of increasing global challenges and divisions, it remains more than ever a geostrategic investment in a stable, strong and United Europe. A credible accession perspective is the key incentive and driver of transformation in the region and thus enhances our collective security and prosperity. It is a key tool to promote democracy, rule of law and the respect for fundamental rights, which are also the main engines of economic integration and the essential anchor for fostering regional reconciliation and stability. Maintaining and enhancing this policy is thus indispensable for the EU’s credibility, for the EU’ success and for the influence in the region and beyond – especially at times of heightened geopolitical competition.”<sup>15</sup>

The European Commission also emphasizes that the effectiveness of the overall accession process and of its implementation must be improved further. While the strategic direction of the policy remains more valid than ever, it must get much better traction on the ground.

Despite successive reforms (such as the new approach on the rule of law, and the focus on the fundamentals under the Commission’s Western Balkans Strategy from 2018), the process needs to be better equipped to deal with structural weaknesses in the Western Balkans countries, in particular in the area of fundamentals. “It is of major importance to build more trust among all stakeholders and to enhance the accession process and to make it more effective.”<sup>16</sup>

A new enlargement methodology sets out concrete proposals for strengthening the whole accession process. The overall aim is to enhance credibility and trust on both sides and to yield better results on the ground. A new enlargement methodology refers primarily to North Macedonia and Albania. However, it is clearly stated that proposed changes can be accommodated within exist-

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<sup>14</sup> COM (2020) 57 final.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

ing negotiating frameworks, ensuring a level playing field in the region. In the other words, negotiating frameworks for Serbia and Montenegro, countries that have already started accession talks, will not be amended, but the proposed changes could be accommodated within the existing frameworks with the agreement of these two countries.<sup>17</sup>

“A core objective of the European Union’s engagement with the Western Balkans countries is to prepare them to meet all the requirements of membership. This includes supporting fundamental democratic, rule of law and economic reforms and alignment with core European values. This will in return foster solid and accelerated economic growth and social convergence.”<sup>18</sup>

To achieve these objectives, a new methodology relies on four criteria: more credibility, a stronger political steer, a more dynamic process, and predictability (positive and negative conditionality). To meet each of these criteria, a new enlargement methodology provides several legal instruments.

#### **i. More credibility**

According to a new enlargement methodology, for the accession process to regain credibility on both sides and deliver to its full potential, this process needs to rest on solid trust, mutual confidence, and clear commitments on both sides.<sup>19</sup> What does it mean in practice?

On one hand, it means the Western Balkans leaders must deliver more credibly on their commitment to implement the fundamental reforms required. These fundamental reforms include rule of law, fighting corruption, ensuring the proper functioning of democratic institutions and public administration, etc. “Both EU Member States and their citizens have legitimate concerns and need to be reassured. This implies that the political will of the Western Balkans countries should be proven by structural reforms. Furthermore, Western Balkans leaders must also show more efforts to strengthen regional cooperation and good neighborly relations to bring stability and prosperity to their citizens, while giving confidence to the EU that the region is addressing the legacy of its past.”<sup>20</sup>

On the other hand, this also means the European Union needs to deliver on its unwavering commitment to a merit-based process. A merit-based process

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<sup>17</sup> Ceranic Perisic(2020).

<sup>18</sup> COM (2020) 57 final.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

implies that when partner countries meet the objective criteria and conditions, the Member States shall agree to move forward to the next stage of the process. All parties must abstain from misusing outstanding issues in the EU accession process. The Commission emphasizes that Member States and institutions must speak with one voice in the region, sending clear signals of support and encouragement.<sup>21</sup>

To regain more credibility on both sides, an even stronger focus should be put on the fundamental reforms. These reforms are essential for success on the EU path and include rule of law, fighting corruption, ensuring the proper functioning of democratic institutions and public administration etc. Based on a new enlargement methodology, fundamental reforms will become even more central in the accession negotiations. This means negotiations on fundamentals will be opened first and closed last and progress on these will determine the overall pace of negotiations.

## 2. A stronger political steer

The second criteria provided by a new enlargement methodology is stronger political steer. It is known that accession to the EU is a process requiring and supporting fundamental reform and political and economic change in the countries aspiring to join. This process also requires the aspiring countries to demonstrate an ability to take on shared responsibilities as a Member State of the EU. "It is not moving on autopilot but must reflect an active societal choice on their part to reach and respect the highest European standards and values. Equally, the commitment of the Member States to share a common future with the Western Balkans as full members of the Union is a significant political and not simply technical undertaking."<sup>22</sup>

Consequently, both sides should show more leadership and live up to their respective commitments in public, while coming in more directly on matters of concern. Hence, it is time to put the political nature of the process front and center and to ensure stronger steering and high-level engagement from both EU Member States and aspiring countries.

To achieve a stronger political steer, a new enlargement methodology proposes to create new opportunities for high level political and policy dialogue with the countries. It includes regular EU-Western Balkans summits and intensified ministerial contacts, especially in areas where alignment is pro-

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

gressing well, and key criteria are being met. For the very first time it is stipulated that accession countries can participate as observers in key European Union meetings on matters of substantial importance for them.<sup>23</sup>

### 3. A more dynamic process

When it comes to the third criteria, a new enlargement methodology suggests making the process more dynamic. To inject further dynamism into the process and to foster cross-fertilization of efforts beyond individual chapters, it is provided that the negotiating chapters will be organized in thematic clusters. These clusters follow broad themes such as good governance, internal market, economic competitiveness, etc.

To this end, a new enlargement methodology provides negotiating chapters to be organized in six thematic clusters. Those clusters are: Fundamentals;<sup>24</sup> Internal Market;<sup>25</sup> Competitiveness and inclusive growth;<sup>26</sup> Green agenda and sustainable connectivity;<sup>27</sup> Resources, agriculture and cohesion;<sup>28</sup> and External relations.<sup>29</sup> Clustering chapters will allow stronger focus on core sectors in the political dialogue and provide an improved framing for higher level political engagement. It will allow the most important and urgent reforms per sector to be identified. This will give overall reform processes more traction on the ground, by better incentivizing sectoral reforms in the interests of citizens and businesses.<sup>30</sup>

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<sup>23</sup> Ibid.

<sup>24</sup> Cluster 1: Fundamentals: 23 – Judiciary and fundamental rights; 24 – Justice, Freedom and Security, Economic criteria, Functioning of democratic institutions, Public administration; 5 – Public procurement; 18 – Statistics; 32 – Financial control.

<sup>25</sup> Cluster 2: Internal market: 1 – Free movement of goods; 2 – Freedom of movement for workers; 3 – Right of establishment and freedom to provide services; 4 – Free movement of capita; 6 – Company law; 7 – Intellectual property law; 8 – Competition policy; 9 – Financial services; 28 – Consumer and health protection.

<sup>26</sup> Cluster 3: Competitiveness and inclusive growth: 10 – Information society and media; 16 – Taxation; 17 – Economic and monetary policy; 19 – Social policy and employment; 20 – Enterprise and industrial policy; 25 – Science and research; 26 – Education and culture; 29 – Customs union.

<sup>27</sup> Cluster 4: Green agenda and sustainable connectivity: 14 – Transport policy; 15 – Energy; 21 – Trans-European networks; 27 – Environment and climate change.

<sup>28</sup> Cluster 5: Resources, agriculture, and cohesion: 11 – Agriculture and rural development; 12 – Food safety, veterinary and phytosanitary policy; 13 – Fisheries; 22 – Regional policy & coordination of structural instruments; 33 – Financial & budgetary provisions.

<sup>29</sup> Cluster 6: External relations: 30 – External relations; 31 – Foreign, security & defense policy.

<sup>30</sup> COM (2020) 57 final.

It is important to note that negotiations on each cluster will be opened as a whole – after fulfilling the opening benchmarks – rather than on an individual chapter basis. As a result of the screening process, carried out per cluster, priorities for accelerated integration and key reforms will be agreed between the EU and the candidate country. “When these priorities have been sufficiently addressed, the cluster (covering all chapters) is opened without further conditions and closing benchmarks are set for each chapter. Where important reforms will already have been implemented before opening, the timeframe between opening the cluster and closing individual chapters should be limited, preferably within a year fully dependent on the progress on the reforms, with the focus on remaining measures needed to ensure full alignment.”<sup>31</sup>

A new enlargement methodology also refers to negotiations with Serbia and Montenegro that have already been opened. To inject more dynamism into the negotiations with these two countries, work on chapters can also be organized around clusters, while respecting the existing negotiating frameworks and with the agreement of these countries. This will allow for more political focus on key sectors and for building political momentum in the countries around key issues for alignment.

#### 4. Predictability

It is important for both Western Balkans countries and EU Member States that the negotiating process be more predictable. Such a process ensures greater clarity on what the Union expects of aspiring countries at different stages of the process, and what the positive and negative consequences are of the process or lack thereof.

In theory, joining the EU is recognized as a process in which external conditioning is a key instrument of integration. In this process, membership to the EU is conditioned by the fulfillment of a large number of conditions, the most important of which is the harmonization of the legal framework with *acquis communautaire*.<sup>32</sup>

Consequently, the core element of the merit-based accession process is its conditionality. Given this, the conditions must be known from the very beginning. It is of great importance that the candidate countries know the benchmarks against which their performance will be measured, on the one hand, and that Member States share a clear understanding of what exactly is requested

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<sup>31</sup> Ibid.

<sup>32</sup> Knezevic/Coric/Visokruna, 234.

from the candidates on the other hand. The Commission will better define the conditions set for candidates to progress and those conditions must be objective, precise, detailed, strict and verifiable.<sup>33</sup>

To meet the fourth criteria, predictability, both positive and negative incentives are envisaged by a new enlargement methodology.

“Providing clear and tangible incentives of direct interest to citizens, the EU can encourage real political will and reward results arising from demanding reforms and the process of political, economic, and societal change. If countries move on reform priorities agreed in the negotiations sufficiently, this should lead to:

- Closer integration of the country with the European Union, work for accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programs, while ensuring a level of playing field.
- Increased funding and investments – including through a performance-based and reform-oriented Instrument for Pre-accession support and closer cooperation with IFIs to leverage support.”<sup>34</sup>

In addition to the instruments of positive incentives, a new enlargement methodology also envisages the whole spectrum of instruments of negative incentives, i.e. different sanctions for any serious or prolonged stagnation or even backsliding in reform implementation. In serious cases, the Commission can make proposals at any time on its own or at the duly motivated request of a Member State in order to ensure a quick response to the situation.

“The EU could address potential problems in several ways:

- Member States could decide that negotiations can be put on hold in certain areas, or in the most serious cases, suspended overall. Already closed chapters could be re-opened or reset if issues need to be reassessed.
- The scope and intensity of EU funding could be adjusted downward, with the exception of support of civil society.
- Benefits of closer integration e.g. access to EU programs, unilateral concessions for market access could be paused or withdrawn.”<sup>35</sup>

A new enlargement methodology emphasizes the importance of transparency of the overall process. Predictability and conditionality will also be enhanced through greater transparency.

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<sup>33</sup> COM (2020) 57 final.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

#### IV. Novelty of the Instruments Provided by a New enlargement methodology

In order to achieve the four criteria provided by a new enlargement methodology, several legal instruments are envisaged. These instruments are a stronger focus on fundamental reforms, high level political and policy dialogue, clustering chapters and positive and negative incentives, i.e. the possibility of closer integration, increased funding and investments and sanctions.

The present part of this paper is an attempt to shed light on the novelty of these instruments. Although the term *new* is constantly used in the document, it turns out that most of them are existing instruments and mechanisms of EU law and are simply applied in a new context.

##### i. Stronger focus on fundamental reforms

One of the issues strongly emphasized by the Commission is the priority of fundamental political reforms such as the rule of law, functioning of democratic institutions, fighting corruptions, etc. According to a new enlargement methodology, negotiations on the fundamentals will be opened first and closed last and progress on these will determine the overall pace of negotiations.<sup>36</sup> While this approach seems to be the right one, especially in the light of recent developments on this front in some Member States, it should be mentioned that the focus on fundamentals in the EU accession negotiations is not an entirely new approach. The importance of a stronger focus on fundamental reforms was repeated in a series of Commission and Councils documents related to the Western Balkans region in recent years.

Furthermore, even the strongest emphasis given to foundations of political and legal systems in accession negotiations will not provide a full protection against potential abuses of the rule of law and authoritarian drifts in individual countries once they become EU members. Besides, incidents of backsliding on fundamental values have happened not only in new EU Member States. “As well as the greater emphasis on fundamental values in accession negotiation, the EU must also strengthen the mechanisms of their enforcement with incumbent members. It may include, for example, a regular Commission’s assessment of Member States’ records in the area of fundamental rights and the rule

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<sup>36</sup> See above [III.1](#).

of law, more active use of infringement procedure in case of failure to implement EU law, strengthening competences of the European Court of Justice, etc.”<sup>37</sup>

## 2. High level political and policy dialogue

To realize a stronger political steer, a new enlargement methodology envisages regular intergovernmental conferences.<sup>38</sup> This high-level political dialogue implies regular EU-Western Balkans summits and intensified ministerial contacts, especially in areas where alignment is progressing well and key criteria are being met. Such increased engagement could lead to the Western Balkans countries participating as observers in the most important EU meetings on matters that are essential for them.

The idea of creating new opportunities for high level political and policy dialogue with the countries is not completely new. Certain aspects of this instrument, such as regular summits and intensified ministerial contacts, have been mentioned before. However the possibility for representatives from the region to participate as observers in the key EU meetings is to be considered as a novelty offered to the Western Balkans countries.<sup>39</sup>

## 3. Clustering chapters

The third criteria of a new enlargement methodology, a more dynamic process, should be met by clustering chapters.<sup>40</sup> It is provided that 35 negotiation chapters should be grouped into six thematic clusters. The European Commission is of the opinion that this will allow a stronger focus on core sectors in the political dialogue and will help identify the most important and urgent reforms per sector.

Although it is difficult to assess the effectiveness of this instrument in advance, it seems that it could help and even speed up the negotiation process under the condition that some secondary issues in less important chapters will not hold the entire negotiation cluster. Another doubt relates to chapters

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<sup>37</sup> Dabrowski Marek, Can the EU overcome its enlargement impasse?, <<https://www.bruegel.org/2020/02/can-the-european-union-overcome-its-enlargement-impasse/>>.

<sup>38</sup> See above [III.2](#).

<sup>39</sup> Ceranic Perisic(2020).

<sup>40</sup> See above [III.3](#).

grouping. One may ask, for example, whether statistics and financial control really belong to Fundamentals or whether putting together agriculture and regional policy in one cluster is a rationale move.<sup>41</sup>

#### 4. Positive and negative incentives

To make the accession process more predictable, a new enlargement methodology envisages the instruments of positive and negative incentives.<sup>42</sup> This fourth part of a new methodology has attracted the most attention from the scientific and professional public. The instrument of closer integration is at the center of their interest.

##### a) *Closer integration*

A possibility for closer integration of the country with the European Union, as one instrument of positive incentives, seems particularly interesting. This instrument is not a completely new one either. Closer integration is just one of the modalities of differentiated integration, a phenomenon that has always existed in European integrations. Numerous manifestations of diversification derive from the Treaties and from secondary law. Special regimes, derogations, exceptions, and safeguard clauses are to be found in the Treaties right from the start of the process of integration.<sup>43</sup>

The Treaty of Amsterdam has turned the exception into a constitutional principle.<sup>44</sup> Namely, the concept of differentiated integration was institutionalized by the Amsterdam Treaty in 1997. The Amsterdam Treaty constitutionalized a notion of enhanced/closer cooperation, by introducing for the first time the formalized possibility for the future development of flexible integration under the Treaties, subject to certain conditions.<sup>45</sup> Since the conditions for the use of enhanced cooperation were very strict, this mechanism was subject to numerous amendments provided by the Nice Treaty and the Lisbon Treaty. According to the Lisbon Treaty: “Member States which wish to establish enhanced cooperation between themselves within the framework of the Union’s non-exclusive competence may make use of its institutions and exercise those

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<sup>41</sup> Dabrowski.

<sup>42</sup> See above, [III.4.](#)

<sup>43</sup> Ceranic Perisic, 13.

<sup>44</sup> Phillipart/Sie Dhian Ho, 330.

<sup>45</sup> Ceranic Perisic, 25.

competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in the Articles 326 to 334 of the Treaty on the Functioning of the European Union.<sup>46</sup>

The history of European integrations testifies that whenever the external borders of the EU have been changed, in terms of increasing the number of Member States and consequently its diversity, the discussion on differentiated integration has been intensified. In this context, differentiated integration, based on the flexibility concept, should be taken as a new principle and a new tool for responding to differences in the enthusiasm and capabilities of the Member States of the EU to take on new tasks of policy integration.<sup>47</sup>

Nowadays, in the context of integrations in the Western Balkans, candidate countries have been offered closer integration with the EU, work for accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes.

Comparison of the mentioned instrument of closer integration with the already known mechanism of enhanced cooperation provided by the Treaties, brings one to the conclusion that the key difference between them lies in the fact that the possibility of closer integration and “phasing-in” to individual EU policies and the EU market is offered without full membership in the EU. This is a real novelty in the EU integration process. Such a possibility has not been offered to any country in the accession process so far.

However, when it comes to the EU Single Market, the question is whether it is possible to participate in it without being an EU Member State. If one looks at the modalities of participation in the EU Single Market, one can find that different modalities of participation in the EU Internal Market without full EU membership already exist.

At this point one can recall the case of Switzerland. Regardless of the different positions of the Western Balkans and Switzerland, in terms of legal positioning regarding the EU *acquis* the Swiss participation within the EU Internal Market could be qualified as a type of closer integration or as an integration at its own speed.<sup>48</sup> In its relationship to the European Union, Switzerland follows the so-called *bilateral approach*. Instead of a comprehensive integration, specific areas of mutual concern are regulated through a framework of traditional international treaties and for a very limited purpose only.<sup>49</sup>

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<sup>46</sup> Art. 20 TEU.

<sup>47</sup> Wallace, 173.

<sup>48</sup> Kellerhals, 147.

<sup>49</sup> Kellerhals/Baumgartner, 272.

Although the privileged position of Switzerland in the EU Internal Market cannot be compared with the possibility offered to the Western Balkans countries, the case of Switzerland is mentioned more illustratively, in the light of examining the modalities of participation in the EU Internal Market.

Since different modalities of participation in the EU Internal Market have already existed, the instrument of closer cooperation offered by a new enlargement methodology is not challenging because of its novelty, but because of its feasibility. The possibility of “phasing-in” to individual EU policies, the EU market and EU programmes for the Western Balkans countries has opened up a few practical questions. How will closer integration of the country with EU, i.e. “phasing-in” to individual EU policies, the EU market and EU programmes, operate in the practice, especially when it comes to the decision-making process. Does it mean that the candidate country will be allowed to participate in the decision-making process in certain EU policies and to vote in the Council and in the European Parliament? Or does it mean that the representatives of that country will participate only as observers in the above-mentioned EU meetings? Does one of the dilemmas also concerns the sustainability of closer integration in individual EU policies, the EU market and EU programmes over time? Is it feasible that the candidate country participate partially in certain EU policies or only in some aspects of the EU Internal Market? And for how long? A new methodology does not provide an answer to any of these questions.

*b) Finding a right balance between positive and negative incentives*

Regarding the EU policy of external conditionality and positive and negative incentives for candidate countries, there are opinions that the EU is continuing with the already used and tested strategy of *the carrot and the stick*. Some believe that the EU did increase the *carrot*, but that in turn it also extended the *stick*.

As for the *carrot*, there is a prospect of closer integration and “phasing-in” to individual EU policies, the EU market and EU programmes and increasing funding and investment. Nevertheless, it seems that by anticipating these instruments of positive incentives the Pandora’s box has been opened. “The devil is in details: how ‘phasing-in’ will operate in practice, the question is whether it will go beyond integration provisions of the SAA, and whether the new Multiannual Financial Framework can allocate more funds for pre-accession aid.”<sup>50</sup>

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<sup>50</sup> Dabrowski.

In terms of *sticks*, namely negative incentives, it is quite clear that sanctions have been tightened. Negative incentives include putting negotiations in certain areas on hold, suspending the entire negotiation, reopening the already closed chapters, reducing the EU funding, withdrawing benefits of closer integration, etc.<sup>51</sup>

“In practice, however, the critical issue is finding the right balance between positive and negative incentives. Historically, it seems that this balance has been moved towards negative incentives, undercutting the hope of candidate countries that have a real chance of joining the EU in the foreseeable future.”<sup>52</sup>

## V. Concluding remarks

In the light of the political, legal and economic challenges that the European Union has been facing for more than a decade, the adoption of a new enlargement methodology might be seen as a positive step. Taking into consideration a certain *enlargement fatigue* and a stagnation in the accession integrations, a new enlargement methodology with its instruments can contribute to reinvigorating the accession process.

It is clear that the instruments envisaged by a new enlargement methodology are not new. Most of them are already existing mechanisms and instruments of EU law in a *new guise*. However, it does not mean that they cannot contribute to overcoming the stalemate in the EU enlargement process. If properly applied in practice, these instruments can contribute to speeding up the accession process.

The current COVID-19 pandemic is expected to have a sizeable impact on the EU's economy, pushing enlargement down again in the list of EU priorities. Although the accession process might be delayed for the Western Balkans countries, such a new approach aims to provide solid and clear mutual commitment to credibility by both Western Balkans governments as well as the European Union. “Thus, this reshuffle is to be observed as an opportunity for both the EU and the Western Balkans to put democratic principles first, as well as to encourage Western Balkans civil society to demand further accountability of their institutions into practice.”<sup>53</sup>

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<sup>51</sup> See above, [III.4](#).

<sup>52</sup> Dabrowski.

<sup>53</sup> Lutjona.

Finally, in times of increasing global challenges and divisions, the prospect for integration in the Western Balkans might be considered as a geostrategic investment in a stable, strong and united Europe.

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