

# Hamster in the Wheel

## Credibility and EU Balkan policy



### ESI Report

15 January 2020

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## Executive Summary

Balkan enlargement was in crisis even before EU leaders failed to agree in 2019 on opening accession talks with North Macedonia and Albania. Unless there is a change in methodology and pace, no Western Balkan country is likely to be a member of the EU by 2030.

On the issue of North Macedonia and Albania the European Union remains divided. There are three groups of countries: The Netherlands is for opening accession talks only with North Macedonia. France is opposed to separate North Macedonia and Albania and argues that it is better not to start talks with either. Italy insists that talks must start with both. The result of this division is a stalemate. If Paris, Rome and The Hague could find a joint common position, the rest of the EU might rally around it.

How might this be achieved? The French position is that the accession process itself needs to change. This paper agrees: without changes in the way talks are organised Macedonian and Albanian reformers will soon feel like hamsters in a wheel, realising that, regardless of how much effort they make, they are not getting closer to joining the EU even by 2030. To understand why, look at what happened to Montenegro. In eight years, Montenegro managed to close only three chapters. Two of these were opened and closed on the same day. Did the government in Podgorica stop working? Did the EU decide, politically, that it simply does not want to close any chapters?

According to the Commission's assessments, between 2015 and 2019 Montenegro made no progress in 23 chapters; advanced (slightly) in nine; and was backsliding in one. At this moment Montenegro is "well advanced" – the best grade – in zero chapters. The focus on opening chapters has misled political attention. It is no indicator of progress. Credible scorecards are. Today the EU needs to square the North Macedonia/Albania circle. But it must also reform the process, make it truly merit based and offer a credible interim goal that inspires real change. This is possible through a reform that builds on the current system but makes four crucial changes.

1. **A two-stage process:** The **goal of talks** remains full accession, while the **intermediate goal** is to offer Single Market entry. In a paper circulated in late 2019 France suggested different stages. This idea can be simplified: there are *two* stages. The first stage is joining the Single Market in the way Finland, Sweden and Austria did in 1994. Joining the Single Market by 2025 would be a realistic goal for Balkan frontrunners. Joining the Single Market by 2030 should be a realistic goal for all Western Balkan countries. This should only depend on them. They would then enjoy the four freedoms – the free movement of goods, capital, services, and labour – that Norway and Iceland enjoy today.
2. **Opening and closing all chapters together:** Instead of opening and closing chapters one by one, they could all be opened at the beginning and closed all at once. The key measure of progress is not a formal one, but substantive changes measured in progress reports.
3. **The rule of law becomes truly central:** All democracy, rule of law and human rights conditions must be fully met before any country can join the Single Market. *Rule of law conditions would be as demanding for joining the Single Market as for full membership, and monitoring of these even stricter.*
4. **Reversibility:** If any country seriously violates basic human rights or undermines the independence of the judiciary it should be possible to suspend the accession process with a simple majority of members voting. Suspension should have real effects, including freezing pre-accession funding. And it should also be possible to restart talks with a simple majority.

Carrying out the reforms needed to join the Single Market and to join the EU has been phenomenally beneficial for peripheral economies. Catching up is possible. North Macedonia today is at the level of development where Lithuania was in 1999. Serbia today is where Estonia was in 1999. Bosnia 2018 is the Romania of 1999. Countries can change. Enlargement policy can have a major impact. For this is must be credible, merit based and serious. It has happened before. It can happen again.

## Never-ending accession

In 2010 some European thinkers were asked about the shape of the European Union in 2030.

One predicted that the former Yugoslav republics of Croatia, Serbia, Bosnia and Herzegovina, and Montenegro, as well as Albania, would all join the European Union between 2011 and 2020. Another wrote that by 2030 “the EU will include all of the Balkans, Switzerland, Iceland and Norway; Turkey, Ukraine, Moldova, and Belarus probably will be members.” A third, former German foreign minister Joschka Fischer, diagnosed a deep European malaise: the “Franco-German engine ... appears blocked, at least for the moment.” National positions across the EU are “simply too different.”<sup>1</sup> Fischer predicted that therefore any “expansion of the EU to include the Balkan states by 2030 ... should also be ruled out.” Fischer is a friend of enlargement. In the same article he praised the effects of past enlargement policy, which brought about a “successful rejuvenation of a country’s economy, society, government, and legal system.” His conclusion was that the EU had a powerful tool available to transform societies, but because of disagreements would not be able to employ it.

Since then one decade has passed. We now know what *actually* happened since 2010:

The last country to join the EU, Croatia, applied for accession in 2003. It became an official candidate one year later (2004), started accession talks another year later (2005), concluded accession talks six years later (2011). Croatia joined the EU *one decade after it had applied* (2013).

North Macedonia applied for accession in 2004. It became an official candidate within one year (2005). In the *fourteen years* since then it has not been allowed to start accession talks.

Montenegro applied for accession in 2008. It started talks *four years* later (June 2012). It has now been negotiating for almost eight years, already longer than Croatia. Of 35 negotiation chapters only 3 have been provisionally closed. At a summit in Sofia in May 2018, *ten years* after Montenegro’s membership application, EU member states refused to support a European Commission target for the country to “potentially be ready for membership in a 2025 perspective.”<sup>2</sup> Montenegro is the front-runner in the Western Balkans today.

Serbia applied for accession in 2009. It started talks *five years* later (2014). It has, so far, provisionally closed 2 chapters.

Albania applied for accession in 2009, even before Serbia. One decade later it has *not yet* started accession talks.

Bosnia applied for accession in 2016. It has not advanced since.

Kosovo has been told that it *cannot apply* for EU accession, as its independence is not recognised by all EU member states.

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<sup>1</sup> All quotes: Daniel Benjamin (ed), *Europe 2030*, Brookings, 2010. The first was Jose Cutileiro, the second Charles Grant.

<sup>2</sup> European Commission, [A credible enlargement perspective for and enhanced EU engagement with the Western Balkans](#), 6 February 2018; Council of the EU, [Sofia declaration of the EU-Western Balkans summit](#), 17 May 2018..

Joschka Fischer was right. Balkan enlargement was in crisis even before EU leaders failed to agree in October 2019 on opening accession talks with North Macedonia and Albania. Unless there is a serious change in pace, no Western Balkan country will be a member by 2030.

This is a familiar scenario. Another South East European country has been in the middle of a never-ending accession process even longer. Turkey applied for EU membership in 1987. It started accession talks *18 years later* (2005). It has been negotiating *for 15 years* since. It managed to close 1 chapter. Nobody believes today that these talks will lead to accession by 2030. And while the process was highly transformative early on, leading to many positive reforms in Turkey between 2001 and 2010, it stopped to be a motor for reforms a decade ago.

### What now for Albania?

Since April 2018, when the European Commission recommended opening accession talks with both North Macedonia and Albania, the European Union has been divided.<sup>3</sup> In a nutshell, there are three groups of countries with different positions on what to do.

1. The Netherlands is for opening accession talks only with North Macedonia. This is the position of its parliament, which is very influential when it comes to enlargement policy; and of its government.

In June 2019, 105 out of 150 members of the Dutch parliament voted against starting talks with Albania.<sup>4</sup> The Dutch prime minister, Mark Rutte, told Pobjeda, a Montenegrin daily, on 10 December 2019 that:

“We do not believe that Albania is ready to start talks with the EU now... Some others do not want it (to decouple North Macedonia and Albania), which is why at the last meeting of the European Council, we decided not to progress on the question of opening negotiations with these countries.”<sup>5</sup>

2. France and other countries do not agree to separate (“decouple”) North Macedonia and Albania and argue that it is therefore better not to start talks with either.

Emmanuel Macron said at a press conference on 18 October 2019 following the European Council:

“I think that opening enlargement talks with North Macedonia and keeping Albania away would have been a fatal political mistake in the region! And this is the only consensus that could emerge. I think this would be a fatal political mistake! You would have unprecedented violent political and social movements, not only in Albania, but also in all the countries with Albanian-speaking minorities.”<sup>6</sup>

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<sup>3</sup> EEAS, [The former Yugoslav Republic of Macedonia and Albania: Commission recommends opening accession negotiations](#), 17 April 2018; Council of the EU, [Council conclusions on enlargement and stabilisation and association process](#), 26 June 2018; EEAS, [2019 Enlargement Package: “North Macedonia and Albania have delivered on reforms”](#), 29 May 2019; Council of the EU, [Presidency conclusions on enlargement and stabilisation and association process](#), 15 October 2019.

<sup>4</sup> European Western Balkans, [“The Netherlands opposes starting EU negotiations with Albania”](#), 13 June 2019.

<sup>5</sup> Pobjeda, [“Da bi otpočele pregovore države moraju biti spremne kao Crna Gora”](#), 10 December 2019.

<sup>6</sup> The Elysee, [“Conférence de presse à l’issue du Conseil européen des 17 et 18 octobre 2019”](#), 18 October 2019.

Macron repeated this position in an interview published by The Economist on 7 November 2019:

“I should add that most of them were in favour of opening up to North Macedonia, but nearly half of them were against opening up to Albania. Fatal error. Ask them tomorrow whether they want to open the door to Albania. Half of them will say no. They want to open up to North Macedonia, it’s small, it has changed its name and that’s a real historic achievement. It doesn’t frighten anyone.”<sup>7</sup>

And most recently, on 4 December 2019, following the NATO summit in London:

“I reject to separate Albania and Northern Macedonia, it is a matter of balance in the region, it is bad to separate, it would be a deadly decision if we opened talks with Northern Macedonia, but not Albania.”<sup>8</sup>

3. Italy and other countries insist that talks must start with both countries at the same time and as soon as possible.

During his visit to Tirana where he met the Albanian prime minister Edi Rama in December 2019, Italian foreign minister Luigi di Maio explained:

“I emphasized to the Prime Minister Italy’s support for the European journey of Albania and North Macedonia. Italy insists on the need for a positive decision for both countries, for a date for the convening of the first intergovernmental conference and also for a mandate for the Commission to prepare the framework for negotiations.”<sup>9</sup>

The likely result of this division is a continuing stalemate. However, if Paris, Rome and The Hague could find a joint common position, the rest of the EU might rally around it.

How can this be achieved? The French position is that the accession process itself needs to change profoundly, to move towards a “new paradigm.”<sup>10</sup> In the interview with The Economist, Macron repeated what he had said many times before: “We have a problem. We can’t make it work with 27 of us ... Do you think it will work better if there are 30 or 32 of us?”<sup>11</sup> He warned that the enlargement process was in urgent need of reform:

“We need to reform our membership procedures, they’re no longer fit for purpose. They’re not strategic. They’re not political, too bureaucratic and not reversible ... If we achieve this reform in the coming months, I’d be ready to open negotiations.”<sup>12</sup>

On 7 January 2020, before meeting Croatian prime minister Andrej Plenkovic, Emanuel Macron explained that he hoped agreement on such a shift could be found before the Zagreb Balkan summit in May 2020.<sup>13</sup> *How* this can be done remains to be seen.

<sup>7</sup> The Economist, [“Emmanuel Macron in his own words \(English\)”](#), 7 November 2019.

<sup>8</sup> MIA, [“Makron: Nema pocetok na pregovori bez prethodna reforma na procedurata”](#), 4 December 2019.

<sup>9</sup> Oculus News, [“Italian Minister Luigi di Maio confirms Italy’s support for integration and reconstruction after the earthquake”](#), 12 December 2019.

<sup>10</sup> The Elysee, [“Declaration of president Emmanuel Macron with Andrej Plenković, prime minister of the Republic of Croatia”](#), 7 January 2020. For a more substantial analysis see: ESI, [Coup de grâce – Delors and squaring the circle – Norway in the Balkans](#), 25 October 2019.

<sup>11</sup> The Economist, [“Emmanuel Macron in his own words \(English\)”](#), 7 November 2019.

<sup>12</sup> Ibid.

<sup>13</sup> The Elysee, *ibid.*

## Montenegro and the writing on the wall

A good starting point is to admit that there was an urgent need for such a paradigm shift even before the recent debate over Albania and North Macedonia. Long before October 2019 the accession process was in desperate need of reform. Imagine for a moment that France, Italy and the Netherlands would all agree on the opening of talks, either with one or with both countries, and without any change in the way accession talks are taking place. What would happen? The reasonable prediction would be: very little.

Before long North Macedonia and Albania, which have carried out many reforms in recent years, would likely lose momentum. Reformers would soon feel like hamsters in a wheel, realising that regardless of how much effort they make, they would still not be getting any closer to joining the EU, even by 2030. To understand why this is likely, look at what happened to Montenegro, the front-runner in the Western Balkans since it started its accession talks in June 2012.

The subjects discussed during accession talks are divided in 33 headings, so-called **chapters**.<sup>14</sup> During the past eight years Montenegro has “opened talks” on all chapters except one.<sup>15</sup> There is a formal procedure where all EU governments must agree unanimously to **open each chapter**. But what does this mean? It does not lead to any additional funding. There is no different reporting on results. There are no additional meetings on the subject.

Many in the EU believe that opening a chapter is a carrot. But after years of opening chapters with Montenegro it seems clear that this exercise is of limited use. Sometimes, EU governments expect the country to do something specific *before* a chapter is opened. One example: before opening the chapter on agriculture and rural development in December 2016, the Council asked Montenegro to present “a comprehensive national strategy on agriculture and rural development, including an action plan.”<sup>16</sup> This should:

“serve as a basis for the transposition, implementation and enforcement of the *acquis*. The action plan will, among other issues, include the development of a land parcel identification system and a unique identification system for farmers to prepare for the management and controls of agricultural payments.”<sup>17</sup>

The only important thing that happens when a chapter is opened is that EU member states set new conditions, **closing benchmarks**, to be met before this chapter may be closed. For example, in the area of food safety, veterinary and phytosanitary policy it is expected that Montenegro “guarantees the establishment of an EU-compliant system for official controls of live animals and animal products.”<sup>18</sup> And that it:

“– submits to the Commission an approved national programme for the upgrading of establishments for products of animal origin, including establishments for animal by-

<sup>14</sup> There are 35 chapters but two chapters are not negotiated: chapter 34 on “institutions” that “covers the institutional and procedural rules of the EU” and chapter 35 on “other issues” which “includes miscellaneous issues which come up during the negotiations but which are not covered under any other negotiating chapter.” See European Commission, [Chapters of the acquis](#).  
Council of the EU, [Montenegro](#), accessed January 2020.

<sup>15</sup> Ministry of European Affairs of Montenegro, [EU Accession Negotiations: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia](#), January 2018.

<sup>17</sup> Ibid.

<sup>18</sup> Ministry of European Affairs of Montenegro, [EU Accession Negotiations: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia](#), January 2018.

products. As regards the milk sector, the national programme should also include a strategy for the use of non-compliant raw milk.

– continues to set up and develop, in accordance with the *acquis*, the relevant administrative structures, in particular as regards food safety controls, and to further increase its administrative capacities and infrastructures. Montenegro demonstrates that it will have sufficient administrative capacity to correctly implement and apply all the *acquis* covered by this chapter upon accession.”<sup>19</sup>

This is curious. *Of course, a new member needs to have an EU-compliant system of controlling animal products if its products are to be sold without any controls through the whole EU. But as this is known before accession talks even start, what is the added value of such opening benchmarks?*<sup>20</sup>

Note that in eight years Montenegro managed to close three chapters. The two chapters which were closed first are peculiar. In two, “science and research” and “education and culture”, Montenegro was *not* expected to do anything: these were opened and closed on the same day! The same happened to Serbia, with these same two chapters. Serbia has not been able to close any other chapter in these past five years, though.<sup>21</sup> Montenegro did close a third one on “external relations.” For this it was required to present:

“an action plan for its remaining preparations in terms of legislative alignment, bringing international agreements into conformity with the *acquis* and enhancement of administrative and control capacity to ensure full application and enforcement of the *acquis* in this chapter from the day of accession.”<sup>22</sup>

So why are no chapters being closed? Did the government in Podgorica stop working? Did the EU decide, politically, that it simply does not want to close any chapters? Recently things got stuck completely. In 2019 Montenegro has not opened or closed any chapters.

Was opening all these chapters a meaningful achievement? Is life better for Montenegrin citizens as a result? To answer this, let us look at the substance of reforms. Since 2015 the European Commission has improved its reporting and assessments; annual progress reports used to be impossible to understand, with many sections cut and pasted from previous reports, frustrating anyone trying to understand what was going on.<sup>23</sup> This has changed, making comparison of progress across time and between countries possible. However, these comparisons show a stark truth: on substance, little has happened in recent years in candidate countries.

According to the Commission’s assessments, between 2015 and 2019 Montenegro made no progress in 23 chapters; advanced (slightly) in nine; and was backsliding in one (intellectual property). At this moment Montenegro is “well advanced” – the best grade – in zero chapters and has a “good level of preparation” in seven.

<sup>19</sup> Ministry of European Affairs of Montenegro, [EU Accession Negotiations: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia](#), January 2018.

<sup>20</sup> For more on this see: ESI, [The Chapter Illusion. For Honesty and clarity in EU-Turkey relations](#), 15 May 2017.

<sup>21</sup> Ministry of European Affairs of Montenegro, [EU Accession Negotiations: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia](#), January 2018.

<sup>22</sup> Ibid.

<sup>23</sup> ESI, [A reporting revolution? Towards a new generation of progress reports](#), 9 November 2015.

Let us translate this into numbers by allocating 1 as the best grade, for being “well advanced”, and 5 as the worst grade, for “early stage”. Since there are 33 chapters, the best collective score would be 33, and the worst 165. In November 2015 Montenegro’s collective score was 105. In May 2019 it was 98. It improved by 7 points in 3.5 years, which is on average by 2 points a year. It needs to advance by another 65 to reach 33. Will this take 30 years?

*European Commission assessment of Montenegro – 2015 vs. 2019<sup>24</sup>*

Well advanced (1)  
 Good level of preparation (2)  
 Moderately prepared (3)  
 Some level of preparation (4)  
 Early stage (5)

	<b>Chapter</b>	<b>2015</b>	<b>2019</b>	
<b>1</b>	Free movement of goods	3	3	0
<b>2</b>	Freedom of movement for workers	5	4	-1
<b>3</b>	Establishment and service provision	3	3	0
<b>4</b>	Free movement of capital	3	3	0
<b>5</b>	Public procurement	3	3	0
<b>6</b>	Company law	3	2	-1
<b>7</b>	Intellectual property law	1	2	+1
<b>8</b>	Competition policy	3	3	0
<b>9</b>	Financial services	3	3	0
<b>10</b>	Information society and media	3	3	0
<b>11</b>	Agriculture and rural development	4	3	-1
<b>12</b>	Food safety, veterinary, phytosanitary	4	3	-1
<b>13</b>	Fisheries	5	4.5	-0.5
<b>14</b>	Transport policy	3	2.5	-0.5
<b>15</b>	Energy	3	2	-1
<b>16</b>	Taxation	3	3	0
<b>17</b>	Economic and monetary policy	3	3	0
<b>18</b>	Statistics	4	3	-1
<b>19</b>	Social Policy and employment	4	4	0
<b>20</b>	Enterprise and industrial policy	3	3	0
<b>21</b>	Trans-European networks	3	3	0
<b>22</b>	Regional policy, structural instruments	3	3	0
<b>23</b>	Judiciary and fundamental rights	3	3	0
<b>24</b>	Justice, freedom and security	3	3	0
<b>25</b>	Science and research	2	2	0
<b>26</b>	Education and culture	2	2	0
<b>27</b>	Environment and climate change	5	4	-1
<b>28</b>	Consumer and health protection	3	3	0
<b>29</b>	Customs union	3	3	0
<b>30</b>	External relations	2	2	0
<b>31</b>	Foreign, security and defence policy	2	2	0
<b>32</b>	Financial control	3	3	0
<b>33</b>	Financial and budgetary provisions	5	5	0
	<b>Total</b>	<b>105</b>	<b>98</b>	<b>-7</b>

<sup>24</sup> European Commission, [Montenegro 2015 Report](#), 10 November 2015; [Montenegro 2019 Report](#), 29 May 2019.



What is also striking is that Montenegro stands today roughly at the same level of alignment as North Macedonia, across 33 chapters. North Macedonia has not started accession talks. It has not opened or closed any chapter or received any benchmarks.

*European Commission assessment of Montenegro and North Macedonia (May 2019)*<sup>25</sup>

	<b>Chapter</b>	<b>Montenegro</b>	<b>North Macedonia</b>
1	Free movement of goods	3	3
2	Freedom of movement for workers	4	5
3	Establishment and service provision	3	3
4	Free movement of capital	3	3
5	Public procurement	3	3
6	Company law	2	2
7	Intellectual property law	2	3
8	Competition policy	3	3
9	Financial services	3	3
10	Information society and media	3	3
11	Agriculture and rural development	3	3
12	Food safety, veterinary, phytosanitary	3	2
13	Fisheries	4.5	3
14	Transport policy	2.5	3
15	Energy	2	3
16	Taxation	3	3
17	Economic and monetary policy	3	3
18	Statistics	3	3
19	Social Policy and employment	4	3
20	Enterprise and industrial policy	3	3
21	Trans-European networks	3	2
22	Regional policy, structural instruments	3	3
23	Judiciary and fundamental rights	3	3.5
24	Justice, freedom and security	3	3
25	Science and research	2	2
26	Education and culture	2	3
27	Environment and climate change	4	4
28	Consumer and health protection	3	3
29	Customs union	3	2
30	External relations	2	3
31	Foreign, security and defence policy	2	3
32	Financial control	3	3
33	Financial and budgetary provisions	5	5
	<b>Total</b>	<b>98</b>	<b>99.5</b>

Things are no different for Serbia. Between 2015 and 2019 Serbia has remained at the same level of alignment in 27 chapters, became more prepared in five and was backsliding in one (competition). It advanced by 4.5 points in 3.5 years. At this speed it will reach alignment many decades from now.

<sup>25</sup> European Commission, [Montenegro 2019 Report](#), [North Macedonia 2019 Report](#), 29 May 2019.

European Commission assessment of Serbia – 2015 vs. 2019<sup>26</sup>

Well advanced (1)  
 Good level of preparation (2)  
 Moderately prepared (3)  
 Some level of preparation (4)  
 Early stage (5)

	Chapter	2015	2019	
1	Free movement of goods	3	3	0
2	Freedom of movement for workers	3	3	0
3	Establishment and service provision	3	3	0
4	Free movement of capital	3	3	0
5	Public procurement	3	3	0
6	Company law	2	2	0
7	Intellectual property law	2	2	0
8	Competition policy	3	3.5	+0.5
9	Financial services	3	3	0
10	Information society and media	3	3	0
11	Agriculture and rural development	5	4	-1
12	Food safety, veterinary, phytosanitary	3	3	0
13	Fisheries	3	3	0
14	Transport policy	3	2	-1
15	Energy	3	3	0
16	Taxation	3	3	0
17	Economic and monetary policy	3	3	0
18	Statistics	3	3	0
19	Social Policy and employment	3	3	0
20	Enterprise and industrial policy	3	3	0
21	Trans-European networks	3	3	0
22	Regional policy, structural instruments	3	3	0
23	Judiciary and fundamental rights	4	4	0
24	Justice, freedom and security	4	4	0
25	Science and research	2	2	0
26	Education and culture	2	2	0
27	Environment and climate change	5	4	-1
28	Consumer and health protection	3	3	0
29	Customs union	3	2	-1
30	External relations	3	3	0
31	Foreign, security and defence policy	3	3	0
32	Financial control	3	3	0
33	Financial and budgetary provisions	5	4	-1
	<b>Total</b>	<b>103</b>	<b>98.5</b>	<b>-4.5</b>

One thing is obvious: the focus on opening chapters is misleading. It is no indicator of progress at all. Credible scorecards are. What matters to citizens is not whether Montenegro is told officially, at a ceremonial hand-over of benchmarks, that its food safety standards, air and water quality or its system of spending public money *should* meet EU standards; that is, obviously, the point of the whole accession exercise. What matters to citizens is whether this happens. If it does not, *what is the point?*

<sup>26</sup> European Commission, [Serbia 2015 Report](#), 10 November 2015; [Serbia 2019 Report](#), 29 May 2019.

*It is easy to explain, in terms any citizen understands, what it means to be “well advanced”:* it is about laws, institutions and practices. Let us look at the area of public procurement to illustrate this. This is about how governments spend public money, and whether they do so in a way that is fair to citizens and businesses from across the EU. When people worry about large-scale corruption, they mostly worry about a weak procurement system.

Montenegro opened this chapter in December 2013. At the time the Council of the EU published a list of expectations. These fall into three categories:

#### *Laws*

The Council expected in 2013 that Montenegro “*aligns its national legislative framework covering all areas of public procurement.*”<sup>27</sup> So how far has it come?

Six years later, in the May 2019 Commission report on Montenegro, we learn that “*preparations continued for new laws on concessions and public procurement, aimed at alignment with the 2014 EU Procurement Directives.*”<sup>28</sup> The report asked Montenegro to “adopt and implement the laws on public-private partnership and public procurement”, and to regulate “procurement in the area of defence and security.” Which raises questions: how many more laws does Montenegro need to adopt and change, before the chapter can be closed? How many has it already adopted? How close is it to the finishing line? What is missing?

#### *Institutions*

The Council expected in 2013 that Montenegro “puts in place adequate administrative and institutional capacity at all levels.”<sup>29</sup> What happened since?

The May 2019 report notes that “institutional changes concerning public procurement administration, introduced at the end of 2018, *may have an impact* on the country’s implementation and enforcement capacity.”<sup>30</sup> What does this mean? How many institutions are still in need of reform? What kind of reform? It is very hard to tell.

#### *Track record*

The Council expected in 2013 that “Montenegro demonstrates a track record of a fair and transparent public procurement system, which provides value for money, competition, and strong safeguards against corruption.”<sup>31</sup> How and when will this track record be assessed? In May 2019 the European Commission concluded that Montenegro’s level of preparedness in public procurement was “moderate.”<sup>32</sup> This assessment has not changed since 2015.

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<sup>27</sup> Council of the EU, [Third meeting of the Accession Conference with Montenegro at Ministerial level – key rule of law chapters opened among others](#), 18 December 2013.

<sup>28</sup> European Commission, [Montenegro 2019 Report](#), 29 May 2019.

<sup>29</sup> Council of the EU, [Third meeting of the Accession Conference with Montenegro at Ministerial level – key rule of law chapters opened among others](#), 18 December 2013.

<sup>30</sup> European Commission, [Montenegro 2019 Report](#), 29 May 2019.

<sup>31</sup> Council of the EU, [Third meeting of the Accession Conference with Montenegro at Ministerial level – key rule of law chapters opened among others](#), 18 December 2013.

<sup>32</sup> European Commission, [Montenegro 2019 Report](#), 29 May 2019.

Sceptical parliamentarians across the EU, wondering if enlargement is good for *their* citizens, in Germany and France, the Netherlands and Finland, might ask whether reforms are actually happening. Will products certified by public agencies in the potential new member state, be sound? Will judgements issued by its national courts, automatically recognised across the EU, be trustworthy? To share sovereignty with a new member means to give power to its agencies and courts. This affects everyone else in the Union.

### **In praise of checklists**

Let us step back for a moment and ask: What is the point of the whole accession process? It is to change countries. It is to improve the quality of air, of road safety and of toxic waste dumps. It is to verify whether a prospective new member has adopted applicable EU laws and rules, has the institutions to implement them, and has the will and ability to do so (a track record). It is to build trust.

It is clear what this requires: meeting publicly known criteria and showing a track record that is assessed in a transparent manner. There are no secrets here, as the criteria to be met are the same for all EU candidates.

What is needed, instead of political theatre (“chapter openings”), is meaningful checklists. In his book *The Checklist Manifesto* the surgeon Atul Gawande describes how checklists are indispensable for any complex activity, from building skyscrapers to operations in a hospital emergency room. Without checklists airplanes would crash more often and more people would die in intensive care. The challenge is not to avoid checklists, but to have good ones.<sup>33</sup>

This is also the challenge for the European Commission, which wants to help countries that need to do thousands of things to become EU member states. It requires chapter check list to set out the following:

- laws and rules (EU regulations and directives) that need to be transposed and implemented, broken down by area.
- lists of institutions that are necessary to implement and to enforce EU rules, to be assessed. This includes both the public administration and the judiciary, since rules which cannot be enforced in national courts are useless. National courts are central to EU accession because they become EU courts – required to defend EU rules – on the day of membership.

There is also a need for a credible methodology to assess track records of implementation; and time for this. Think of it like a probation period.

It is experts in the European Commission who need to draw up these lists. It is the Commission that should ensure that there is communication to publics about what needs to be done and why it matters. Of course, the governments of applicants should do this as well, but if the EU has an interest in the Western Balkans changing it will be proactive. Listing the requirements, defining the tasks, assessing alignment gives the EU leverage. It is an exercise of EU power and promotes European values and interests.

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<sup>33</sup> Atul Gawande, *The Checklist Manifesto. How to Get Things Right*, Picador, 2009.

The problem with the current process of accession is that it is hard to explain, both to publics in the Balkans and to sceptical EU politicians. This raises distrust and suspicions. EU accession is a complex process. It affects every aspect in the lives of citizens. That is why it must be transparent: thousands of concerned individuals – politicians, administrators, judges, companies, citizens – should understand what is happening and what is needed.

This requires quality roadmaps and quality checklists for each chapter; combined with regular convincing public assessments and feedback from the Commission. Feedback that is taken seriously and seen as useful can be a powerful motivator for civil servants. Assessments – positive or negative – that are noticed by publics can be useful for politicians. And most importantly, check lists focus efforts, in accession as in hospitals or on building sites.

### **Paradigm shift**

The EU needs to square the North Macedonia/Albania circle. But it must also reform the accession process, make it truly merit based and restore a credible interim goal that inspires real change, while reducing the sense in EU members that further enlargement is risky. This is possible through a reform that builds on the current system, but makes four crucial changes:

#### **1. A two-stage process**

The **goal of talks** remains full accession, while the **intermediate goal** is to offer Single Market entry. In a paper circulated in late 2019 France suggested seven different stages. This idea can be simplified: there might be *two* stages. The first stage is joining the Single Market and implementing all policy reforms needed for membership of the European Economic Area, such as public procurement, consumer protection and environment protection (see annex 3). Chapters to be closed in the next years are those that lead to the Single Market.

#### **2. Opening and closing all chapters together**

Instead of opening and closing chapters one by one, they could all be opened at the beginning and closed all at once at the end, after all conditions have been met; there is no point in closing a chapter in 2020 if accession to the Single Market or to the EU takes place many years later; in the meantime the *acquis* and conditions will change.

#### **3. The rule of law becomes even more central**

All democracy, rule of law and human rights conditions must be fully met before any country can join the Single Market. At this moment, accession to the EU is beyond the political horizon of Balkan countries, so they may feel little pressure from their publics to carry out perhaps inconvenient rule of law reforms. With a two-stage process there would be a meaningful goal within reach. *But rule of law conditions would be as demanding for joining the Single Market as for full membership, and monitoring of these even stricter (see below).* In this way the EU regains leverage in the next years.

#### **4. Reversibility**

If any country seriously violates basic human rights or undermines the independence of the judiciary (as happened in Turkey in recent years) it should be possible to suspend the accession process more easily, with just a simple majority of members voting.

Suspension should have real effects such as freezing pre-accession funding. And it should also be possible to restart it with a simple majority so that there is less reluctance to suspend it.

The EU has no interest in slowing down reforms in the Western Balkans, but in assessing, after reforms have been done, how sustainable they are.

Such a reform would also end the political drama surrounding Balkan enlargement in the news cycle in the next few years: there would be no need for more summit disagreements, no cliff-hanger debates on whether to open this chapter or allow that country to move ahead; dramas which create the (misleading) impression in the public that a large number of countries are about to become full members.

What else is in it for the EU? Politicians in EU member states need to be able to answer two questions: First, does the accession of new members make the EU stronger? Is it good for current members? (*Because, if not, why do it?*) Second, does enlargement to the Western Balkans pose risks? Is it possible that the new members will import new problems, make it harder to reach agreements, undermine an already fraying EU consensus on basic rule of law standards? (*Because, if yes, why do it?*) A third question sometimes put – might the region fall back into instability without countries being accepted as members? – answers itself: if Western Balkan countries are so fragile that *not* joining might lead to a security crisis, they are far from being ready to be members. EU membership is too demanding to be a safety net for failing states.

The prospect of new members joining will make the EU stronger if it increases the leverage of current members in a region that matters to them; if it helps this region catch up; if it allows the EU to set standards. The best way to contain risks is to demand evidence that potential members are able and willing to meet obligations and play a constructive role. The way to convince EU sceptics is to see future members do this before they join.

### **Rule of law and vital signs**

The Commission might also consider changing how it measures and communicates about the central issue of the state of the rule of law in accession countries. What matters here is not whether courts are independent on paper but whether they are independent in reality when put under stress. It also is irrelevant what the law on public broadcasting says when there is only one point of view that is being broadcast.

The best approach is to be selective but thorough. Like doctors and nurses in a hospital, who measure and record the **vital signs** of every patient – heart-beat, blood pressure, temperature, breathing and pain levels – for signs of trouble, EU expert groups should carry out intense in-depth assessments of key rule of law issues, focusing not on the institutional set-up but on *outcomes*. This would sharpen everyone's focus. The goal is to develop a set of clearly defined indicators of democratic health which *all* countries would be expected to do well on and which everyone can understand. For instance, the following could be vital signs to check regularly:

- In-depth trial monitoring of selected important trials (corruption, organised crime) in all countries to see whether the judiciary is truly independent under stress, leading to public reports. In fact, the European Commission's February 2018

communication on the Western Balkans suggested that “trial monitoring in the field of serious corruption and organised crime should be introduced.”<sup>34</sup>

- In-depth assessments of actual corruption experiences (not just perceptions) in different sectors of society, to see progress over time in reducing these. The European Commission should commission corruption surveys and draft Western Balkans Anti-Corruption Reports, using the same methodology as was used for the EU member states in 2014.<sup>35</sup> A new report could be published every few years, assuring comparability between countries and over time.<sup>36</sup>
- In-depth assessments whether security services (including the intelligence sector) are truly under parliamentary control – unlike the situation in North Macedonia under Nikola Gruevski or what happens in Turkey today. This could build on the experience in North Macedonia from 2015 and 2017 when an expert group led by former Commission official Reinhard Priebe went there, assessed the situation and produced concrete recommendations.<sup>37</sup>
- In-depth monitoring of national broadcasters to assess pluralism in political coverage (using the methodology developed and used during election observation missions led by the OSCE’s Office for Democratic Institutions and Human Rights – ODIHR).<sup>38</sup>
- In-depth assessment of how the weakest in societies are treated (orphans, prisoners, minorities) which is a way to assess not just human rights, but also institutional capacity.

In each case in-depth assessments would lead to hard-hitting public reports following expert missions to all six Western Balkan countries; and findings would be communicated in ways voters can also understand.

### **What is the reward?**

Some might ask, both in the Western Balkans and in the EU, what would be the ultimate incentives for societies and leaders in the region to take part in such a process? Why is it good to meet the conditions and join the biggest Single Market in the world? The best answer is short and memorable: Lithuania. Estonia. Romania.

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<sup>34</sup> European Commission, [A credible enlargement perspective for and enhanced EU engagement with the Western Balkans](#), 6 February 2018, pp. 3 and 4.

<sup>35</sup> European Commission, [EU Anti-Corruption Report](#), 3 February 2014.

<sup>36</sup> For more on this proposal see ESI, [Measuring Corruption. The case for deep analysis and a simple proposal](#), 19 March 2015.

<sup>37</sup> European Commission, [The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts’ Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015](#), 8 June 2015; [The former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts’ Group on systemic Rule of Law issues 2017](#), 14 September 2017.

<sup>38</sup> OSCE, [Methodology](#).



*Vilnius*

Lithuania went from 37 percent of EU average GDP per capita in 1999 to 81 percent in 2018.<sup>39</sup>

This is remarkable: in 1999, the year when the Helsinki summit in December decided to start accession talks with Lithuania, the country had a per capita GDP that was just a third of the average of the 28 countries that today make up the EU. One decade later, by 2009, it stood at half the EU average. And today it stands at 81 percent. It is an extraordinary convergence. But it is not unique.



*Tallinn*

Estonia stood at 40 percent of the EU average per capita GDP in 1999. By the time it joined the EU in 2004 it had already reached 54 percent. In 2018 it stood at 82 percent.

Lithuania and Estonia are small nations, like many in the Western Balkans. But the convergence of big nations setting out to join the European Union Single Market has been no less striking. Poland went from 43 percent of the EU average per capita GDP in 1995 to 50 percent in 2004 and 71 percent in 2018. Spectacular? Yes. But not as spectacular as the Eastern Balkan tiger,

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<sup>39</sup> GDP per capita measured in PPS (Purchasing Power Standards), which eliminates the differences in price levels between countries.



Romania, which stood at 26 percent in 1999 when accession talks were opened. It was then the poorest candidate country. In 2018 it stood at 66 percent.

Here is a remarkable fact about recent European economic history: carrying out the reforms needed to join the Single Market and to join the EU has been phenomenally beneficial for peripheral economies. And this – a realistic promise of a better life – is the most powerful incentive for Western Balkan reformers.

*GDP per capita (in purchasing power standards), EU-28=100<sup>40</sup>*

<b>Country</b>	<b>1999</b>	<b>2018</b>	<b>2018/1999</b>
Lithuania	36.8	80.8	+44.0
Estonia	40.0	81.6	+41.6
Romania	26.4	65.6	+39.2
Latvia	34.8	68.9	+34.1
Bulgaria	27.3	50.8	+23.5
Slovakia	50.4	73.1	+22.7
Poland	47.7	70.3	+22.6
Hungary	51.2	70.7	+19.5
Czech R.	72.2	90.5	+18.3
Croatia	46.3	62.9	+16.6
Slovenia	80.4	86.9	+6.5
North Macedonia	n/a	36.2*	n/a
Serbia	n/a	39.9	n/a

\* 2017

Note: catching up is possible. North Macedonia today is at the level of development where Lithuania was in 1999. Serbia today is where Estonia was in 1999. Bosnia 2018 is the Romania of 1999. Countries can change. Enlargement policy can have a major impact. For this is must be credible, merit based and serious. It has happened before. It can happen again.

## Conclusion

This paper sets out a way to change the trajectory of a presently never-ending non-transformative process. The argument in a nutshell:

EU Balkan enlargement is **only possible if it is deeply transformative**. None of the current candidates and potential candidates have a chance of joining without a deep transformation of their institutions and economies.

The Balkan enlargement process is **not transformative right now**. It does not inspire politicians or thousands of civil servants to make the focused and intense efforts that are required to transform Montenegro or Serbia, Kosovo or Bosnia and Herzegovina.

<sup>40</sup> Eurostat, “Main GDP aggregates per capita, percentage of EU28 total per capita (based on million purchasing power standards), current prices” [nama\_10\_pc], accessed 14 January 2020 (in order to access these data, you need to navigate the [Eurostat database](#) to the respective table modify the variables in the Eurostat database accordingly).

Currently **countries are trapped in a vicious circle of low expectations and few reforms**. This is as true for frontrunners (Montenegro, Serbia) as for laggards (Bosnia and Herzegovina, Kosovo).

In recent years countries which believed that they are about to start accession talks have worked hard towards them as a **meaningful and inspiring interim goal**. Politicians in Montenegro (before and right after accession talks began in 2012), Serbia (between 2010 and 2014), North Macedonia (at the time of answering the questionnaire and gaining candidate status 2004-2005 and again between 2017 and today), Albania (since 2014) and also Turkey (between 1999 and the start of accession talks in 2005) managed to carry out difficult reforms.

Why did the goals of obtaining candidate status and then starting talks, which fall very much short of full membership, inspire reforms? Because it was seen as meaningful:

- It was seen as taking countries **closer to the ultimate goal** of membership.
- It was seen **to depend on a country's own efforts**.
- It seemed **clear** to politicians and civil servants what needed to be done.

Today, after talks start, the prospect of joining disappears into the distant future. *Whether a country becomes a full member will not depend on its efforts alone*. It depends on the state of the EU in the distant future. France doubts publicly that the EU will be strengthened by having more members, a doubt shared by other member states. When will this change? Nobody can tell. This means that currently, once talks start, credible interim goals disappear. The opening of chapters is NOT a credible interim goal. And money is not a strong tool to incentivise change. Serious EU money takes many years to programme and spend. For civil servants this is more work. For politicians it is no quick reward. More money would be very useful to support reformers; but it cannot create them.

However, joining the Single Market by 2025 would be a realistic goal for Balkan frontrunners. Joining the Single Market by 2030 should be a realistic goal for all Western Balkan countries. This should only depend on them. They would then enjoy the four freedoms – the free movement of goods, capital, services, and labour – that Norway and Iceland enjoy today. After they join, they could show to sceptics that they can sustain the discipline of being inside; and develop a track record. For this the rule of law is crucial: only by protecting it will countries be allowed to join the Single Market and only by preserving it can they become full members.

This is not a detour, but a station on the road to full accession. It is the boldest realistic proposal on the table now. If Paris, The Hague, and Rome agree on it, it could happen.

### **Annex 1: The track-record of the two-step approach**

In his inaugural speech to the European Parliament in January 1989 late European Commission President Jacques Delors posed the question how to “reconcile the successful integration of the Twelve without rebuffing those who are just as entitled to call themselves Europeans?” He offered a “more structured partnership with common decision-making and administrative institutions”.<sup>41</sup>

Delors was talking about the members of the European Free Trade Association (EFTA), the second West European trade block next to the EU. It was founded in 1960 by countries that did not want to or could not join the EU (then European Communities): Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK (Iceland, Finland and Lichtenstein joined later).

By the time of Delors’ speech, Denmark, the UK and Portugal had already left EFTA to become EU members. Less than two months later the remaining EFTA members took up Delors’ offer and started negotiations.<sup>42</sup> Three years later Austria, Finland, Iceland, Norway and Sweden signed the European Economic Area (EEA) agreement, on 2 May 1992. They became members of the Single Market on 1 January 1994.<sup>43</sup> Austria, Finland and Sweden acceded to the EU a year later, on 1 January 1995, only 23 months after EU membership negotiations had started in February 1993.

Only through membership in the EEA was such a quick accession to the EU possible. As Anders Olander, a former negotiator of Sweden, put it:

“For my country, Sweden, it was a stepping-stone towards full membership of the EU. Without the EEA Agreement, and the process leading up to it – the best European Integration School that I can think of – we would not have been able to conclude our accession negotiations so easily and rapidly as was the case.”<sup>44</sup>

Veli Sundbäck, the former chief negotiator of Finland, shares this view: “For us in Finland the EEA greatly facilitated our accession negotiations.”<sup>45</sup>

Any country that adopts all the legislation, sets up all the institutions and implements all the policies required for membership of the single market has already made the largest part of the reforms necessary to become an EU member. It is like for a runner to have already reached kilometre 30 of a 42 kilometres’ marathon.

Every West Balkan country that meets the Single Market criteria would have taken a gigantic step towards meeting the EU membership criteria. It would have proven that it can carry out ambitious and demanding reforms. And its image would improve significantly.

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<sup>41</sup> Jacques Delors, “Statement on the broad lines of Commission policy”, extracts reprinted in: Marius Vahl (ed), [European Economic Area 1994-2009, EFTA Commemorative publication](#), 2009, p. 12f.

<sup>42</sup> Marius Vahl (ed), [European Economic Area 1994-2009, EFTA Commemorative publication](#), 2009, p. 15.

<sup>43</sup> Switzerland concluded the negotiations but could not become a member because its citizens voted against EEA membership in a referendum.

<sup>44</sup> Anders Olander, “What we learned from the EEA negotiations”, in Marius Vahl (ed), [European Economic Area 1994-2009, EFTA Commemorative publication](#), 2009, p. 30.

<sup>45</sup> Veli Sundbäck, “The EEA Negotiations – Bumpy Road, Worth Travelling”, in Marius Vahl (ed), [European Economic Area 1994-2009, EFTA Commemorative publication](#), 2009, pp. 26-28.

**Annex 2: Will the Western Balkans enjoy freedom of movement of people?**

In all EU membership negotiations this century the EU insisted that its member states had the right to apply restrictions on the free movement of workers for up to seven years after accession.

There were always member states, however, which decided not to apply any restrictions at all. Citizens of the 10 new members joining in 2004 could immediately work in Ireland, Sweden and the UK. Citizens of Bulgaria and Romania (joined in 2007) could immediately work in Cyprus, the Czech Republic, Estonia, Finland, Latvia, Lithuania, Poland, Slovakia, Slovenia and Sweden. Citizens of Croatia (joined in 2013) could immediately work in Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia and Sweden.

Today all citizens of EU member states can work in all countries that are part of the Single Market, except for Croatian citizens (who still cannot work in Austria and Switzerland).

A similar scheme would apply to citizens of Western Balkan countries that join the Single Market. The number and lengths of restrictions would depend on the labour market situations.

### **Annex 3: Areas covered by the Single Market (in the EEA)**

The following list provides an overview of all areas covered by the Single Market (in brackets the length of the respective annexes in the EEA Agreement that list the regulations, decisions and other legislation that need to be implemented in each area):

#### ***I. Free movement of goods (792 pages)***

1. Veterinary and phytosanitary matters (281)
2. Technical regulations, standards, testing and certification (463)
3. Product liability (2)
4. Energy (46)

#### ***II. Free Movement of Workers and self-employed persons (35)***

5. Free movement of workers (3)
6. Social security (13)
7. Recognition of professional qualifications (19)

#### ***III. Right of establishment and provision of services (267)***

8. Right of establishment (5)
9. Financial services (120)
10. Services in general (4)
11. Electronic communication, audio-visual services & information society (25)
12. Transport (113)

#### ***IV. Free movement of capital (4)***

13. Free movement of capital (4)

#### ***V. Competition and common rules (47)***

14. Competition (11)
15. State aid (13)
16. Procurement (14)
17. Intellectual property (9)

#### ***VI. Horizontal provisions (244)***

18. Health & safety at work, labour law, equal treatment for men & women (14)
19. Consumer Protection (7)
20. Environment (67)
21. Statistics (143)
22. Company Law (13)

## Annex 4: Further reading & other material



### Newsletters

[Coup de grâce – Delors and squaring the circle – Norway in the Balkans](#) (25 October 2019)

[The Hypnotist – North Macedonia this summer – In Memoriam Dejan](#) (28 April 2019)

[Win-Win for Europe: Defending democracy in the Balkans – and in Poland](#) (22 June 2018)

[Making history? Macedonia and Elysium](#) (4 April 2018)

[Balkan crises, imagined and real: Bosnian elections – PISA gap](#) (31 January 2018)

[Accession revolution in Brussels – a new flagship – Usain Bolt and statistics](#) (9 November 2015)

### Reports and papers

[The Chapter Illusion – For honesty and clarity in EU-Turkey relations](#) (15 May 2017)

[Measuring corruption – The case for deep analysis and a simple proposal](#) (19 March 2015)

[Enlargement and Impact – Twelve ideas – Dummy Report \(Paris\)](#) (28 January 2015)

[Vladimir and Estragon in Skopje – A fictional conversation on trust and standards](#) (17 July 2014)

[Enlargement 2.0 – The ESI Roadmap Proposal \(Belgrade\)](#) (27 November 2014)

### Videos and podcasts

[The question of a child: What makes the effort required to join the EU possible?](#) (8 December 2019)

[What is more important: Political will or accession methodology?](#) (7 December 2019)

[101 On the French Veto, Balkan accession and what next](#) (18 November 2019)

[Politico Europe: New plan for EU hopefuls](#) (14 November 2019)

[Enlargement and the benefits of competition](#) (26 February 2014)