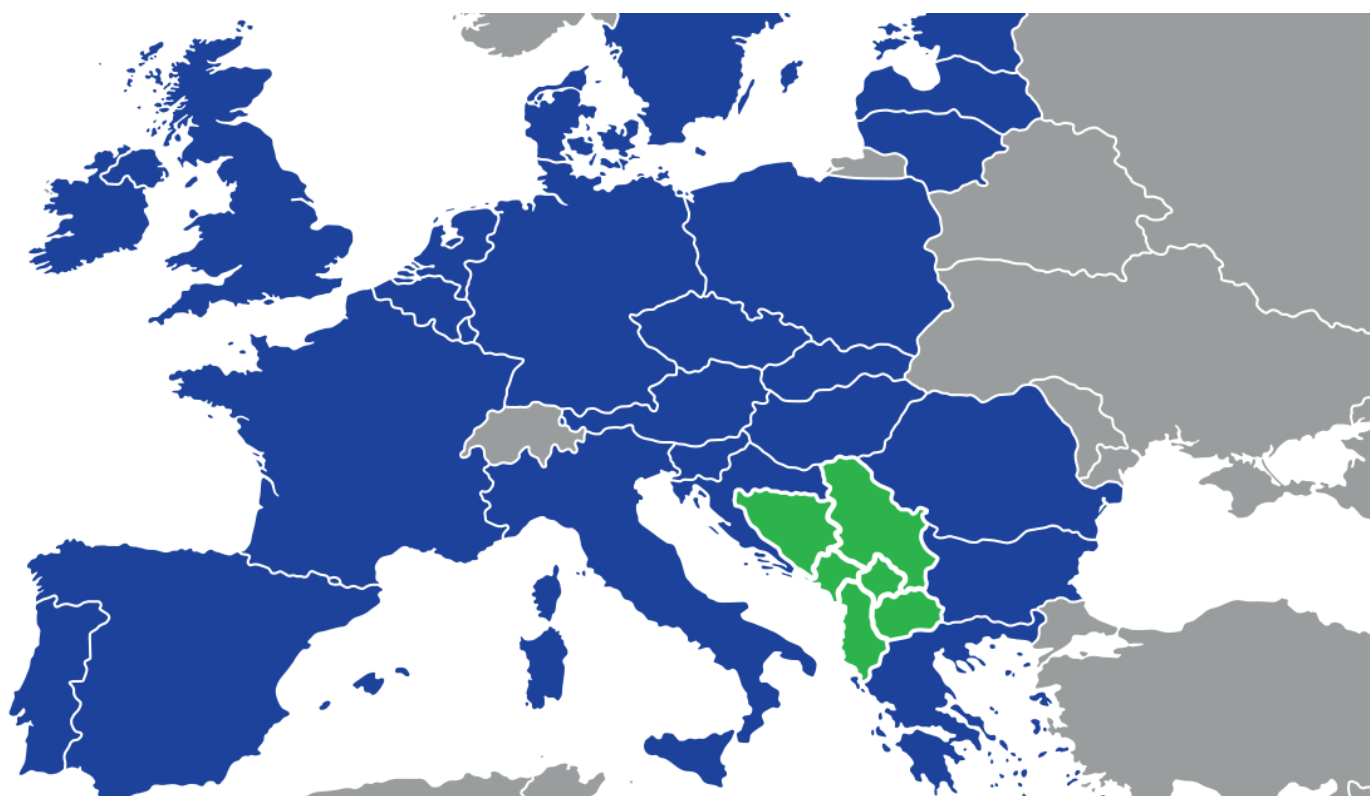


EASTERN MONITOR

Between moderate progress and prolonged stagnation: The European Commission's Reports on the Western Balkans

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- **Immature and troubled democracies, deeply politically polarised, 'captured' by organised crime and endemic corruption, facing an urgent need to improve the rule of law and freedom of expression, moderately prepared, or at an early stage of preparation, for EU membership – these are the key hallmarks of the (potential) candidates for EU membership, according to the 2019 Commission's reports¹.**



The Commission published the Western Balkan strategy² in early 2018 that aimed to boost the EU's faltering enlargement policy – yet, the positive momentum is now evidently lost. Although some member states displayed an unusually strong willingness to hinder this unpopular policy, this is largely due to limited progress in the region itself. The Commission therefore painted a grim overall picture of the state of affairs in the aspiring member states, assessing their preparedness for EU membership in mostly, although not solely, negative terms. The general tone of the reports is also more critical and explicit, demonstrating a bolder approach of the outgoing Commission that no longer steers away from criticising the Western Balkan strongmen.

The Commission repeated its recommendation to open accession talks with North Macedonia and Albania, praising the progress they have achieved. Wary of the ramifications of an outright rejection of the Bosnian EU membership application, the Commission did not take a definite stance on the issues – in effect suggesting the country is currently not ready to become a candidate. It also proposed yet another roadmap for reforms that is unlikely to yield any tangible results. Serbia and Montenegro are clearly losing the momentum of their reforms and urgently need to strengthen their efforts across the board. Serious shortcomings in democratic procedures and practices, the rule of law and particularly the freedom of expression are assessed as areas of the most serious concern across the region.

Praise for North Macedonia and Albania that did not suffice

Using the methodology introduced in 2015 to evaluate an overall progress and what has been achieved over the previous year³, the Commission drew a noticeable distinction between North Macedonia and Albania that have made some progress and other (potential) candidates that have stagnated.

The Commission evaluated the progress of North Macedonia in a particularly positive light. The country is duly praised for reaching 'a historic agreement' with Greece, resolving a toxic name dispute. Moreover, it 'has continued to undergo fundamental changes in an inclusive and open political atmosphere' delivering tangible results in the key areas – the judiciary, the fight against corruption, and intelligence services and public administration reforms. The North Macedonian government has indeed pursued an ambitious reform agenda dealing with the deeply corrosive consequences of the previous autocratic regime. Although in no particular area it was evaluated as making 'very good progress', the country has made good progress on most issues. However, to secure support for a name change from opposition MPs, PM Zaev employed undemocratic and arguably illegal practices⁴ – offering an amnesty for those not directly involved in the 2017 rampage in parliament – which the Commission conspicuously did not address in its reports.

Albania is also commended for pursuing 'profound reforms' of its justice system and 'unprecedented re-evaluation of judges and prosecutors'. It has also made good progress on fundamental rights and the fight against corruption and organised crime, but on freedom of expression the progress has been limited. Although

¹ EU Enlargement Package 2019, https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

² A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

³ To assess the overall level of preparation, the following scale was used: Early Stage, Some Level of Preparation, Moderately

Prepared, Good Level of Preparation and Well Advanced. To evaluate the progress over the previous year, the initial scale used the following terms: Backsliding, No Progress, Some Progress, Good Progress and Very Good Progress. This year, a term 'Limited progress' was added, most likely due to political sensitivity related to the usage of the terms 'No progress' or 'Backsliding'.

⁴ (North) Macedonia, the new name comes with hopes and high costs, <https://www.balkanicaucaso.org/eng/Areas/North-Macedonia/North-Macedonia-the-new-name-comes-with-hopes-and-high-costs-192098>

the Commission noted 'strong polarisation in the political sphere', it clearly downplayed the serious political and institutional crisis the country has been going through for months – including violent anti-government protests – in order not to diminish its prospects for the start of accession talks.

The Commission called on the member states – in unusually strong terms – to live up to their commitments, 'give credit where credit is due' and open membership negotiations with both countries. It made a convincing case for the candidates by affirming their 'historic achievements and substantial reforms'. In contrast to previous reports, the Commission was also more inclined to present EU enlargement in geo-strategic terms, warning that a tepid response 'would only help the EU's geopolitical competitors [Russia, China and Turkey] to root themselves on Europe's doorstep'.

Nevertheless, this issue has proved to be very challenging for the member states, reflecting a wider and deep-seated East-West schism within the Union. Namely, thirteen states – almost all Central and East European members, Italy, Austria and Cyprus – in a joint statement appealed to members of the Council 'to maintain and consolidate the positive momentum' and take 'far-sighted, bold decisions' by opening the accession negotiations with North Macedonia and Albania, recognising their 'remarkable efforts and progress'⁵. At the same time, many Western European members – most notably France and the Netherlands – have been rightfully cautious. In the light of democratic backsliding in some Central and East European members, they have voiced serious doubts as to whether these two candidates genuinely delivered sustainable and irrevocable reforms – especially when it comes to the rule of law in Albania. Moreover, many Western European states have been extremely wary about the domestic political consequences of the Union's

further expansion to the Western Balkans. As a result, the Council postponed the decision on opening accession talks with North Macedonia and Albania until October 2019⁶, dealing yet another blow to the credibility of enlargement policy in this region.

A wake-up call for Serbia and Montenegro

The progress has largely stalled in other aspiring member states, although no backsliding has been reported. Serbia and Montenegro, still formally frontrunners⁷, are now 'risking falling behind on their stated ambitious goals' if they do not act with greater determination and increase their efforts in crucial areas. Specifically, no progress has been made on freedom of expression in these countries. Serbia has made limited progress on the judiciary and fundamental rights, the fight against corruption, the environment and climate change. What is particularly worrying is a lack of progress on several politically 'non-sensitive' areas, such as rights of establishment and freedom to provide services, public procurement and competition policy. At the same time, Serbia has made very good progress only in one subfield – establishing the Erasmus+ national agency, unlike Montenegro that has not made very good progress over the previous year.

It is therefore striking that after five and seven years of membership negotiations respectively, in no policy areas Serbia and Montenegro are assessed as 'well advanced'. Instead, both countries are overall appraised as moderately prepared for EU membership. While this demonstrates a general lack of political will to deliver reforms, it also highlights an increasingly visible lack of expertise in EU integration, chronic institutional

⁵ Joint Statement of the Foreign Ministers on the EU commitment to the Western Balkans' European integration, <https://www.gov.pl/web/diplomacy/joint-statement-of-the-foreign-ministers-on-the-eu-commitment-to-the-western-balkans-european-integration>

⁶ Council conclusions on enlargement and stabilisation and association process,

<https://www.consilium.europa.eu/en/press/press-releases/2019/06/18/council-conclusions-on-enlargement-and-stabilisation-and-association-process/>

⁷ Serbia opened 16 and preliminary closed 2 chapters, whereas Montenegro opened 32 chapters and provisionally closed 3 negotiating chapters.

inertia and a low priority of this issue for the key decision-makers and stakeholders. The reports also reflect the worsening political situations in both countries and should be read as an ultimate wake-up call for their progressively autocratic ruling elites. It is evidently high time that both countries reset their relations with the EU and move beyond a declarative commitment to EU integration that does not anymore yield tangible results.

A long way to go for Bosnia and Herzegovina (and even longer for Kosovo)

The Commission was particularly critical of Bosnia and Herzegovina, a potential candidate facing ‘many structural challenges.’ The country is at an early stage of preparation for EU membership in most important areas – the fight against corruption and organised crime, the judiciary, public administration reform, information society and media, establishing a functioning market economy, economic and monetary policy, and even education and culture, a chapter ‘easiest’ to negotiate and close.

Wary of the ramifications of an outright rejection of the Bosnian EU membership application⁸, the Commission did not take a definite stance and would return to this issue in the 2020 Enlargement package. In effect, it suggested the country is currently not ready to become a candidate as it ‘does not yet sufficiently fulfil the criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.’ This country was also provided with yet another roadmap for fundamental reforms it needs to undertake to secure a candidate status. Reflecting a chronic problem of the

complex, inefficient and ethnically-based constitutional setup, the roadmap requires Bosnia and Herzegovina to establish a judicial body that would ensure the consistent interpretation of the law throughout the country, introduce a clause to allow the State upon accession to temporarily exercise competencies of other level of government to prevent and remedy breaches of EU and to ensure that all citizens can exercise their political rights by addressing the Sejdic-Finci ECtHR case law.⁹

In effect, the country is required to alter the delicate balance of power between two entities and three constituent nations and strengthen the central government. However, it seems unlikely that political leaders would ever agree on such constitutional changes, particularly the leadership of the *Republika Srpska*, which strongly opposes weakening of its powers – even if that would mean an ultimate failure of Bosnian EU membership bid. In a country where politics is centred – more than anywhere else in the region – around deeply entrenched ethnic divisions, politicians will not cave to pressures and deliver on any politically sensitive reforms, prioritizing ‘defending’ narrowly defined ethnic interests over efforts to join an increasingly disengaged Union.

Similarly, locked in a bitter dispute with Serbia over its status, Kosovo’s leaders remained preoccupied with the statehood issue at the expense of domestic reforms. Kosovo, as a potential candidate, is thus at ‘an early stage’ of preparation for EU membership, although it has made some progress on the rule of law and fundamental rights, public administration reforms, and the fight against corruption and organised crime. At the same time, Kosovan leaders have been increasingly and vocally disillusioned with the EU and how it treats Kosovo. This is particularly related to the EU’s failure to remove visa requirements for its citizens, despite the Commission’s report that all benchmarks have been met. Importantly, they have not caved in to the strong EU pressures to revoke, ‘as a matter of urgency’, tariffs on

⁸ It took Bosnian authorities the record 22 months to answer 3897 questions of the Commission. Due to disagreements between different levels of government, 22 questions were not answered.

⁹ CASE OF SEJDIĆ AND FINCI v. BOSNIA AND HERZEGOVINA,

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-96491%22%5D%7D>

imports from Serbia and Bosnia and Herzegovina, which is a clear reflection of a weakening clout the Union exerts in the region.

At long last, the Commission used more critical and explicit language

In contrast to previous reports, the general tone of the 2019 reports is more critical and explicit. The aspiring members are thus described as partly 'captured' states, characterised by the rule of law which 'does not apply properly to all lever of power', endemic corruption and 'growing and serious concerns' for the freedom of expression. The reports call for 'genuine and sustainable results on key issues', frequently stating 'an urgent need' to make progress. There are also more explicit examples of negative practices. For example, the Commission noted that the ruling coalition in Serbia systematically prevented the parliament from exercising its legislative role, pointing out instances where it misused parliamentary procedures. It unambiguously stated that 'all levels of government show signs of political capture' in Bosnia and Herzegovina, while assessing that 'pressures on judiciary remains high' in Serbia. The Commission also mentioned the 'envelope affair'¹⁰ in Montenegro, highlighting widespread corruption and illegal political party financing.

The Commission was often denounced for being too complacent and preoccupied with the regional stability at the expense of domestic reforms. The previous reports indeed tended to steer clear of explicit criticism of the ruling elites. When existed, the criticism was worded in general terms, using bureaucratic language. As such, it was often misinterpreted by the local leaders to suit their domestic political purposes. By pinpointing the concrete shortcomings in the critical areas of the media freedom, the fight against corruption and the rule of law, the Commission has now limited the

scope for selective interpretation of its reports. This is a welcome change in the approach of the outgoing Commission that seems freer to voice its concerns, no longer having to consider wider political repercussions of its assessments. The reports of the next Commission will, however, be an ultimate test of whether this is a temporary modification or a sign of more fundamental changes in the EU approach to the region.

A further erosion of the faltering Western Balkan democracies

Although facing various country-specific challenges, all (potential) candidates encounter similar lingering obstacles on their EU path, with the functioning of democratic institutions, the rule of law and the freedom of expression being the most difficult ones.

Weak institutions and serious shortcomings in democratic procedures and practices are now the focus of the Commission appraisal, as the region continues to suffer from a lack of cross-party dialogue and democratic political culture. There is notably 'an urgent need to create more space for genuine cross-party debate' in Serbia. A high degree of polarisation and the opposition's prolonged boycott of parliamentary activities have negative effects on Albania, while the Kosovo Assembly continued to operate in a highly polarised political context. The Commission noted limited progress on re-establishing political dialogue in Montenegro. It was only in North Macedonia, where 'the culture of compromise among political actors has improved'.

The Commission also stressed the importance of free and fair elections, calling for substantive electoral reforms in Serbia, Montenegro and Albania. None of the OSCE recommendations stemming from the previous elections have been addressed in Serbia. Likewise, Montenegrin electoral system is yet to be 'reviewed in a

¹⁰ In January 2019, a video recording of a senior official of the ruling Democratic Party of Socialists receiving an envelope with allegedly \$97,000 to be used to fund the party's 2016 election

campaign was made public, triggering street protests under the motto '97,000 - Resist'.

comprehensive and inclusive manner' according to the OSCE conclusions. In Bosnia and Herzegovina, ethnic-based restrictions for election to legislative bodies still needs to be removed. The critical appraisal of electoral procedures clearly mirrors the lack of political will of the regional ruling elites to create a genuine level playing field for all political actors.

It is not coincidental that significant deficiencies in political institutions came to the attention of the Commission. Over the previous year, the region has witnessed a noticeable erosion of democracy and public confidence in government. Except in North Macedonia, the autocratic tendencies of the local leaders have increased in all aspiring members. The Balkan strongmen have demonstrated a brazen disrespect for fundamental democratic principles, resulting in 'a shrinking space for diverging political opinions', an increased polarization of political scenes and a lack of debates between ruling and opposition parties. Consequently, political and social tensions have risen across the region, culminating in mass street protests in Serbia, Albania and Montenegro, with protesters demanding freedom of the press and conditions that ensure free and fair elections.

An urgent need to implement the rule of law reforms

The Commission reiterated that 'there is an urgent need to implement reforms in the rule of law more strongly and credibly' as this is 'the most important condition for the Western Balkans to move forward on their respective European paths'. It specifically noted 'a lack of political will, institutional resistance and an increasingly hostile environment for civil society' with regards to the rule of law reforms in Serbia. Current constitutional and legislative framework leave room for undue political influence over the judiciary in Serbia, while it does not provide a sufficient guarantee of judicial independence, accountability and efficiency in Bosnia and Herzegovina. Albania, however, has made important progress towards reforming its judicial system and

vetting procedures for its judges. North Macedonian progress was also praised as it 'stepped up the implementation of the judicial reform strategy' providing 'a firm base for lasting change'.

Regarding fighting high and medium level corruption, North Macedonia and Albania have made progress, by reinforcing their anti-corruption frameworks. Other candidates are evaluated as 'far from meeting the requirements for membership'. For instance, in Serbia and Montenegro, 'corruption is prevalent in many areas and remains an issue of concern'. The Commission thus found that poor results in tackling organised crime 'show the ineffectiveness of criminal procedures, give strong signals of impunity and [critically] contribute to the risk of criminal infiltration of the political and economic systems.'

Freedom of expression – 'A matter of serious concern'

There is a particularly critical appraisal of the general lack of progress on freedom of expression and the independence of the media in this region. The Commission noticed widespread efforts to influence the independence of public service broadcasters, non-transparent public and private funding of the media, frequent political interference and opaque media ownership. In surprisingly unambiguous terms, the Commission found no progress on freedom of expression in Serbia and Montenegro since both countries failed to address the recommendations from the previous reports. It noted that the overall environment in Serbia is not conducive to the exercise of freedom of expression; as a result, the lack of progress in this country is 'now a matter of serious concern'. In Montenegro, 'continued political interference in the national public broadcaster and the Agency for Electronic Media remains a matter of serious concern'. Political pressure and intimidation against journalists are also a cause for concern in Bosnia and Herzegovina. North Macedonia is singled out as the only country that has made good progress by creating 'a

climate that is favourable for expressing pluralistic viewpoints.'

On other important issues, the Commission has repeatedly noted an 'excessive politicisation' of the civil service and the lack of transparent and effective public procurement, even in the most advanced candidates. This year, it clearly recognised the mismatch between declarative proclamation of EU membership as a strategic goal and the pace of reforms, arguing that political leaders must 'leave no doubts as to their strategic orientation and commitment to join the EU'. This is particularly important in Serbia, where political leaders have never unambiguously embraced European integration, often considering the alternatives to joining the EU¹¹, with the frequent anti-Western campaign in pro-government media. Therefore, the Commission recognised an urgent need to create 'a broad pro-European consensus, which is vital for the country's progress'.

The sobering reports of the outgoing Commission are unlikely to make any lasting impact

Reactions to the Commission's reports have been mixed. Most regional leaders criticised the reports' findings or selectively read them – emphasising the positive aspects and downplaying the critical ones. Kosovo's president Thaçi called the report disappointing, because it refers to Kosovo as 'a country which has reached almost no progress since the declaration of independence'. He added that the phrase 'Kosovo is at

an early stage' in almost every field does not reflect objectively the situation on the ground.¹² Montenegrin president Đukanović tried to minimize critical aspects of the assessment, arguing that it is normal that less progress will be noted from one report to another because 'Montenegro had already made a serious step forward'.¹³ In the light of mostly negative evaluation of Serbia, PM Brnabić said the report was 'partly biased', not objective and half-true. 'It did not upset me, it amused me', she added. Brnabić concluded that 'whether any new chapter will be opened or not – it is not important any more. The political situation in the EU has more influence on opening the chapters than [a country's] progress'.¹⁴ Complex political circumstance in many EU members – and the EU itself – are indeed not conducive for the Union's expansion. However, such relativization of the accession process and claiming that little depends on the candidates themselves is certainly too simplistic and clearly detrimental to reforms that had evidently lost momentum in Serbia.

Some later reactions have been more sensible. After being heavily criticised for disregarding the independent regulatory bodies – as their annual reports had not been debated for years – the Serbian parliament finally discussed the reports of the State Audit Institution, the Fiscal Council and the Commission for Protection of Competition. Parliament seeks to 'demonstrate that it supports and respects the work of the independent regulatory bodies and their role in society', its speaker Maja Gojković suddenly claimed¹⁵. Yet, it seems these minor changes in practices and procedures will not be durable. The scope for the EU's transformative influence has shrunk across the region, as bold and even angry responses to its reports demonstrate. Ruling elites are very well aware that EU membership is not viable for the foreseeable future. It is

¹¹ Serbian defence minister, Aleksandar Vulin, known for acting as a mouthpiece for the president Vučić, repeatedly warned that Serbia could ditch EU bid and turn to Russia, arguing that 'in case the EU doesn't want Serbia, there are others who do',

<https://www.foxnews.com/world/official-serbia-could-ditch-eu-bid-turn-to-russia>

¹² Thaci says EU report does not reflect reality in Kosovo, <https://www.gazetaexpress.com/thaci-says-eu-report-does-not-reflect-reality-in-kosovo/>

¹³ Đukanović: Ništa neočekivano u izveštaju Evropske komisije,

<http://rs.n1info.com/Region/a487724/Djukanovic-Nista-neocekivano-u-izvestaju-Evropske-komisije.html>

¹⁴ Serbia's PM says EC 2019 report on her country partly biased,

<http://rs.n1info.com/English/NEWS/a487680/Belgrade-sees-EC-2019-report-on-Serbia-as-partly-biased.html>

¹⁵ Gojkovic at Opening of National Convention Session, [http://www.parlament.gov.rs/Gojkovic at Opening of National Convention Session.36658.537.html](http://www.parlament.gov.rs/Gojkovic%20at%20Opening%20of%20National%20Convention%20Session.36658.537.html)

therefore unlikely that the sobering reports of the outgoing Commission will make any lasting impact, even in those candidates that are clearly on the brink of prolonged stagnation, if not regression.

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