

Eastern Monitor

A new methodology for the same problems: Is the future of the enlargement process lost?

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Introduction

After a period of stalemate, the EU officials once again brought back the enlargement policy and Western Balkan countries into the spotlight during the Slovenian Presidency in the Council. Another EU-WB Summit produced the Declaration with a well-known proclamation that ‘the EU reaffirms its unequivocal support for the European perspective’ of the region, and ‘commitment of the Western Balkans partners to the primacy of democracy, fundamental rights, and values and the rule of law’¹.

Nevertheless, this event took place at the time of an EU enlargement crisis, where no single candidate or potential candidate country made progress on its EU path. Due to the lack of political and economic reforms, Montenegro has opened last chapter in June 2020 and no progress was made since. Serbia is still only halfway through the process, with the last tangible results achieved in December 2019. On the contrary, even though North Macedonia and Albania have demonstrated certain efforts to achieve substantive changes, their future is uncertain due to Bulgaria blocking the start of the accession negotiations with the two countries on the basis of bilateral issues with North Macedonia. The Brdo Declaration was supposed to provide a new momentum to the negotiations and address the existing impasses by reconfirming and reassuring the ‘EU commitment to the enlargement process’.²

Even though the European perspective was reaffirmed once again, annual progress reports assessing the state of play in each (potential) candidate country and their preparedness for EU membership show that the region has a long way to go. As a stimulus to the process, the European Commission urged for the official launch of

accession negotiation with North Macedonia and Albania and visa liberalization with Kosovo, emphasizing that delays can have ‘a negative impact on the credibility of the EU in the region’³. In addition, the European Commission recommended opening of the cluster 3 (Competitiveness and inclusive growth) and cluster 4 (Green agenda and sustainable connectivity) with Serbia, in line with the new enlargement methodology, as the government ‘prioritized EU-related reforms in the first half of 2021 and delivered on a number of important outstanding commitments’⁴.

In spite of a more positive tone that prevails in EC’s 2021 Reports, the overall picture stays rather the same: moderately prepared countries for EU membership with limited progress in most areas. Once again, the Commission failed to call a spade a spade and turned a blind eye on fundamental problems as assessment in the reports is focused on a ‘ticking of the boxes approach’ and on only formal improvements. The new methodology⁵ introduced by the European Commission last year was supposed to help overcome the lack of reform implementation and bring more substantive changes, yet the Commission missed an opportunity to point out the exact shortcomings that need to be addressed.

The last glimmer of hope for Serbia and Montenegro

Serbia and Montenegro are both labelled as ‘frontrunners’ of the EU enlargement process amongst the Western Balkan countries. Nevertheless, both countries made only little headway over time, which brings into question to what extent the will for further negotiations is present among the ruling elites. Despite the application of the new

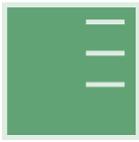
¹ Brdo Declaration 2021, <https://www.consilium.europa.eu/media/52280/brdo-declaration-6-october-2021-en.pdf>

² *Ibid.*

³ 2021 Communication on enlargement policy, pg. 3, https://ec.europa.eu/neighbourhood-enlargement/2021-communication-eu-enlargement-policy_en

⁴ *Ibid.*, pg. 27

⁵ Enhancing the accession process - A credible EU perspective for the Western Balkans 2020, https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-perspective-western-balkans_en



methodology and the adoption of laws, strategies and action plans, the overall takeaway is rather pessimistic: both countries are still flawed democracies with polarized political landscapes and fragile institutions.

According to the report, in the past year, Serbia made limited progress in fundamental chapters including areas such as the functioning of the judiciary, fight against corruption, freedom of expression and fight against organized crime. Nevertheless, the Commission concludes that ‘overall balance is ensured under the rule of law chapters and normalization of relations with Kosovo, on the one hand, and progress in the accession negotiations across chapters, on the other’ adding that ‘the rule of law and normalization of relations with Kosovo is essential and will continue to determine the overall pace of the accession negotiation’⁶.

When assessing the state of play in various chapters, the country made good progress in some areas such as financial control, company law, taxation and energy; however it stays moderately prepared in 22 out of the 35 chapters. A positive evaluation was given with regard to the constitutional reforms in the area of judiciary, emphasizing that ‘broad and constructive discussion with relevant stakeholders has been launched, in order to define the best solutions bearing in mind the Venice Commission recommendations.’⁷ However, some of the obligations such as amending the Constitution and the Media strategy were supposed to take place in 2016; thus, the fact that they are unwinding 5 years later brings into question the achieved ‘progress’.

After almost a decade of formal negotiations with the EU, Montenegro is stagnant in its progress. Due to the lack of reforms in fundamental areas, only 3 chapters have been (provisionally) closed so far. In line with this, in its report the Commission recognized the need for further efforts in order to

‘address outstanding issues, including the critical areas of freedom of expression and media freedom and fight against the corruption and organized crime’.⁸ Overall, it is assessed that Montenegro made limited progress in 30 out of 33 chapters, without recorded backsliding in any area.

While this presents a glimpse of hope, certain regression has been noted in fundamental chapters, since functioning of judiciary was assessed to be in a worse state compared to the last year, without noticed progress in this area.⁹ In addition, due to the political crisis which occurred in the aftermath of elections as well as the crisis in the accession process, where negotiation were at risk of being halted due to the attempt to amend prosecution law, a lack of progress is inevitable. The Commission underlined limited progress in the reform of public administration as the government change and the new parliamentary majority ‘severely affected civil service.’¹⁰ Regarding Montenegro’s ability to assume obligations of EU membership, the Commission emphasized that reforms are undertaken at a slower pace than the previous year, making good progress only in the area of food safety and public procurement.

No surprises for North Macedonia and Albania

Even though North Macedonia and Albania still did not commence with formal negotiations, compared to the other countries in the region, they advanced the most in EU-related reforms. In the 2021 Communication on enlargement, the European Commission set out the exigency for Member States to conclude the discussion on the Negotiation Framework without further delays and to organize the first intergovernmental conference during the Slovenian Presidency.¹¹ Yet, it is likely that the official negotiations will remain hung in the balance

⁶ *Ibid*, pg. 28

⁷ Serbia 2021 Report, pg. 18, https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en

⁸ 2021 Communication on enlargement policy, pg. 27

⁹ Montenegro 2021 Report https://ec.europa.eu/neighbourhood-enlargement/montenegro-report-2021_en

¹⁰ *Ibid*, pg. 4

¹¹ 2021 Communication on enlargement policy, pg. 28



and will not start before the end of the year, given the November elections in Bulgaria and the time required for forming a new government.

According to the report, North Macedonia made good to moderate progress and showed a steady commitment to deliver reforms in many key areas including the rule of law, freedom of speech, and fight against organized crime. In addition, the Commission particularly welcomed efforts by North Macedonia to strengthen democracy and generate reforms in key areas of fundamentals ‘through the ‘Europe at Home’ agenda and ‘Action Plan 21’ on the fight against corruption’.¹² However, despite the good assessment, chronic problems are still persisting in certain domains, namely within the scope of implementation of existing legal framework, excessive adoption of legislative acts under the fast track procedure and adoption of electoral law prior to elections. Regarding the freedom of expression, the European Commission underlined the existence of a ‘favorable climate for media freedom that allows critical media reporting’¹³ although there have been certain impediments during the pandemic.

Albania continued to deliver reforms in key areas such as judiciary, fight against corruption and organized crime and reform of public administration. According to the Commission’s assessment, the comprehensive justice reform, the Achilles heel of Albanian reforms, ‘reached an important milestone with the appointment of three new judges to the Constitutional Court’ resulting in good progress overall.¹⁴ Comparing to the last year’s report, Albania performed slightly better as two chapters are marked with good level of preparedness, although assessment of no/limited progress appeared more frequently. Concerning the fight against corruption, overall, only some progress was made, even though the report emphasized that the vetting process of members of the judiciary brought a positive effect. On the other hand, freedom of expression remains a

matter of concern as no progress was achieved during the reporting period and the general atmosphere in which journalists operate stays unfavorable due to the verbal attacks and smear campaigns against them by political elites.

Bosnia and Herzegovina and Kosovo* remain on a starting lane

In order to grant the candidate status to Bosnia and Herzegovina, the Council of the EU endorsed in 2019 14 key reform priorities that need to be delivered upon as a condition for any advancement in the negotiations process. And yet, three years later the process is falling behind more than ever. The report on Bosnia and Herzegovina-related reforms shows so far the most negative assessment, both for the country and within the whole region. In its assessment, the Commission pointed out that the overall progress of the country on its EU path is hindered by ‘unconstructive political disputes’ while political commitment to the European integration ‘has not been turned into concrete action’.¹⁵

No progress in the functioning of the judiciary remains a matter of serious concern, while legislative and institutional framework fails to comply with the requirements of EU membership. Some progress has been made in the area of public administration reform (PAR) by adopting action plans and strategies, although the country is still at the early stage of preparation. The EC’s report assessed that Bosnia and Herzegovina did not achieve tangible results in the rule of law reforms as widespread corruption and a political capture had negative effects on citizens’ wellbeing, especially during the

¹² North Macedonia 2021 Report, pg. 3 and 8, https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en

¹³ *Ibid*, pg. 6

¹⁴ Albania 2021 Report, https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en

¹⁵ 2021 Communication on enlargement policy, pg. 29



COVID-19 pandemic.¹⁶ In line with this, the Commission warned of potential backsliding in this area as officials failed to tackle such deep-rooted phenomena. Furthermore, no progress was achieved in guaranteeing freedom of expression to the media and protection of journalists against violence and threats.

Compared to Bosnia and Herzegovina, the Commission's assessment on Kosovo paints a slightly brighter picture. A positive note was given in regard to the dialogue between Belgrade and Pristina, interpreting the meetings on both political and expert levels as a success. Some/limited progress was achieved in the area of judiciary, fight against corruption and organized crime and freedom of expression. Nevertheless, in most areas, Kosovo is at early stage of preparation as a consequence of political instability and inability of officials to deliver on the EU-related reforms, especially within fundamental chapters. Regarding the judicial reform, the most important area to rule of law, the report points out the 'slow, inefficient and vulnerable' justice administration due to the political influence.¹⁷ Similar to the other reports, the Commission expressed concern regarding the threats against journalists despite formal improvements and alignment of legal framework with European standards. No progress during the reporting period was noted in the public administration reform as a consequence of 'frequent government changes'.¹⁸

¹⁶ Bosnia and Herzegovina 2021 Report https://ec.europa.eu/neighbourhood-enlargement/bosnia-and-herzegovina-report-2021_en

¹⁷ Kosovo* 2021 Report pg. 4, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en

¹⁸ *Ibid*, pg. 12

Governance in a time of democratic deterioration

Over the past years, the Western Balkan countries have been categorized as hybrid or transitional regimes¹⁹ due to the continuous deterioration of democratic standards. In this year's reports, the Commission expressed particular concern over the overall state of democracy, as the absence of a political will impedes sustainable progress. Consequently, the proper functioning of institutions is hampered by entrenched illiberal practices, 'strong political polarization, boycotts of elections and parliamentary work by the opposition and mistrust across the political spectrum'.²⁰

Following the 2020 elections boycott in Serbia by the opposition parties, the ruling party engaged in an inter-party dialogue on improving electoral conditions and the process itself. The dialogue was conducted on two tracks, without and with the involvement of members of the European Parliament, resulting in an agreement that contained 16 measures. Nevertheless, the agreement was not signed by part of the opposition parties as it was seen as a mere legitimized excuse for further 'collapse of integrity of electoral processes'.²¹ Even though the dialogue was supposed to bring all interested parties to the table, the Commission pointed out that the 'political climate remained polarized' while 'inflammatory language was used against political opponents' during the parliamentary debates.²²

With a new political landscape, deep political polarization is present in Montenegro in the post-election period, where the change of the ruling coalition 'transformed the dynamics between

¹⁹ See: Nations in Transit 2021 - Democracy Scores, Freedom House <https://freedomhouse.org/countries/nations-transit/scores>

²⁰ 2021 Communication on enlargement policy, pg. 13

²¹ N1, BIRODI: Agreement legitimized the collapse of integrity of elections, <https://rs.n1info.com/english/news/birodi-agreement-legitimized-the-collapse-of-integrity-of-elections/>

²² Serbia 2021 Report, pg. 8



executive and legislative powers'.²³ The Commission noted that the decision-making process and meaningful political dialogue were hampered by the lack of constructive engagement of all parliamentary actors and the boycott of plenary sessions by some MP's. On a more positive note, the report recognized the efforts of the Parliament to enhance transparency and its legislative role.

Similar to Serbia and Montenegro, Bosnia and Herzegovina failed to address the existing democratic deficit. Numerous recommendations by OSCE/ODIHR are still not implemented, especially those concerning transparency of political party financing. The Commission pointed out the existence of imbalance between legislative and executive power, caused by the deep division of the country, which contributes to the slower pace of EU-related reforms.

The Commission assessment on political criteria in Kosovo stays rather worrisome as the reporting period was 'marked by political instability' which consequently affected legislative activities²⁴, despite some positive highlights that were noted in the conduct of elections in February 2021.

In a more positive light, North Macedonia and Albania made further efforts in addressing the functioning of democratic institutions. Even though parliamentary work in North Macedonia was impeded during the COVID 19 crisis, the Commission highlights the role of opposition in the adoption of EU-related laws and recognizes further efforts for strengthening democracy by 'activating existing checks and balances'.²⁵ In a similar vein, the Commission assessed that the 'majority and opposition in Albania will need to improve political dialogue and work together with all parts of

society'²⁶ even though some examples of good practices are present in the light of EU-related reforms.

Milder terminology for the 'best report so far'

After the reports were published, the Serbian Prime Minister, Ana Brnabic, noted that the report on Serbia has been 'best one so far', which clearly shows that the EU is sending a strong message to Serbia and recognizes Government's efforts to carry out reforms, particularly in the rule of law area.²⁷

Indeed, the recommendation for opening new clusters can be interpreted as a sign of progress, nevertheless, the wording of the report remains technical and subject to various interpretations. What can be noted in this year's report is that the assessment was based on third-party indicators²⁸ related to democracy as well as the use of a different (softer) language in addressing the most sensitive problems. Compared to the previous one, this report does not mention state capture in Serbia despite the continued existence of such practices in reality. In addition, experts and opposition parties are united in the judgment that the report lacks a critical and objective evaluation of the current progress. And yet, the picture is two-sided. Recently, there have been some serious accusations against the impartiality of the progress reports and DG NEAR in their evaluations. According to the sources cited in the article published by Politico, the Hungarian commissioner for neighborhood and enlargement, Olivér Várhelyi, 'has overseen a push to play down concerns about the rule of law and human rights in candidates for EU membership' especially in Serbia, making the overall assessment of the report partial.²⁹

²³ Montenegro 2021 Report, pg. 8

²⁴ Kosovo* 2021 Report, pg. 7

²⁵ North Macedonia 2021 Report, pg. 3

²⁶ Albania 2021 Report, pg. 9

²⁷ Danas, Brnabic: Izvestaj EK najbolji u poslednjih nekoliko godina <https://www.danas.rs/vesti/politika/brnabic-izvestaj-ek-najbolji-u-poslednjih-nekoliko-godina/>

²⁸ Third party indicators included assessment of: Freedom House, Reports without borders, the Economist Intelligence Unit, World Justice Project, The World Bank Group and Transparency International

²⁹ Politico, Olivér Várhelyi: Europe's under fire gatekeeper <https://www.politico.eu/article/oliver-varhelyi-eu-commissioner-enlargement-western-balkans-serbia-human-rights-democracy-rule-of-law/>



In the first place, Várhelyi's efforts to disregard concerns on lack of progress in key areas goes hand in hand with the attempt of Hungarian Prime Minister Viktor Orbán to undermine the EU's institutions on the rule of law and democracy issues. Consequently, such partiality could affect the standing of the Commission vis-a-vis EU Member States and hamper the credibility of the Union among leaders in the Western Balkan.

In contrast to Serbia, this year's reports did not stir much attention among officials and citizens of the other candidate and potential candidate countries as the belief in the European project is fading across the Western Balkans. Followed by the political crisis in Bosnia and Herzegovina and announced resignation of the North Macedonian Prime Minister, the long-awaited assessment stayed a non-news. Due to the technocratic language, annual reports are subject to various interpretations by authorities with a goal to highlight progress that is made according to their political needs. At the same time, the EU's shaken credibility in the region contributed to the dismissal of certain findings among officials³⁰ making the reports obsolete and less relevant for the domestic changes.

Fresh start for the ongoing process

Even though the EU continues to have an important role in the region, mainly in the economic sphere, the enlargement process is on a 'life support' showing the urgent need for change of the current approach towards the negotiations. What was supposed to provide a 'breath of fresh air' to the negotiations, turned out to be just another missed opportunity for the EU to make the process more merit-based, credible and transparent. The new methodology showed that changing the approach on paper does not necessarily lead to a more political process and

certainly it does not contribute to achieving the long needed and tangible results. Instead of moving in the same direction, the process seems as divergent as ever and hampers EU's geopolitical leverage and image in the Western Balkans.

In order to restore its credibility amongst citizens and political actors in the region, the EU has to be ready to stop making concessions to the region's strongmen and use more veracious language to address existing shortcomings. In its reports and communication, the European Commission needs to focus more on the actual implementation of the required reforms rather than only on formal adoption of EU's recommendations. It also needs to use a clearer and more honest language, directly addressing the failures and lack of political will where present, instead of using language pleasing to the region's leaders. In addition, positive reinforcement in the form of access to the European funds should be granted to those countries which are making fundamental reforms in the area of rule of law and functioning of democratic institutions. The EU should also move forward to incorporate countries in the Conference on the future of Europe in order to show that the statement that 'the Western Balkans is part of the same Europe as the European Union'³¹ does not remain an empty phrase.

³⁰ Balkan Insight, Albania's Rama Dismisses 'False alarms' over media freedom, <https://balkaninsight.com/2021/10/20/albania-pm-complains-over-rights-organizations-false-alarms-over-media-freedom/>

³¹ Politico, EU leaders back 'enlargement' for Balkans – just not anytime soon, <https://www.politico.eu/article/eu-leaders-enlargement-balkans/>



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