

Stepping up the beat: the reinvigoration of dialogue between the EU and the Balkans

Abstract

This article examines the European Commission's 2020 Enlargement Package and the 2020 country reports for its partners in the western Balkans and Turkey. We focus on the social policy aspects of how the Commission assesses progress and what it regards as priority among the outstanding issues. The Commission is once again talking about 'enlargement' rather than the western Balkans' 'EU perspective', but the reports indicate that the gap not only remains sizable, but growing; and the longer that this has continued, the less credible the process has become. It continues to be true that the region could do more to help itself – even allowing for the impact on policy-making of the Covid-19 pandemic – and the level of regional co-operation currently exists at a rather low level. Furthermore, that parts of the region talk openly of alternative avenues for their future remains a source of worry. However, the documentation lays down – at least on the surface – a worthwhile challenge, as well as a test for all parties, regarding aspirations and the extent of political goodwill which is key to the whole enlargement/accession process.

Keywords: EU enlargement, western Balkans, Turkey, social and employment policy, trade unions, social dialogue

Introduction

The European Commission published its 2020 Enlargement Package early in the October. Accompanying the package was the highly detailed staff working documents examining the progress made in the last year by each candidate for EU membership and potential member, captured against the EU negotiating chapters setting out the partner's ability to assume the obligations of membership. Additionally, an Economic and Investment Plan, the need for which was identified earlier in 2020, was also adopted with the aim of spurring the long-term recovery of the region.

The latter might be seen as an attempt to breathe new life into an increasingly moribund former, with both sides demonstrating long-term fatigue with the result that enlargement, on the one side, and accession, on the other, has become, for both, little more than a 'declaratory goal' (Solioz 2020a, 2020b) covering up a business as usual approach to politics in which '*we* agree to show willing (to some extent) while *you* agree to take us seriously (to some extent).' At least the EU is talking specifically about enlargement again – and that represents progress, of sorts, from a period of a couple of years in which the EU, largely in the shape of France, seemed to see little future in continuing what had become something of a mutually-recognised pretence.

The Economic and Investment Plan could well act to breathe new life into the enlargement process but, in a not-yet post Covid-19 world, it is a clearly serious attempt to do not only that but also to engage the region positively in a green and digital transition and to foster practical regional co-operation around the issue of (sustainable) economic growth. Time will tell if it is able to achieve such aims (as indeed it must). At the same time – still relatively early into the term of the current Commission and with a (relatively) new President, both taking office in late 2019 and immediately before the disruption of the Covid-19 pandemic – we are clearly entering a key preparatory period for the wider region if there are to be new entrants in the second half of this decade. This does seem to create at least the potential for a window of opportunity and, if both sides' willingness is not only a paper commitment, then real progress over the next eighteen months to two years is a possibility.

This article seeks to examine the progress reports not in full but as regards the issues which are the most appropriate to the theme of the *SEER Journal*: to have a look at what western Balkans states are doing concerning social policy and employment, especially as regards the state of social dialogue and collective labour law and its enforcement (Chapter 19), but also the free movement of workers (Chapter 2) and the freedom to provide services as regards the recognition of professional qualifications (Chapter 3).¹ We also have an eye on the broader, over-arching political scene which not only controls the context in which legislators and societies can make progress but also the extent to which the end-goal of that progression – accession to the EU – is realisable.

The article is structured as follows: first, we look at the 2020 enlargement package as an overall platform for the region, attempting to synthesise a 'state of affairs' narrative, before exploring the relevant sections of the individual country reports as regards the priority progress issues identified for each. A summary then attempts to draw some lessons about the main issues as regards social policy confronted by countries across the region, and also compares where each western Balkan state sits in this area in relation to each other. We turn next to the contents of the Economic and Investment Plan and the highly significant aims set out for this before reaching some conclusions as to future prospects.

2020 enlargement package

The cutely-named DG NEAR – smoothly eliding over and encompassing both the Neighbourhood and Enlargement portfolios on behalf of the European Commission –has not given the impression that it will allow the grass to grow under its feet:

- in February 2020, the Commission adopted proposals to enhance the accession process (European Commission 2020a)
- in March, and specifically reversing the Macron-led block at the Brussels Summit in October 2019 under the previous Commission, the European Council endorsed the decision to open accession negotiations with Albania and North

1 Rather oddly, the recognition of professional qualifications sits in Chapter 3 rather than in freedom of movement for workers, with Chapter 3 otherwise focusing on much broader services-related issues.

Macedonia, Commissioner Várhelyi having undertaken his first Balkans mission specifically to those countries as early as January

- in April, the Commission set out its €3.3bn package of measures to support the western Balkans in respect of Covid-19 (European Commission 2020b), with access to several measures extended to western Balkan states as if they were EU members
- and in May, at the EU-Western Balkans Summit in Zagreb, the EU reaffirmed its intention to intensify engagement, in return for a conditionality pledge from partners that they recognised the EU as their main source of support (see Becker 2020).

There is neither tardiness nor a lack of engagement here. It would be interesting to debate the source for all this: partly it seems to lie in the need to put right the mis-step over Albania and North Macedonia at the Brussels Summit (and now again jeopardised in relation to the latter by Bulgaria); partly it may reflect an awareness generated by the pandemic of the potential for economic collapse affecting also the EU on its existing borders; and partly it is likely to reflect the growing engagement of China in the region as well as the state of relations between several states and entities with, primarily, Russia but also with the US. Nevertheless, at the same time it does also build on the back of the EU-Western Balkans Summit in Sofia in May 2018 (the first such thing for fifteen years).² With this in mind, the level of energy in the apparently determined vigour of DG NEAR is something to be respected.

More specifically, the overt mention of enlargement, in the very title of the Communication launching the 2020 package (European Commission 2020d), is very welcome, as is the Commission's own acknowledgment that its approach has been 'reinvigorated' (European Commission 2020a). This is a key word in that it confesses to a need for the process to be in some way 'better'. This could hardly be denied in the sense of the failure to integrate any Balkans state other than Slovenia and Croatia in the period since 2004; and given the five-year 'break from enlargement' placed in 2014 by Commission President Jean-Claude Juncker. We might, subsequently, also add the loss of focus arising from having to spend inordinate amounts of time and energy dealing with all the soul-sapping implications of Brexit. The EU's other internal issues – among them: the constitutional debate in the middle of the 2000s; the response to Greece and the Eurozone crisis, on top of the financial crisis; and the migration crisis of 2014/16 – which Christophe Solioz (2020a) refers to collectively as 'polycrisis', might also be mentioned here: all of which cumulate in yet one more: a crisis of credibility and trust.

It also, however, amounts to an acknowledgment of the need to overcome the 'enlargement fatigue' of the past, although whether it is now simply too late to overcome the 'accession fatigue' in the democracies of south-east Europe is a moot point. The European Commission has itself specifically defined 'better' as having 'more credibility', 'a stronger political steer', a 'more dynamic process' and 'predictability, positive and negative conditionality' (European Commission 2020a) – all of which are, at one and the same time, strong indictments of the failures of the post-2004 pe-

2 On the fringes of which the *SEER Journal* held its own twentieth anniversary celebrations.

riod as well as useful yardsticks for measuring the scale of the desire for future improvements. The policy on enlargement never went away (accession reports were produced in each subsequent year), although it clearly did lose focus for a while. Whether this ‘reinvigoration’ turns out in the medium-term to be more than just a shift in the mood music remains to be seen – but there is an evident pick-up in the beat.

Reading the Communication in terms of the key priority areas it sets out – the fundamentals for EU membership (the rule of law, the economy and functioning of democratic institutions and public administration); the ability to take on the obligations of membership (the alignment of domestic legislation with the *acquis communautaire*); and regional co-operation and what the Commission now calls ‘good neighbourly relations’ – the new Commission’s view is evident. Amongst the countries of the region, an ‘even stronger focus’ needs to be applied, that the level of preparation is ‘moderate’ and the pace of alignment ‘different’ and that ‘important outstanding bilateral issues still have to be solved’.

The language is strong about identifying the uneven progress of reforms and that much work is still to be done – but this was always likely after such an evident policy break as was imposed in 2014 and as a result of EU accession itself being an ever-changing goal: the EU’s own legislature continues to evolve while accession negotiations are underway. Additionally, there are evident capacity gaps in candidate and potential countries which cause problems at the technical administrative level: resources are evidently pressured and staffing comprehensive EU accession departments presents clear difficulties. Furthermore, individual states clearly have their own agendas as regards policy direction, including (but not limited to) EU accession, as well as domestic political and humanitarian crises of their own to attend to, and the evident bilateral issues arising between several of them with each other and with EU member states not least arising from a series of border disputes and other issues that continue to bedevil bilateral relations. Finally, the absence of a meaningful negotiations process in this most recent period has also allowed room for alternative futures to be debated and for some geo-politics to be engaged in.

In the past, under the ‘regatta’ principle, policy was to limit uneven progress by the offer of visible rewards in one area to try and encourage progress in another. However, this is no longer possible given the outcomes of the moratorium and of the impact of the Covid-19 pandemic which has led the EU, in some respects, to see the region as one and to return to south-east Europe as a bloc, in the same way as in the pre-2004 era as regards central and eastern Europe.

Individual legislatures within the region are building their own nation states and responsibility for themselves (Plachkova 2018). And that’s fair enough, in some respects, although there are clear examples of how this has been to the detriment of co-operation within the region. Furthermore, it’s clear that the ‘big men’ (Kanin 2003) for which the region has been famous in the past have not exactly returned (since they never went away in some places), but they have meanwhile become more entrenched and also, at this exact point, more widespread.

Nevertheless, EU policy continues to be based on the need to deepen economic integration within the region, identifying the vital role this has to play in the regener-

ation of the western Balkans. There are knock-on effects from that in terms of the target of improving regional co-operation and good neighbourliness, as well as in delivering a series of individual countries better equipped at working together rather than essentially competing with each other for the same markets (Golemi 2016). Furthermore, it's also true that a region whose countries are committed to trading with each other rather than in opposition to each other will see growth at the sort of level which will better prepare them for accession to the EU (Sergi *et al.* 2019).

One continuing aspect of the ‘regatta’ principle is the ‘naming and shaming’ process embodied in the country reports – 125 pages or so of closely-typed text assessing the progress of each candidate and potential candidate against the accession fundamentals, alongside detailed assessments of the state of play with regard to each one of the chapters of the *acquis*. Here, it remains true that, if progress is to be made, this will be most likely when countries can see that the end goal of accession is not only visible but actually attainable – and that this is coming sooner for some than others, with tangible benefits to states and their citizens.

With that thought in mind, we turn next to the state of play on freedom of movement for workers and employment in the individual countries, firstly in the candidate countries (Albania, Montenegro, North Macedonia, Serbia and Turkey) and then in the two whose status is as potential candidates (Bosnia and Herzegovina and Kosovo). Here, Chapter 2 on freedom of movement for workers seeks to ensure that citizens of one member state may work in another and must be given the same working and social conditions as other workers; while Chapter 19 on social policy and employment seeks to set in place minimum standards on labour law, equality, health and safety at work and non-discrimination; and to promote social dialogue.

Country reports

On reading the reports, we can see that the Commission has a grading system in place under which progress on each chapter of the *acquis* is being evaluated, stemming from ‘early stage of preparation’ at the one end to ‘well-advanced’ at the other; on top of which there is an indication of the state of progress in the last year, ranging from ‘backsliding’ (where changes are introduced which take a state away from the *acquis*) to ‘good progress’. In both cases, these are five-point continuums (although there may be other grades at one – or both – ends). Charts 1 and 2, which are contained in the ‘Progress against the social policy chapters’ sub-section later in this document, highlight the individual staging points on the continuums in closer detail.

There is, however, little publicly available information on the criteria for coming to each decision and individual judgment and the prevailing level of goodwill on the part of the staff compiling the documents no doubt plays a considerable part. We should also observe that any such report is likely to want to be encouraging where possible and, in terms of targets, to work on the art of the possible. Here, of course, capacity and appetite also play key roles.

In 2020, all the candidate and potential countries fit somewhere on both these five-point continuums. The Commission does not attach an individual ‘score’ to each of the grades, but it is possible to develop one as a means of facilitating an assessment of precisely where the countries lie in relation to each other as well as how far

they still have to go. We return to this in the section on evaluation which follows the country reports.

Candidate countries

Albania

On freedom of movement for workers (Chapter 2), Albania is adjudged to be at a stage of ‘some’ level of preparation; and to have made ‘some’ progress over the last twelve months. Targets for the next year are to amend the law on foreigners enabling family members of EU citizens to work in Albania without a work permit (currently going through parliament); and to continue to negotiate and implement bilateral social security agreements with EU member states, progress on which is already underway although new agreements remain to be fostered.

On Chapter 3, Albania is assessed as ‘moderately’ prepared, although making only ‘limited’ progress in the last period, with the recommendations therefore being simply repeated. In terms of professional qualifications, Albania needs to step up its efforts to align with the *acquis* on mutual recognition and to ensure appropriate institutional capacity in this area, with ‘no progress’ having been made here recently.

As with Chapter 2, Albania is at a stage of ‘some’ level of preparation as regards social policy and employment (Chapter 19) and to have made ‘some’ progress over the last twelve months. Here, the targets set for the next twelve months are three-fold:

- continue to operationalise the employment and vocational education and training structure
- ensure the implementation of the National Strategy on Social Protection and the social inclusion policy document, both medium-range strategy documents (up to 2023); and strengthen inter-institutional co-ordination on measures affecting the most at-risk groups
- adopt legislation on the representativeness criteria for membership of the National Labour Council (NLC) and the bylaws establishing the tripartite regional councils, expected to be established at the end of 2018.

The report also points out that the implementation and enforcement of the new Labour Code still needs to be monitored more closely, particularly as regards the State Labour Inspectorate and the State Health Inspectorate, the latter concerning occupational health and safety, and in which there are ‘insufficient financial and human capacities’.

Furthermore, the bipartite social dialogue remains weak as a result of what the report refers to as insufficient experience among the trade unions, the lack of a culture of social dialogue and ‘employers’ scepticism’. One might well comment from a trade union perspective that experience is only gained, and a culture generated, by practical ‘doing’ and that the key issue to be addressed, therefore, is employers’ scepticism. Additionally, the report points to the ‘significant efforts’ that are still needed to be made to transform the NLC into an ‘effective and regular social dialogue forum, aiming at improving collective bargaining.’

Montenegro

Montenegro is assessed as having ‘some’ level of preparation as regards free movement of workers and to have registered ‘some’ progress during the year. Just the one target is set for the next twelve months – to continue to establish structures and develop capacity in terms of the EU support project on social security schemes and the appropriate action plan (see also De Wispelaere *et al.* 2020). Here, an action plan was adopted in March 2019 while amendments have been made to the law on foreigners and to the quota for temporary residence and work permits which simplify procedures.

Montenegro has 25 bilateral agreements on the co-ordination of social security systems, 16 with EU member states.

On Chapter 3, Montenegro is ‘moderately’ prepared, having made ‘some’ recent progress; however, as regards the specific area of the mutual recognition of professional qualifications, the position is considerably better than that since Montenegro has reached a ‘satisfying level of alignment’ with the *acquis* although the report recommends that follow-up monitoring is required to ensure continuous alignment.

Concerning social policy and employment, Montenegro again has ‘some’ level of preparation although ‘good’ progress has been made in the past twelve months. There are three targets for the next twelve months:

- implement the revised labour law, revise the anti-discrimination law and introduce better quality employment measures for young people, women, disabled people and minorities
- make greater efforts as regards the grey economy and more actively address issues related to safety at work (a policy linkage that is particularly interesting)
- increase the support provided to, and reform of, social protection in the direction of employment activation and social inclusion.

The revised labour law was adopted in December 2019 while further measures to harmonise the linked law against discrimination with the *acquis* are planned for 2020.

However, the report observes that ‘strengthened capacities’ for labour inspection and ‘enhanced co-ordination’ will be required for the law to have an impact.

The laws on social dialogue were adopted in 2018 and, while there was ‘good’ co-operation on the adoption of the labour law, ‘more time is required’ for improved representation and consultation between the social partners. The report also notes that there needs to be a ‘continuing focus’ on protecting workers’ rights, especially as regards trade union activities and in ensuring the collective bargaining agreement is concluded.

North Macedonia

North Macedonia is assessed as being at an ‘early stage’ on freedom of movement for workers, but to have made ‘no progress’ in the last twelve months. Key targets for the forthcoming period are to continue to adapt the legal framework on access to the labour market, especially in terms of non-discrimination against EU workers, with EU citizens having no access to employment in public administration;

and to take steps to identify which administrative measures would have to be introduced in preparation for future accession.

North Macedonia has 23 bilateral agreements on the co-ordination of social security systems, 14 of which are with EU member states; and 18 agreements on mutual health insurance, 12 of which are with EU member states.

There has been better progress as regards Chapter 3, where North Macedonia is ‘moderately’ prepared, having made ‘some’ progress in the last twelve months. Even so, ‘more efforts’ are required in terms of further alignment with the *acquis* on the recognition of professional qualifications, where progress has been ‘limited’, and this was also set as one of the Chapter 3 targets with a number of specific areas of concern.

On social policy and employment, North Macedonia is better placed than with freedom of movement for workers, being assessed as ‘moderately prepared’ and to have made ‘some progress’ recently. Even so, the previous year’s recommendations were not fully implemented and thus remain valid for the next twelve months:

- continue to implement employment activation measures for the long-term and low-skilled unemployed, particularly women, disabled people and Roma
- improve the capacities of the State Labour Inspectorate and reinforce the bipartite social dialogue which, in the private sector, is ‘poor’
- continue the provision of assistance to vulnerable groups in society while addressing poverty and discrimination.

The report further comments that the enforcement of the labour legislation, despite some sound measures in principle, continues to lag and that the professional performance of the State Labour Inspectorate remains ‘low’. Capacity as regards health and safety had ‘slightly improved’ following the recruitment of additional inspectors but was ‘still insufficient’. It notes that consultation on a new labour law is underway and that a revision of the Law on Safety and Health at Work has been initiated.

However, limited progress has been made on social dialogue, which remains ‘inadequate’ amidst the social partners’ ‘weak’ capacities. The commitment of the social partners to reinforce collective agreements – here, the report seems to implicate employers – is ‘poor’. Furthermore, trade union membership is in decline while workers’ confidence in union structures is deteriorating.

Serbia

On freedom of movement of workers, Serbia is ‘moderately’ prepared and has made ‘some’ progress during the last year. The only target set is to continue to enhance co-operation with EU member states on the co-ordination of social security systems. Amendments have been made to streamline the procedure for issuing work permits although these need to be further simplified as regards EU citizens who are still covered by rules for third country nationals.

Serbia has bilateral agreements with social security institutions in 19 EU member states although the conditions for co-operation need to be further improved.

Concerning Chapter 3 on right of establishment and freedom to provide services, Serbia is again ‘moderately’ prepared while recent progress has been ‘good’. In respect of the mutual recognition of professional qualifications, the target is set for Serbia to make continuing efforts towards harmonisation with the *acquis*.

On social policy and employment, Serbia is also ‘moderately’ prepared but has made only ‘limited’ progress recently. Budget allocations for active labour market policies increased in 2019 but then decreased and are ‘far too low’ for the number of jobseekers, while the other recommendations of last year again remain valid:

- ensure adequate financial and institutional resources for employment and social policies targeted at the young, women and the long-term unemployed; and improve social benefits for people below the poverty threshold
- significantly strengthen the bipartite and tripartite social dialogue at all levels
- ensure the consistent implementation of labour and social welfare legislation throughout the country.

In this field, an action plan was adopted in May 2020 to align the Serbian legislation with the *acquis*. The progress report is critical that the new law on the right to strike has yet to be adopted and that, while labour inspections have focused on undeclared work, they are yet to have a significant impact. The law on the oversight of inspections also needs to be amended to comply with the ILO Conventions adopted by Serbia.

The report’s observations on social dialogue are highly critical: dialogue remains ‘weak’ while the legal framework and capacity to foster collective bargaining needs to be adjusted. Collective agreements are ‘hardly’ concluded in the private sector while ‘no progress’ has been made in tripartite dialogue, the report noting the Economic and Social Council’s inability to reach consensus on a rise to the minimum hourly wage.

Turkey

Turkey is assessed as at an ‘early stage’ of progress on freedom of movement for workers (Chapter 2); but that there had been ‘no progress’ during the period. No targets were set here for the next twelve months – an indication either that no progress is thought to be likely; or, alternatively, that some progress, in any of the areas affected by this chapter, would be welcome.

The same grading is applied to Chapter 3 on right of establishment and freedom to provide services. However, there is a general target set here: aligning the national legislation with the *acquis* in the area of the mutual recognition of professional qualifications.

Things are a little more advanced as regards social policy and employment, with Turkey assessed as having reached ‘some’ level of preparation although, again, ‘no progress’ is reported for the most recent period. Three targets are set, however:

- remove obstacles limiting trade union rights and the functioning of the social dialogue at bilateral and tripartite levels, including legislative and those arising from state policy practice

- improve the enforcement and implementation of the legislation on workers' rights, labour law and health and safety at work in particular
- promote access to employment for women by stepping up appropriate work-life balance policies.

The report points to the 'considerable gaps' which exist as regards the enforcement and implementation of the legislation. The number of inspectors has 'slightly increased' but efforts to improve capacity need to continue in line with ILO benchmarks.

On social dialogue, the progress report notes that the labour assembly focused on the future work agenda of the ILO but adopted no conclusions; that the Economic and Social Council had not convened since 2009; and that other formal social dialogue mechanisms are either not utilised or lack 'genuine democratic involvement' and, thus, 'cannot promote consensus building'. Anti-union discrimination by employers 'is reportedly very strong' with instances of arbitrary dismissals, harassment and detention for activities of a peaceful nature. Public sector employees have no right to strike while some are also deprived of the right to organise. Public sector collective bargaining needs to be improved in line with ILO standards; and Turkey must ensure that its law 'does not interfere with the right to organise a trade union according to ILO Convention 87'.

Potential candidates

Bosnia and Herzegovina

On freedom of movement, BiH is assessed as having 'some' level of preparation, although it has made 'no progress' in the last twelve months. Two targets are set: start work on a country-wide vacancies database; and to continue negotiating and concluding bilateral agreements on social security. The law does not distinguish between EU workers and other foreigners, although the non-discrimination law is wide-embracing. However, employment in public administration is reserved to citizens of the country while EU citizens continue to need a work permit and must meet several conditions. At entity level, and in the District of Brčko, the laws on residence permits on grounds of employment need to be fully harmonised with the state-level law.

There are nine bilateral agreements on social security, of which six are with EU member states although a further number have been implemented on the basis of succession from Yugoslavia.

As regards rights of establishment and freedom to provide services, BiH is regarded as at an 'early' stage of preparation but has again made 'no progress' recently. The current legislation does not provide for the mutual recognition of foreign qualifications for regulated professions, and even a general roadmap for alignment remains to be implemented. Furthermore, 'significant efforts' still have to be made to establish an adequate institutional framework. However, no recommendation has been made in this area.

Likewise, 'some' level of preparation is in place as regards social policy and employment although there has been only 'limited' progress recently. Consequently,

‘serious challenges’ remain to be addressed, including on the social dialogue. Three targets have been identified as priority for the next twelve months:

- adopt the employment strategy for the Federation and the country-wide strategy on employment as a policy framework; and provide for additional implementation and monitoring capacity
- introduce a uniform minimum level of maternity leave benefits and protection
- enhance the social dialogue at all levels and the conclusion of general collective agreements.

Labour laws are in place, but require further improvement in order to meet EU standards in full, not least in the area of discrimination, while implementation ‘remains inadequate’ especially as regards the social dialogue, protection for workers and the enforcement of the outcomes of labour inspections. Laws on occupational health and safety are in place on a country-wide basis but the level of harmonisation remains ‘uneven’.

As regards the social dialogue, the involvement of the social partners is ‘limited’ and internal capacities are ‘weak’ at all levels of the government; and, furthermore, ‘no significant improvements’ have been made. Economic and social councils operate at entity level, although the Federation one has been ‘facing many difficulties’ in its work over the past two years and a state-level one continues to be lacking.

Kosovo

Chapters 2 and 3 have been combined as regards the assessment of the state of preparation under which Kosovo remains ‘moderately’ prepared for EU accession but to have made only ‘limited’ progress recently. The targets for the next year as regards the direct interests of workers are that Kosovo needs to align with the EU *acquis* on the mutual recognition of professional qualifications and to remove barriers to the right of establishment and freedom to provide services.

Two social security agreements entered into force in 2019 and negotiations with the Netherlands, Slovenia and Albania have been initiated.

On social policy and employment, Kosovo is at an ‘early stage’ of preparation but has made only ‘limited’ progress recently. Here, ‘most’ of the previous recommendations have not been implemented and are simply repeated for this next period:

- continue to implement the strategy for employment and social welfare, and monitor results
- amend and enforce the labour law in line with the *acquis*, in particular as regards discrimination and parental leave
- amend and adopt a law on the Economic Social Council, enforce health and safety at work rules and take measures to reduce workplace accidents further
- ensure better targeting and delivery of social services in municipalities and of social assistance schemes.

The report observes in particular that the poor implementation of even the existing labour law, particularly in the private sector, ‘remains a concern’. As regards health and safety at work, the law was aligned with the *acquis* in 2019 but implementation ‘remains limited’ and the majority of workers are not covered by health

insurance or insurance against work-related accidents or illnesses. The Labour Inspectorate has made the attempt to increase capacity via making a greater number of inspections although this has 'not had a significant impact on the ground'.

Regarding the social dialogue, the 2014 general collective agreement expired in 2017 without actually having been implemented. A new agreement is now being negotiated. Furthermore, amendments to the Law on the Economic Social Council aimed at improving its capacities, decision-making and overall performance have not yet been adopted. The report also notes that private sector trade unions are under pressure, with some cases of 'retaliation' for industrial action, and are generally less organised as a result.

Evaluation of the country reports

Reading through these individual summaries, while a number of the issues are rooted within the individual situations applying within each state, there are a number of recurring themes as regards their current state of preparation when it comes to labour and social affairs. These are set out, as principles, in what follows (there are issues around how such principles both interact – because clearly several are interlocking – and, crucially, around how they might be implemented in practice). The order in which the issues are set out does not reflect any sort of priority ranking.

1. the target is frequently repeated that states should initiate and negotiate further bilateral agreements which co-ordinate social security provision as a means of facilitating freedom of movement between citizens. While having certainty of medical treatment while living and working in other countries *outside* the Balkans certainly facilitates freedom of movement, few western Balkans states are in a good negotiating position here as a result of the flight to western Europe of many of their citizens. In principle, most Balkans states are likely to have good medical facilities as a result of the legacy of the past, but the exodus of trained medical staff, largely to Germany (Panic and Kozina 2016), is a critical stumbling block. Even so, there may be a way here via securing medical insurance deals and, furthermore, this is potentially something in which states can co-operate as a means of raising their bargaining power with medical insurers.

Freedom of movement also takes on greater importance *within* the Balkans given that freedom of movement is a potential response to unemployment at a time when – if the Economic and Investment Plan and the Regional Common Market is successful (see following section) – there is a degree of job-creating growth. For a number of reasons (among them the effects of war, the impact on families and towns from which people move and the need for balanced, sustainable development), it would be wise not to overstate the potential here, however

2. there are few signs of progress on the mutual recognition of professional qualifications. This is clearly a potentially thorny issue in which a superficial 'quick win' frequently ends up being mired in the detail. It may be that too much time has passed in the interim, but many of the states share a common professional and vocational education and training background as well as professional practice standards; thus, it may be that co-operation may provide a route for common advance. Even if states' VET systems are now divergent, the sorts of co-opera-

tion under which separate states take the lead on particular professions may still secure an advance for all.

Furthermore, the achievements in this area recorded by Montenegro are likely to be illustrative for others – the rare example of a state in the region which is actually winning ought, in principle, clearly to be worth learning from. Here, the promotion of best practice is something on which the Regional Co-operation Council might be usefully involved. This is an early example of the need for action since the Economic and Investment Plan identifies the mutual recognition of qualifications within the region as one of the building blocks of the Common Regional Market

3. ‘insufficient capacity’ – both financial and institutional – is commonly found among states’ labour inspectorates (again a situation in which the countries of the region have – or, rather, had – a strong legacy),³ including in the area of health and safety. This is disastrously short-sighted since labour oversight and its meaningful enforcement in practice has the potential to provide an underpin to decent work as well as an effective response to the grey economy and corruption, and is critical to many of the other issues emerging from the country reports on social issues. In particular, in ensuring that collective agreements are respected, it also has the capacity to strengthen the social dialogue (which, itself, is a recurring theme).

One solution here clearly requires both finance and training; given the wreckage caused to regional economies by Covid-19,⁴ the timing of both is difficult but, as regards training, it may be that the Economic and Investment Plan can make some sort of a contribution. Additionally, this might well represent a quick win for social dialogue where the social partners are engaged and consulted on particular programmes; and, again, it may serve as a sound basis for further regional co-operation. Investment in maintaining budgetary resource where recruitment takes place is an issue which will require both short-term and long-term initiatives to be taken either by states or bilaterally.

The other solution is that states need to address the political blocks which prevent social dialogue from functioning effectively – much easier said than done, of course. However, it is good that a well-functioning social dialogue is on the agenda as regards the EU’s assessment of the level of integration of western Balkan states. In the interim, the more noise that can be made about the failures in this regard, and the reasons why, the better. Organisations at international level can assist significantly in this regard

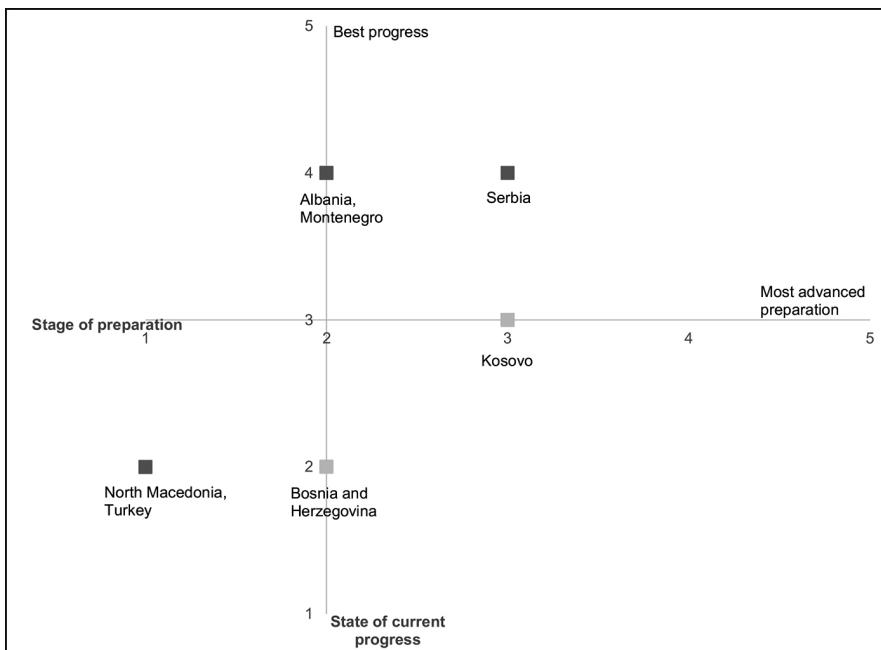
3. It is worth noting that the culture generated by this legacy is itself actually a key obstacle – where labour inspections are now non-existent, or can now be brushed off, whereas they could not before, the reasons for compliance all too evidently disappear, too.
4. The Regional Co-operation Council anticipates a drop of between 3 and 5.6 per cent in GDP during 2020. Furthermore, the decline in FDI during 2020 is already at 40 per cent. Figures sourced from the presentation of Majlinda Bregu, RCC Secretary-General, at the Connectivity Forum Panel ‘Winners and Losers of Covid-19 in South-East Europe’, held in Tirana on 1 October 2020. Available at: <https://rcc.int/news/649/bregu-economic-integration-among-the-western-balkans-6-and-with-the-eu-is-the-most-important-in-this-moment>.

4. the state of social dialogue in general is, however, poor almost everywhere and at almost all levels, from the tripartite to the bipartite to the regional. There are a number of reasons why, which vary in individual cases, but the response to an identified lack of capacity amongst the social partners and scepticism on the part of employers is again training, plus contact and practice. This is once more something on which the social partners in the region might look to the Economic and Investment Plan and there is, of course, a wealth of experience on offer within the trade union organisations of western Europe, including the European Trade Union Institute, on which capacity development programmes may draw
5. labour laws need frequently to be amended to secure better protection for trade union activities and in line with ILO Conventions. It is fairly clear why employers and, in some cases, powerful figures in governments might not want a strong trade union movement – but systems that rely on social dialogue depend on this (and, indeed, on strong employer bodies, too). In addition, providing better protection for trade union activities has a key role in stemming trade union decline and where there are signs of a loss of confidence in trade union abilities. Trade unions are no doubt already pushing for this – but they now have a clear source of argumentation with which to boost their campaigns. Furthermore, there needs to be effective sanctions on employers where they engage in retaliatory action and in other anti-union discriminatory action, including the targeting of union officials and activists
6. weak capacity amongst trade union organisations is also a recurring, and long-term, problem. This needs to be addressed by training programmes for which the Economic and Investment Plan might again provide suitable resources. In the short-term, greater engagement with members as regards the aims and results of trade union activity, via improved membership communications and better bottom-up orientation, might well help.

Progress against the social policy chapters

The following two quadrant charts help with a comparison of how each state is progressing under Chapters 2 and 19 respectively, both against the EU's evaluation and, thereafter, with regard to each other. The quadrants cross at the average score for each chapter on each of the two measures, with 1= low and 5= high. The further up the chart, and the further to the right, the better the current state of progress and the more advanced the stage of preparation, with a general movement in an 'easterly' direction, towards a score of five on the preparation measure, symbolising states that are probably ready to conclude negotiations on these chapters.

Chart 1 – Freedom of movement for workers (Chapter 2)

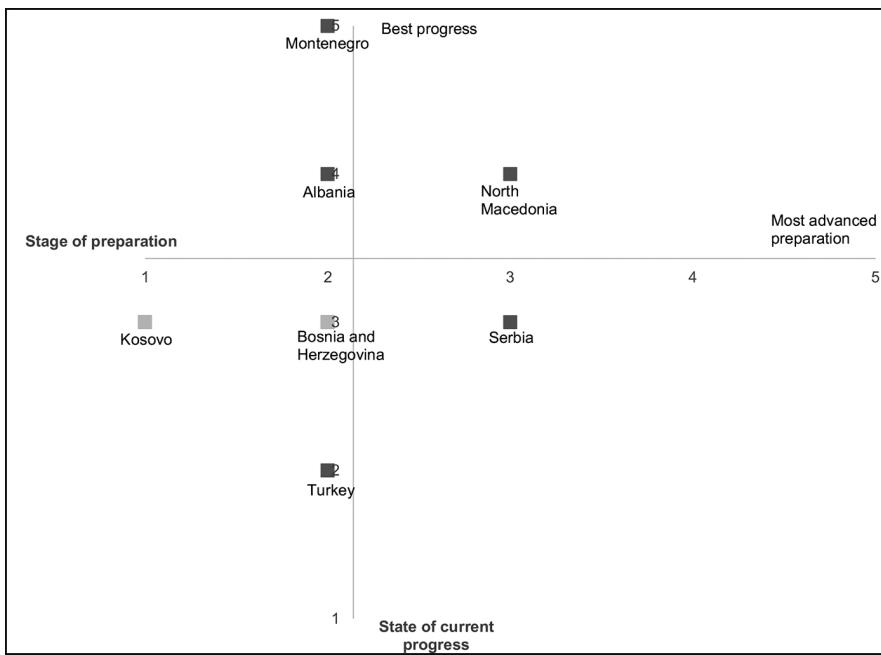


Key: Stage of preparation (horizontal axis): 1 – early; 2 – some; 3 – moderately; 4 – good; 5 – well-advanced; state of current progress (vertical axis): 1 – backslicing; 2 – no progress; 3 – limited; 4 – some; 5 – good. Dark shaded – candidate country; Light shaded – potential candidate country

We can see that no western Balkans state is at a particularly advanced level of preparation here, with the best being Serbia and Kosovo although Serbia has made a little more in the way of recent progress. Albania and Montenegro are also making progress at the same rate as Serbia, although both are – currently – assessed as being at a lower stage of preparation. North Macedonia and Turkey are least prepared and, along with Bosnia and Herzegovina, have made no recent progress – bear in mind here that 2 represents a low bar given that a score of 1 demonstrates a state that is backslicing (which none, currently, are).

Chart 2, constructed as before, turns the focus to Chapter 19. Here, we can see again that no state is better prepared than ‘moderately’ so, a designation shared by Serbia and North Macedonia although North Macedonia has made more progress recently. Montenegro has made the most progress – scoring a maximum – although like three other states (Albania, BiH and Turkey), it is starting from a low base. Kosovo is least prepared and has not made significant progress, while Turkey – as above – has made no progress at all.

Chart 2 – Social policy and employment (Chapter 19)



Key: As for Chart 1. Source (for both Chart 1 and Chart 2): author's own analysis.

It may come as some surprise given the current state of its politics, and it may thus reflect some kind of indictment of the reporting process, that Serbia is overall best positioned on the measures which are most relevant to workers and to social affairs. We should recall here that, couched within diplomatic language as it may be,⁵ the individual country report is quite damning of the current social position in Serbia including as regards both the social dialogue and some legislative issues which are really quite basic, such as the non-existence of a law on strikes. At the same time, Serbia is clearly in a better position as a result of the relative scale of its economy: in 2018, it had the largest GDP in the region (i.e. of the six candidate and potential candidates other than Turkey) and accounted for 45 per cent of the total.⁶ Indeed, it may be that Serbia's economic strength might even be buying it a bit of leeway as regards the nature of the EU's assessment on social policy measures since the Serbian economy and its continued growth is key not only to the emphasis now being placed on

- 5 We should acknowledge that the use of diplomatic language in a report is itself likely to be a problem when dealing with 'big men'.
- 6 €42.9bn in 2018 out of a regional total (excluding Turkey) of €94.6bn (European Commission 2020d). Taking the GDP per capita measure, the Serbian economy ranks second (again excluding Turkey) behind Montenegro.

regional co-operation but also to alleviating the drop in EU-wide GDP once the EU has enlarged to encompass the western Balkans.

Both North Macedonia and Kosovo are equally as well positioned on one of these two chapters but at the stage of least preparation on the other. Montenegro, Albania and BiH are moving at different paces but, currently, none is more advanced than Turkey as regards Chapter 19, while North Macedonia – with which the EU has opened accession negotiations (alongside Albania) occupies exactly the same space as Turkey as regards Chapter 2.

It is also worthwhile noting that only Montenegro, as regards Chapter 19, is assessed as having made ‘good’ recent progress on either social policy chapter: the best results otherwise are that ‘some’ progress is being made and, even then, only by Albania, North Macedonia and Serbia (and not, even then, on both chapters simultaneously). Furthermore, in several cases there has been no progress on prior-year recommendations so these are simply repeated. This is a truly shocking position to be in – although at least, on these two chapters, we can say that no state is currently ‘back-sliding’ – a designation attached in this series of reports only to Turkey (as regards four other chapters) and BiH (one other).

That states supposedly in transition have, after – in some cases – two decades or more of reform, advanced only as far as ‘at an early stage’ or having made (at one level up) ‘some’ progress on social policy might be seen as a terrible indictment of the generalised lack of qualitative progress across the region as well as of the failure of the process in which the EU has been engaged.

It is worth reminding ourselves, however, that none of the countries were in formal negotiations with the EU on membership so the reports are not exactly a measure of progress against a specific target; rather more an assessment of how far there is still to go in terms of the *acquis* and, also, where the EU thinks states might most usefully concentrate resources in the next period not least as a means of countries developing sufficiently for actual negotiations to be opened (or, in the case of BiH and Kosovo, to gain candidate status). The perspective on accession for those without candidate status is clearly still one which drives policy, as demonstrated well in the case of BiH which has an integration plan in place (Fazlić 2020).

Nevertheless, convergence between the EU and the western Balkans has clearly slowed in policy terms as well as in terms of GDP (EIU 2018) – in the former case, almost to apparent standstill: the process is one that has become marked by de-convergence and de-consolidation (Solioz 2020a, 2020b).

Consequently, none of this strikes the observer as a sign of a region, collectively, which is looking to make progress and keen to do what it can to catch-up with the legislative programme and realise its professed accession ambitions. Whatever the reasons, the Commission will be looking for a response by way of a faster rate of progress at least by the time of the 2022 reports (given the need for improvements in capacity in the interim) in reaction to its initiatives in seeking to reinvigorate the enlargement dialogue. Certainly by then it will want to be seeing the region move positively out of the ‘Balkans in limbo’ scenario (Čepeirković and Gaub 2018). If there is not such progress, it will indeed question where the money is going: ‘reform’ goes very much hand-in-hand with investment. Countries in the region need to do more to

bridge the reality gap that divides their professed ambitions from their achievements in practice.

Economic and Investment Plan and the Common Regional Market

The money that the European Commission is offering in the next period comes via the Economic and Investment Plan's mobilisation of 'up to' €9bn of investment as a 'comprehensive' initiative to spur long-term economic recovery across the western Balkans (noting here the exclusion of Turkey). It is worth noting that all this money has already been 'foreseen' in the sense that it refers to IPA III (Instrument for Pre-Accession Assistance), which itself remains dependent on final agreement being reached with the Council and the European Parliament on the Multiannual Financial Framework 2021-2027 (hence the 'up to'). The proposal for IPA III is for an investment of €14.162bn (in current prices).⁷ Nevertheless, the Economic and Investment Plan would seek to act as a pump-primer for up to €20bn of additional investment, not least via the forthcoming Western Balkans Guarantee Facility, and its aim to focus IPA III funding on a very specific and targeted set of aims has been made plain.

The Plan is based on ten 'flagship investments' proposed in the following areas and following 'preliminary' consultation with the governments of the region:

- sustainable transport (three initiatives)
- clean energy (three initiatives)
- environment and climate
- digital future
- private sector
- human capital

For our purposes here, the most interesting is the last-named although the application of the green agenda to the western Balkans, and just transition, is clearly also of significant interest to trade unions. There are two particular focuses for human capital investment, both evident from the conclusions of the social chapters of the country reports: the Plan is intended to provide 'strong support' for the development of human capital, including high-quality education and training systems, employment, health and social protection; and it will 'improve labour market participation' especially young people and women, vulnerable groups and minorities.

Of specific interest is a forthcoming 'Innovation Agenda for the western Balkans' which has the aim of enhancing human capital, stopping the 'brain drain' to western Europe while encouraging circulation within the region, and providing a better perspective for young people. This addresses one of the three key aspects which is currently widening the east-west divide (Solioz 2020a), but the 'brain drain' requires not only economic improvement but also addressing democratic deficits (Buyuk 2020).⁸

- 7 Note that the IPA includes Turkey. The proposed value of IPA III is actually a small drop on IPA II (as valued without the UK contribution and at 2018 prices).
- 8 As Solioz (2020a) also records: the other two issues he specifically identifies being the capture of the state and its agencies by business and party oligarchs; and the decreasing public participation in politics alongside the erosion of trust in political elites.

Resolving several visa issues, some of them bilateral ones, and promoting a ‘western Balkans Erasmus’ (Beharić and Bokshi 2020) also have something to commend themselves, too, not least in the light of the emphasis placed on the Common Regional Market.

The overall aim of the Plan is to support the enlargement package by helping states meet their obligations under membership. Primarily, this means the ‘fundamentals first’ principle under which states need to address corruption and organised crime, the economy and the functioning of democratic institutions and public administration. ‘Democratic institutions’ encompasses social dialogue and trade unions: the Plan speaks quite openly about boosting not only the region’s economic development but also its social cohesion (European Commission 2020c: 3); while it is also intended to strengthen dialogue on implementing the European Pillar of Social Rights in the region (European Commission 2020c: 15), of which principle 8 deals with social dialogue and the involvement of workers. Thus it is plain that, while the flagship initiative under the Economic and Investment Plan is the Youth Guarantee, there is room for other projects which take the accession process forward in the area of social dialogue.

In return, western Balkans states must deliver ‘more credibly’ on their commitment to implement the reforms required and with a clearer political commitment – the conditionality approach under which finance to assist accession assumes that the reforms will then be forthcoming. This implies accelerated funding and investment as the reward for progress, including the phased introduction to individual EU policies as a state gets closer to accession – as well as a ‘downwards adjustment in scope and intensity’ where there is prolonged stagnation or backsliding. Here, the country reports are ‘a very useful tool⁹ for governments to focus their reform programmes in the year ahead based on what is essentially a clear three-step package:

- a. substantive funding ‘swiftly’ to deliver on key priority investments proposed by the authorities and which have a high impact for the whole region
- b. the ‘firm commitment’ of the partners to ‘accelerate’ the reforms needed to consolidate the conditions for economic growth
- c. the engagement of the whole region in establishing an economic market that will make the region more attractive to investors.

The references to regional economic integration are founded within the belief that the establishment of a Common Regional Market (CRM) for the region’s 17.9m people, based on the removal of barriers to trade and the overcoming of fragmentation, would assist economic recovery and growth, and also act as a stepping stone to integration with the European Single Market following accession to the EU. A declaration on the CRM was signed at a summit which took place in Sofia on 10 November 2020. Consequently, the Plan is specifically motivated around this issue while also calling on western Balkan governments to commit to developing an ‘ambitious and inclusive roadmap’ on which to establish it. We might also note that the CRM is seen

⁹ ‘Questions and Answers: Economic and Investment Plan for the Western Balkans’, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1819. This is the source for other quotes in this paragraph and the next.

as a solution to the recognised need to give fresh impetus to a process of accession that has become moribund and discredited: giving the states of the western Balkans themselves some sort of say in deciding the rules of the market and, in the process, reinvigorating the process of accession.

Relying on World Bank methodology, the Commission believes that the CRM would increase GDP within the region by 6.7 per cent – i.e. some €6.3bn on the basis of 2018 GDP. The World Bank is not specific on the time period over which such a benefit would accrue – indeed, the figure is raised with the minimum of fanfare (World Bank 2019: 27) – but the figure looks attractive on the surface, not least in the sense of the likely loss to GDP arising from Covid-19 (see above, at footnote 4).

Just how realistic this turns out to be in practice is clearly dependent firstly on the reliability of the World Bank's methodology; and, secondly, on how much the states are able to co-operate in practice. It should thus remain a working assumption for now. However, it does provide something of a basis on which to work and it is clear that removing barriers to trade will spur growth in economic activity. Equally, it is welcome that states coming closer to accession will gain additional benefits in terms of being treated more as an EU member, without which it may have been the case that the CRM simply becomes an end in itself.

Ultimately, it thus appears that where enlargement policy seems to have ended up is neither 'regatta' nor '*en bloc*' but some sort of hybrid: enlargement on the basis of individual assessment – and, perhaps, taking place with several countries at once – but on the basis of the countries of the region working together in support of the same aim and which, ideally and perhaps idealistically, lifts them all towards the common goal of EU membership.

Conclusion

Following a lengthy period in which the European Union, affected by its own 'polycrisis' (Solioz 2020a), appeared to have taken its eye off the western Balkans ball, the 'reinvigorated' plan is now quite clear. We can see the determined return of conditionality while the carrots (as well as some sticks) have been made plain: faster progression towards accession will result in benefits in terms of faster and closer integration, even prior to accession; in contrast, states that do not make such progress will see less investment and a downgraded priority in terms of focus.

That ball is quite clearly now in the court of the countries of the region as regards what they want to do.

The choices that countries make in this regard are likely to be conditioned by their own level of 'accession fatigue' but the clear language and aims of the documentation that the EU has produced during 2020 seem very much to act as a wake-up call. If so, it will be interesting to see how countries respond: firstly, given that they have not been used to being this close to the centre of attention for some time; and, secondly, given that some have used the interim period to look elsewhere for sponsors and support. Here, the response of Serbian President Vučić earlier this year at the start of the pandemic, turning to China in lament at the EU's initial (but quickly corrected) failure of responsiveness, seems to have acted as its own wake-up call in Brussels. This, it seems, stung the EU: hence the rather indignant tone of the re-

sponse, when launching the Covid-19 relief package, that it demonstrated that the EU was ‘once again the region’s most effective and reliable partner’ (European Commission 2020b: 2) and calls for recognition within the region of such. The states of the western Balkans could be forgiven for having forgotten this over the course of the inaction and the distracted nature of the relationship during the previous few years. It may well be that recent signs of a degree of tension between Belgrade and Moscow are a reflection of the EU, once again, being seen as returning to its role as a serious player in the region. It is possible to see the EU as having played a decent hand in this – even if that hand was simply the desire to lay again the card of active involvement; and to do so with a particular strategy in mind.

However, much depends on how the Covid-19 pandemic, already on the rise again across the region and more widely, pans out in the next period. The region has more than enough ‘hard’ populists in place already and, while populism, in general across the globe, has not enjoyed a good war,¹⁰ the conditions of economic collapse resulting from any shutting down of European economies to isolate the virus, at a time of year when it is more likely to have murderous effect, are – in their ability to act as a breeding ground for populist or libertarian responses – a sizable cause for concern in 2021 and beyond. This is true of both the western Balkans and the EU: it is a cause of particular regret that the EU, having at last grasped again the need to act in the region, was then immediately confronted by the pandemic. To its credit, it has not shrunk from the task.

Were this a more normal time, it would be good to see the countries of the region start some sort of processes of public debate as regards the next steps to be taken. This is perhaps unlikely, for the reason that these are not – and for a variety of reasons, not only those related to the pandemic – normal times. Nevertheless, what governments (and, in turn, their peoples) choose to do in the next twelve months or so will have enormous significance for the processes of economic growth within the western Balkans and EU accession. In the meantime, and in connection also with the outcome of the US election, this is a test for the nationalist ‘big men’, too: having put extensively their trust in a different outcome in the US, there are now choices that they will have to make at a point when they can no longer hide behind the veil offered by the EU’s distractedness; and then be held accountable for those.

One final point to make is that the attempt to kick-start the Common Regional Market will have implications for a couple of international organisations focused on the area: firstly, CEFTA (the Central European Free Trade Area), established purposely to facilitate integration into the EU and whose members are the six western Balkans states plus Moldova; and the Regional Co-operation Council.

Should the Common Regional Market take off, there will need to be rules of operation and disputes adjudication procedures, for which the CEFTA Joint Committee and its other structures might be well suited. The rules of the Common Regional Market will inevitably be closely aligned with the rules of the EU Single Market – this is of course substantially the point since the CRM is seen as a first step towards

10 It is unlikely to be a coincidence that, globally, among the countries hardest hit by the pandemic are those also run by populists.

accession (and another way in which the EU has played its hand rather cleverly). On the other hand, the need now for an alternative structure to CEFTA highlights that results so far since CEFTA expanded to the south-east in 2006 have, in terms of its role of preparing states for EU membership, been insufficient.

The Regional Co-operation Council, the successor organisation to the Stability Pact and which was intended to increase co-operation across the region but whose results have also been rather disappointing, certainly in comparison with the aims, also needs to respond to this reinvigoration of EU policy by stepping up its level of visibility. Currently more of a lobbying and investment promotion agency, albeit apparently rather well-funded (in part by the EU), it is debatable as to whether the RCC has indeed the strength to make the step up required. Inevitably, there are questions of capacity that apply here, too. Certainly it needs to become a much more powerful articulator of region-wide concerns *vis-à-vis* Brussels as well as a forum in which trade and, perhaps, other issues, can be thrashed out. In short, it needs to become something like a Commission for the CRM. The RCC's facilitation of an Action Plan for the CRM, in place in time for the Sofia summit in November, is an encouraging sign of an outfit developing its level of proactivity – but clearly it needs to do much more; and rather quickly.

As with these earlier attempts at increasing co-operation within the western Balkans, the CRM might also be doomed to founder on the rocks of intransigence, political blocks in the name of irredentism and growing nation-state pride. And there is clearly a surfeit of problems to overcome: among them years of bad governance, corruption and petty squabbling, on top of the remarkable lack of progress towards the social aspects of the *acquis* that states have, in general, made thus far. A more interventionist hand from the EU will therefore be needed to ensure that it does not founder – but, unlike these earlier attempts, the conditionality of aid in return for reform is now much more closely tied into the design as well as the operation of the structure. It clearly needs too – to have any chance of success, the reinvigoration must present a qualitatively different experience as regards reform and states coming to adopting the *acquis* than the previous, failed one. At least now there is some – welcome – momentum coming from the EU side.

It is too early to be writing the history just yet, but the direct nature of the dialogue that is being reinvigorated between the EU and the region as a whole, which might have fallen into disrepair through disuse and mistrust in the last few years, does have the potential to play a strong role in determining the future of the region and the medium-term prospects of those countries that constitute it. The question now is how those countries and institutions step up in response.

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