

The EU Enlargement and Accession Procedure – The Case of Western Balkan Countries

Marko Davinić*

Table of Contents

A. Introduction	513
B. Overview of the EU Accession Procedure	514
C. Current situation in the Western Balkans	517
I. Albania	519
II. Bosnia and Herzegovina	519
III. The former Yugoslav Republic of Macedonia	520
IV. Kosovo (in line with UNSCR 1244/1999)	521
V. Montenegro	521
VI. Serbia	522
D. Regional Stability as a “Substitute” for Democracy	523
E. Concluding Remarks	525

A. Introduction

The term Western Balkans was created by the European Union in the early 2000s with the aim of avoiding associations with the former Yugoslavia, which collapsed in bloody ethnic conflicts during the nineties. The term comprises all former Yugoslav republics except for Slovenia and with the addition of Albania. The EU launched a Stabilisation and Association Process at the 2000 Zagreb Summit, while a clear prospect for the EU membership was offered to the WB countries, together with Turkey, at the 2003 Thessaloniki Summit. As a consequence, a series of Stabilisation and Association Agreements (SAAs) were signed between the Member States and the Western Balkan countries. Unlike the European agreements signed between the EU and the Central Eastern European Countries that joined the EU in 2004 and 2007 respectively, the promotion of regional cooperation and good-neighbourliness is

* Marko Davinić is an Associate Professor, University of Belgrade, Faculty of Law, Public Law Department.

firmly attached to all SAAs.¹ This is not a surprise given the unresolved issues originating from the history of ethnic conflicts in the region, including unsettled borders and minority issues.² As the European Commission emphasised in many documents, the accession process today is more rigorous and comprehensive than in the past and progress towards membership is dependent on the steps taken by each country to meet the established criteria. A key lesson learned from the past is the importance of first addressing critical issues in the negotiating process.³

The EU has been experiencing both external and internal problems, such as the financial crisis, the Brexit, the migration crisis, and terrorism attacks. Consequently, the enlargement process has been put aside due to more critical matters currently shaking the sustainability of the EU. In addition, when the EEC had only six members, the stimulus for enlargement was very strong, while with 27 EU Member States today, the enthusiasm for enlargement has decreased.⁴ However, a postponement of enlargement may provoke significant regional risks and deterioration of bilateral relations, as demonstrated in the recent period in the whole region of the Western Balkans.

The paper is separated into three central parts. The first part provides a general outline of the accession phases through which each country must pass on its path to the EU while the second part presents the position of the Western Balkan countries in this process. The third part analyses the significance of good neighbourly relations for future membership in the EU, while also underlining that stability cannot be a substitute for democracy in this region. The key deliberations sum up the research results and point to joint problems for all Western Balkan countries in the ongoing EU accession process.

B. Overview of the EU Accession Procedure

Membership in the European Union has been considered as one of the most effective factors motivating democratic reform and political stability in the region. After all, the idea of peace is the core value of the EU. However, this process proved to be very long, arduous and uncertain for the Western Balkan countries.

Article 49 TFEU envisages in a general manner that

“any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”.⁵

1 *Van Elswwege*, Good-neighbourliness as a Condition for Accession to the European Union: Searching the Balance between Law and Politics, in: Kochenov/Basheska (eds.), *Good Neighbourliness in the European Legal Context*, 2015, p. 218. On the issue of regional cooperation, see *Topic*, Regional cooperation, in: Prifti (ed.), *The European future of the Western Balkans: Thessaloniki@10 (2003-2013)*, 2013, pp. 65-71.

2 *Bajić*, The Principle of Good-Neighbourliness in the European Union Enlargement Context: How Strict Conditionality for Serbia?, 2016, p. 14.

3 See for example European Commission, *Enlargement Strategy and Main Challenges 2013-2014*, COM (2013) 700 final of 16/10/2013.

4 *Prokopijević*, *Ekonomska kriza i proširenje EU (Economic crisis and EU enlargement)*, *Izazovi evropskih integracija* 4/2009, p. 47.

5 OJ C 326 of 26/10/2012, p. 43.

In connection, Article 2 stipulates that

“the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.⁶

Besides these abstract provisions, a country can only become a Member State if it fulfils all criteria for accession as first defined by the European Council in Copenhagen in 1993 (Copenhagen criteria), and strengthened in Madrid in 1995.⁷

The Copenhagen European Council underlines that

“membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”.⁸

However, it was also stipulated that

“the Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.”⁹

All those criteria can be divided into three main categories:

1. Political: stable institutions guaranteeing democracy, the rule of law, human rights and protection of minorities;
2. Economic: functioning market economy and the capacity to cope with competition and market forces in the EU, and

6 OJ C 326 of 26/10/2012, p. 17.

7 See the conclusions from these two historic meetings: www.europarl.europa.eu/summits/copenhagen/co_en.pdf and www.europarl.europa.eu/summits/mad1_en.htm#enlarge (15/9/2017).

8 Conclusions of the Presidency of the European Council in Copenhagen of 21-22/6/1993, SN 180/93, p. 12. On the economic development of Western Balkan countries, see: *Uvalic*, The economic development of the Western Balkans since Thessaloniki, in: Prifti, (fn. 1), pp. 73-82.

9 Conclusions of the Presidency of the European Council in Copenhagen of 21-22/6/1993, SN 180/93, p. 12.

3. Administrative: the capacity to take on the obligations of membership, which means adoption of the entire body of European legislation and its effective implementation through appropriate administrative and judicial structures.¹⁰

In addition, it was emphasised that the EU must be able to integrate new members, so it reserves the right to decide when it is ready to accept them. Taking this into account, some authors argue that past experiences demonstrate that geopolitical criteria and attitudes of the great powers are still more important for the accession than the Copenhagen and Madrid criteria.¹¹

The EU has designed a pre-accession strategy, in order to help countries to prepare for future membership. The main part of this strategy includes agreements that regulate rights and obligations of the countries, and in the case of the Western Balkan countries these are the Stabilisation and Association Agreements. Actually, the whole new agenda for Western Balkan countries was launched in 2000, called the Stabilisation and Association Process, with the main objective to help countries in the region during the painful process of reconciliation and stabilisation after the civil war. EU financial assistance is another important aspect of the pre-accession strategy. The EU has created a single financial instrument ("Instrument for Pre-Accession Assistance" – IPA), which has been in force since 2007.¹²

After the Stabilisation and Association Agreement is signed, a country that wishes to join the EU submits an official application for membership to the Council, which decides whether or not to accept it and recognise the country as a candidate (on the basis of an opinion from the Commission). This decision is subject to endorsement by the European Council. Candidate status does not mean that the EU will automatically start accession negotiations, which is a subsequent, separate step in the EU integration process, for which additional progress is required. The Member States decide when and on what terms to open and to close accession negotiations with candidates on each policy area, and there are 35 negotiating areas (chapters) in total. Negotiations operate on the principle that "nothing is agreed until everything is agreed", thus definitive closure of chapters occurs only at the end of the entire process.¹³

10 European Commission, *Understanding Enlargement, The European Union's enlargement policy*, 2011. The administrative criterion is not precisely determined, but it clearly concerns the creation of a system of professional, effective and transparent depoliticized administration, both vertically, and horizontally. See *Miščević*, *Madridski kriterijum: administrativni kapaciteti kao uslov članstva u Evropskoj uniji* (Madrid criteria: administrative capacity as a condition for EU membership), *Izazovi evropskih integracija* 1/2008, p. 97; *Ateljević*, *Administrativni kriterijum: politički ili tehnički uslov za članstvo u EU* (The Administrative criteria: political or technical condition for EU membership), *Izazovi evropskih integracija* 4/2009, pp. 1-23.

11 See *Đurković*, *Geopolitički okvir proširenja Evropske unije* (Geopolitical framework of EU enlargement), *Izazovi evropskih integracija* 8/2010, p. 91.

12 European Commission, (fn. 10). Through IPA II, the EU is providing 11.7 billion Euro for the period 2014-2020 to support the enlargement countries in their preparation for accession as well as regional and cross-border cooperation. European Commission, *EU Enlargement Strategy*, COM (2015) 611 final of 10/11/2015, p. 4.

13 European Commission, (fn. 10); see also https://europa.eu/european-union/topics/enlargement_en (15/9/2017).

The Commission keeps the Council and the European Parliament informed about the countries' progress, mainly through individual country reports. When negotiations on all chapters are completed, the results are incorporated into a draft accession treaty. If it wins the support of the main EU institutions, the treaty is signed and ratified by the candidate country and all Member States. When the ratification process is complete, the accession treaty enters into force on its scheduled date, and the acceding state becomes a Member State.¹⁴

The European Council renewed its consensus on enlargement in December 2006. From that moment on, enlargement policy has been based on consolidation and rigorous conditionality.¹⁵ A key lesson learned from the past is the importance of addressing the fundamentals first, indicating that the critical issues such as strengthening democratic institutions, administrative and judicial reforms and the fight against corruption would be tackled first in the negotiating process.¹⁶

This approach was further elaborated by *Jean-Claude Juncker*, the President of the Commission, in his Political Guidelines for the next European Commission. In this document from 2014 he emphasised:

“When it comes to enlargement, I fully recognize that this has been an historic success that brought peace and stability to our continent. However, the Union and our citizens now need to digest the addition of 13 Member States in the past ten years. The EU needs to take a break from enlargement so that we can consolidate what has been achieved among the 28. This is why, under my Presidency of the Commission, ongoing negotiations will continue, and notably the Western Balkans will need to keep a European perspective, but no further enlargement will take place over the next five years [...]”.¹⁷

C. Current situation in the Western Balkans

In November 2015, the European Commission set out a medium-term strategy for EU enlargement policy to cover the period of its mandate. It provides clear guidance and establishes the framework and tools to support the countries of the Western Balkans and Turkey to address the core issues and requirements of the accession process. Although recognising that the clear perspective of EU membership is a key stabilising factor for Western Balkan countries, the Commission repeated that no new country will be ready to join the EU until the end of its mandate in 2019.¹⁸ This

14 Ibid.

15 At its meeting in Brussels in December 2006, the European Council, 16879/1/06, para. 4 and 6 stressed “that the enlargement strategy based on consolidation, conditionality and communication, combined with the EU’s capacity to integrate new members, forms the basis for a renewed consensus on enlargement. [...] To sustain the integration capacity of the EU the acceding countries must be ready and able to fully assume the obligations of Union membership and the Union must be able to function effectively and to develop.”

16 Ibid.

17 *Juncker*, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Political Guidelines for the next European Commission of 15/7/2014, p. 12.

18 COM (2015) 611 final of 10/11/2015, pp. 2 and 4.

institution summarised the main obstacles that lie ahead in the EU integration process of Western Balkan countries:

“All countries face major challenges with respect to the rule of law. Judicial systems are not sufficiently independent, efficient or accountable. Serious efforts are still needed to tackle organised crime and corruption. While fundamental rights are often largely enshrined in law, shortcomings persist in practice. Ensuring freedom of expression is a particular challenge, with negative developments in a number of countries. Public administration reform needs to be pursued with vigour, to ensure the necessary administrative capacity as well as to tackle high levels of politicisation and a lack of transparency”.¹⁹

Once again, the Commission underlined that enlargement policy remains focused on the already mentioned “fundamentals first” principle, which implies good neighbourly relations and regional cooperation as well.²⁰

Regarding the fight against corruption and organised crime, the Commission insisted on proactive, well-coordinated and effective law enforcement to ensure corruption cases are properly investigated, prosecuted and sanctioned, including the seizure and confiscation of assets. Confiscation of criminal assets has been seen as a key in dismantling criminal networks, as well as criminalisation of illicit enrichment to address the phenomenon of unexplained wealth.²¹

The Commission’s 2016 Communication on EU Enlargement Policy takes stock of progress in the implementation of the EU Enlargement Strategy 2015. This document recognises that

“several countries in the region continue to show clear symptoms and various degrees of state capture. Companies, institutions or powerful individuals use illegal practices to influence and shape policies, the legal environment and the economy to their own interests. The declared political commitment to fight corruption has not translated sufficiently into concrete results. Efforts therefore need to focus more than ever on establishing a convincing and sustained track record in these fields based on efficient, effective and unbiased investigations, prosecutions and court rulings in cases at all levels. [...] The authorities need to seriously start dismantling criminal networks and confiscating assets, including using more ambitious and powerful tools like extended confiscation of assets and systematic use of financial investigations”.²²

In addition, it was underlined that in the Western Balkan countries

“undue political interference in the work of public broadcasters, untransparent public funding of media, and intimidation of journalists has continued”.²³

19 Ibid., p. 2.

20 Ibid., pp. 5 and 11.

21 Ibid., p. 34 et seq. On issues of corruption and organised crime in the Western Balkans, see *Mungiu-Pippidi*, The widening implementation gap: the impact of EU accession on governance in the Western Balkans, in: Prifti, (fn. 1), pp. 35-44; *Brière/Prifti*, Human and drug trafficking: the fight against organised crime, in: Prifti, (fn. 1), pp. 45-54.

22 European Commission, 2016 Communication on EU Enlargement Policy, COM (2016) 715 final of 9/11/2016, p. 3.

23 Ibid., p. 4.

Regarding regional cooperation, the Commission has repeated the importance of good neighbourly relations and insisted on more responsible political leadership and further efforts towards reconciliation.²⁴

In the following subchapters the current situation in individual Western Balkan countries will be analysed, as well as their respective pathways towards the EU. Since Croatia became the new EU member state in 2013, the situation in this country will not be presented. Serbia and Montenegro are two candidate countries, which opened negotiations with the EU, while the former Yugoslav Republic of Macedonia and Albania have the same status but have not yet opened negotiations. Finally, Bosnia and Kosovo (in line with UNSCR 1244/1999) are two potential candidate countries that signed Stabilisation and Association Agreements, which have entered into force. Mentioned countries are listed in alphabetical order.²⁵

I. Albania

Albania signed the Stabilisation and Association Agreement in June 2006 and it entered into force in April 2009. In the same period Albania applied for EU membership and in November 2009 the Council invited the European Commission to submit its opinion. In October 2012, the Commission recommended that Albania be granted EU candidate status, subject to completion of measures in certain areas. Following the publication of the Commission's report on Albania's progress on judicial reform, and the fight against corruption and organised crime, the European Council granted Albania the status of a candidate country in June 2014.²⁶

In its Conclusions from December 2016, the Council takes positive note of the Commission's Recommendation to open accession negotiations with Albania, subject to credible and tangible progress in the implementation of the justice reform, in particular the re-evaluation of judges and prosecutors. The Council underlined that Albania needs to ensure that results in the fight against corruption are achieved at high level, as well as that more effective results in dismantling organized criminal networks and addressing drug production and trafficking need to be progressively secured.²⁷

II. Bosnia and Herzegovina

The Stabilisation and Association Agreement between Bosnia and Herzegovina and the EU was signed in June 2008, and after a long ratification process entered into force

²⁴ Ibid., p. 7.

²⁵ For main statistical data regarding countries of the Western Balkans, see Eurostat, Key figures on enlargement countries, 2017 edition.

²⁶ See www.consilium.europa.eu/en/policies/enlargement/albania/; https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania_en; https://eeas.europa.eu/headquarters/headquarters-homepage/6953/albania-and-eu_en (all 15/9/2017).

²⁷ See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, Albania 2016 Report, SWD (2016) 364 final of 9/11/2016.

in June 2015. Bosnia and Herzegovina's application for EU membership was submitted in February 2016. In accordance with the accession procedure, the European Commission will give its opinion on the application to the Council. If the opinion is positive, the European Council can decide on granting Bosnia and Herzegovina a candidate status. Until then, Bosnia and Herzegovina will still have the status of a potential candidate country.²⁸

In its conclusions from December 2016, the Council calls on authorities in Bosnia and Herzegovina to continue to pursue socio-economic reforms while also focusing on the reforms in the rule of law field, including strengthening the independence, accountability and professionalism of the judiciary, the fight against corruption and organised crime, the fight against radicalisation and terrorism, as well as public administration reform. Furthermore, the Council noted with concern the lack of progress in the freedom of expression and media and expects Bosnia and Herzegovina to intensify efforts to address this issue.²⁹

III. The former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia was the first Western Balkans country that signed a Stabilisation and Association Agreement with the EU in 2001, which entered into force in April 2004. After application for EU membership was submitted in March 2004, the former Yugoslav Republic of Macedonia was granted candidate country status in December 2005.³⁰ However, it has suffered a series of setbacks which have meant it has not yet started negotiations with the EU.

In its conclusions from December 2016, the Council reiterated its serious concern about the continuation of the political crisis in the former Yugoslav Republic of Macedonia. In its words, the country continues to suffer from a divisive political environment, polarisation and lack of culture of compromise, with backsliding in important areas such as the functioning of the judiciary. It should also address systemic rule of law issues including breaches of fundamental rights, judicial independence, media freedom, elections, corruption, politicisation of state institutions and failures of oversight. The Council emphasised that there is a need to bring the longstanding discussions with Greece on the name issue to a definitive conclusion without delay.³¹

28 See www.consilium.europa.eu/en/policies/enlargement/bosnia-herzegovina; https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina_en (both 15/9/2017).

29 See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, Bosnia and Herzegovina 2016 Report, SWD (2016) 365 final of 9/11/2016.

30 See www.consilium.europa.eu/en/policies/enlargement/former-yugoslav-republic-macedonia/; https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/former-yugoslav-republic-of-macedonia_en; https://eeas.europa.eu/delegations/former-yugoslav-republic-macedonia/1457/former-yugoslav-republic-macedonia-and-eu_en (all 15/9/2017).

31 See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, The former Yugoslav Republic of Macedonia 2016 Report, SWD (2016) 362 final of 9/11/2016.

IV. Kosovo (in line with UNSCR 1244/1999)

Following the NATO bombing of SFR Yugoslavia in 1999, Kosovo was placed under UN administration. Kosovo's declaration of independence from Serbia was enacted in February 2008 by the Assembly of Kosovo. Kosovo's independence was not recognised by Serbia, and consequently also not recognised by five EU Member States.³²

The EU is present in Kosovo through the EULEX rule of law mission and its special representative. In April 2016 the Stabilisation and Association Agreement between the EU and Kosovo entered into force. This agreement is without prejudice to Member States' positions on status and provides the contractual framework within which the EU and Kosovo will intensify their cooperation.³³

In its conclusions from December 2016, the Council called on Kosovo to focus on the implementation of the comprehensive reforms necessary to meet its obligations under the Stabilisation and Association Agreement. Especially, Kosovo should further intensify its efforts to improve the rule of law, including judicial independence, and its fight against organised crime and corruption. Effective promotion and protection of human rights should be pursued, including the full protection of Serbian cultural and religious heritage. The inclusion and protection of minorities including additional efforts to ensure a safe environment and safeguarding of their property rights should be addressed. In addition, Kosovo was encouraged to swiftly implement in good faith its part of all past agreements, in particular the establishment of the Association/Community of Serb majority municipalities and to engage constructively with Serbia in formulating and implementing future agreements. The Council recalled that progress in the process of normalisation of relations with Serbia is an essential principle of the Stabilisation and Association Agreement and underpins the development of relations and cooperation between the EU and Kosovo.³⁴

V. Montenegro

After declaring independence from the State Union of Serbia and Montenegro in 2006, Montenegro signed a Stabilisation and Association Agreement in October 2007, which entered into force in May 2010. Montenegro's application for EU membership was submitted in December 2008, and the country was granted candidate status in December 2010.

32 As a result, the European Union always refers to "Kosovo", with a footnote containing the text agreed to by the Belgrade-Pristina negotiations: "This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence."

33 See https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/kosovo_en; https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en (both 15/9/2017).

34 See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, Kosovo 2016 Report, SWD (2016) 363 final of 9/11/2016.

On the basis of a positive opinion from the Commission, the Council decided to open accession negotiations with Montenegro in June 2012, and this decision was endorsed by the European Council in the same month. Until now, 26 out of 35 negotiating chapters have been opened for negotiations of which two (science and research, education and culture) have already been provisionally closed.³⁵

In its conclusions from December 2016, the Council recognised that the legal framework in the area of the rule of law is largely complete and the institutional set-up is in place. However, the Council underlined the importance that the entire rule of law system delivers more concrete results and sustainable track record, in particular in the fight against corruption and organised crime, including effective investigations, prosecutions and final convictions. In addition, continued actions are needed to pursue the public administration reform and to strengthen the independence of institutions.³⁶

VI. Serbia

The Stabilisation and Association Agreement between Serbia and the EU was signed in April 2008, and it entered into force in September 2013. In December 2009 Serbia formally applied for EU membership, and after the positive opinion from the Commission, it was granted EU candidate status in March 2012. The governments of Serbia and Kosovo concluded the Brussels Agreement (First Agreement of Principles Governing the Normalization of Relations) in April 2013,³⁷ enabling the start of EU entry talks with Serbia. Serbia officially started accession negotiations in January 2014, and until now 8 out of 35 negotiating chapters have been opened of which two have already been provisionally closed (science and research, education and culture).³⁸

In its conclusions from December 2016, the Council recommended that Serbia should intensify reform efforts and focus on effective implementation, in particular in rule of law areas such as judicial reform and the fight against corruption and organised crime. The Council urged Serbia to swiftly implement in good faith its part of all past agreements with Kosovo, in particular on energy, and to engage constructively in formulating and implementing future agreements. The Council underlined that progress in the process of normalisation of relations with Kosovo under chapter 35, as well as regarding chapters 23 (judiciary and fundamental rights) and 24 (justice,

35 See www.consilium.europa.eu/en/policies/enlargement/montenegro; https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/montenegro_en; www.delme.ec.europa.eu/code/navigate.php?Id=56 (all 15/9/2017).

36 See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, Montenegro 2016 Report, SWD (2016) 360 final of 9/11/2016.

37 See the text of this agreement, www.kord-kim.gov.rs/eng/p03.php (1/9/2017); Brussels agreement was followed by further agreements between Serbia and Kosovo concluded in August 2015.

38 See www.consilium.europa.eu/en/policies/enlargement/serbia/; https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en; <http://europa.rs/serbia-and-the-eu/milestones/?lang=en> (all 15/9/2017).

freedom and security) remain essential for the overall pace of the negotiating process.³⁹

D. Regional Stability as a “Substitute” for Democracy

All Western Balkan countries, apart from Albania, were created by the dissolution of the former Yugoslavia, which was followed by nearly a decade of bloody conflicts. Unresolved issues that still exist today mostly relate either to the consequences of the dissolution of the joint country (borders, succession), or to the consequences of wars fought after the dissolution (refugees and the responsibility for the committed war crimes).⁴⁰ Main challenges that lie ahead in the Western Balkans should be addressed through the “Berlin process” which brings together heads of state and government from the region.⁴¹

The Council underlined in its 2015 conclusions that

“good neighbourly relations and regional cooperation are essential elements of the Enlargement Process, as well as of the Stabilisation and Association Process, and contribute to prosperity, stability, reconciliation and a climate conducive to addressing open bilateral issues and the legacies of the past. In general, continued efforts are needed to tackle out-

39 See Council, Conclusion 15370/1/16 of 13/12/2016; European Commission, Serbia 2016 Report, SWD (2016) 361 final of 9/11/2016.

40 *Delević*, Regionalna saradnja među zemljama zapadnog Balkana (Regional cooperation between countries of Western Balkans), Izazovi evropskih integracija 10/2010, p. 14. About the numerous bilateral issues between Western Balkan states and between Western Balkan states and neighboring EU member states, see Bilateral issues in the Western Balkans, <https://tracingenlargement.files.wordpress.com/2014/06/bilateral-issues-in-the-western-balkans.png> (15/9/2017).

41 The Berlin Process is an initiative for enhancing regional cooperation in the Western Balkans, boosting EU-related reforms and accelerating the EU enlargement process. Since the Western Balkan states are at different stages in the accession process, the Berlin Process also plays a role in bridging the gaps between them. This process entails annual high-level meetings (the first was held in Berlin in 2014) between the six Western Balkan governments and several EU member states. The Berlin Process is built on two existing and mutually complementary processes involving the countries of the Western Balkans and the EU. The first one is the “Brdo-Brijuni Process” initiated by Slovenia and Croatia, and second one is “Western Balkans Six (WB6)” initiated by Montenegro. See *Nićić/Nechev/Mameledžija*, The Berlin Process and Regional Cooperation in the Western Balkans: How to Make Agreements More Effective and Efficient?, Policy Brief, 2016, p. 3; *Nićić/Nechev/Mameledžija*, The Berlin Process: crystallization point for the Western Balkans, A Regional Study on the Implementation of the Commitments from the 2015 Vienna Western Balkans Summit, 2016, p. 5 et seq. On 31/5/2017 the German Minister of Foreign Affairs, *Sigmar Gabriel*, announced a “Berlin plus” agenda at a conference of the Ministers of Foreign Affairs of the Western Balkans in Berlin. *Gabriel* proposed to set up a fund for infrastructure and technology to which EU Member States, EFTA and the European Economic Area members could contribute as donors. Such funds should also help to accelerate projects like transport links between the least-connected countries in the region. See *Flessenkemper*, ‘Berlin Plus’ will not change the game, Balkans in Europe Policy Blog of 2/6/2017.

standing bilateral disputes, including border disputes, in order to ensure that they do not have a detrimental effect on the accession process”.⁴²

In addition, the Commission stressed that bilateral issues need to be addressed as early as possible and should not hold up the accession process.⁴³

This implies that regional stability has become more important than ever before for Western Balkan countries. As *Bajić* suggests, the good-neighbourliness principle gradually became a good-neighbourliness condition, based on which progress of candidate countries towards the EU would be measured.⁴⁴ She adds, that

“although not clearly a part of the accession criteria, the principle has been developed through years of enlargement practice, becoming a firmer and more explicit condition for EU accession with each new enlargement round”.⁴⁵

Van Elswwege makes a distinction between good-neighbourliness requirements in terms of the obligation of conduct (it is sufficient just to engage in a constructive dialogue trying to solve outstanding issues) and obligation of result (disputes with neighbouring countries have to be resolved before accession can take place).⁴⁶ We can conclude that with the progress of the process of EU integration, more and more requirements have been transformed from obligation of conduct to obligation of result.

However, the stability of the region should not be based on the expense of the democratic processes. Elaborating the situation in Serbia *Stojić* suggests that

“the EU was almost exclusively focused on Serbian relations with Kosovo, at the expense of all other policy areas crucial for the country’s domestic democratic transformation. Since the Serbian government was cooperative in *de facto* recognising Kosovo’s independence, it was praised for normalising its relations with Kosovo, while the Commission turned a blind eye to the deterioration of democratic conditions. [...] The danger lies in the fact that domestic transformation remained in the shadow of this issue”.⁴⁷

This process is very harmful and cannot bring the desired results in the long run. As *Marić* suggests,

“the EU has been turning a blind eye to the growing antidemocratic tendencies of the political elites in the Western Balkans for the sake of maintaining stability”.⁴⁸

42 Council, Enlargement and Stabilisation and Association Process – Council conclusions, 15356/15 of 15/12/2015. These Conclusions are mainly based on the Commission’s EU Enlargement Strategy 2015, COM (2015) 611 final of 10/11/2015.

43 COM (2016) 715 final of 9/11/2016, p. 8.

44 *Bajić*, (fn. 2), p. 11.

45 *Ibid.*, p. 36.

46 *Van Elswwege*, (fn. 1), p. 218.

47 *Stojić*, EU enlargement to the Western Balkans: Out of sight, out of mind?, Policy Paper, February 2016, p. 7.

48 See <http://carnegieeurope.eu/strategieurope/69846> (15/9/2017).

In a similar way, *Schenkkan* notices that

“because of the EU’s preoccupation with other crises in the last ten years, and because it sees the region primarily in terms of threats instead of opportunities, the EU has preferred stability over transformation. This has resulted in the withering of the EU’s promise of enlargement, on the one hand, and the entrenchment of strongman leaders, on the other”.⁴⁹

“The absence of war provides an alibi for assorted Balkan leaders (‘stabilitocrats’, if you will) to capture state resources and institutions and muffle critics” emphasised *Bechev*, and in *Weber’s* words trading “democracy for false stability and false EU unity” is the main mistake that the EU has made in its engagement in the Western Balkans.⁵⁰ Hopefully, the representatives of the EU will realise the harmfulness of this approach and will cease to make damaging compromises for the sake of apparent stability.

E. Concluding Remarks

The leading problem of nearly all Western Balkan countries is the fact that creating an appearance of reform has become more important than the reforms themselves, while the fight against corruption and organised crime exists only to the extent that it does not endanger the governing structures and individuals connected to them.

The fact that no country in the region has adopted the Law on the Origin of Property, which is the foundation of a rule of law and social justice, especially in transitional societies, proves that the readiness of governing structures to investigate all illegal actions over the past 25 years of the transitional period does not exist. Namely, the redistribution of social wealth from the socialist period was committed through the so-called “plundering” privatisations of big companies and plants, thus creating a special social class of “tycoons-oligarchs”, who have at their disposal enormous property, financial assets and influence. The symbiosis has been created between them and the political and security “elites” in the Western Balkans, which is detrimental for the democratic processes in these countries. Furthermore, in the largest number of privatisations, the goal was not to preserve and improve production, but to extract the existing assets and expropriate the land belonging to the aforementioned companies. As a result, the biggest losers of the privatisations are the workers in these companies, who were left jobless and without the state’s help in further requalification.

In addition, for the sake of illusory stability in the region, the EU has supported, or at least silently accepted, numerous problematic political party leaders, characterised by the ultra-nationalist past during the wars in the nineties (for example, in Serbia and Bosnia and Herzegovina), by their involvement in systemic corruption and organised crime (for example, in Montenegro and, until recently, in Macedonia), and by their direct responsibility for war crimes committed against civilians (for example, leading Albanian politicians in Kosovo). The list should be extended by adding a very harmful recent statement of the Albanian Prime Minister that a union between Albania

⁴⁹ Ibid.

⁵⁰ Ibid.

and Kosovo cannot be ruled out if EU membership prospects for the Western Balkans fade.⁵¹ Such politicians surely cannot contribute to the regional stability and good neighbourly relations. Moreover, it seems that the regional nationalist feelings “feed on each other”, i.e. that the “danger” coming from the neighbours presents a sure winning ticket for the elections in these countries.

In this regard, the EU should exert more pressure on the countries in the region with the aim of organising regular and fair elections. It means not only the absence of irregularities on the very election day, but also organising outdated electoral rolls, and a balanced presence of all participants in the political process during the election campaign. Namely, the control of electronic media with national frequencies by the ruling parties, which are presented in a more positive manner and for much longer time periods, questions the legality, but also the legitimacy of elections in the countries of the region. In addition, election campaigns are financed not only from the budget, but from secret party funds, a result of which is a big discrepancy in media representation of all parties.

All of this results in the ruinous “brain drain”, a dominant problem of the regional countries. The most talented and educated young people leave the country not only because of better professional and financial conditions, but due to the negative selection in all segments of society in the Western Balkans. Namely, affiliation with the ruling parties and closeness to the ruling elites have become the main recommendation for employment, and a large number of incompetent staff get hired based on “suspicious” diplomas from private universities. In this manner, the regional countries remain the dominant employers, not of the best, but of the politically eligible and obedient. Such negative selection, if left unchecked, will have catastrophic consequences for the development of all countries in the Western Balkans in the near future.

Due to all the aforementioned circumstances, the support of Western Balkans’ citizens for EU accession has drastically decreased, after the strong support this process enjoyed some ten years ago. Namely, most citizens have the impression that only the members of the political “elites” and their associates can benefit from accessing the EU, and that the role of cheap labour force and consumers of imported goods is intended for the rest. It is up to the EU to change these prejudices in the following period. First of all, it has to work harder on promoting its own support for the Western Balkan countries, which is huge, but not always visible to their citizens. In addition, the EU should rigorously insist on effective implementation and enforcement of adopted legislation and strategies. Finally, and most importantly, the EU should not trade democracy for false stability, meaning it would have to discontinue its cooperation with compromised politicians, who are in the ruling positions in the majority of Western Balkan countries, even though that could shortly arrest the European integration process. In the longer term, it would send a clear message to the citizens that supporting such politicians and their policies is in direct conflict with the values on which the EU is built, and with the possibility of rapidly joining this supranational organisation.

51 *MacDowall*, Albanian prime minister: EU faces “nightmare” if Balkan hopes fade, Politico of 21/4/2017.