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Twelve Proposals for EU Enlargement from the Western Balkans

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Quick Summary

Enlargement is a successful EU policy, maybe the most successful one in the foreign policy arena. Its ability to transform a country and society towards market economy and democracy lies behind the aspiration of the WB countries to join the EU. After years of 'enlargement fatigue' the European Commission in February 2018 published the communication *A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans* in which it gives directions for future activities with the final goal of enlarging to the WB until 2025 (for Serbia and Montenegro as frontrunners). The outcome of the EU-WB summit in Sofia was below expected and indicates absence, both in the EU and WB, of critical mass for further enlargement. In order for enlargement to remain credible, as a policy and EU as a policy actor in the WB region, the way enlargement is run needs to change.

Based on experience from enlargement to Central and Eastern Europe and challenges of reform process among WB countries, the policy study provides set of twelve recommendations to decision makers in the EU and to EU members. The proposals have a potential to give boost to pro-European and pro-reform forces in the WB region and, at the same time, accelerate and reenergise the enlargement process. There are five types of recommendations: making enlargement possible; new methodology of negotiations; more funds for accession with more agile conditionality for their use; better use of existing Stabilization and Association Agreements as frameworks for adaptation to single market rules and for economic development; rule of law as the ultimate test for EU membership.

Relevance to Regional Reconciliation:

Enlargement process is perhaps the most positive development in the WB and the most positive driving force of reforms. Proposed recommendations would accelerate and reenergise the enlargement process. On the other hand, closing the European membership perspective for the WB would bring reforms to a halt and start the reverse process. In the area of rule of law this reverse process has already started, leading to state capture. In such circumstances, regional reconciliation would be much less probable if possible at all.

Background

The European Union opened the door for the WB countries at the 2003 Thessaloniki Summit, if membership criteria are met. Fifteen years later, only Croatia managed to join the EU in 2013. Currently Serbia and Montenegro have been negotiating membership since 2014 and 2012, respectively. North Macedonia and Albania have been promised the opening of accession negotiation in June 2019, if criteria are met. Bosnia-Herzegovina has applied for membership and is finalising responses to the Questionnaire and is looking towards Commission's *Avis*. Kosovo^{1*} is not included in the accession process since five EU member states do not recognise it as an independent state.

In February 2018, the European Commission published the communication *A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans* in which it gives directions for future activities with the final goal of enlarging to the WB. The document gives the possibility of the first enlargement to occur by the end of 2025 with front runner countries being Montenegro and Serbia, if conditions are met and in the foreseeable future for the rest of the WB. The first EU-WB summit was held after 15 years in Sofia in May 2018. However, the enlargement was not even mentioned but the topic was connectivity of EU and WB. It is evident that both in the EU and in the WB a critical mass does not exist to use all available resources to implement the WB 2025 project. The outcome of the 2019 EP elections, the composition of the new Commission, the situation in EU member states, finalising Brexit and adoption of the new MFF 2021–2027 would set the tone of enlargement after 2020.

Key Issues

The **aim** of this document is to pinpoint what has to be done by the EU and its member states in order to make the enlargement successful.

It must be stressed that enlargement is a successful EU policy, maybe the most successful one in the foreign policy arena. **In order for enlargement to remain credible as a policy and EU as a policy actor in the WB region, the way enlargement is run needs to change.** We are at the crossroad: the process of enlargement will either accelerate until the final goal of new members joining the EU in a foreseeable future or it will lose its purpose.

The European Movement in Serbia, together with partners from the region, have developed **Twelve proposals for EU enlargement.** They contain proposals how to re-energize the process, making it successful in the WB without diluting the membership criteria or abandoning fundamental values of the EU. This particularly stands for the rule of law that is under threat both in the EU and in the WB.

Basic assumption necessary for the success of the enlargement process is that the EU sincerely wants to accept new members and that the WB sincerely wants to join the EU and fulfil membership criteria. **Proposals are mostly directed to the EU institutions and EU member states since they are defining the policy, setting the dynamic and methodology of the process.** The document does not give recommendations to WB countries since the Copenhagen criteria and Annual Progress Reports give clear guidelines on what has to be done. For Montenegro and Serbia that are running accession negotiations, it is even clearer what they have to do in order to be ready for membership. Negotiation documents (screening reports, opening, interim and closing benchmarks) accurately define future steps and activities. **The (potential) WB candidates should fulfil their obligations regarding membership criteria that are already defined and well known, and not to attempt mimicking their fulfilment.**

¹ * 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

Topic 1:

Making Enlargement Possible

Problem Statement: THE EU IS NOT AMBITIOUS ENOUGH IN ORDER TO MAKE ENLARGEMENT POSSIBLE

Problem Description: It is conceivable that the new EC Enlargement Communication combined with some improvements of existing accession instruments may be sufficient for facilitating the accession of the two frontrunners, Serbia and Montenegro. However, it will by no means suffice for the rest of the WB. It is obvious that changes in the way the EC manoeuvres the enlargement process are required. High on the reform agenda of the enlargement process should be the institution of a new methodological approach to opening and running negotiations.

Over the years, the negotiating procedure has become more and more cumbersome, fragmented and, *de facto*, a tool to slow down and protract the process of accession (e.g. decoupling candidate status from date of opening accession negotiations, introducing benchmarks etc.) This trend must be reversed.

Current accession negotiations, apart from being too slow, are overly bureaucratic and segmented. This allows for negotiations to run for an indefinite period, draining the energy and capacity of a candidate country and thereby actually reducing its reform capacity and undermining pro-EU forces. **There are at least 76 instances when any EU member state can stop the accession of any candidate country.**² The motives behind an EU member halting the process might not be related to a particular chapter or even connected to the *acquis* or EU membership. Innovations and improvements to the accession process should be introduced. Methodology of accession negotiations should be improved with the purpose of moving quickly toward the opening of chapters. The bulk of reforms should be shifted to the period after a chapter is opened. This would give more support to pro-EU oriented forces in the WB and create a push for an internal reforms agenda, showing that accession negotiations are moving forward, and that the EU offer of membership is valid and standing.

Topic 2:

Making Accession Negotiations Functional

Problem Statement: Current Methodology or Accession Negotiations do not have to Lead to Successful Accessions

Problem Description: The methodology of accession negotiations has been substantially changed since the eastern enlargement in the years 2004 to 2007. It has over time become more and more segmented, making accession more complex. New steps and conditions have been introduced, such as opening, interim and closing benchmarks, as well as decoupling the granting of candidate status from the setting of a date for opening accession negotiations. In order to make accession credible and to make it achievable within a reasonable period (10–15 years of accession negotiations is not a reasonable period), new instruments and a new approach will have to be introduced that bring stronger engagement in and commitment to the process, both from acceding countries and the EU itself.

It is necessary to introduce roadmaps (RMs) with clear deadlines identifying key milestones for reaching the next phase in the accession process. The RMs should precisely prescribe the steps to:

- Obtaining candidate status;
- Opening negotiations;
- Ending the negotiation process successfully.

² Not taking in to account the variable number of opening benchmarks that would add in some cases, depending on the candidate country, up to 10 more instances when unanimity in EU is required for a candidate country to advance in the process.

An accession period (calculated from receiving the *avis*/candidate status) that runs for four full terms in office of a government (a term in office is four years) is not a realistic timeframe. Enlargement is being overridden by other political events. It is not realistic to expect countries to maintain the momentum of reforms and to retain the necessary administrative capacities and expert professionals in the same jobs over such a long period.

This proposal relies on the positive experience of the visa liberalization process in 2009–2010. This project proved that where there are clear requirements for each step on the way to the abolishment of visas, countries act promptly to fulfil their obligations.

The design of an RM should not be the task of the EC alone; it should involve the acceding country as well. Jointly defining the timeline and milestones would make the enlargement process a joint endeavour of the EU and the candidate/potential candidate country at every stage. This method would strongly improve its credibility.

Topic 3:

Financing the Accession

Problem Statement: More Funds for Accession with Effective Conditionality would Enable Reforms and Better Preparation for Membership

Problem Description:

A majority of commentators consider it necessary to increase pre-accession funds for WB countries. Some authors proposed that the EU should find ways to open structural funds to the candidate countries even before membership.³ The current low level of economic development of WB countries and the slow pace of economic convergence with the EU are the major arguments for this position. The GDP per capita in the WB is roughly half of GDP in Eastern European EU countries.⁴ Additionally, between 2005 and 2015, WB countries recorded a trade deficit with the EU of €94 billion, paralleled by increasing foreign debt⁵. In the case that the economies of the WB region continue their current growth rates, it would take over half a century for them to converge with the EU standards of living.⁶ Increased EU funds should be one of the major sources of these investments to ensure the economic convergence of the WB region.

WB countries receive pre-accession assistance from IPA II from 0.27%⁷ of GDP (BiH) up to 1.48%⁸ of GDP (Kosovo*) per year.⁹ There is room for a substantial increase in the current pre-accession assistance for WB countries without risk of endangering their macroeconomic stability. This increase should start with the new MFF 2021–2027 with the goal of reaching 2% of individual WB countries' GDP in the year of their accession to the EU.

³ Matteo Bonomi and Dušan Reljić, "The EU and the Western Balkans: So Near and Yet So Far Why the Region Needs Fast-Track Socio-Economic Convergence with the EU", *SWP Comments* 53, German Institute for International and Security Affairs, December 2017, https://www.swp-berlin.org/fileadmin/contents/products/comments/2017C53_rlc_Bonomi.pdf

⁴ Peter Sanfey, Jakov Milatović and Ana Krešić, "How the Western Balkans can catch up", *EBRD Working Paper* No. 186, 2016

⁵ Matteo Bonomi and Dušan Reljić, "The EU and the Western Balkans: So Near and Yet So Far Why the Region Needs Fast-Track Socio-Economic Convergence with the EU", *op.cit.*

⁶ International Bank for Reconstruction and Development/The World Bank, "Western Balkans: Regional Economic Integration Issues Notes", Washington, June 2017, <http://pubdocs.worldbank.org/en/471351498823233178/1-WB6-Regional-Economic-Integration-Issues-Notes-29-June-2017-final.pdf>

⁷ Our calculations based on data from Eurostat and DG NEAR (GDP and IPA II allocations for year 2016).

⁸ *Ibid.*

⁹ For example, the ceiling for cohesion funds for EU member states is 2.35% of GDP within MFF 2014-2020

The joint initiative submitted by the National IPA Coordinators of the WB countries to the EC in 2011 proposed a new design of the pre-accession instrument¹⁰ The proposal was based on the idea that WB countries should receive increased EU funds early enough in the accession process (linearization of EU funds) to enable them to access international bond markets on more favourable terms. The proposal included the establishing of a Western Balkan Guaranteeing Fund (WBGF). As a result, WB countries would be better prepared to absorb these funds, with a fluid and continuous pipeline of projects, thus preparing for future Structural Funds management.¹¹ Proposals within the aforementioned initiative are even more relevant today for the planning of pre-accession assistance within the MFF 2021–2027 in light of the new EU Enlargement Strategy.

The linearization of EU funds is based on the experiences from previous rounds of EU enlargement, which showed the need for earlier access to more EU funds before accession, and better sequencing of EU funds to maximize absorption and impact. Additionally, it envisages that pre-accession assistance should increase significantly as accession approaches, while a compensatory reduction in the amount of structural funds available to the country after accession should follow. A gradual increase of EU funding in the pre-accession phase, within the MFF 2021–2027, would enable the WB countries to be much better prepared for accession by transforming their economies and in particular, by modernizing their infrastructures, thereby enabling the fulfilling of *acquis* standards.

Topic 4:

Better Usage of Existing Association Tools

Problem Statement: Better Use of Existing SAAs as frameworks could Facilitate the Adaptation to Single Market Rules and for Economic Development

Problem Description: The Action Plan annexed to the EU Enlargement Communication complements the Multi-Annual Action Plan (MAP) for a Regional Economic Area agreed by leaders of the WB6 in July 2017.¹² The Communication points to implementation of the SAA and legal approximation with the EU single market rules as tools for a progressive integration of the regional market into the EU's internal market, and for untapped growth potentials in the WB.¹³ Certain remarks and initiatives in the EU Enlargement Strategy coincide with (or complement) Title VI of the SAA named *Approximation of Laws, Law Enforcement and Competition Rules*. In order to better utilize existing SAAs as tools for better approximation with single market rules and economic development, changes can be made to the policy approach of the EU and WB, particularly regarding implementation of the State aid policy and approximation with the internal market *acquis*.

First, trade between the EU and the WB reached €43 billion in 2016.¹⁴ The EU is the most important trading partner of the WB. However, there is significant room for further growth, particularly considering the large trade deficit the WB has with the EU. The latest research on trade done by

¹⁰ A document initiated and prepared by the Office of the Deputy Prime Minister for European Integration, Mr. Božidar Đelić, Deputy Prime Minister for European Integration and NIPAC and Mr. Ognjen Mirić, Coordinator for EU funds.

¹¹ The joint initiative of the National IPA Coordinators of the Western Balkan countries consisted of the following five proposals: linearization of EU funds to Western Balkan beneficiary countries; greater NIPAC ownership over project identification; simplifying and aligning IPA fully with the Structural Funds model; early adoption of the strategic and institutional framework for 2014–2020; ensuring candidate countries are strongly positioned fiscally to enter the EU

¹² Regional Cooperation Council, "Consolidated Multi-annual Action Plan for a Regional Economic Area in the Western Balkans Six", Meeting document, Trieste, July 12, 2017, <https://www.rcc.int/docs/383/multi-annual-action-plan-for-a-regional-economic-area-in-the-western-balkans-six>

¹³ *Ibid.*, 5-6.

¹⁴ European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, European Commission, Strasbourg, 6.2.2018, COM(2018) 65 final, *op. cit.*, 12.

European Movement in Serbia¹⁵ confirmed that technical barriers to trade are the main obstacle when goods are exported from CEFTA parties to the EU.¹⁶ Title VI of all WB SAAs provides for *Agreement on Conformity Assessment and Acceptance of Industrial Products once the legislative framework and the procedures of [a WB country] are sufficiently aligned with that of the Community and appropriate expertise is available*. Sufficient alignment is mostly reached and signing these agreements would open possibilities to extend the effects of the internal market to the WB and increase exports from WB to the EU.

Second, major improvements in state aid control in WB are possible.¹⁷ Indeed, if there is a serious intention for markets to function in the pre-accession phase, a fundamental overhaul of the national state aid policy is needed. Nevertheless, the approach of the EC so far has been rather formalistic, prescriptive and lacking in clear and affirmative policy guidelines to the WB public authorities. State aid rules should be used as a policy tool to gradually redirect public funds from perpetuating economic inefficiencies toward supporting investments compatible with the internal market, while creating a predictable legal environment for grantors and beneficiaries. This approach would assist acceding countries to adapt and prepare for conditions on the EU internal market. Otherwise, state aid control will remain an obscure, misunderstood legal field, beyond the grasp of those it is supposed to regulate.

Topic 5:

Rule of Law in Accession Process

Problem Statement: Rule of Law should be the Ultimate Test for EU Accession

Problem Description: The main reason for considering Enlargement a successful EU policy is its ability to transform a country and its society. This is why countries aspire to join EU. This capacity for transformation is particularly important in the areas of rule of law. By honouring its own fundamental principles and values in the process of enlargement in the WB, the EU would be seen as a promoter of the rule of law and thus an agent of change for the better. This would in turn lead to a rise in pro-EU sentiment in the WB – a sentiment that is gradually diminishing. In the Enlargement Communication, the EC mentioned the rule of law 24 times, stating that this would be the ultimate test of readiness for EU accession. The crucial political problem of the WB pointed in the Enlargement Communication is that the WB countries *show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests*.

The wording of the EU Enlargement Communication has been the strongest emphasis of this problem so far. However, in order to change the situation in the WB, this assessment has to find a concrete place in the country reports of WB6 (where applicable). Every state capture must be named – it involves certain leaders, political elites, people and elements of the society behind them. If the agents of state capture are not identified, this assessment will remain little more than a declaration.

¹⁵ Effects of SAA and CEFTA2006 on WB6 European Integration and Regional Cooperation: Achievements and Ways Forward, European Movement in Serbia, 2017, <http://www.emins.org/product/effects-of-saa-and-cefta2006-on-wb6-european-integration-and-regional-cooperation-achievements-and-ways-forward/>

¹⁶ Organization for Economic Cooperation and Development, “Western Balkan survey (2004)”, Internet: www.oecd.org/dataoecd/25/31/43892876, (04.06.2011.), Cited from: Predrag Bjelić, Radmila Dragutinović Mitrović and Ivana Popović Petrović” Administrative Barriers to Trade as Predominant Non-Tariff Barriers in the Western Balkans Trade” International Conference for International Trade and Investments (ICITI2013), *Conference Proceedings*, University of Mauritius and World Trade Organization, 4-6 September 2013, pp. 0-26.

¹⁷ State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities.

There are widespread impressions that the EU is ready to accept delinquent behaviour in the WB today in order to avoid security disruptions and maintain stability. The impression that undemocratic behaviour is tolerated for the sake of stability must be changed if the WB are to be transformed, truly stabilised, and properly integrated into the EU. **Extending the rule of law advisory missions in the WB**, as proposed by the Strategy, is a move in the right direction and mission reports should be made public in order to show that EU is not negotiating about its fundamental values.

The EU should strongly push for change since breaking with old habits depends mainly on the existence of political will.

Recommendations:

For EU and EU member states:

- 1. The EU should boldly reform and then implement its enlargement strategy as proposed by the European Commission (EC) in February 2018.** The European Commission's Communication has brought back Enlargement into the EU policy mainstream as part of its agenda for a new Europe in the year 2025. It is meant to give boost to pro-European and pro-reform forces in the WB region. The general discourse after publishing the Communication demonstrated that still both in the EU and in the WB a critical mass to use all available resources to implement WB 2025 project does not exist.
- 2. The EU (and its member states) should demonstrate the political readiness to make enlargement functional, putting it in the centre of its policy by devoting resources and funds, as was the case in the 2004/2007 enlargement.** The EU should be ready to *put its money where its mouth is* as the flagship initiatives in the 2018 EC Enlargement Communication rely on more so-called *soft measures* (adoption of policies, new institutions etc.) while they are not so explicit on the issues of additional financing.
- 3. The EC reaffirmed the merit-based approach to enlargement because the gaps in the accession process among WB countries have become too wide.** The EC is right to insist on **three crucial conditions** that are linked to WB progress towards accession: the respect of the rule of law, further economic and social development and the advancement of regional cooperation. The insistence on the respect of rule of law and fundamental rights is one of reasons why there is still large support for EU integration in the region. However, the EC should be straightforward in naming both concrete practices and those who practice state capture and undermine the rule of law.
- 4. The methodology of running accession negotiations should be altered** in order to move quickly toward the opening of chapters and shifting the bulk of reforms needed for the period after a chapter is opened. **Current methodology of accession negotiations became an end in itself and is questionable if it could lead to closing the negotiations and accession.** *Roadmaps*, as a new instrument in the accession process with clear duties of candidate countries and clear deadlines for fulfilling them, should be introduced in every phase of accession in order to streamline the reforms in candidate countries necessary for reaching the next step. Existing mechanisms should be enhanced to give better results.
- 5. The qualified majority voting procedure in the Council should be extended to the decision-making process in enlargement policy.** Unanimity should be maintained in the Council for the initial and final decisions in the process, namely, to start and to close accession negotiations with a candidate country. Currently every EU member state has at least 76 opportunities to halt accession of a candidate country. Reducing this would significantly relax the negotiation process and enable faster progress. The EU should insist that resolving bilateral issues is a duty of both (potential) candidate countries between themselves but also between a (potential) candidate country and an individual EU member state. The EU should remain the facilitator of resolving bilateral issues in the WB. Bilateral issues between WB countries and EU member states should be resolved on a bilateral basis and not burden the accession process.

6. **The EU should, in particular, devote more funds to enlargement to the Western Balkans. This increase would start with the new MFF 2021–2027, with the goal of reaching 2% of individual WB countries' GDP in the year of their accession to the EU.** The increase in pre-accession assistance would enable the WB countries to be better prepared for accession, meeting *acquis* standards and improving the economic convergence with the EU.
7. **It is necessary to develop, strengthen and maintain the capacities of countries to manage increased funds.** Therefore it is necessary to ensure that the new financial pre-accession instrument for the MFF 2021–2027 is prepared on time and harmonised with the requirements of structural funds – especially in programming, financial management and control. The WB countries should secure a continuous project pipeline and develop and implement efficient recruitment and retention policies for staff dealing with EU funds.
8. **The EU should extend the benefits of its internal market to the region prior to accession as much as possible.** This should be done through the existing Stabilisation and Association Agreements with WB as the legal frameworks for adaptation to single market rules and for economic development. Through the full exercise of possibilities envisaged in existing SAAs, some benefits of the EU internal market can be extended to the WB without the need to amend neither existing agreements nor EU legal framework.
9. **The EU should apply to its trade with the WB the same recommendations it gave to the WB in the Enlargement Communication, and sign bilateral Agreements on Conformity Assessment and Acceptance of Industrial Products** with WB countries to eliminate technical barriers to trade, which are currently the main obstacles when goods are exported from the WB to the European Union. Signing these Agreements is already envisaged in individual SAAs, so there is no need for changing the legal framework.
10. **The EU should guide the WB in using state aid rules within SAAs as a policy tool to gradually redirect public funds from perpetuating economic inefficiencies to supporting investments that are compatible with the internal market.** However, the EU should also demonstrate flexibility for national investment policies aligned with the EU agenda, allowing for the reindustrialization of the region.
11. **The EU should start considering the WB as if it was already a part of the EU.** In particular, this should be done by including the WB in the internal work of EU institutions as much as possible (although without voting rights), as well as in discussions about the future of the Union. This approach would strengthen the much-needed feeling of ownership of the process, of acceptance and equality, the lack of which is the strongest argument of anti-EU forces in the WB. Additionally, the EU should extend its internal developmental, regional and infrastructural strategies to include the WB as much as possible in all areas and policies where feasible, such as the Energy Union and EU Industrial Policy.
12. **Developing the rule of law and reaching EU standards in judicial independence, in the fight against corruption and organised crime and in the protection of fundamental rights** by the WB should be the ultimate test of readiness for EU membership. **No leniency** should be accorded in this area. In order to change the situation of “state capture” in the WB, the EU should identify where such state capture exists and **name the offending actors** in the individual country reports.

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