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## The Western Balkans and the EU: Genuine and Sincere?: *The Story of Bilateral Disputes and Pretence*

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### Abstract

Enlargement is seemingly back on the list of EU priorities. It took a war for it to happen! Indeed, it has been over a decade since the last EU enlargement with Croatia. Other Western Balkan countries have been (im)patiently queuing in the EU's foyer, waiting for Godot, who never comes despite the promises of his arrival. Meanwhile, Türkiye, an EU candidate country since 1999, dropped out of the league, being almost wiped off the enlargement map after the stalemate in its negotiations with the Union. The EU's progress with the Western Balkan countries – for which the European perspective was unequivocally confirmed over two decades ago – has stalled due to various issues, including unresolved bilateral disputes. Yet, requesting settlement of bilateral disputes that fall outside the scope of EU law and the jurisdiction of EU courts to reach solutions that can be rejected once the candidate country becomes an EU Member State is rather vain. The current situation is disheartening, underscoring the necessity for a revised approach in the pre-accession process that promotes solidarity, peaceful coexistence, and genuine friendship among states.

**Keywords:** accession process; bilateral disputes; EU enlargement; Western Balkans

### 1. Introduction

Surrounded by threats in the light of Russia's full-scale invasion of Ukraine, the EU has started to work hard on emphasising its unionistic cause, realising the importance of enlargement for its peaceful existence. But did the war in Ukraine change the EU's approach towards the Western Balkan countries? Did the EU learn about the possible consequences of neglecting the vulnerable neighbourhood for too long? While it may be premature to provide definitive answers to these questions, the steps taken by the European Union thus far do not appear particularly promising.

The progress of the Western Balkan countries towards the EU has been very slow at best, notwithstanding the frequently repeated mantra about the EU's full commitment to the region. Pompous rhetoric aside, enlargement towards the region has never been the EU's top priority, be that because of the EU's internal issues or lack of urgency stemming from insufficient levels of instability in the region. This myopic and unsustainable strategy is particularly apparent in the context of the challenges confronting Europe due to the ongoing conflict in Ukraine. Despite the region's recent difficult history and intra-ethnic and inter-ethnic tensions, the EU has taken the Western Balkans' peace for granted. To use an expression attributed to Winston

Churchill, the Balkans produces more history than they can consume<sup>1</sup> – a bitter reality which the EU persistently overlooks.

The EU is not the only player to blame for the slow pace of progress of the Western Balkan countries – it takes two to tango! Promises and failures became increasingly intertwined in the EU enlargement story towards the region. Realising that their countries will not become part of the EU any time soon, political leaders in the Western Balkans adapted their narratives and politics quickly. It is essentially a story of pretence: proclaiming EU membership, a strategic national interest, governments in the Western Balkans have been repeatedly aligning their European story meant for their bone-tired citizens with the pious words and commitments of the Union. Failed EU promises have been conveniently used for domestic fiascos.

In reality, the EU accession of the Western Balkan countries, for which the European perspective has been unequivocally confirmed over two decades ago, has stalled due to various issues, including unresolved bilateral disputes that fall outside the scope of EU law and lead to overpoliticisation of the accession process.<sup>2</sup>

The seemingly vigorous efforts of the EU to bring back enlargement to life fall short of substantially tackling overpoliticisation and guaranteeing the predictability of the enlargement process. Conditionality tied to financial assistance without a clear EU perspective has proven insufficient to achieve substantial changes in priority sectors, such as the rule of law, in these countries.<sup>3</sup> Indeed, as of 2025, all Western Balkan countries still struggle with weak rule of law performance, albeit to different extents and not necessarily lagging behind some of the EU Member States in that respect.<sup>4</sup> In such circumstances, the European Commission's new Reform and Growth Facility for the Western Balkans, which provides an additional €6 billion in grants and loans to Western Balkan countries until 2027,<sup>5</sup> cannot be exceptionally effective.

This paper tells a story of bilateral disputes in the enlargement process: it is a story of historical rivalries and conflicts. Siniša Rodin's taxonomy of interstate disputes is crucial in the context of the accession process.<sup>6</sup> Rodin differentiates between vertical and horizontal disputes based on the (a)symmetric relationships between the involved states: vertical disputes occur between a Member State and a candidate country, and horizontal disputes involve only candidate countries engaging with one another.<sup>7</sup> Additionally, disputes arising during the accession process can also impact European countries that have not yet attained candidate status, i.e., potential candidate countries.

In the fifth and sixth rounds of enlargement,<sup>8</sup> certain countries that joined the Union primarily dealt with disputes among themselves or with third countries, i.e., with

<sup>1</sup> V Petrović, "The Balkans in the Cold War" (2019) 20(4) *Journal of Cold War Studies* 258–62.

<sup>2</sup> E.g. E Basheska, "EU Enlargement in Disregard of the Law: A Way Forward Following the Unsuccessful Dispute Settlement Between Croatia and Slovenia and the Name Change of Macedonia" (2022) 14 *Hague Journal on the Rule of Law*, 221–56. See, also, E Fouéré, "EU Enlargement and the Resolution of Bilateral Disputes in the Western Balkans" *CEPS* (July, 2023) available at <<https://cdn.ceps.eu/wp-content/uploads/2023/07/EU-enlargement-and-the-resolution-of-bilateral-disputes-in-the-Western-Balkans.pdf>> (last accessed 12 June 2025).

<sup>3</sup> *Ibid.*

<sup>4</sup> See 2024 World Justice Project, available at <<https://worldjusticeproject.org/rule-of-law-index/>> (last accessed 12 June 2025).

<sup>5</sup> Regulation (EU) 2024/1449 of the European Parliament and of the Council of 14 May 2024 on establishing the Reform and Growth Facility for the Western Balkans PE/80/2024/REV/1, p 27.

<sup>6</sup> S Rodin, "The European Union and the Western Balkans: Does the Lisbon Treaty Matter?" in F Bindi and I Angelescu (eds), *The Foreign Policy of the European Union: Assessing the Europe's Role in the World* (2nd edn, Washington, DC, Brookings Institution Press 2012) pp 153–71, 156.

<sup>7</sup> *Ibid.*

<sup>8</sup> The enlargement numbering as used in this work draws inspiration from D Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law* (Alphen aan den Rijn, Kluwer Law Intl 2008) p. 8, who distinguishes between the ten countries which joined the Union on 1 May 2004,

horizontal disputes to which conditionality has not been enforced consistently. Currently, however, strict conditionality has been imposed on Serbia and Kosovo in their accession process, aiming to normalise their relationship. Other horizontal issues may also become a serious obstacle for candidate countries in the accession process. Vertical bilateral disputes tend to be more intricate than horizontal disputes due to the inherent power imbalance between the states involved during the accession process. Such an imbalance increases the likelihood that Member States will be able to advance their national interests more effectively when resolving their bilateral issues with the (potential) candidate country in the accession process. Unlike horizontal disputes, which have only occasionally led to delays or deadlocks in the accession process so far, vertical disputes are currently one of the primary reasons for the stagnation of candidate countries and will continue to be a significant factor in the future. Vertical disputes greatly increase the risk of overpoliticisation of the accession process, as discussed in Section II of this paper.

This paper does not aim to address all disputes involving candidate countries. Instead, it focuses on the main challenges faced by Western Balkan countries in their pursuit of EU membership, which are viewed as such by either EU institutions or the states involved. In addition to being classified as either vertical or horizontal, such disputes can be categorised by their nature, encompassing issues related to borders, national minorities, history, and other concerns. Section III addresses various known disputes involving Western Balkan countries, which are either hindering their progress toward EU integration or have the potential to do so. Finally, Section IV concludes that the current landscape of bilateral disputes among Western Balkan countries is disheartening, highlighting the need for a new approach in the pre-accession process that fosters solidarity, peaceful coexistence, and genuine friendship among these states.

## II. Settlement of bilateral disputes in the EU accession process

Making the settlement of bilateral disputes a key aspect of the accession process has strengthened the control of Member States over the advancement of candidate countries while also providing them with opportunities to advocate for their national interests during the enlargement process. Admittedly, Member States have been able to use their membership powers to delay the enlargement process since the first enlargement round. Unlike in the past, however, when they rarely used such powers for that purpose, this has become a common practice at the current stage of integration. As put by Hillion, “promoting national interests over the common interest is no longer a taboo in the EU”<sup>9</sup> – a trend he describes as “nationalisation” of the EU enlargement policy.<sup>10</sup> Likewise, the notion of “bilateralisation” of the accession process, referring to the bilateral disputes in

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i.e., in the fifth enlargement round: Cyprus; Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia; Slovenia; and the two countries which joined the Union on 1 January 2007, i.e., in the sixth enlargement round: Bulgaria and Romania. This enlargement numbering, as opposed to the European Commission’s, which considers the fifth enlargement round including the accession of all new Member States from 2004 and 2007 (see European Commission, “Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania” (Communication) COM (2006) 214 final, follows according to Kochenov, from the fact that the enlargements of the Union in 2004 and 2007 were governed by different Treaties of Accession, occurred at different dates and involved different transitional measures. In addition, the Treaty of Accession of the Republic of Bulgaria and Romania, Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, Articles 36–9, [2005] OJ L157/3, envisaged post-accession measures for these two countries – in particular, monitoring by the Commission of these states’ compliance in the areas of justice and home affairs, the internal market and economic policy and sanctions for the non-compliance thereof for a period of three years after accession.

<sup>9</sup> C Hillion, “The Creeping Nationalisation of the EU Enlargement Policy” (2010) 6 SIEPS, 39.

<sup>10</sup> *Ibid.*

the EU integration process, has been well-known among Brussels officials<sup>11</sup> and criticised at the highest level.<sup>12</sup> The notion of “overpoliticisation” of the accession process, as used in this paper, highlights the negative effects of “nationalisation” or “bilateralisation” on the rule of law during the enlargement process. While EU enlargement has always been inherently political, the rule of law is essential to enlargement policy, with predictability being a key aspect of the procedural rule of law outlined in the enlargement regulation. The “nationalisation” and “bilateralisation” of the accession process hinder the effective application of the principle of conditionality, resulting in an unpredictable process. This unpredictability is closely tied to the “insufficient domestic political will to implement necessary reforms,”<sup>13</sup> which the European Court of Auditors identified as the primary reason for the lack of reforms in the Western Balkan countries. Moreover, this lack of predictability undermines the crucial procedural rule of law component of EU enlargement regulation. In such a context, the accession process is described as over-politicised – a term used in this study to indicate that political considerations have taken precedence over established accession criteria, either accelerating or obstructing a country’s progress towards EU membership.

The insertion of the requirement for settlement of bilateral disputes, which has been covered by the good neighbourliness condition in the accession process,<sup>14</sup> created a dangerous environment that can lead to aggravation of the bilateral issues and further deterioration of the relations between the involved neighbouring countries. Settlement of bilateral issues under pressure and within a framework of asymmetric powers of the involved parties is, in itself, contrary to the substance of the principle of good neighbourliness, which is based on sovereign equality of states.<sup>15</sup> Blockades and stalemate of the progress of the involved (potential) candidate countries are unavoidable in circumstances where settlement of sensitive bilateral issues is made a condition for their progress in the accession process. Moreover, this condition opens the doors to an increasing number of bilateral disputes as Member States naturally find the accession process, where conditionality is employed and where they have an upper hand vis-à-vis (potential) candidate countries, a convenient platform for reaching advantageous solutions to their bilateral disputes. In other words, the requirement for settlement of bilateral disputes in the accession process, increases the number of disputes, contributing to further aggravation of interstate relations. Such a situation adds to the unpredictability of the enlargement process, making the accession perspective of candidate countries astonishingly blurred. Unsurprisingly, the motivation and willingness of candidate countries to reform are deteriorating in such circumstances.

Yet, arguing about borders for a country to become part of a borderless Union makes little sense. Equally unreasonable are arguments about history, which wake up ghosts from

<sup>11</sup> V Vasilev, “EU enlargement – The Challenges of Bilateral Disputes in the Western Balkans” *The Western Balkans* (10 November 2024) available at <<https://thewesternbalkans.com/eu-enlargement-the-challenges-of-bilateral-disputes-in-the-western-balkans/>> (last accessed 12 June 2025).

<sup>12</sup> As more recently noted by the European Council President, Antonio Costa, “bilateralisation” is an unfair way to deal with accession, which should be avoided: see NA Erturk, “European Council President Urges Member States to Avoid ‘Bilateralization’ during Enlargement Process” AA (19 December 2024) available at <<https://www.aa.com.tr/en/europe/european-council-president-urges-member-states-to-avoid-bilateralization-during-enlargement-process/3428292#>> (last accessed 12 June 2025).

<sup>13</sup> European Court of Auditors, “EU Support for the Rule of Law in the Western Balkans: Despite Efforts, Fundamental Problems Persist” Special Report (2022) available at <[https://www.eca.europa.eu/Lists/ECADocuments/SR22\\_01/SR\\_ROL-Balkans\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR22_01/SR_ROL-Balkans_EN.pdf)> (last accessed 12 June 2025) (ECA Special Report).

<sup>14</sup> See, e.g., European Commission, 2022 Communication on EU Enlargement Policy, COM(2024) 690 final (30 October 2024), 16.

<sup>15</sup> See, in greater detail, I Pop, *Components of Good Neighbourliness Between States – Its Specific Legal Contents – Some Considerations Concerning the Reports of the Sub-Committee on Good-Neighbourliness Created by the Legal Committee of the General – Assembly of the United Nations* (Bucharest, Editura R.A.I. 1991).

the past and create an unpleasant history of today's reality. Worse still, bilateral disputes that block the progress of (potential) candidate countries fall outside the scope of EU law and jurisdiction of EU courts, which in practice means that no compliance with settlement agreements can be ensured once the involved candidate country becomes an EU Member State.<sup>16</sup> Still, the accession process of Western Balkan countries is overburdened with issues related to the above questions, blocking the progress of candidate countries and effectively preventing progress in crucial fields where reforms are much-needed.

The situation, however, is not hopeless. The EU has proven that when there is a will, there is a way to overcome possible obstacles in the accession process. Most recently, for instance, in the case of Ukraine, the EU leaders came up with an “inventive” idea of surpassing a veto in the Council. The Hungarian Prime Minister, Viktor Orbán, who opposed the opening of the accession negotiations with Ukraine, was asked by the German Chancellor, Olaf Scholz, to leave the room during the vote. (Un)coincidentally, however, the EU unlocked €10.2 billion of funding for Hungary just one day before the vote on the opening of the accession negotiations with Moldova and Ukraine despite the numerous concerns (and potentially a legal action against the Commission in the future)<sup>17</sup> that the country has not fulfilled the necessary conditions to get funds. Such a transaction and bypassing tactic can hardly be a sustainable solution for existing and future blockades in the Council, as admitted by Chancellor Scholz himself: “[t]hings can’t be solved every time by leaving the room. This is for exceptional cases (. . .).”<sup>18</sup> The Western Balkan countries certainly do not make exceptional cases of that kind, or else they would not have been in the waiting room for so long. Instead, a number of possible solutions may help to overcome the current impasse. These include: revising the unanimity voting in the Council<sup>19</sup>; using Article 273 TFEU to address bilateral disputes once all involved parties have become Member States<sup>20</sup>; or separating bilateral issues that fall outside the EU law from the enlargement framework and their resolution under the existing framework of international law along with staged integration of involved candidate countries.<sup>21</sup>

Most importantly, however, any new approach must build on the values and principles on which the EU has been founded – pluralism, tolerance, justice, solidarity, non-discrimination, and equality. Primarily, the establishment of democratic interstate relations founded on the collective interests of all Member States, as a replacement for traditional diplomatic relations rooted in the national interests of individual states within a supranational framework<sup>22</sup> should extend beyond the European Union to encompass future members. This expansion is essential if the promotion of genuine amity, cooperation, and understanding among states is to be considered of true significance. Ultimately, the EU integration process is not about solving all bilateral issues between

<sup>16</sup> On this matter, see, C-457/18, *Republic of Slovenia v Republic of Croatia*, ECLI:EU:C:2020:65 (*Slovenia v Croatia*).

<sup>17</sup> European Parliament, “Release of Frozen EU Funds to Hungary: MEPs to Debate Next Steps with Commission” News (23 January 2024) available at <<https://www.europarl.europa.eu/news/en/press-room/20240122IPR17026/release-of-frozen-eu-funds-to-hungary-meps-to-debate-next-steps-with-commission>> (last accessed 12 June 2025).

<sup>18</sup> *Euronews*, “EU Summit: Germany’s Scholz Gets Orbán to Leave Room for Decision on Ukraine Accession” (16 December 2023) available at <<https://www.euronews.com/2023/12/16/eu-summit-germanys-scholz-gets-orban-to-leave-room-for-decision-on-ukraine-accession>> (last accessed 12 June 2025).

<sup>19</sup> See, e.g., the Report of the Franco-German working group on EU Institutional Reform, “Sailing on High Seas – Reforming and Enlarging the EU for the 21st Century” (October 2023) available at <<https://www.auswaertiges-amt.de/blob/2617322/4d0e0010ffcd8c0079e21329bbb3332/230919-rfaa-deu-fra-bericht-data.pdf>> (last accessed 12 June 2025). See, also, W. Zweers et al., “Unblocking Decision-Making in EU Enlargement: Qualified Majority Voting as a Way Forward?” *Clingendael Policy Brief* (June, 2024) available at <[https://www.clingendael.org/sites/default/files/PB\\_Unblocking\\_decision-making\\_in\\_EU\\_enlargement.pdf](https://www.clingendael.org/sites/default/files/PB_Unblocking_decision-making_in_EU_enlargement.pdf)> (last accessed 12 June 2025).

<sup>20</sup> *Slovenia v Croatia*, para. 109.

<sup>21</sup> E.g., Fouéré, “EU Enlargement and the Resolution of Bilateral Disputes” who also recommends other ways for unblocking the accession process, 5–6.

<sup>22</sup> P. Allott, “The European Community is not the True European Community” (1991) 100 *Yale Law Journal* 2485–500.

neighbouring countries, but rather about making them irrelevant in the new framework of supranational cooperation between Member States. The reality is that EU Member States have little appetite for confronting each other.<sup>23</sup>

### III. Bilateral disputes involving Western Balkan countries

The Western Balkan candidate countries are progressing very slowly (and some are stagnating) on their path to the EU. Montenegro and Serbia have been negotiating with the EU for over a decade now. Albania has made significant strides after years of stagnation by swiftly advancing in the opening of its negotiation chapters with the European Union. Remarkably, by mid-2025, Albania has surpassed Serbia in the number of chapters opened and has positioned itself ahead of both Bosnia and Herzegovina and North Macedonia, both of which had yet to commence negotiations with the EU. Kosovo is a potential candidate country, yet it lags significantly behind its counterparts in the Western Balkan region.

#### I. Montenegro

Montenegro started negotiations with the EU in 2012, and in 2018, the country was encouraged by the European Commission that it could join the EU (along with Serbia) in 2025 if it delivers the necessary reforms and settles bilateral disputes with its neighbouring countries.<sup>24</sup> While being a frontrunner among other Western Balkan candidate countries, the country has not finished the negotiation process as of mid-2025. In June 2024, the EU agreed that Montenegro met the interim benchmarks set for Chapter 23 (on judiciary and fundamental rights) and Chapter 24 (on justice, freedom and security), which paved the way for the country to start closing chapters in the accession process.<sup>25</sup> Montenegro is the first EU candidate country to receive a positive Interim Benchmark Report in line with the new EU Enlargement methodology. Once negotiations on Chapters 23 and 24 are provisionally concluded, the country may progress more quickly. The new aim of Montenegrins for EU accession is 2028.<sup>26</sup> Yet whether or not that target date is realistic depends not only on the country's commitment to all necessary reforms but also on its ability to escape the trap of bilateral disputes with neighbouring countries, particularly with neighbouring Croatia.<sup>27</sup>

While Croatia and Montenegro have, generally, amicable relations, history and certain tensions from the past, as well as unresolved border issues, have started burdening their friendship, opening a possibility for future delays and/or blockades of the candidate

<sup>23</sup> Concerning issues that fall within the scope of EU law, Article 258 TFEU is the main infringement procedure under which the European Commission can take a Member State to court. Although Article 259 TFEU allows for confrontation among Member States, the procedure is contingent upon the Commission's failure to take action. The infrequent use of Article 259 TFEU highlights the effectiveness of EU mechanisms in avoiding direct conflicts between Member States. Aside from issues related to EU law, Member States have displayed little interest in resolving bilateral disputes that lie beyond its scope. Many unresolved disputes attest to this fact.

<sup>24</sup> European Commission, "A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans" COM (2018) 65 final (EC 2018 Communication), p 2.

<sup>25</sup> Seven chapters were provisionally closed by June 2025 (Chapter 5 on Public Procurement; Chapter 7 on Intellectual Property Law; Chapter 10 on Information Society and Media; Chapter 20 on Entrepreneurship and Industrial Policy; Chapter 25 on Science and Research; Chapter 26 on Education and Culture; and Chapter 30 on External Relations).

<sup>26</sup> F Baccini, "From Words to Deeds. Montenegro Has Entered the Final Phase of EU Accession Negotiations" *Eunews* (26 June 2024) available at <<https://www.eunews.it/en/2024/06/26/from-words-to-deeds-montenegro-has-entered-the-final-phase-of-eu-accession-negotiations/>> (last accessed 12 June 2025).

<sup>27</sup> For other unresolved issues between Montenegro and neighbouring countries, see Fouéré, "EU Enlargement and the Resolution of Bilateral Disputes". However, the progress of Montenegro has not been made conditional upon the settlement of these issues.



country. In 2022, the Croatian Academy of Science and Arts (CASA) published “Annexes to the Protection of Croatian National Interests During the Negotiations of the Republic of Croatia with Bosnia and Herzegovina, Montenegro and Serbia Regarding their Accession to the European Union,”<sup>28</sup> listing issues with neighbouring countries that Croatia should raise within the EU enlargement framework. With regard to Montenegro, CASA suggested several issues to be addressed by Croatia, including: guaranteed mandates for Croats in the Montenegrin Parliament; determination of the land border; protection of the rights of the Croatian minority and right to unhindered return and free disposal of the property of all those who had to leave their homes during the war in the territory of the former Yugoslavia; payment of reparations and return of the cultural treasures taken by Montenegro; etc.<sup>29</sup>

In 2023 already, the relations between the two neighbours started to deteriorate with regard to an unresolved dispute over the ownership of a former Yugoslav Royal Navy sailing ship “Jadran” and the memorial plaque at the former Morinj camp in Kotor.<sup>30</sup> The situation worsened in 2024, when the Parliament of Montenegro adopted a resolution on WWII war crimes in Croatia’s Jasenovac, which angered the EU Member State. Indeed, Croatia was quick to connect this act of Montenegro with the good neighbourliness condition in the enlargement practice as a “key criterion for assessing progress in Montenegro’s accession process.”<sup>31</sup> The Ministry of Foreign Affairs of Croatia noted that: “Croatia expects Montenegro to prioritise resolving the issue of determining responsibility for crimes committed by Montenegrin citizens during the aggression against the Republic of Croatia in the 1990s.”<sup>32</sup> In November 2024, Croatia sent a non-paper to Montenegro requesting a resolution to the “Jadran” ownership issue, border demarcation, prosecution of war crimes, finding missing persons during the war, as well as resolving a name issue of a swimming pool in Kotor.<sup>33</sup> In December 2024 already, Croatia effectively blocked Montenegro from closing the Chapter on Foreign, Security and Defence Policy in response to the unresolved issues between the two countries, even if the Croatian Minister for Foreign Affairs, Grlić Radman, rejected calling the move a blockade, insisting that the unresolved questions between the two neighbours are not bilateral but are “humanitarian and civilizational issues, which are universal.”<sup>34</sup>

<sup>28</sup> Croatian Academy of Sciences and Arts, “Prilozi za zaštitu hrvatskih nacionalnih interesa prilikom pregovora Republike Hrvatske s Bosnom i Hercegovinom, Crnom Gorom i Srbijom u pogledu njihova ulaska u Europskoj Uniji” (20 May 2022) available at <<https://www.info.hazu.hr/2022/05/prilozi-za-zastitu-hrvatskih-nacionalnih-interesa-prilikom-pregovora-republike-hrvatske-s-bosnom-i-hercegovinom-crnom-gorom-i-srbijom-u-pogledu-njihova-ulaska-u-europsku-uniju/>> (last accessed 12 June 2025).

<sup>29</sup> For the full list of requests, see Croatian Academy of Sciences and Arts, “Prilozi za zaštitu hrvatskih nacionalnih interesa” (*ibid.*).

<sup>30</sup> A Bu, “Hrvatska poslala non-paper Crnoj Gori, blokada pregovora s EU na horizontu” *Oslobođenje* (5 December 2024) available at <<https://www.oslobodjenje.ba/vijesti/region/hrvatska-poslala-non-paper-crnoj-gori-blokada-pregovora-s-eu-na-horizontu-1003437/>> (last accessed 12 June 2025). See, also, M Mirković, “Montenegro External Relations Briefing: Intensification of the EU Integration Process: Montenegro on the Way to Obtaining IBAR” (2024) 70(4) China-CEE Institute Weekly Briefing 6–8.

<sup>31</sup> Government of the Republic of Croatia, “MVEP: Usvajanje rezolucije o Jasenovcu neprihvatljivo, neprimjereno i ugrožava odnose” (29 June 2024) available at <<https://vlada.gov.hr/vijesti/mvep-uvajanje-rezolucije-o-jasenovcu-neprihvatljivo-neprijmereno-i-ugrozava-odnose/42652>> accessed 12 June 2025.

<sup>32</sup> *Ibid.*

<sup>33</sup> A Bu, “Hrvatska poslala non-paper Crnoj Gori”.

<sup>34</sup> DC, “Grlić Radman: Pitanje nestalih osoba i oštete logoraša su teme koje sve u EU moraju brinuti, a ne samo Hrvatsku” *Vijesti* (16 December 2024) available at <<https://www.vijesti.me/vijesti/politika/737163/grlic-radman-pitanje-nestalih-osoba-i-odstete-logorasa-su-teme-koje-sve-u-eu-moraju-brinuti-a-ne-samo-hrvatsku>> (last accessed 12 June 2025).

In the Montenegro 2024 Report, the Commission highlighted that “relations with Croatia have been souring,”<sup>35</sup> due to tensions related to unresolved bilateral issues, among other things, mentioning specifically the pending border demarcation between the two countries, and their dispute regarding the ownership of the sailing ship “Jadran.” It also referred to the resolution concerning WWII war crimes in Croatia’s Jasenovac, adopted by the Parliament of Montenegro.<sup>36</sup>

What seems to be the most advanced candidate country at the moment may certainly change if Croatia persists to use its membership powers for settlement of any of the above bilateral issues in the accession process contrary to its pre-membership stance that “outstanding issues between states which are of a bilateral nature, such as border issues, must not obstruct the accession of candidate countries to the European Union from the beginning of the accession process until the entry into effect of the Accession Treaty.”<sup>37</sup>

## 2. Serbia

The case of Serbia is much more complicated than that of Montenegro. The country was awarded candidate status in 2013 and started the negotiations in 2014. Ten years later, its relationship with the EU is rather complicated. Serbia’s close relationship with Russia and its refusal to join international sanctions against the latter, despite its support for the territorial integrity and sovereignty of Ukraine, certainly does not contribute to the strengthening of the EU–Serbia relationship.<sup>38</sup> That said, however, the EU and Serbia have signed a Memorandum of Understanding launching a Strategic Partnership on sustainable raw materials,<sup>39</sup> battery value chains, and electric vehicles, which, although not uncontroversial,<sup>40</sup> may accelerate Serbia’s progress towards the EU to a certain extent or mitigate criticism regarding the country’s insufficient reforms.<sup>41</sup> However, the relationship between Serbia and some of its neighbours remains extremely challenging.

Primarily, Serbia–Kosovo relations are extremely complex and problematic. Serbia strongly objects to the independence of Kosovo, considering it formally a part of its territory. Numerous tensions have arisen between Serbia and Kosovo in the past, persisting to the present day, despite the EU’s facilitation of talks between the two parties since 2011. These, however, go beyond the scope of this paper. A most important point in the context of EU enlargement and the process of accession is the necessity of normalisation of the relationship between Serbia and Kosovo, which has become “an essential condition on the European path of both Parties.”<sup>42</sup> Indeed, after intense

<sup>35</sup> European Commission, “Montenegro 2024 Report” (Communication), (30 October 2024) SWD(2024) 694 final, 63.

<sup>36</sup> *Ibid.*

<sup>37</sup> “Narodne novine” broj 121/11, the whole version of the text in English is available at <[https://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_10\\_121\\_2379.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2011_10_121_2379.html)> (last accessed 1 April 2025).

<sup>38</sup> See, e.g., European Parliament resolution of 8 February 2024 on the situation in Serbia following the elections (2024/2521(RSP)).

<sup>39</sup> See “Memorandum of Understanding Between the European Union and the [R]epublic of Serbia of a Strategic Partnership on Sustainable Raw Materials, Battery Value Chains and Electric Vehicles” available at <[https://single-market-economy.ec.europa.eu/document/6fe0e605-9299-45c3-b846-2efb85585251\\_en](https://single-market-economy.ec.europa.eu/document/6fe0e605-9299-45c3-b846-2efb85585251_en)> (last accessed 11 June 2025).

<sup>40</sup> T Zejak, “Jadar Project Timeline: A Full Overview of the Most Controversial Investment in Serbia’s Recent History” *Balkan Green Energy News* (20 September 2024) available at <<https://balkangreenenergynews.com/jadar-project-timeline-a-full-overview-of-the-most-controversial-investment-in-serbias-recent-history/>> (last accessed 12 June 2025).

<sup>41</sup> E.g., B Elek, “How Brussels Risks Undermining Serbia’s Democratisation Potential” *Heinrich Böll Stiftung* (2 April 2025) available at <<https://eu.boell.org/en/2025/04/02/how-brussels-risks-undermining-serbias-democratization-potential>> (last accessed 12 June 2025).

<sup>42</sup> European Commission, Staff Working Document, “Serbia 2024 Report” (8 November 2023) SWD(2023) 695 final.



negotiations, the two parties reached an Agreement on the Path to Normalisation in Brussels on 27 February 2023 and agreed on its Implementation Annex in Ohrid, North Macedonia, on 18 March 2023, accepting these as integral parts of their EU accession process. In April 2024, the EU incorporated the obligations of Serbia under the Ohrid Agreement under Chapter 35 of the accession benchmarks, establishing also a mechanism for monitoring the implementation of the agreements reached within the Serbia–Kosovo dialogue. The normalisation of the relationship between Serbia and Kosovo has become a formal condition for the progress of both Serbia and Kosovo towards the EU. That said, the implementation of the Agreement on the Path to Normalisation has not gone smoothly as planned, if not being completely blocked, to the present day.<sup>43</sup>

Furthermore, as in the case of Montenegro, CASA came up with suggestions for numerous bilateral issues to be raised by Croatia in the negotiating stage with Serbia, including: ending of hostilities against Croatian citizens; demarcation on the Danube; protection of the rights of the Croatian minority and the right to unhindered return and free disposal of the property of all those who had to leave their homes during the war in the territory of the former Yugoslavia; revealing all the places of execution of Croats during the conflicts in the 1990s, as well as the names of those killed and their dignified burial; submitting data on all detained and missing Croatian soldiers and civilians, detainees of Serbian camps; payment of reparations; etc.<sup>44</sup>

The European Commission referred in the Serbia 2024 Report to several outstanding issues.<sup>45</sup> With regard to Bosnia & Herzegovina, border demarcation issues need to be resolved and the countries still need to reach an agreement on two dams on the Drina River and a part of the Belgrade-Bar railway, which crosses into Bosnia and Herzegovina.<sup>46</sup> Close relations between Serbia and Republika Srpska entity, with established joint parliamentary forum that held an “all-Serb assembly” in Belgrade in June 2024, and the attendance of the national day of Bosnian Serbs by Serbian officials have been deemed problematic.<sup>47</sup> The Commission has not discussed the relationship between Bulgaria and Serbia, which, although generally positive, may be problematised in the future. In December 2023, a group of MEPs wrote a letter to EU institutions about the “violation of rights and incitement of hatred towards the Bulgarian minority in Serbia,”<sup>48</sup> noting that “Serbia should not be judged only by its words, but only by the actions it takes, which should be in line with European values and human rights, including those in defence of minorities.”<sup>49</sup> In that context, the Bulgarian President, Rumen Radev, noted that

[t]he main criterion by which we will judge and give support to the progress of the Western Balkan countries is precisely the situation of our compatriots in each country – their conditions for economic and social development and, above all, their ability to defend their national identity, language, culture and historical memory.<sup>50</sup>

<sup>43</sup> Z Zhinipotoku and L Semini, “EU Envoy Urges Kosovo and Serbia to Resume Efforts to Normalize Ties Through Talks” *AP News* (6 September 2024) available at <<https://apnews.com/article/kosovo-serbia-eu-talks-lajcak-pristina-bislimi-e9822aeb820d79f6bd69c194bee58a>> (last accessed 12 June 2025).

<sup>44</sup> For the full list of requests, see Croatian Academy of Sciences and Arts, “Prilozi za zaštitu hrvatskih nacionalnih interesa”.

<sup>45</sup> European Commission, Staff Working Document, “Serbia 2024 Report” (30 October 2024) SWD(2024) 695 final.

<sup>46</sup> *Ibid.*, 62.

<sup>47</sup> *Ibid.*, 62–3.

<sup>48</sup> K Nikolov, “Bulgarian President Hints at Rethink Over Backing Serbia’s EU Membership” *Eruactiv* (1 October 2024) available at <<https://www.euractiv.com/section/politics/news/bulgarian-president-hints-at-rethink-over-backing-serbias-eu-membership/>> (last accessed 12 June 2025).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

With regard to Croatia, the European Commission noted that relations between the two countries “continue to be marked by ad hoc antagonistic public exchanges and diplomatic demarches.”<sup>51</sup>

The last time Serbia opened a new chapter in the negotiations with the EU was in 2021. As of June 2025, Serbia has been blocked from opening the third cluster in the negotiation process by the Council. This is despite the European Commission’s fourth positive assessment of Serbia’s preparedness in this respect and the invitation sent to that candidate country on behalf of the Council to submit its negotiating position on two chapters under cluster 3.<sup>52</sup> Future discussions in the Council about potentially opening cluster 3 were made conditional on substantial progress by Serbia regarding the rule of law and the normalisation of relations with Kosovo.<sup>53</sup>

### 3. Albania

Albania was tied to North Macedonia for the purposes of the opening of the EU accession negotiations, sharing the same stagnating history until recently, when the Council decided to decouple the two countries and proceed with the opening of the first cluster of negotiations on 15 October 2024 with Albania only. The candidate country has demonstrated remarkable progress in advancing the chapters of negotiations and is projected to open them all in 2025.<sup>54</sup> Furthermore, there are tentative indications suggesting the possibility of concluding the negotiations in the near future, with the aim of joining the EU by 2030.<sup>55</sup> The EU Enlargement Commissioner, Marta Kos, most recently praised Albania, promising bright future to the candidate country:

Albania is a success story in the enlargement process. (...) The plan is to open all chapters this year and close them next year. Full membership will bring significant benefits. 2030 – is that okay, Prime Minister? It’s okay.

It is yet to be determined if the rhetoric aligns with reality. What is known is that the country maintains generally good relations with all neighbouring countries which effectively reduces the likelihood of blockades arising from bilateral disputes. In the case of its relationship with Greece, however, some outstanding issues have been highlighted by the Commission.

Minority rights,<sup>56</sup> particularly the property rights of the Greek minority in Albania, have been emphasised as a subject of disagreement between the two countries, and that issue has been brought into connection with the future EU integration of that country.<sup>57</sup> Yet, although

<sup>51</sup> European Commission, Staff Working Document, “Serbia 2024 Report” (30 October 2024) SWD(2024) 695 final, 61.

<sup>52</sup> Hungarian Presidency Council of the European Union, “Bálint Ódor: Significant Progress in Serbia’s EU Accession” (Press Release) available at <<https://hungarian-presidency.consilium.europa.eu/en/news/balint-odor-significant-progress-in-serbia-s-eu-accession/>> (last accessed 12 June 2025).

<sup>53</sup> Council of the European Union, Conclusions on Enlargement (Brussels, 17 December 2024) 16983/24, para 34.

<sup>54</sup> M D’Orazio, “Albania and the EU: Membership by 2030?” *Friends of Europe* (4 June 2025) available at <<https://www.friendsofeurope.org/insights/critical-thinking-albania-and-the-eu-membership-by-2030/>> (last accessed 12 June 2025).

<sup>55</sup> *Ibid.*

<sup>56</sup> European Commission, “Albania 2024 Report” (Communication)” (30 October 2024), SWD(2024) 690 final, 59.

<sup>57</sup> See “Μητσοτάκης από Χειμάρρα: Υποχρέωση της Αλβανίας να σέβεται πλήρως τα δικαιώματα των ομογενών” (in Greek) (*Καθημερινή*, 22 December 2022) available at <<https://www.kathimerini.gr/politics/562198108/mitso-takis-apo-cheimarra-yποchρεωση-tis-alvanias-na-sevetai-pliros-ta-dikaionomata-ton-omogenon/>> (last accessed 12 June 2025); See, also, CNN Greece, “Τσίπρας σε Ράμα: Η ένταξη της Αλβανίας στην ΕΕ περνά από τον σεβασμό της ελληνικής μειονότητας” (in Greek) (12 April 2019) available at <<https://www.cnn.gr/politiki/story/172706/tsi-pras-se-rama-h-entaxi-tis-alvanias-stin-ee-perna-apo-ton-sevasmo-tis-ellinikis-meionotitas>> (last accessed 12 June 2025).

not mentioned by the Commission, the rights of the Albanian Chams (a minority expelled from Greece during World War II) could be equally problematised, given that Albania has been continuously calling for reparations, while Chams in Albania have been pushing for a right of return.<sup>58</sup> The detention of an ethnic Greek mayor-elect, who was arrested on charges of vote-buying, highlighted another troubling issue. He was released after serving two-thirds of his sentence, having secured a mandate as a Member of the European Parliament (MEP) and parliamentary immunity with Greece's ruling New Democracy party during the 2024 European Parliament elections.<sup>59</sup> This situation raises concerns about a lack of accountability and possible misuse of the system by potential and current MEPs.<sup>60</sup> Finally, Albania and Greece decided to refer their long-standing dispute over the division of maritime borders,<sup>61</sup> to the ICJ. It remains to be seen, however, if the dispute between the neighbours pops up in the framework of the accession process in the future.

#### 4. North Macedonia

North Macedonia is probably the most prominent example of the negative impact of the overpoliticisation of the EU enlargement process. Ever since its independence in 1991, the country has been adapting to the challenges and requirements of its neighbourhood, trying to be accepted in international and supranational organisations while struggling for its own multi-ethnic yet unitary existence. From changing its flag to changing its Constitution to changing its name, North Macedonia is still expected to make further amendments to its Constitution to start negotiating with the EU. The opening of the negotiations has been delayed for many years despite the numerous recommendations of the Commission to the contrary.

With regard to the bilateral relationship between North Macedonia and its neighbours, the Commission outlined the outstanding issue with Bulgaria and the bilateral commitments of the two countries under the Treaty of Friendship, Good-Neighbourliness and Cooperation and its Protocol in the 2024 Progress Report for the candidate country.<sup>62</sup> The main issue between the two neighbours refers to historical events and figures, as well as the language and identity of North Macedonia and Macedonians. All these are differently perceived and interpreted by the two neighbouring countries. In summary, Bulgaria was the first country to recognise the independence of the former Republic of Macedonia. The official position of Bulgaria asserts that both the Macedonian nationality and the Macedonian language share historical roots with the Bulgarian nationality and the Bulgarian language.<sup>63</sup> This perspective is strongly contested

<sup>58</sup> A Ruci and K Bali, "Why Have Relations Between Greece and Albania Deteriorated?" DW (12 May 2023) available at <<https://www.dw.com/en/greece-albania-relations-strained-over-range-of-issues/a-67637033#:~:text=Why%20have%20relations%20between%20Greece%20and%20Albania%20deteriorated%3F,...%207%20Large%20Albanian%20community%20in%20Greece%20>> (last accessed 12 June 2025).

<sup>59</sup> "Three New Euro MPs Draw 'Get Out of Jail Free' Cards" NewsVote (13 June 2024) available at <<https://brusselsignal.eu/2024/06/three-new-euro-mps-draw-get-out-of-jail-free-cards/>> (last accessed 12 June 2025).

<sup>60</sup> Ibid. See also A Krzysztozek, "Pardoned MEPs Stripped of Immunity, Face Prosecution" EurActiv (2 April 2025) available at <<https://www.euractiv.com/section/politics/news/pardoned-meps-stripped-of-immunity-face-prosecution/>> (last accessed 12 June 2025); and K Neubert, "German Far-Right MEP Stripped of Immunity" EurActiv (2 April 2025) available at <<https://www.euractiv.com/section/politics/news/german-far-right-mep-stripped-of-immunity/>> (last accessed 12 June 2025).

<sup>61</sup> J Mehmetaj and S Meçaj, "Dispute Between Albania and Greece over the Delimitation of Maritime Zones" (2022) 3(8) Lex Portus 7–29.

<sup>62</sup> European Commission, "North Macedonia 2024 Report" (30 October 2024) SWD(2024) 693 final, 59.

<sup>63</sup> See, e.g., V Treneski et al, *White Book about the Language Dispute Between Bulgaria and the Republic of North Macedonia* (Sofia/Toronto, Orbel Publishing House 2021); cf. O Vangelov, "An Analysis of Bulgaria's Rejection of the Macedonian Ethno-Linguistic Identity and Its Implications" in R Hudson and I Dodovski (eds), *Macedonia's Long Transition* (Cham, Palgrave Macmillan 2017) p 222.

by North Macedonia.<sup>64</sup> The two countries set up a Multidisciplinary Expert Commission on Historical and Educational Issues to discuss contested historical questions and to recommend ways to overcome the difficulties, especially with regard to education and remembrance.<sup>65</sup> The work of the Multidisciplinary Expert Commission, however, has been largely politicised, with the governments from both countries expecting the experts to serve the national interests of their country rather than to work impartially.<sup>66</sup> The (re) appointment of experts has thus allegedly been made in accordance with the needs of the defined national interests of the respective governments rather than being based on merit alone. In such circumstances, the Multidisciplinary Expert Commission can hardly contribute to mutual understanding and the betterment of the relations between the two countries. Moreover, historical events and figures are sensitive issues and agreement over the contested aspects requires time, as testified by the work of the Joint German–Polish Textbook Commission.<sup>67</sup> Any viable solution in this regard necessitates the absence of political pressure and undue influence on the Multidisciplinary Expert Commission, as well as the disassociation of its findings from the accession progress of the candidate country. An additional issue arose from the “French proposal,” announced by French President Emmanuel Macron, which was intended to serve as a compromise plan designed to resolve the existing stalemate and has consequently been accepted by the previous government in the candidate country. The “French proposal” envisages the inclusion of the Bulgarian ethnic minority in the Macedonian Constitution,<sup>68</sup> which the current Government pledges to only accept if the amendments of the Constitution have deferred effect, i.e. if the relevant amendments come into force once North Macedonia becomes a Member State.<sup>69</sup> Such a stance has been explained by the new Government in the candidate country in the context of pre-accession vetoes and failed promises. North Macedonia was promised EU support and expected to start the accession negotiations once it changed its name – a decision for which the previous Government had to act against its national laws and the will of its people.<sup>70</sup> Instead, the country faced barriers to its progress, initially encountering opposition (along with Albania) from France in 2019, followed by similar resistance from the Netherlands and Denmark. Subsequently, the resistance came from Bulgaria. In line with its pre-election promises, the new Government of North Macedonia is not willing to make any concessions without guarantees that no other bilateral issues would block its progress towards the EU in the future. Such guarantees, however, do not form part of the accession process.<sup>71</sup>

<sup>64</sup> *Ibid.*

<sup>65</sup> European Forum for Reconciliation, “The Joint Bulgaria–North Macedonia’s Commission” (1 July 2018) available at <<https://efrec.gei.de/initiatives/details/the-joint-bulgaria-north-macedonias-commission>> (accessed 12 June 2025).

<sup>66</sup> E.g. S Kramarska, “Ognen Vangelov: Macedonia’s Progress Toward Europe Was Placed on the Commission” *ResPublica* (17 September 2024), available at <<https://respublica.edu.mk/interview/ognen-vangelov-macedonias-progress-toward-europe-was-placed-on-the-commission/?lang=en>> (last accessed 12 June 2025).

<sup>67</sup> Leibniz-Institut für Bildungsmedien | Georg-Eckert-Institut, The Joint German–Polish Textbook Commission available at <<https://www.gei.de/en/knowledge-transfer/international-textbook-cooperation/deutsch-polni-sche-schulbuchkommission>> (last accessed 12 June 2025).

<sup>68</sup> Council of the European Union, “Conclusions on North Macedonia and Albania” (Brussels, 18 July 2022), paras. 4 and 6.

<sup>69</sup> A Dimoski, “Constitutional Changes with Delayed Effect Sole Acceptable Solution, Gov’t Wants Guarantees and Predictable EU Path: MFA Sources” *MIA* (16 June 2025) available at <<https://mia.mk/index.php/en/story/constitutional-changes-with-delayed-effect-sole-acceptable-solution-govt-wants-guarantees-and-predictable-eu-path-sources>> (last accessed 16 June 2025).

<sup>70</sup> Basheska, “EU Enlargement in Disregard of the Law.”

<sup>71</sup> See, D Kochenov and E Basheska, “Ukraine and the EU Enlargement: What Is the Law and Which Is the Way Forward?” (2025) *EJRR* 1–17.

## 5. Bosnia & Herzegovina

Bosnia & Herzegovina applied for EU membership in 2016. It has been progressing slowly, if at all, until the end of 2022, when the European Council granted the country candidate status. In March 2024, the European Council agreed to open the accession negotiations with Bosnia and Herzegovina once the country fulfils the conditions specified by the Commission. These conditions refer to the necessary steps that the country should take to strengthen the rule of law, the fight against corruption and organised crime, migration management, and fundamental rights.<sup>72</sup> The accelerated status of Bosnia and Herzegovina has been significantly influenced by concerns over Russian and Chinese influence in the Balkans, especially in light of the ongoing war in Ukraine.<sup>73</sup> In fact, Bosnia and Herzegovina was the third country, following Ukraine and Moldova, to be granted candidate status within a six-month period.

With regard to the relationships of Bosnia and Herzegovina and the neighbouring countries, the Commission outlined a number of issues with neighbouring Serbia, which have been discussed earlier in this text.<sup>74</sup> The relationship between Bosnia and Herzegovina and Croatia is also burdened by several issues concerning land and sea borders. The 1999 border agreement has not been ratified by any of the two parties. Private property issues and acquired rights have impacted the implementation of the 2001 succession agreement. Also, Bosnia and Herzegovina objects to Croatia's plan to build a radioactive waste facility near the border.<sup>75</sup> Last but not least, CASA named numerous issues to be raised during the accession negotiations with Bosnia and Herzegovina, including: demarcation in the Bay of Mali Ston; protection of the rights of Croats minority and the right to unhindered return and free disposal of the property of all those who had to leave their homes during the war in the territory of the former Yugoslavia; ensuring the protection of the Adriatic Sea and the coastal area; etc.<sup>76</sup>

## 6. The case of Kosovo

Kosovo is a potential candidate country, which only applied for EU membership in 2022. As previously explained, normalisation of the relationship between Serbia and Kosovo under the Agreement on the Path to Normalisation, in line with the Ohrid Agreement, has become an important condition for both parties.<sup>77</sup> Moreover, the EU integration of Kosovo is more problematic than the rest of the Western Balkans as it remains unrecognised by five EU Member States and five candidate countries.<sup>78</sup> This is notable even from the title of the most recent report, inserting an asterisk next to "Kosovo" with an explanation that the "designation is without prejudice to positions on status, and is in

<sup>72</sup> European Commission, "Report on Progress in Bosnia and Herzegovina – March 2024" (Communication) (12 March 2024), COM(2024) 129 final.

<sup>73</sup> RFE/RL's "Balkan Service, Bosnia Formally Granted EU Candidate Status As Part Of Wider Push For Enlargement" (15 December 2022) available at <<https://www.rferl.org/a/bosnia-eu-candidate-status/32178615.html>> (last accessed 12 June 2025).

<sup>74</sup> In particular, issues with Serbia include: determining state borders, reaching an agreement on two dams on the Drina River, and a part of the Belgrade-Bar railway. See European Commission, "Bosnia and Herzegovina 2024 Report" (Communication) (30 October 2024), SWD(2024) 691 final, 63.

<sup>75</sup> *Ibid.*

<sup>76</sup> For the full list of requests, see Croatian Academy of Sciences and Arts, "Prilozi za zaštitu hrvatskih nacionalnih interesa".

<sup>77</sup> European Commission, "Kosovo\* 2024 Report" (Communication), (30 October 2024), WD(2024) 692 final.

<sup>78</sup> EU Member States that do not recognise Kosovo are: Cyprus, Greece, Slovakia, Spain, and Romania do not recognise Kosovo as an independent state. Furthermore, five candidate countries do not recognise Kosovo: Bosnia and Herzegovina, Georgia, Moldova, Serbia and Ukraine.

line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.”<sup>79</sup>

The question of the status of Kosovo and its recognition by the EU as an independent state has been examined by EU courts. In 2020, Spain (a non-recogniser of Kosovo) brought a case in front of the General Court of the European Union (GCEU) requesting an annulment of the decision of the Commission to treat Kosovo as a “third country” for the purposes of its admission to the EU Body of European Regulators for Electronic Communications (BEREC). The GCEU noted that the concept of “third country” differs from the concept of “third state”:

the concept of “third country” within the meaning of Article 35(2) of Regulation 2018/1971 cannot, contrary to the Kingdom of Spain’s submissions, be equated with that of “third State.” The concept of “third country” has a broader scope which goes beyond sovereign States alone, with the result that Kosovo is capable of falling within it, without prejudice to the position of the European Union or its Member States as regards the status of Kosovo as an independent State. Similarly, as a “third country,” Kosovo may also have public authorities, such as the NRA of Kosovo, with the result that the Kingdom of Spain’s assertion that “only a State can have an NRA” cannot reasonably succeed.<sup>80</sup>

The GCEU’s conclusion that the concepts of “third state” and “third country” were different was dismissed by the CJEU. On an appeal brought by Spain against the GCEU decision, the CJEU confirmed that there is no difference between the concepts of “third state” and “third country,” noting, however that:

for the purposes of ensuring the effectiveness of Article 35(2) of Regulation 2018/1971, a territorial entity situated outside the European Union which the European Union has not recognised as an independent State must be capable of being treated in the same way as a “third country” within the meaning of that provision, while not infringing international law.<sup>81</sup>

Without entering into broader discussion about the status of Kosovo, the CJEU reminded that “the European Union has entered into several agreements with Kosovo, thus recognising its capacity to conclude such agreements,”<sup>82</sup> and clarified that the treatment of Kosovo as a “third country” for the purpose of concluding agreements does not affect the individual position of EU Member States regarding its status.<sup>83</sup> In other words, although Cyprus, Greece, Slovakia, Spain and Romania do not recognise the independence of Kosovo, the latter can be treated as a “third country” under the EU Treaties. The recognition of Kosovo by these states and its future progress towards the EU will largely depend on the normalisation of its relations with Serbia, i.e., on the implementation of the Agreement on the Path to Normalisation in line with the Ohrid Agreement.<sup>84</sup> Meanwhile, the EU strengthened its relations with Kosovo by approving the long-awaited visa liberalisation for Kosovars. Furthermore, the Committee on Political Affairs and Democracy of the Council of Europe (CoE) recommended Kosovo to be invited to become

<sup>79</sup> European Commission, “Kosovo\* 2024 Report”.

<sup>80</sup> Case T-370/19, *Spain v European Commission*, ECLI:EU:T:2020:440, para.36.

<sup>81</sup> Case C-632/20 P, *Spain v European Commission*, ECLI:EU:C:2023:28, para. 50.

<sup>82</sup> *Ibid.*, para. 55.

<sup>83</sup> *Ibid.*, para. 52.

<sup>84</sup> Balkans Policy Research Group, “Kosovo: Unlocking its Euro-Atlantic Path” (2023) available at <<https://balkanpolicy.org/wp-content/uploads/2023/03/Kosovo-Unlocking-its-Euro-Atlantic-Path-1.pdf>> (last accessed 12 June 2025).



a CoE member on a basis of a statutory report which noted that “membership would strengthen human rights standards by ensuring access to the European Court of Human Rights for all those under Kosovo’s jurisdiction.”<sup>85</sup> The Parliamentary Assembly passed the Report. The decision, however, on CoE membership of Kosovo requires a two-thirds majority in the Committee of Ministers. The vote has not taken place yet, and the process has stalled after Germany’s demand for the establishment of the Association of Serb Municipalities, which has proven to be highly problematic.<sup>86</sup> Should Kosovo become a CoE member, its path towards the EU may also ease, even if EU membership requires the unanimous agreement of all EU Member States.

#### IV. Conclusion

The war in Ukraine seemingly made the EU rethink its priorities, placing enlargement at the top of the list. Three years after the start of the Russian full-scale invasion of Ukraine, however, none of the Western Balkan countries has finished the negotiation process, despite the numerous efforts and unbeaten optimism of the Commission in that direction.

The Western Balkan countries certainly learned how to play the story of pretence – i.e., to pretend they trust the EU bureaucrats when promising open doors for the region while expecting them to turn a blind eye to the lack of reforms in their country. It is a simple reciprocal game that all involved actors have been playing for many years now – a kind of a “double bluff” as described by Stefan Lehne.<sup>87</sup>

In reality, the process has stalled due to various issues, including unresolved bilateral disputes. Yet, arguing over borders for a country to become part of a Union where borders have lost much of their significance is rather meaningless. Arguing over history for a country to become part of the same club, creates an unpleasant history of today’s reality. Above all, if one is to have in mind that such bilateral disputes fall outside the EU law and, therefore, settlement agreements cannot be effectively enforced once the involved candidate country becomes an EU Member State, all of these make little sense.

Still, a great number of bilateral disputes are overburdening the accession process. This paper revealed numerous known issues in which Western Balkan (potential) candidate countries are involved and which are blocking, or have the potential to block their progress on their path towards the EU. All Western Balkan (potential) candidate countries, without exception, have certain issues with neighbouring state(s) which may problematise their progress towards accession. Montenegro, which is the frontrunner among the other Western Balkan countries, has several unsolved issues with Croatia, and so does Serbia. In addition, Serbia has open questions with Bosnia and Herzegovina and, most importantly, with Kosovo. Albania is less affected by bilateral issues than other countries in the region, but certain issues with neighbouring Greece may open some old wounds. North Macedonia has an unresolved dispute with Bulgaria, while its relationship with Greece is still vulnerable. Bosnia and Herzegovina has unsolved issues with both Croatia and Serbia. Finally, the situation in Kosovo is less favourable than that of any other Western Balkan country, with five non-recognisers among EU Member States and five more among EU

<sup>85</sup> Parliamentary Assembly, “PACE Recommends that Kosovo Becomes a Member of the Council of Europe” (16 April 2024) available at <<https://pace.coe.int/en/news/9424/pace-recommends-that-kosovo-becomes-a-member-of-the-council-of-europe>> (last accessed 12 June 2025).

<sup>86</sup> P Isufi and A Isufi, “Germany Snubs Kosovo’s Last Push for Council of Europe Membership” *BalkanInsight* (16 May 2024) available at <<https://balkaninsight.com/2024/05/16/germany-snubs-kosovos-last-push-for-council-of-europe-membership/>> (last accessed 12 June 2025).

<sup>87</sup> S Lehne, “Kosovo and Serbia: Toward a Normal Relationship” *Carnegie Europe* (2012) available at <<https://carnegieendowment.org/posts/2012/03/kosovo-and-serbia-toward-a-normal-relationship?lang=en>> (last accessed 12 June 2025).

candidate countries. The future of Kosovo will largely depend on the normalisation of its relationship with Serbia.

The current situation in the Western Balkans is worrisome, necessitating a revised approach to the pre-accession process. This new strategy should promote solidarity, encourage peaceful coexistence, and foster genuine friendships among the participating states. To effectively support democratic relations among nations, it is essential to extend these principles to the accession process for future EU Member States. The era of pretense must come to an end if we expect meaningful reforms in the Western Balkan countries and if EU enlargement is truly a top priority. One key observation is that overpoliticisation reduces the predictability of the accession process. Yet, excess uncertainty is often rejected by people: “[i]f change feels like walking off a cliff blindfolded, then people will reject it. People will often prefer to remain mired in misery than to head toward an unknown.”<sup>88</sup>

**Competing interests.** The author declares that there are no conflicts of interest to declare.

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<sup>88</sup> RM Kanter, “Ten Reasons People Resist Change” *Harvard Business Review* (25 September 2012) available at <<https://hbr.org/2012/09/ten-reasons-people-resist-chang>> (last accessed 12 June 2025).