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ONE STEP FORWARD, TWO STEPS BACK: THE EU AND THE WESTERN BALKANS AFTER THE ADOPTION OF THE NEW ENLARGEMENT METHODOLOGY AND THE CONCLUSIONS OF THE ZAGREB SUMMIT

Uroš Ćemalović *

Abstract: Montenegro and Serbia are stuck in the EU accession negotiations, while, with Albania and North Macedonia, the perspective of their future course is very unclear. Between still relatively fluid elements of the new enlargement methodology presented in February 2020 and quite a weak political impulse given by the Zagreb Declaration adopted in May 2020, the potential accession to the EU of the four Western Balkans candidate countries remains not only uncertain, but seems even less realistic than it was after the Thessaloniki Summit in 2003. The paper shows how, just in the first five months of 2020, the path of the Western Balkans towards EU accession has managed to go one timid step forward and two solid steps back. First, some elements of a novel approach to accession are encouraging, but remain imprecise, often inapplicable and subject to potential divergent interpretation. Second, maintained top-down conditionality, combined with internal difficulties of all Western Balkans countries and their high adjustment costs to meet membership criteria could lead to the crumbling of pro-European consensus and a decline of democracy. Finally, the Conclusions of the Zagreb Summit mentioned neither accession nor membership in the EU, confirming the wavering political support for enlargement among Member States. The main methods used in the paper are content analysis and the comparative legal method, while the analysis of the Montenegrin and Serbian case provides evidence for the correlation between the weaknesses of the Zagreb Declaration and the hypothesised second step back in the accession process.

Keywords: EU enlargement, Western Balkans, conditionality, accession criteria, law approximation.

1 Introduction

From its very foundation, the European Economic Community (EEC) has been a project with an intrinsic capacity for enlargement. In spite of the fact that the provisions of the Treaty establishing the EEC did

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not mention any substantial or procedural rules related to the accession of new Member States, it undoubtedly comprises a larger, pan-European perspective, given that the contracting parties were 'calling upon the other peoples of Europe who share their ideal to join in their efforts'.¹ The major political changes in Europe brought about by the fall of the Berlin wall and the reunification of Germany have significantly strengthened the importance of preparedness to integrate new Member States, while the big 2004 enlargement has proven the European Union's (EU) desire to reconcile the principles of an 'ever closer' and 'ever larger' Union.

However, for almost two decades, the so-called 'European perspective of the Western Balkans countries'² has remained a reiterated political declaration usually devoid of important consequences. The conclusions of the EU-Western Balkans Summit, held in Thessaloniki on 21 June 2003, are still fully relevant, while it seems that enlargement fatigue, on the one hand, feeds 'accession fatigue', on the other. In such a context, on 5 February 2020, the European Commission issued a Communication on 'Enhancing the accession process – A credible EU perspective for the Western Balkans',³ whose main objective was to propose a new enlargement methodology, while the Declaration⁴ adopted at the EU-Western Balkans Zagreb Summit,⁵ held via video conference on 6 May 2020, did not even mention the notion of membership in the EU. On the other hand, after lengthy negotiations and political bargaining between the Member States, the European Council, on 25 March 2020, finally granted the status of candidate country to Albania and North Macedonia,⁶ while the progress of Montenegro and Serbia in the accession negotiations with the EU during 2019 was very modest, with, respectively, no further chapters provisionally closed or with only one chapter opened. Finally, even

¹ Treaty Establishing the European Economic Community (not published in the OJ), preamble, para 8.

² Thessaloniki Declaration of the EU-Western Balkans 2003 Summit, para 2.

³ Commission Communication COM(2020) 57.

⁴ Declaration of EU-Western Balkans 2020 Summit <<https://www.consilium.europa.eu/media/43776/zagreb-declaration-en-06052020.pdf>> accessed 15 May 2020.

⁵ The Zagreb Summit, initially planned for 6 and 7 May 2020, was first postponed, but it was finally held via video conference on 6 May. In some of its official documents and press releases, the Croatian government uses the notion of 'Southeast Europe' (see, for example <<https://vlada.gov.hr/news/plenkovic-reviving-european-prospect-for-s-e-europe-will-be-croatian-presidency-s-big-legacy/28795>> accessed 10 May 2020), while the European Commission, as the subtitle of its Communication COM(2020) 57 clearly indicates, privileges the notion of 'Western Balkans'. Without entering a complex and predominantly meta-legal debate on this terminological distinction, this paper will use the term 'Western Balkans'; see also n 50.

⁶ In this paper, the author uses the denomination 'North Macedonia' (NM) as a stand-in for any other name North Macedonia has had over the last three decades; for more on the legal aspects of the Prespa Agreement that introduced this change, see n 18.

if the multiple crises (unrelated to its enlargement policy) faced by the EU in the last few years (the migrant crisis, Brexit, the weakening of democracy in some Member States) have to a degree certainly contributed to enlargement fatigue, their impact will not be discussed, given that this falls outside the main scope of this paper. For methodological reasons, this paper will not analyse the (potential) accession of Bosnia and Herzegovina and Kosovo, given that their candidacy status is still uncertain.

Between still relatively fluid elements of the new enlargement methodology and quite a weak political impulse given by the Zagreb Declaration, the potential accession to the EU of the four Western Balkans candidate countries remains not only uncertain, but also subject to rules still to be clarified. The objective of the first part of this paper is to try and distil some elements of new conditionality and the potential positive features of the new enlargement methodology, while the second part examines why the recycled notion of 'European perspective', combined with some weaknesses of the new enlargement strategy, represents two steps back in EU-Western Balkans relations.

The main methods used in the paper are content analysis and the comparative legal method, while the congruence analysis of the Montenegrin and Serbian case provides evidence for correlation between the weaknesses of the Zagreb Declaration and the hypothesised second step back in the accession process. The relevant national regulatory and administrative frameworks of the candidate countries are mainly analysed under the auspices of political EU conditionality.

2 One step forward: a potentially new impulse for enlargement

After 1 July 2013 and the accession of Croatia, the EU's enlargement has been facing numerous and ever-growing challenges. As a frontrunner in terms of the number of negotiating chapters opened (32), Montenegro has been a candidate for EU accession for almost a decade,⁷ while, with Serbia, more than six years after the first Intergovernmental Conference, only half of the negotiating chapters have been opened.⁸ However lengthy and laborious the accession talks with these two countries may

⁷ The Council confirmed Montenegro as a candidate country on 17 December 2010, while the accession negotiations started on 29 June 2012; see also section 3.2; for more information on Montenegro's membership status and negotiating chapters opened and closed, see <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/montenegro_en> accessed 11 May 2020.

⁸ Serbia was confirmed as a candidate country on 1 March 2013; see also section 3.2; for more information, see <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en> accessed 5 May 2020.

seem, the examples of Albania and North Macedonia can give rise to even greater concern over the future of enlargement.

North Macedonia has officially been a candidate country from December 2005, while Albania, after the European Commission's negative (2010) and highly conditional positive (2012) opinion, was awarded candidate status in June 2014. Without entering in the specific reasons for such a long period over which both countries (especially North Macedonia) have been candidates without any reachable perspective for the opening of accession negotiations, the fact that, in the second half of 2019, a group of EU Member States (among others, France) blocked yet another attempt to launch the negotiations, has led some authors to conclude that 'the enlargement process officially came to a standstill'.⁹ However, after long-lasting political bargaining and a number of political declarations of different European leaders – often mutually conflicting and mostly aimed at fostering favourable public opinion in their own country – the Council, by its Conclusions adopted on 25 March 2020,¹⁰ decided to open accession negotiations with North Macedonia and Albania. The same Council Conclusions endorsed the European Commission's Communication on the new enlargement methodology, published a month earlier. Those two facts combined may seem like an important positive impulse for the Union's enlargement policy, but only if the Member States manage to rebuild a consensual approach to enlargement, based on a common interpretation of the main political criteria. As a less formal structure, the Berlin process¹¹ – initially designed to complement the existing EU-led mechanisms and relaunch relations with Western Balkans countries – could engender some political improvements, but remains impotent when it comes to consensus-building among the Member States.

Given that all the changes in the enlargement methodology proposed by the Commission will be fully applicable only to Albania and North Macedonia – while the negotiating frameworks for Montenegro and Serbia will not be amended, 'but the proposed changes could be accommodated within the existing frameworks [...] with the agreement of these two countries'¹² – all potential impacts of the new methodology would become fully evident during the accession negotiations. This assessment is reaffirmed by the fact that the draft negotiating frameworks for Alba-

⁹ Richard Kraemer and Reuf Bajrovic, *A New Anglo-American Partnership for the Western Balkans* (USEurope Alliance 2020) 3.

¹⁰ General Affairs Council Conclusions of 25 March 2020 on Enlargement and Stabilisation and Association Process – the Republic of North Macedonia and the Republic of Albania.

¹¹ See n 52.

¹² Communication COM(2020) 57, 1.

nia and North Macedonia, presented by the Commission on 1 July 2020, reiterate the main principles already introduced by the new enlargement methodology (credibility, predictability, stronger political steer, focus on fundamental reforms). It is therefore necessary to examine the aspects of the new enlargement methodology that could have a positive impact on the effectiveness of the future negotiation process (section 2.1), before turning to the question of potentially new conditionality stemming from both the new methodology and the Council's decision to open accession negotiations with North Macedonia and Albania (section 2.2). Since we see the potential improvements brought about by the new enlargement methodology only as a function of their applicability in the future negotiations, these two elements can only be treated as a single but unique step forward in EU-Western Balkans relations.

2.1 Towards a more dynamic enlargement via the clustering of negotiating chapters

The main features of the European Commission's Communication on 'Enhancing the accession process – A credible EU perspective for the Western Balkans' are its proclamatory style and excessive use of prescriptive (and often imprecise) formulations. It is based on four general principles detailed in its chapter 'Reinvigorating the accession process', each dedicated to set out the 'Commission's concrete proposals for strengthening the whole accession process'.¹³ Apart from the focus on the political nature of the process, its stronger steering and enhanced credibility, the two elements of the new enlargement methodology of particular importance for future accession negotiations are: 1) the clustering of negotiating chapters; and 2) enhanced predictability, with positive and negative conditionality as a core element.

In the context of general and often bureaucratic formulations with which the Commission's Communication overflows, the wish to contribute to making the accession process more dynamic by clustering negotiating chapters is one of its most concrete, applicable and potentially beneficial elements. As technical as it may seem at first sight, the entire procedure according to which the negotiating chapters are not only opened and closed, but also prioritised and internally structured, can be of great importance for the course of the entire negotiation process.

As some authors have rightly remarked for the countries that are already in the negotiation process with the EU (Montenegro, Serbia), 'restructuring of the negotiation chapters has brought forward the centrality of the rule of law and corresponding policy areas and has led to the

¹³ *ibid.*

modernising of legal systems of these countries'.¹⁴ On the other hand, the order in which the chapters are opened influences both the way the citizens (of both Member States and the candidate country) assess the progress of negotiations, but also determines its pace and priorities. For example, for the so-called 'Helsinki group' of candidate countries (Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia), 'the strategic evolution of negotiation'¹⁵ was based on the principle that the easy chapters are opened first, in contrast to the case for Croatia, as well as for negotiations now taking place with Serbia and Montenegro, when the most difficult chapters (23 – Judiciary and Fundamental Rights and 24 – Justice, Freedom and Security) are opened first. Even if the principle of a separate opening (and closing) of each negotiating chapter has some important advantages – of which some of the most significant are the focus on sector-specific national legislation and the involvement of experts – their clustering according to thematic criteria 'has a great potential to make the entire negotiation more effective'.¹⁶

The Communication proposes six big clusters of negotiating chapters: 1) fundamentals (out of which the most prominent are Chapters 23 and 24, but also those dedicated to public procurement, statistics and financial control); 2) the internal market; 3) competitiveness and inclusive growth; 4) the green agenda and sustainable connectivity; 5) resources, agriculture and cohesion; and 6) external relations. By opening and closing negotiations on each cluster as a whole, both the screening process and the examination of opening benchmarks will be carried out per cluster, avoiding certain overlapping and the so often criticised negotiation-related EU red tape. Moreover, the Communication provides that 'priorities for accelerated integration and key reforms will be agreed between the EU and the candidate country',¹⁷ allowing, in principle, an entire cluster to be opened without further conditions. When these priorities have been sufficiently addressed, the cluster (covering all associated chapters) should be opened without further conditions, while closing benchmarks are set for each chapter.

Notwithstanding some of the potential difficulties related to this new principle (which will be examined in part 3), it may provide important economies of time and resources, giving the entire enlargement process

¹⁴ Christophe Paulussen and others (eds), *Fundamental Rights in International and European Law: Public and Private Law Perspectives* (Asser Press-Springer 2016) 3.

¹⁵ Melania-Gabriela Ciot, *Negotiation and Foreign Policy Decision Making* (Cambridge Scholar Publishing 2014) 199.

¹⁶ Uroš Čemalović, 'Towards a New Strategy for EU Enlargement: Between the Wish for Encouragement, the Reality of the Fatigue, and the Threat of a Dead End' (2020) 4 *EU and Comparative Law Issues and Challenges* (ECLIC) 281.

¹⁷ Commission Communication (2020) 57, 5.

a better image in the eye of the public. This is particularly important for North Macedonia, considering that the decision to open accession negotiations was adopted more than fourteen years after the country gained the status of candidate country. Over that period, the country faced numerous challenges, including times of political instability and the difficult compromise over identity and long-standing issues with Greece,¹⁸ as well as some recurrent linguistic and historical issues with Bulgaria.¹⁹

2.2 Some elements of a new conditionality

While, according to some authors, 'EU conditionality is most often identified with limited, discrete instances of influence',²⁰ others observe that, in some countries of the Western Balkans, 'EU conditionality has effectively contributed to the consolidation of [...] detrimental governance patterns'.²¹ However, it certainly remains one of the most important mechanisms to achieve the (at least formal) alignment of candidate countries with the standards necessary for membership. One of the most important vectors of this alignment is approximation of laws, aiming to 'eliminate the inconsistent differences in national legislations',²² an EU policy applicable to both Member States and candidate countries. However, the notion of conditionality related to EU enlargement is an overarching concept, representing 'the core element of the merit-based ac-

¹⁸ In June 2018, the so-called Prespa Agreement settled a long-lasting dispute between Greece and the Former Yugoslav Republic of Macedonia (FYROM). Greece was vigorously against the use of the denomination 'Macedonia', given that its northern region (with Thessaloniki as capital) historically uses the same name; for more on the legal aspects of the Prespa Agreement, see <<http://www.qil-qdi.org/the-prespa-agreement-between-greece-and-north-macedonia-and-the-settlement-of-the-name-dispute-of-objective-regimes-erga-omnes-obligations-and-treaty-effects-on-third-parties/>> accessed 13 May 2020.

¹⁹ In the former Yugoslavia, Macedonian was fully recognised as one of the official languages. On the other hand, mainly by invoking identity-related argumentation, numerous Bulgarian scientists and politicians (including some Bulgarian MEPs) repeatedly claimed that the Macedonian language is only a dialect of Bulgarian. The solution is expected to be brought by a bilateral commission, competent to reach a common interpretation of historical and linguistic issues. For more details on the possibility that Bulgaria blocks the accession of North Macedonia over this issue, see <<https://europeanwesternbalkans.com/2020/05/18/could-bulgaria-block-the-eu-path-of-n-macedonia-over-common-history-interpretation/>> accessed 14 May 2020.

²⁰ Mario Zucconi, *EU Influence Beyond Conditionality: Turkey Plus/Minus the EU* (Palgrave Macmillan 2020) 19.

²¹ Solveig Richter and Natasha Wunsch, 'Money, Power, Glory: The Linkages between EU Conditionality and State Capture in the Western Balkans' (2020) 27 *Journal of European Public Policy* 41.

²² Uroš Čemalović, 'Framework for the Approximation of National Legal Systems with the European Union's Acquis: From a Vague Definition to Jurisprudential Implementation' (2015) 11 *Croatian Yearbook of European Law and Policy* 241.

cession process'.²³ In the same vein, the Commission's intention to bring more predictability in the relations with candidate countries – through, on the one hand, better defined positive and, on the other, the introduction of negative conditionality – is one of the strongest features of the Commission's new enlargement methodology. It is therefore necessary to examine the general framework of the potentially new concept of conditionality stemming from the Communication of 5 February 2020, before turning to the question of how this framework might interact with the set of concrete conditions detailed in the Council's decision of 25 March 2020 to open accession negotiations with North Macedonia and Albania.

Without mentioning *expressis verbis* that one of the main reasons for the adoption of a new enlargement methodology is the relatively modest success of the accession negotiation process – and in spite of the fact that the Western Balkan countries have been subject to reinforced conditionality compared to that applied in earlier enlargements – it is clear that the Commission is fully aware of the absence of 'clarity on what the Union expects of enlargement countries at different stages of the process'.²⁴ In other words, conditionality is applicable to every phase of the relations between the EU and the (potential) candidate country, but it becomes crucial when the accession negotiations effectively start. Therefore, the new methodology first strives to improve the effectiveness of positive conditionality, and then to introduce the possibility to halt or reverse the accession process if there is 'any serious or prolonged stagnation or even backsliding in reform implementation'.²⁵ The potential impact of negative conditionality is reinforced by the 'fundamentals first' approach, given that unsatisfactory reforms in crucial (legal and political) fields could undermine the progress of negotiations in numerous other (mainly economical) areas.

The Commission's annual reports are seen as the most appropriate way to better define the conditions set for candidate countries to progress, while those conditions 'must be objective, precise, detailed, strict and verifiable'.²⁶ However, what is actually worrying at this point is the potential lack of uniform interpretation by the Commission (and the Member States) of whether some conditions are met or not. In the context of refurbished authoritarian tendencies in some EU countries and from the point of view of what is referred to as 'illiberal democracy',²⁷ how, for example, would the condition related to the freedom of the media be

²³ Communication COM (2020) 57, 5.

²⁴ *ibid.*, 6.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ See n 49.

interpreted by various stakeholders? Back in 2018, as it was pertinently remarked for Albania by Kristina Irion and Tarik Jusi, 'conditionality mechanisms failed to ensure absence of political and financial pressures on the media'.²⁸ This conclusion is still fully applicable to many other countries of the Western Balkans, including Montenegro, North Macedonia and Serbia. Notwithstanding that a better-defined positive conditionality is crucial for clearer guidance and more effective accession negotiations, it is not easily applicable in all negotiation clusters, and especially in those that are more related to political criteria.

Even if it may seem a measure introducing a punitive component to the mechanism of conditionality, and in spite of certain opinions seeing it as an element of 'balance between rewards and threats',²⁹ negative conditionality, as exposed in Communication (2020) 57, is a suitable counterpart of clearer and better defined positive conditionality. Halting or reversing the accession process could also be a suitable way to send a clear message to the public in the candidate country about the results of their political leadership in membership negotiations with the EU. This could be particularly appropriate when the approximation (and adequate implementation) of national legislation with the EU *acquis* is in question. However, once again, here the same already-mentioned problem arises in the context of positive conditionality: the uniform interpretation of some (mainly political) criteria.

When examined in the context of what has previously been said on positive and negative conditionality in the new enlargement methodology, the Council Conclusions of 25 March 2020 on the accession of North Macedonia and Albania (as well as the negotiating frameworks presented by the Commission on 1 July 2020), at least theoretically, open equally large space for both the acceleration and slowing down of the accession negotiations. Notwithstanding the fact that the Council's decision as such represents a positive impulse, the lengthy and laborious process of consensus-building among the Member States regarding the opening of accession negotiations with Albania and North Macedonia clearly indicates that the political encouragement desired by the Commission is not always followed by the Member States. However, it seems that the way the Council defined the conditions to be fulfilled by Albania prior to the first intergovernmental conference respects, at least generally, the conditions of objectivity and precision demanded by the new enlargement strategy, while the criteria related to verifiability and uniform interpreta-

²⁸ Kristina Irion and Tarik Jusić (eds), *Media Constrained by Context: International Assistance and the Transition to Democratic Media in the Western Balkans* (Central European University Press 2018) 280.

²⁹ Eli Gateva, *European Union Enlargement Conditionality* (Palgrave Macmillan 2016) 59.

tion can only be assessed in the future course of the accession process. Some of the most important issues to be resolved are: 1) the adoption of electoral reform ‘ensuring transparent financing of political parties and electoral campaigns’;³⁰ 2) continued implementation of judicial reform, ‘including ensuring the functioning of the Constitutional Court and the High Court, taking into account relevant international expertise including applicable opinions of the Venice Commission’;³¹ 3) finalisation of ‘the establishment of the anti-corruption and organised crime specialised structures’;³² 4) further strengthening of the fight against corruption and organised crime; and 5) tackling the phenomenon of unfounded asylum applications.

On the other hand, the GA Council Conclusions related to North Macedonia do not mention any specific issue to be resolved before the first intergovernmental conference, but simply invite the Commission ‘to continue to monitor the progress and continued compliance in all areas of the conditions identified by the Council in June 2018 related to the opening of negotiations’;³³ as well as ‘to carry out and complete the process of analytical examination of the EU acquis’.³⁴ While clearly defined criteria in the field of justice, freedom, security, fundamental rights and the judiciary (now belonging to a unique cluster 1), as well as the planned screening carried out per cluster, could significantly speed up the future negotiations with Albania, the strict application of the principle of negative conditionality could, on the other hand, considerably slow it down. For North Macedonia, the focus will be on the approximation of national legislation with the EU acquis, an area in which significant acceleration could be expected due to cluster-based screening. However, in the absence of clearer guidelines in the draft negotiating framework regarding criteria related to the rule of law, this potential positive effect could be seriously compromised.

3 Two steps back: a strategy without substance and a ‘perspective’ without accession

Analysed as a whole, the new enlargement methodology presented on 5 February 2020 is excessively prescriptive, generally imprecise and – even more than usual for the EU’s bureaucratic jargon – impregnated with proclamatory formulations often devoid of substance and appli-

³⁰ Council Conclusions 7002/20 final, 5.

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*, 4.

³⁴ *ibid.*

cability. As the previous part of the paper demonstrated, its two main positive aspects – with, however, quite a few elements of uncertainty regarding their future interpretation and enforcement – are the clustering of negotiating chapters and modified conditionality, but they are far from sufficient to proclaim a new era of EU enlargement. On the other hand, the Zagreb Declaration adopted at the EU-Western Balkans Summit on 6 May 2020 did not even mention the term ‘accession’, insisting, 17 years after the Thessaloniki Declaration, on yet another use of the fluid term of ‘European perspective’. In this way, the timid one step ahead achieved by concrete and applicable elements of the new enlargement strategy has been largely nullified by the lack of both ‘technical’ and political substance. First to be examined here are the weaknesses of the Commission’s strategy (section 3.1), before turning to the issue of how the Council failed to give a stronger impulse to the accession process (section 3.2).

3.1 The first step back: an enlargement methodology devoid of substance and applicability

The three main negative features of the Commission’s Communication on the new enlargement methodology are imprecision, lack of substance and questionable applicability. While its proclamatory style and excessive use of prescriptive formulations could, to some extent, be justified by its general nature, its wording is obviously the fruit of laborious political bargaining, where the search for the smallest common denominator has led to empty political verbiage. The word ‘credible’ or ‘credibility’ is mentioned 12 times, the accession process as such has to be ‘reinvigorated’, support for the European perspective of the Western Balkans is ‘unequivocal’, while an ‘accession perspective’ is ‘the key incentive and driver’ of transformation in the region. When it comes to the excessive use of prescriptive formulations, the noun ‘commitment’ is mentioned seven times; the Western Balkans leaders ‘must deliver more credibly’, while ‘both sides should show more leadership’. However, the weaknesses of the new methodology can best be demonstrated by a closer analysis of its two main intentions: 1) the wish for a more politicised accession; and 2) the focus on a merit-based process.

In previous waves of enlargement, the entire procedure of accession to the EU was fundamentally ‘a very technical matter, left to the highly sub-specialised and initiated experts’³⁵ and, consequently, often very distant from the citizens of both Member States and candidate countries. This is particularly evident in matters related to eminently economic issues, when negotiations about certain topics can easily transform into

³⁵ Ćemalović (n 16) 290.

'marathons of experts'.³⁶ This is why Communication (2020) 57 rightly points out that, from the standpoint of candidate countries, accession 'is not moving on autopilot but must reflect an active societal choice',³⁷ while, on the side of the Member States, it should be seen as a 'significant political and not simply technical undertaking'.³⁸ This observation would have been a good starting point for a substantial reform of enlargement methodology provided that:

the Commission had accompanied it with more substantial propositions on how to better involve the citizens (of both member states and candidate countries), in order to present them why the EU should be an active societal choice and a matter of interest for both parties. Especially after the COVID-19 outbreak, it would be increasingly difficult to explain to citizens why the continuation of the enlargement process and integration of the new member states would be a better political choice than refurbished national sovereignty, more border control and less supra-national solidarity and cooperation. Instead, the Commission proposes more planning, stronger leadership and a more solid institutional structure. All these elements are undoubtedly important, but it is inappropriate to insist on societal choice and not exclusively the technical nature of the enlargement, while proposing reinvigorated politicisation and a more top-down approach.³⁹

Conditionality is still the main mechanism to ensure the merit-based accession process while, according to the Commission, accession itself has to reflect 'an active societal choice'⁴⁰ in the countries aspiring to join. As indicated in section 2.2, the new enlargement methodology introduces negative conditionality, as well as some new elements for a better definition of positive conditionality; through its interaction with the clustering of negotiating chapters, the main incentive for accession countries would be the perspective of accelerated accession. In the same vein, the key to success of the entire concept of conditionality lies in clearly defined benchmarks that are sufficiently detailed and not subject to divergent interpretations. Though when it comes to EU-Western Balkans relations, 'conditionality is not just an enlargement tool [but] a political multi-dimensional and multi-purpose instrument of EU Foreign and Security Policy'.⁴¹

³⁶ Matthieu Trouvé, *L'Espagne et l'Europe: de la dictature de Franco à l'Union européenne* (Peter Lang 2008) 440.

³⁷ Communication COM(2020) 57, 3.

³⁸ *ibid.*

³⁹ Ćemalović (n 16) 290.

⁴⁰ Communication COM(2020) 57, 5.

⁴¹ Jehona Lushaku Sadriu, *Europeanization through Conditionality and Deliberation in the EU Enlargement Process* (Lit Verlag 2019) 20.

Given that all the decisions related to each phase of the accession process are adopted by unanimity, numerous positive aspects of clustering and the better approach to conditionality can be entirely counter-balanced by a divergent opinion of a single Member State, having either a different assessment on the progress of a candidate country or, even worse, its own interpretation of certain conditions. The picture becomes even more complicated if one adheres to the opinion that conditionality is, at least partially, an instrument of the Union's Foreign and Security Policy (FSP). In spite of the fact that Communication (2020) 57 specifies that 'the Commission will better define the conditions set for candidates to progress, in particular through its annual reports',⁴² nothing prevents any Member State – as we have already seen in the case of North Macedonia⁴³ – from introducing their own conditions, especially if the enlargement-related issue overlaps with some objectives of the FSP.⁴⁴

Not only that – in the absence of clearer guidelines regarding the uniform interpretation of the conditions set for candidates to progress – the new enlargement methodology might become entirely inapplicable. At the same time, its wish to provide 'clear and tangible incentives of direct interest to citizens'⁴⁵ and to 'encourage real political will'⁴⁶ could become entirely pointless due to the opposition of a single Member State. Finally, some authors believe that 'top-down conditionality has weakened political competition and mechanisms of internal accountability and deliberation',⁴⁷ allowing 'linkages between EU conditionality and state capture'

⁴² Communication COM(2020) 57, 5.

⁴³ See also n 18.

⁴⁴ This might represent a significant issue, especially for Serbia, whose intention to join the EU is heavily compromised by its special relations with Russia and China. Moreover, in this candidate country, accession to the EU is quite far from being 'an active societal choice'. In spite of the results of regular surveys of public opinion published by the country's Ministry of European Integration – which, in general, show that more than 50% of respondents support membership in the EU – the overwhelming majority of national media, as well as declarations of numerous political decision-makers actively promote a Euro-sceptic, often anti-European, agenda; it was particularly evident during the crisis caused by the COVID-19 outbreak, during which relatively modest Chinese support and aid was labelled as 'brotherly aid showing steel-solid friendship', while the substantial aid of the EU was either totally ignored or designated as 'minimal and belated'. For the December 2019 results of opinion polls published twice a year by the Serbian Ministry of European Integration, see <https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/istrazivanja_javnog_mnjenja/opinion_pool_dec_19.pdf> accessed 16 May 2020; for an overview regarding the EU's and Chinese assistance to Serbia during the crisis caused by the COVID-19 outbreak, see <<https://europeanwesternbalkans.com/2020/03/30/steel-friendship-between-serbia-and-china-criticised-by-european-commentators/>> accessed 17 May 2020.

⁴⁵ Communication COM(2020) 57, 5.

⁴⁶ *ibid.*

⁴⁷ Richter and Wunsch (n 21) 41.

to be established.⁴⁸ In any case, while legal and economic conditionality could rarely be subject to divergent interpretations, political conditionality is much more problematic, especially in the context of the weakening democracy in some EU Member States.⁴⁹

3.2 The second step back: yet another ‘perspective of a perspective’

The crucial incentive for the integration of the Western Balkan⁵⁰ countries into the EU was given at the Thessaloniki Summit in June 2003. At that moment, the potential candidates were Albania, Bosnia and Herzegovina, Croatia, North Macedonia,⁵¹ Serbia and Montenegro (as a federal state). Seventeen years later, after an impressive number of summits and other official meetings in various formats,⁵² only Croatia has become an EU Member State, Albania and North Macedonia have recently become candidates, while Montenegro and Serbia (from 2006, two independent states) have, for quite a long time, been in the accession negotiation process. Apart from Croatia – whose relatively swift⁵³ accession seems to play the role of the exception that confirms the rule – the

⁴⁸ *ibid.*

⁴⁹ For Hungary, see András Pap, *Democratic Decline in Hungary: Law and Society in an Illiberal Democracy* (Routledge 2019); for a wider comparative overview, see Aldo Madariaga, *Neoliberal Resilience: Lessons in Democracy and Development from Latin America and Eastern Europe* (Princeton University Press 2020).

⁵⁰ See also n 5. The question of which countries of Southeastern Europe actually belong to the Western Balkans was (and, to a certain extent, still is) the subject of disagreement both in theory and among politicians, the main issue being the place of Croatia; as for the Thessaloniki Declaration, it clearly includes this country. For a comprehensive study on the place of different ex-Yugoslav countries in various regional clusters, see Sabine Rutar (ed), *Beyond the Balkans – Towards an Inclusive History of Southeastern Europe* (Lit Berlin 2014).

⁵¹ The country's name at that time was the Republic of Macedonia; in international fora and due to the opposition of Greece, the denomination ‘the Former Yugoslav Republic of Macedonia’ was used. See nn 6 and 18.

⁵² In addition to the regular EU-Western Balkans summits, the so-called Berlin process was initiated in 2014, ‘an initiative aimed at stepping up regional cooperation in the Western Balkans and aiding the integration of these countries into the European Union’ (<<https://berlinprocess.info/about/#wbsummits>> accessed 21 May 2020); until now, after the Berlin Summit in 2014 another five summits have been held. The process is supported by the European Commission; however, it officially does not involve the EU institutions, but only the representatives of six Member States (Austria, Croatia, France, Germany, Italy and Slovenia) and the UK.

⁵³ Croatia's accession could certainly not be defined as ‘swift’ when compared with the 1995 and previous enlargements. However, when we compare it with the results achieved so far in the accession negotiations of Montenegro and Serbia, Croatian accession certainly merits being characterised as reasonably rapid. Croatia managed to open and close all negotiating chapters in less than six years, while Montenegro's and Serbia's accession negotiations, until now, have lasted more than eight and six years, respectively.

EU enlargement to the Western Balkans has been a failure. After the conclusions of the last EU-Western Balkans Zagreb Summit of 6 May 2020, it is very likely to remain so.

On the one hand, the political and legal problems related to accession have not been remedied over the last years, while, on the other, the Zagreb Summit has failed to bring a stronger impulse for enlargement. To use the expression cherished by the Commission, the cross-fertilisation⁵⁴ of these two negative elements (the mainly unsuccessful past and a very uncertain future) could be detrimental to the future of enlargement. Moreover, the Zagreb Summit takes a step back in comparison to previous EU-Western Balkans summits because, unlike some other summits, it failed to initiate concrete models of mutual cooperation between the candidate and potential candidate countries of the region. For example, the Declaration adopted at the Paris Western Balkans Summit, held in July 2016, not only mentioned the commitment of the accession countries 'to abstain from misusing outstanding bilateral issues in the EU accession process',⁵⁵ but also launched the Regional Youth Cooperation Office.⁵⁶

Given that the accession-related vicissitudes of Albania and North Macedonia were examined in part 2, the focus now will first be on the two candidates that are already in negotiations, before turning to the conclusions of the Zagreb Summit. Taking into consideration the internal political, administrative and economic difficulties in Montenegro and Serbia, the clearer incentive of membership offered 'in last enlargement rounds'⁵⁷ would lead both to stronger EU influence in those countries and to more incentivised reforms. This is exactly the point where the conclusions of the Zagreb Summit omitted to send a clear political message.

Montenegro's accession negotiations started in June 2012; eight years later, the country has 32 (out of 33) negotiating chapters opened, and only three provisionally closed. The last Commission Report⁵⁸ esti-

⁵⁴ According to Communication COM (2020) 57, 'further dynamism' should be injected into the accession process and 'cross-fertilisation' of efforts fostered; the only practical and concrete consequence of such 'cross-fertilisation' of efforts is the organisation of negotiating chapters in thematic clusters; see section 2.1.

⁵⁵ Final Declaration by the Chair of the Paris Western Balkans Summit, para 2 <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/policy-highlights/regional-cooperation/20160713-01.final-declaration-by-the-chair-of-the-paris-western-balkans-summit.pdf>> accessed 6 July 2020.

⁵⁶ *ibid*, para 3.

⁵⁷ Rachel Epstein and Ulrich Sedelmeier (eds), *International Influence Beyond Conditionality: Postcommunist Europe after EU Enlargement* (Routledge 2009) 4.

⁵⁸ European Commission, 2019 Communication on EU Enlargement Policy, 2019 Montenegro Report.

mates that, as far as the political criteria are concerned, the situation in the country is far from being satisfactory (a polarised and fragmented political scene, the absence of dialogue, parliamentary accountability), while, as regards governance, transparency is still an issue, and the country is 'moderately prepared' with the reform of its public administration. The approximation of national laws with the EU *acquis* is satisfactory only in some areas (company law, intellectual property law, energy, and foreign, security and defence policy), while it is still lagging behind in numerous important areas, such as environment, agriculture and rural development, the movement of goods, and competition. With a better prepared public administration, but also some similar structural difficulties related to economic and environmental issues, Croatia managed to open and close all negotiating chapters in less than six years.⁵⁹

More than six years after the first EU-Serbia Intergovernmental Conference,⁶⁰ only eighteen negotiating chapters have been opened and two provisionally closed. According to the last Report of the Commission,⁶¹ the political situation is characterised by the lack of 'broad pro-European consensus'⁶² and, more generally, the absence of sufficient cross-party debate. Public administration and, even more, the judiciary, still need to be significantly strengthened and reformed, while the country's ability to attract and retain qualified staff in EU-related issues is very limited and its fight against corruption mainly unsatisfactory. Approximation of the national legal system with the EU *acquis* is good in some areas (company law, intellectual property law, transport policy, customs), while, in many others, progress is either limited (public procurement, statistics, social policy, employment) or there is even non-compliance with the Stabilisation and Association Agreement (state aid control, fiscal discrimination and restriction of competition in some areas). However, the most prominent characteristic of Serbia's relation with the EU is the fact that its membership in the Union is far from being 'an active societal choice' of its citizens, and of its political and intellectual elites.⁶³

Held during the peak of the global crisis caused by the COVID-19 pandemic, and only a month after the status of candidate countries was granted to Albania and North Macedonia, expectations from the EU-Western Balkans Zagreb Summit were high. Beyond its importance for the

⁵⁹ The screening stage of accession negotiations began on 20 October 2005, while the last negotiating chapter was closed on 30 June 2011.

⁶⁰ The first EU-Serbia Intergovernmental Conference was held on 21 January 2014, and the first negotiating chapter opened almost two years later (14 December 2015); the last, 18th, negotiating chapter was opened on 10 December 2019.

⁶¹ Commission, 2019 Communication on EU Enlargement Policy, 2019 Serbia Report.

⁶² *ibid* 3.

⁶³ See n 44.

future of EU enlargement, the Summit was also an occasion to reposition the Union as one of the crucial stakeholders in international relations. In all current candidate countries – and especially in North Macedonia and Serbia – a clear membership perspective is crucial for the success of the political and legal transformations necessary for accession. As rightly noted by Epstein and Sedelmeier, ‘in the last enlargement rounds, the EU has offered [...] the incentive of membership, [while] in the current candidates, the conditions are much less conducive for this incentive to result in strong EU influence’.⁶⁴ Moreover, ‘most of the remaining candidate countries face much higher domestic adjustment costs to meet the EU’s political conditionality’,⁶⁵ while in some of them, as noted by the Commission,⁶⁶ pro-European consensus is crumbling and freedom of the media threatened. In such a context, the Conclusions of the Zagreb Summit mentioned neither accession nor membership in the EU, recycling the usual political verbiage, characterised by yet another mention of ‘unequivocal support for the European perspective of the Western Balkans’. Taking into consideration ever growing legal, economic and political conditionality, combined with the internal difficulties of the Western Balkan countries mainly related to political instability, corruption and the independence of the judiciary, a clear perspective of membership, and not just ‘a perspective of a perspective’, would be sufficient political incentive. Given that in every phase of negotiation, progress in accession is thoroughly assessed, allowing every Member State to evaluate whether the requirements of the accession process are met, it is disappointing to see the extent to which the Zagreb Summit, seventeen years after Thessaloniki, missed the opportunity to take a step off the beaten track of wavering political support for enlargement.

4 Conclusion

During the first half of 2020, the issue of EU enlargement was treated on three important occasions. First, in February, the European Commission published a new enlargement methodology, striving to enhance accession, by bringing more credibility, predictability and dynamism to the process. Second, in March, the European Council – after a long period of uncertainty and political bargaining – granted the status of candidate country to Albania and to North Macedonia, while the draft negotiating frameworks for those two countries were presented by the Commission on 1 July 2020. Finally, the EU-Western Balkans Zagreb Summit, held in May, expressed its ‘unequivocal support for the European perspec-

⁶⁴ Epstein and Sedelmeier (n 57) 4.

⁶⁵ *ibid.*

⁶⁶ See n 58.

tive of the Western Balkans', but did not mention the terms 'accession' or 'membership'. While some elements of a novel approach to accession and the potential positive features of a new enlargement methodology for the two new candidate countries could be assessed as a potential step forward, this was entirely counterbalanced by the maintained top-down conditionality with more planning, stronger leadership and an institutional structure further discouraging citizen participation. It is therefore very unlikely that the new enlargement methodology will contribute to accession as an 'active societal choice' and not simply a 'technical undertaking'. Finally, the internal difficulties of all Western Balkans countries and their high adjustment costs to meet the EU's political conditionality have often led to crumbling pro-European consensus and continue to undermine it. In such a context, the empty political verbiage of the Zagreb Declaration and yet another 'perspective of a perspective' reflect the wavering political support for enlargement among Member States, making its future if not impossible, then very uncertain.



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