

# Renewing hope? An analysis of the new EU enlargement methodology and its implications for Kosovo

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Renewing hope? An analysis of the new EU enlargement methodology and its implications for Kosovo

Author: \*Alejandro Esteso Perez

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Group for Legal and Political Studies  
“Rexhep Luci” str. 16/1  
Prishtina 10 000, Kosovo  
Website: [www.legalpoliticalstudies.org](http://www.legalpoliticalstudies.org)  
E-mail: [office@legalpoliticalstudies.org](mailto:office@legalpoliticalstudies.org)  
Tel/fax.: +381 38 234 456

\*International Reserch Fellow, Group for Legal and Political Studies

# RENEWING HOPE? AN ANALYSIS OF THE NEW EU ENLARGEMENT METHODOLOGY AND ITS IMPLICATIONS FOR KOSOVO

## Executive Summary

At a press conference held in Brussels on February 5<sup>th</sup> 2020, European Commissioner for Neighbourhood Policy and Enlargement Negotiations Olivér Várhelyi presented the new methodology that would, from now on, underlie and steer the European Union (EU) enlargement process. This set of newly-revised principles, devised for a “more predictable, more dynamic and more political” integration procedure, is bound to involve –to a greater or lesser extent– the six non-EU countries in the Western Balkan region (WB6): Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

How the WB6 are to fare in the framework of the new enlargement methodology is still a conundrum. The European Commission (EC) is fearing the entire European integration process could be in jeopardy amid a context where mass migration, Euroscepticism and the so-called *enlargement fatigue* are severely conditioning EU Member States’ policies towards candidate and potential candidate countries. Simultaneously, public attitudes vis-à-vis the EU are drastically changing in the WB6, which poorly perceive of Brussels as a trustworthy and reliable partner after years of empty promises.

Ahead of this new and somehow experimental scenario, Kosovo stands in limbo between the institutional ventures of mending Europe’s youngest country and the struggle for full statehood recognition in international fora. Many are the challenges the country is facing, not least at a time when the EU project is in the doldrums. In this light, what role is Kosovo expected to play from now on? And how does the new enlargement methodology affect and involve Kosovo in a political, economic and social sense?

This policy analysis will delve into these matters along three main blocks of content. In the first block, we will introduce an overview of the new enlargement methodology as presented by the EC, identifying the potential motivations behind its formulation and critically dissecting its components. In the second block, we will carry out an in-depth analysis on where Kosovo stands in the enlargement process, what its achievements and fallbacks have been, what developments are expected from it to deliver on and what the implications of this new methodology are for the country. The third and last block will map out a set of policy recommendations for Kosovo.

## I. The EU’s New Enlargement Methodology: Same Stakes Through Other Means

### A brief insight into EU enlargement

Over its almost 70 years of existence, the EU has managed to grow exponentially and strived to transform into the pan-continental political-economic union it is today. From the *Inner Six* that in 1951 signed the Treaty of Paris and gave birth to the European Coal and Steel Community (ECSC) to the current EU27, a positive balance of 21 new Member States has nurtured the Union and rendered it the largest economy and trading block in the world, with an estimated population of 447 million.

Enlargement has been ultimately considered as one of the EU’s most extraordinary foreign policy mechanisms, open to any European country that “respects the democratic values of the EU and is committed to promoting them”<sup>1</sup>. The current enlargement process is the political and technical aftermath of seven successive accession waves, throughout which the conditions and

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<sup>1</sup> European Commission, 2016. Conditions for membership. [online] Available at: <[https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en)> [Accessed 11 March 2020].

requirements for full-fledged membership have become more and more demanding. The process, as we know it today, includes several formal steps that depart from the signing of a pre-accession Stabilization and Association Agreement (SAA)<sup>2</sup>. Each SAA is tailored to the needs of each potential candidate country and it is used as the basis upon which the future accession process will build. Once the country has complied with the SAA, it can apply for membership and be awarded candidate status – after which the Council of the EU (hereinafter, *the Council*) is to decide whether to officially launch accession negotiations. These negotiations are framed within the 35 chapters in which the EU’s *acquis communautaire* –the full set of legislation, international agreements, fundamental rights and standards that builds up EU law– is structured. Once all chapters have been opened, undergone the so-called *screening* (monitoring) process and closed, the EC can recommend closing accession negotiations and submit its decision to the Member States, which will have the final say. If the Council unanimously approves, a Treaty of Accession is signed and, after ratification by all Member States’ national parliaments, the candidate country becomes a Member of the Union.

As of April 2020, all WB6 are *en route* –although at different points down the road– to becoming full-fledged EU Member States. These are Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. While Montenegro and Serbia are already undergoing accession negotiations as candidate countries –at 32 and 18 chapters opened, respectively–, Albania and North Macedonia have recently been given green light to launching accession talks, likewise as candidate countries. Bosnia and Herzegovina and Kosovo hold the status of potential candidates. Whereas Bosnia and Herzegovina’s membership application got declined by the EC given a weak compliance with the membership criteria<sup>3</sup>, Kosovo’s SAA only entered into force in 2016 and has not yet submitted its membership application.

### Enlargement fatigue and domestic conditionality

The year 2004 witnessed the outcome of the greatest and most meaningful integration endeavour the EU had embarked on since its foundation: Czechia, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia were officially becoming full-fledged Members of the Union from May 1<sup>st</sup>. The European club was welcoming ten new States, 74 million new people, 737 km<sup>2</sup> of new area and ten new languages, paving the way to becoming the largest economy in the world. 2004 marked the moment when every State across the continent understood its prospects for a future within the EU, regardless of its geographical location, political history or wealth. It confirmed, in all, that common European values were nothing exclusive to the West but sentiments that could be shared by anybody willing to fit in.

The two subsequent enlargement waves, one in 2007 –which welcomed Bulgaria and Romania– and the most recent in 2013 –which welcomed Croatia–, reaffirmed the pan-European ambition of the EU project, albeit one that has progressively lost traction in recent years. Pivotal issues such as the 2015 refugee crisis, Brexit, the consolidation of a Eurosceptic far-right and latter episodes of extremist terrorism have all contributed to EU leaders’ attention deviating from enlargement and, thus, to a poorer engagement with new candidate or potential candidate countries – an attitude commonly referred to as *enlargement fatigue*. The former President of the EC Jean-Claude Juncker portrayed in his 2014 political guidelines what enlargement fatigue would mean in practice: “the EU needs to take a break from enlargement so that we can consolidate what has been achieved among the 28 [Member States]. This is why, under my [2014 to 2019] Presidency of the Commission, ongoing negotiations will continue, and notably the

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<sup>2</sup> The SAA is the official *ad hoc* name given to a regular EU Association Agreement (AA) with the WB6.

<sup>3</sup> European Commission, 2019. *Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*. Brussels.

Western Balkans will need to keep a European perspective, but no further enlargement will take place over the next five years.”<sup>4</sup>

The main takeaway stemming from the notion of enlargement fatigue is that the EU wants to take care of, first and foremost, its own internal struggles. This has already contributed to a perceivable gradual neglect of the enlargement process and of the commitment vis-à-vis the WB6, including both candidate and potential candidate countries. In this regard, the role of the EC has remained merely technical inasmuch as its mandate is limited to issuing recommendations and suggesting potential measures to align candidate countries’ legislation with EU standards, as well as evaluating whether a candidate country is ready or not for the next step in the enlargement process. It is, however, the Member States that have the final say when key decisions are to be made, namely before awarding a country candidate status or before launching accession negotiations. Not in few occasions has this led to the enlargement process being jeopardized given its heavy conditionality on Member States’ internal states of affairs. Simply put: the government of Member State X that is struggling with mass migration at a domestic level will likely be influenced towards the possibility of putting on hold or blocking the integration ambitions of non-Member State Y which membership in the EU could eventually entail new waves of migration towards Member State X.

Over the past months, two main candidate countries had borne the brunt of Member States’ high conditionality on domestic issues: Albania and North Macedonia. Both countries were, since April 2018 and according to the EC, fit to start accession negotiations with the EU through the opening of the negotiating chapters<sup>5</sup>. This major step was delayed for almost two years –until the March 2020 EUCO Summit– owing to scepticism from a group of Member States of which France has well been the most outspoken party<sup>6</sup>. French President Emmanuel Macron claimed that the current enlargement process is not functional and that efforts by Tirana and Skopje were still not enough; in addition, France is of the opinion that 27 Member States are already too many for the EU to be an efficient decision-making body<sup>7</sup>. These claims notwithstanding, Macron can arguably fear that enlargement would further weaken France’s influence in favour of Germany and that the prospect of welcoming two new Member States could feed (yet more) domestic debates on immigration.

To a lesser extent, the Netherlands had also voiced its reluctance to launching accession talks with Albania. Claiming a lack of substantial reform of the judiciary in order to fight corruption and organised crime<sup>8</sup>, the Dutch representatives advocated for a decoupling of Skopje and Tirana so that the former, that had delivered significantly, would move forward. A similar view was held by Denmark, which would have allowed for North Macedonia to move forward in the accession

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<sup>4</sup> Juncker, J. C., 2014. *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission*. Strasbourg, p. 12.

<sup>5</sup> Marušić, S. J., 2019. EC Recommends Accession Talks with Albania, North Macedonia. *Balkan Insight*, [online] 29 May. Available at: <<https://balkaninsight.com/2019/05/29/ec-recommends-accession-talks-with-albania-north-macedonia/>> [Accessed 14 February 2020].

<sup>6</sup> 2019. Failure to open accession talks with Albania and North Macedonia is a mistake. *European Parliament News*, [online] 24 October. Available at: <<https://www.europarl.europa.eu/news/en/press-room/20191021IPR64717/failure-to-open-accession-talks-with-albania-and-north-macedonia-is-a-mistake>> [Accessed 21 February 2020].

<sup>7</sup> Tregoures, L., 2019. By blocking enlargement decision, Macron undercuts France’s Balkan goals. *Atlantic Council*, [online] 30 October. Available at: <<https://www.atlanticcouncil.org/blogs/new-atlanticist/by-blocking-enlargement-decision-macron-undercuts-frances-balkan-goals/>> [Accessed 20 February 2020].

<sup>8</sup> Marušić, S. J., 2019. Netherlands Welcomes EU Talks with North Macedonia, not Albania. *Balkan Insight*, [online] 9 October. Available at: <<https://balkaninsight.com/2019/10/09/netherlands-welcomes-eu-talks-with-north-macedonia-not-albania/>> [Accessed 20 February 2020].

process but not Albania. Although less vocally, they are fearful of Albania's internal instability and are sceptical about its performance in the implementation of reforms.<sup>9</sup>

### The October 2019 Summit and the French non-paper

At the European Council (EUCO) Summit in October 2019, no unanimity was reached for opening accession talks with Albania and North Macedonia given the French, Dutch and Danish refusals<sup>10</sup>. This was the second time in less than six months that the EU leaders voted down the EC's recommendation to move forward with Skopje and Tirana's accession bids, and the issue was subsequently reverted to before the May 2020 EU-Western Balkans Summit in Zagreb. Disappointment over yet another rejection did not wait, and France's obstructive attitude was heavily criticized – particularly in regard to North Macedonia, for which an agreement with Greece over the so-called “name issue” was a precondition to launching negotiations. Many observers and officials raised concerns over the potential consequences these constant negatives could have in the Albanian and Macedonian, let alone regional, public opinion attitudes vis-à-vis the EU.

In a surprising turn of events, the standstill stoked by France's persistent veto seemed to break with the release –just a few weeks after the October Summit– of a non-paper drafted by Paris and circulated among the Member States<sup>11</sup>. The five-page document, titled *Reforming the European Union accession process*, was the latest turning point in the recent enlargement ordeal. In it, France reaffirmed its commitment to the European perspective of the WB6 yet defended the implementation of a renewed approach to the enlargement process via four principles: gradual association, stringent conditions, tangible benefits and reversibility.

Through such a procedure, integration of a candidate country would be based on several successive stages falling under different policy blocks (f. ex. rule of law, economic and financial affairs, employment and social policy, internal market, foreign policy) whereby the closing of negotiations in each stage-block “would open up the possibility to participate in EU programmes, to be involved in certain sectoral policies and [...] to benefit from certain targeted finance”<sup>12</sup>. The stage concerning rule of law and fundamental rights, given its exceptional and overarching nature, would constitute an integral precondition and would thus be opened first and closed last.

The French non-paper envisaged the transition from one stage to the next within a very clear set of guidelines mapped out in detail through “easily and objectively verifiable indicators”<sup>13</sup>. The candidate country would be eligible for increased financial support –besides the benefits already obtained from its participation in EU programmes– in accordance with the stages completed and the overall compliance with the required reforms. In cases of non-compliance or lack of progress, the principle of reversibility would allow for suspension of benefits or general suspension of talks.

All the elements making up this new methodology would be framed within a stronger political governance, meaning regular monitoring from both the EC and Member States themselves, bolstering the EUCO's role “as candidate countries are increasingly involved in sectoral policies”<sup>14</sup>. The non-paper ends with a formal request to the EC that it restructure the current methodology on the basis of these demands by January 2020.

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<sup>9</sup> Peel, M. and Hopkins, V., 2019. France objects to North Macedonia and Albania EU accession talks. *Financial Times*, [online] 15 October. Available at: <<https://www.ft.com/content/fce9e9a0-ef36-11e9-ad1e-4367d8281195>> [Accessed 21 February 2020].

<sup>10</sup> European Council, 2019. *European Council meeting (17 and 18 October 2019) – Conclusions*. Brussels.

<sup>11</sup> 2019. *Non-Paper. Reforming the European Union accession process*, [online] November. Available at: <<https://www.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf>> [Accessed 24 February 2020].

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

The French non-paper arrived at a difficult time for EU institutions. The EC had shaped up itself as a very outspoken supporter of European integration and had traditionally acted in a particularly vocal way regarding its commitment towards the European perspective of the WB6<sup>1516</sup>. The October 2019 fiasco was a blow for the EC's expectations and France's veto was unarguably undermining the EU's credibility in the region as it has driven the whole enlargement process to a true state of impasse. This fact notwithstanding, membership prospects for the entire region still remain a key priority for the EC, echoed throughout the years by Commissioners and officials working on the matter<sup>1718</sup>. The ball would now lie, however, in the court of the brand-new EC headed by Ursula von der Leyen, in office since December 2019. It is this new College of Commissioners which, from 2020 on, would have to take up the challenges left hanging after the demise of the Juncker administration, including the handling of France's non-paper and the regaining of enlargement momentum.

### Introducing the new methodology: four principles, one goal

The new EC rightly understood that stakes were high. The risk of not launching accession talks with Albania and North Macedonia could jeopardize the whole enlargement process, ostensibly too high a price to pay. France's set of prerequisites mapped out in the non-paper was, ultimately, the new roadmap if negotiations with Tirana and Skopje were to prosper. At a press conference held in Brussels on February 5<sup>th</sup>, European Commissioner for Neighbourhood Policy and Enlargement Negotiations Olivér Várhelyi presented the newly-revised principles that would from now on, not without prior approval from Member States', underlie and steer what is envisaged as a "more predictable, more dynamic and more political" enlargement process.<sup>19</sup>

The renewed enlargement strategy drafted by the new EC and introduced by the Commissioner is articulated along a three-track plan: the implementation of a new methodology for accession negotiations; the launching of accession negotiations with Albania and North Macedonia; and the establishment of a major economic development program for the Western Balkan region. All three elements constitute key priorities "which we [the EC] hope that the EU-Western Balkans Summit in Zagreb in May can endorse"<sup>20</sup>, Várhelyi reminded in clear reference to Member States having the final say.

Notwithstanding the saliency of the strategy's three components, the Commissioner focused the major part of his intervention on the new methodology for accession negotiations. He detailed the four principles that lay the foundations of the new procedure, largely drawn along the French non-paper's guidelines: credibility, predictability, dynamism and stronger political steer.

The principle of **credibility** departs from the understanding that "the accession process needs to build on trust, mutual confidence and clear commitments by the European Union and

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<sup>15</sup> 2010. EU to reaffirm its commitment to Western Balkans at Sarajevo meeting. *European Council*, [online] 1 June. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_10\\_647](https://ec.europa.eu/commission/presscorner/detail/en/IP_10_647)> [Accessed 27 February 2020].

<sup>16</sup> Muminović, E., 2019. Mogherini: European Union to be consistent on the next steps of the enlargement process. *European Western Balkans*, [online] 31 August. Available at: <<https://europeanwesternbalkans.com/2019/08/31/mogherini-european-union-to-be-consistent-on-the-next-steps-of-the-enlargement-process/>> [Accessed 27 February 2020].

<sup>17</sup> Dempsey, J., 2013. The Transformative Power of EU Enlargement: An Interview with Štefan Füle. *Carnegie Europe*, [online] 28 November. Available at: <<http://carnegieeurope.eu/strategieurope/?fa=53742>> [Accessed 27 February 2020].

<sup>18</sup> 2019. Hahn: European Perspective, the Only Guarantee for the Balkans. *RTK Live*, [online] 7 November. Available at: <<https://www.rtklive.com/en/news-single.php?ID=15218>> [Accessed 27 February 2020].

<sup>19</sup> 2020. Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology. *European Commission* [online] 5 February. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_208](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_208)> [Accessed 9 February 2020].

<sup>20</sup> *Ibid.*



the Western Balkans”<sup>21</sup>. This pillar still envisages an exclusively merit-based dynamic as the only way forward in the sense that, as long as reforms in the WB6 are being carried out and strengthened, “we [the EC] will be able to deliver also on our side”<sup>22</sup>. Continuous assessment of the progress in the WB6 will play a key role within this principle, including field missions to the countries with experts from both the EC and the Member States<sup>23</sup>.

The principle of **predictability** will provide for clearer benchmarks and conditions as to what the EU’s expectations are at different stages of the enlargement process. The EC will “better define the conditions set for candidates to progress, in particular through its annual reports”<sup>24</sup> and strive for a larger involvement of all Member States in the monitoring of the achievements – or fallbacks.

Furthering the **dynamism** of the negotiating process will entail the re-organization of the hitherto 35 negotiating chapters of the *acquis communautaire* into six thematic clusters<sup>25</sup>. As per the EC’s design, each cluster contains between two and nine chapters, allowing for “the most important and urgent reforms per sector to be identified”<sup>26</sup>. Whereas the old methodology provided for all 35 chapters to be opened and closed independently from one another, this new version envisions the opening of each cluster as a whole – meaning that chapters falling within one same cluster will be opened, discussed and closed simultaneously. The cluster on *Fundamentals*, which includes economic criteria, functioning of democratic institutions and public administration reform, will always be opened first and closed last.

Cluster name	Negotiating chapters of the <i>acquis</i> included in the cluster
1. Fundamentals	5. Public procurement 18. Statistics 23. Judiciary and fundamental rights 24. Justice, Freedom and Security 32. Financial control
2. Internal market	1. Free movement of goods 2. Freedom of movement for workers 3. Right of establishment and freedom to provide services 4. Free movement of capital 6. Company law 7. Intellectual property law 8. Competition policy 9. Financial services 28. Consumer and health protection

<sup>21</sup> 2020. A more credible, dynamic, predictable and political EU accession process - Commission lays out its proposals. *European Commission* [online] 5 February. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_181](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_181)> [Accessed 9 February 2020].

<sup>22</sup> 2020. Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology. *European Commission* [online] 5 February. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_208](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_208)> [Accessed 9 February 2020].

<sup>23</sup> 2020. EC press conference by Commissioner Olivér Várhelyi on a revised methodology for the European Union accession process. *European Commission*, [online] 5 February. Available at: <<https://audiovisual.ec.europa.eu/en/video/I-184089>> [Accessed 10 February 2020].

<sup>24</sup> European Commission, 2020. *Enhancing the accession process - A credible EU perspective for the Western Balkans*. Brussels, p. 5.

<sup>25</sup> According to the EC’s Communication, chapter 34 "Institutions" and chapter 35 "Other issues" will be handled separately.

<sup>26</sup> European Commission, 2020. *Enhancing the accession process - A credible EU perspective for the Western Balkans*. Brussels, p. 4.

3. Competitiveness and inclusive growth	10. Information society and media 16. Taxation 17. Economic and monetary policy 19. Social policy and employment 20. Enterprise and industrial policy 25. Science and research 26. Education and culture 29. Customs union
4. Green agenda and sustainable connectivity	14. Transport policy 15. Energy 21. Trans-European networks 27. Environment and climate change
5. Resources, agriculture and cohesion	11. Agriculture and rural development 12. Food safety, veterinary and phytosanitary policy 13. Fisheries 22. Regional policy & coordination of structural instruments 33. Financial & budgetary provisions
6. External relations	30. External relations 31. Foreign, security & defence policy

Source: European Commission, 2020. *Enhancing the accession process - A credible EU perspective for the Western Balkans*. Brussels.

Finally, a **stronger political steer** will translate into an enhanced and more permanent dialogue between the EU and the WB6. It is expected that European leaders hold regular high-level debates on the achievements of the region, potentially “based on the [May 2020] Zagreb Summit”<sup>27</sup> and including country-specific Inter-Governmental Conferences (IGC). The participation to a larger extent of the Member States in the monitoring of the process will be an essential component in this principle, whereby EU and WB6 governments will be required to show more engagement and a strengthened proof of leadership. Along the same vein, WB6 representatives would also be able to participate as observers at a number of EU discussions regarding issues of significant importance to them.

Outside of these four principles, the entire new methodology will be framed within the overarching notion of **reversibility**. Via this safeguard, Member States would be able to put the negotiations on hold or even have them suspended if a candidate country undergoes serious stagnation, backsliding or shows a lack of compliance along the policy lines dictated by the EC. Chapters that have already been closed could be re-opened or reset<sup>28</sup>. The “fifth principle” of reversibility will, thus, underlie the whole enlargement process from the moment a candidate country opens accession talks.

### How is the new enlargement methodology actually new?

France’s disapproval of how the enlargement process had been functioning hitherto and its voiced criticism towards the prevailing methodology –made official via the November 2019 non-paper– pushed the EC towards the adoption of a new strategy more aligned with Paris’s leanings. In a clear attempt to prevent yet another veto against launching membership talks with Albania

<sup>27</sup> 2020. Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology. *European Commission* [online] 5 February. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_208](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_208)> [Accessed 10 February 2020].

<sup>28</sup> European Commission, 2020. *Enhancing the accession process - A credible EU perspective for the Western Balkans*. Brussels, p. 6.

and North Macedonia, many of this new methodology's premises are significantly in line with Macron's dictations.

When asked about the actual newness of the enlargement strategy, Commissioner Olivér Várhelyi was unequivocal: "If you look at all the elements that are new [...] this will result in a new methodology altogether."<sup>29</sup> The extent to which this claim is accurate, however, is arguable and should be subject to close examination.

In absolute terms, the enlargement methodology has not undergone a full head-to-toe revamping inasmuch as its essence –enlargement as a goal– and its format –the system of chapters– are being left untouched. There is, however, a set of novelties worth evaluating, of which the most remarkable is the restructuring of negotiating chapters into thematic **clusters**. This is a new element largely inspired by the French non-paper through which, as introduced before, hopes to generate more dynamism and momentum during negotiations – a clear sign of this being the fact that the order in which clusters will be opened will highly depend on the candidate country's context.<sup>30</sup> A larger importance has been given to rule of law and fundamental rights through the largely-encompassing cluster on *Fundamentals* – an overarching batch of reforms which will determine the overall path and speed of negotiations.

The pursuit of a **stronger political steer** along the whole enlargement process is not much a novelty as it is a redundancy: putting onto paper what was happening *de facto*. Taking Albania and North Macedonia as the most recent example, their accession developments have been profoundly conditional on domestic circumstances within Member States, namely in France, the Netherlands and Denmark. As per the new methodology, EU27 governments are granted an even more powerful role – which entails nothing but a higher risk for domestic conditionality to serve as a progress hindrance for candidate and potential candidate countries. The role of the EC as a technical referee, ultimately the true judge of a country's tangible achievements, will foreseeably diminish and come to mean nothing but ink on paper, since the final say would not be founded upon acknowledging the fulfilment of technical criteria but upon Member States' fears of upheaval at home.

As it can be assumed, the future implementation of the new enlargement strategy will primarily involve Albania and North Macedonia. It is, however, too early to anticipate the real efficacy of this methodology and the actual adequacy of its mechanisms. In this light, Tirana and Skopje will be acting as guinea pigs throughout this refurbished and highly experimental enlargement plan. On the other hand, Montenegro and Serbia would be allowed to opt in and abide by the new methodology should they wish to. It is still unclear to what extent the strategy will affect Bosnia and Herzegovina and Kosovo given their lower degree of alignment with EU regulations.

Changing –and toughening– the rules in the middle of the game will not come at zero cost for the EC, let alone the EU, as a credible and trustworthy partner. Despite this, EU institutions must not lose the momentum generated through this strategy reboot and must cooperate multi-dimensionally with the WB6 in order to hold their European perspective on focus. The endorsement by the EUCO in March 2020 of the new enlargement methodology, alongside the green light to Albania and North Macedonia for launching accession talks, should gradually contribute to making the WB6 remain down the integration track.

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<sup>29</sup> 2020. EC press conference by Commissioner Olivér Várhelyi on a revised methodology for the European Union accession process. *European Commission*, [online] 5 February. Available at: <<https://audiovisual.ec.europa.eu/en/video/1-184089>> [Accessed 11 February 2020].

<sup>30</sup> *Ibid.*

## II. KOSOVO AND THE EU'S NEW ENLARGEMENT METHODOLOGY

### Kosovo's enlargement journey

Kosovo currently holds the status of potential candidate country for EU membership. Almost two decades have passed since Western Balkan countries were, for the first time, institutionally granted a European perspective at the Thessaloniki Summit of 2003<sup>31</sup>, unquestionably their point of departure towards full EU accession. While Slovenia succeeded in its integration endeavour early on and became a full-fledged Member State already in 2004, Croatia did so in 2013. Now, the current WB6, namely the countries that are still *en route* to membership, are dealing with different stages along the integration process: whereas candidate countries Montenegro and Serbia have already launched accession negotiations and opened 18 and 32 negotiating chapters, respectively, Albania and North Macedonia were recently given green light for opening accession talks. Finally, Bosnia and Herzegovina and Kosovo remain last in line as potential candidate countries. As a potential candidate, a country has clear prospects of joining the EU but has not been awarded candidate status<sup>32</sup> – while financial assistance is received at this stage, full compliance with the relevant contractual agreements prior to application must be guaranteed and successfully completed.

Kosovo's journey towards EU membership is not bound to be an easy ride. This analysis will delve into two main policy concerns that ought to be considered top priorities for Kosovo's institutions to succeed in taking further steps along the integration process. These are the already-mentioned **SAA** and the **European Reform Agenda (ERA)**.

It can be argued to a very large extent that the **SAA** signed between Kosovo and the EU in 2015 and in force since 2016 is, as of today, the foremost keystone that underlies Kosovo's path towards accession<sup>33</sup>. It constituted the first legal agreement between Prishtina and Brussels and it maps out all mechanisms for the implementation of the reforms that will gradually align Kosovo's legal framework with the EU's<sup>34</sup>. In practice, the SAA entails the compliance with a series of rights and obligations focusing on all policy areas, such as democratic principles, free trade, state aid, employment, political dialogue and home affairs<sup>35</sup> – all towards Kosovo's ultimate adoption of EU principles. Implementation of the SAA in Kosovo takes place currently within the National Plan for Implementation of the SAA (NPISAA) 2019-2023, the "national strategic document for planning [...] and monitoring the implementation of all [SAA-linked] reforms"<sup>36</sup>. According to official data, the NPISAA program during 2019 was enforced at a rate of 50.87%:

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<sup>31</sup> 2003. EU-Western Balkans Summit Thessaloniki, 21 June 2003. *European Commission*, [online] 21 June. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/PRES\\_03\\_163](https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163)> [Accessed 23 February 2020].

<sup>32</sup> European Commission, 2019. Candidate countries and potential candidates. [online] Available at: <<https://ec.europa.eu/environment/enlarg/candidates.htm>> [Accessed 2 March 2020].

<sup>33</sup> European Union, 2016. Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part. *Official Journal of the European Union*, Strasbourg.

<sup>34</sup> Republic of Kosovo Ministry of European Integration, 2017. SAA. [online] Available at: <<http://mei-ks.net/en/saa>> [Accessed 5 March 2020].

<sup>35</sup> 2015. Stabilisation and Association Agreement (SAA) between the European Union and Kosovo signed. *Council of the European Union*, [online] 27 October. Available at: <<https://www.consilium.europa.eu/en/press/press-releases/2015/10/27/kosovo-eu-stabilisation-association-agreement/>> [Accessed 5 March 2020].

<sup>36</sup> Republic of Kosovo Ministry of European Integration, 2017. National Program for Implementation of the Stabilisation and Association Agreement– NPISAA. [online] Available at: <<http://mei-ks.net/en/national-program-for-implementation-of-npisaa>> [Accessed 5 March 2020].

only 204 out of 401 measures planned had undergone implementation.<sup>37</sup> In 2016, 2017 and 2018 the implementation rate had been of 55.46%<sup>38</sup>, 62.05%<sup>39</sup> and 68.23%<sup>40</sup>, respectively.

The **ERA** was launched in late 2016 as “a joint document of the Republic of Kosovo and the European Union for the fulfilment of obligations deriving from the [...] SAA, namely for implementation of priority reforms requiring attention at the highest political level”<sup>41</sup>. In essence, it is an action plan that sets out the key priorities for Kosovo’s relevant institutions in order to speed up the enforcement of the SAA through, for example, the drafting of laws and programmes. 22 priorities feature in the ERA, divided along three categories: (I) Good Governance and the Rule of Law; (II) Competitiveness and Investment Climate; and (III) Education and Employment. Although these objectives should have been completed by the end of 2017, many of its priorities still remain unfulfilled. As per the *2018 Final Report on Implementation of the ERA*, only 10 out of 22 priorities were fully implemented, whereas the remaining 12 were in progress.<sup>42</sup> At the time of writing, an extension of the Reform Agenda, the **ERA II**, is yet to be drafted and launched.

There is very little doubt about the fact that Kosovo’s next steps down the integration road are highly conditional on its institutional readiness to deal with the measures enshrined in the SAA and the forthcoming ERA II. Thus far, many of the reforms envisaged have not been fully complied with and have, therefore, mostly resulted in half-done work. Taking ERA as an example, which expiration was scheduled for 2017 but it dragged along until 2018 amid poor compliance, implementation of priorities has been rather modest. Extension of the Reform Agenda via the ERA II is the evidence that, in a context of weak reforms, extra State resources and institutional energy have to be put into the process in order fulfil the unfinished priorities. For its part, the SAA will not be complete until the ERA II has paved the way towards tangible reform – a necessary step prior to embarking any further along the integration and enlargement processes.

#### A message from Brussels: Kosovo’s key reform areas

As part of its yearly Enlargement Package, the EC in its 2019 *Communication on EU Enlargement Policy* mapped out a series of key reforms for the WB6 and Turkey –all at different stages of the enlargement process– to engage with and implement. The Package contained, as is now a tradition, country-specific *Reports* featuring thorough assessments and well-dissected pictures of each candidate and potential candidate country’s current domestic state of affairs. The exhaustive *Kosovo 2019 Report*, launched at this time, contained an in-depth examination of the country’s achievements over the past year in the fields of **rule of law**, **economic development**, **regional cooperation**, **normalisation of relations with Serbia** and **alignment with European standards**. Remarks were formulated in both positive and negative terms – that is, highlighting accomplishments as well as fallbacks. Most importantly, the Report lay out instructions and prospective measures on key reform areas to enforce over the next twelve months, in line with the SAA and the ERA.

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<sup>37</sup> Republic of Kosovo Ministry of European Integration, 2020. *Report on the Implementation of the National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) during 2019*. Prishtina.

<sup>38</sup> Republic of Kosovo Ministry of European Integration, 2017. *Report on the Implementation of the National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) during 2016*. Prishtina.

<sup>39</sup> Republic of Kosovo Ministry of European Integration, 2018. *Report on the Implementation of the National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) during 2017*. Prishtina.

<sup>40</sup> Republic of Kosovo Ministry of European Integration, 2019. *Report on the Implementation of the National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) during 2018*. Prishtina.

<sup>41</sup> Government of the Republic of Kosovo, 2018. *Final Report on Implementation of the European Reform Agenda (ERA) 2016 – 2018*. Prishtina.

<sup>42</sup> *Ibid.*

Kosovo has a long path to tread in terms of political criteria and the **rule of law** before being able to acquire full EU membership. As per the Report, the functioning of democratic institutions is jeopardized by an overall lack of transparency and oversight, while processes of policy implementation are severely hampered by the external influences and the misuse of public funds. Women and non-majority communities are underrepresented in central public institutions and political parties, and the overall lack of financial resources hinders effective fulfilment of measures and reforms at several administrative-institutional levels. Corruption remains rampant and is spearheaded by appointments of high-level officials or public servants on non-merit grounds, while cooperation with the Anti-Corruption Agency is insufficient and the Special Prosecution Office is in need of more specialised and trained staff<sup>43</sup>. While swift implementation of some regulations has been welcomed and acknowledged, Kosovo is still lagging in regard to reforms.

In the field of **economic development**, the Report raised concern over Kosovo's very challenging labour market situation alongside a widespread informal economy. It also called upon Kosovo to revoke the 100% tariffs for all goods imports from Serbia and Bosnia and Herzegovina – a measure implemented by the former government in Prishtina as a response to Serbia's derecognition campaign against Kosovo.<sup>44</sup> This is the EC's main exhortation for Kosovo also in terms of **regional cooperation** and **normalisation of relations with Serbia**, while simultaneously acknowledging its engagement in the EU-facilitated dialogue with Belgrade and highlighting the positive progress in its neighbourly relations with Albania, Montenegro and North Macedonia.<sup>45</sup>

Kosovo's process of **alignment with European standards** has seen some progress but further preparation is needed, particularly in terms of adoption and implementation of legislation. This applies to the fields of free movement of goods, persons and capital, customs, taxation, competition and public procurement.<sup>46</sup> Further efforts towards enforcement are needed in regard to social policy and employment, wherein several strands of legislation have to be amended, and several others implemented; also, little progress was made on addressing skills gaps in the labour market. The *acquis communautaire*, the Report states, will only be successfully implemented once Kosovo improves its administrative capacity and coordination across all sectors.<sup>47</sup>

The *Kosovo 2019 Report* is the most recent, exhaustive and all-encompassing official document released by the EC up until now referring to Kosovo's state of domestic affairs. It accurately sets out Kosovo's achievements, fallbacks and priorities, and it even provides mechanisms for the authorities and institutions to tackle them. It constitutes, in all, the most detailed roadmap for Kosovo to build upon, as it is meant to yield tangible results as an essential part of the SAA and the ERA.

### What is in for Kosovo? Questions and answers

Two essential aspects regarding Kosovo's path towards EU accession have been tackled so far. On the one hand, we have addressed the process of enlargement in relation to Kosovo, evaluating the current and most relevant tools of policy alignment that have been established between Kosovo and the EU and identifying on what stage the country stands in terms of compliance and implementation. On the other hand, we have set the focus on the policy areas where Kosovo is required to deliver in a particularly diligent way. Having considered these two strands, what role will the new enlargement methodology play in regard to Kosovo as a potential candidate country?

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<sup>43</sup> European Commission, 2019. *Kosovo Report 2019*. Brussels.

<sup>44</sup> *Ibid.*, p. 45

<sup>45</sup> *Ibid.*, pp. 53-4

<sup>46</sup> *Ibid.*, pp. 55-63

<sup>47</sup> *Ibid.*, p. 5

Through a set of analytical questions, we will carry out a critical in-depth examination of how the new enlargement methodology plays out for Kosovo in practice.

- **Is the new enlargement methodology a reliable means to map out a set of reforms for Kosovo?**

The new enlargement methodology was foremostly developed as a tool to circumvent France's potential veto over launching accession talks with Albania and North Macedonia after the October 2019 EUCO Summit. Through this restructured strategy, the EU would ostensibly have a tool to redeem itself vis-à-vis Tirana and Skopje – after which green light was finally given at the March 2020 EUCO Summit. This is why, in purely technical terms, and strictly based upon progress along the enlargement timeline, the new enlargement methodology is hardly relevant for Kosovo – the country is still far from reaching Albania and North Macedonia's level of progress. Kosovo is, as of today, just over half-done with SAA-linked reforms and ERA is in the process of extension into ERA II; visa liberalization for the Schengen area is not in place yet; and matters regarding Kosovo's statehood and international recognition remain an issue. In comparative technical terms, understandably, Albania and North Macedonia have already trodden a long path up to their current spot.

In this light, Kosovo's short- to medium-term goals must orbit around the fulfilment of all preconditions and policy priorities as per the contractual agreements Kosovo and the EU have signed, namely the SAA and, in this framework, the ERA II. It is in Kosovo's best interest to, through undertaking such reforms in an effective and trustworthy way, prove to EU stakeholders – including institutions but, particularly, Member States– that the country is a reliable and serious partner with an ability to deliver in a timely manner.

How Albania and North Macedonia will fare in the framework of the new enlargement methodology is still a conundrum. The fact that the rules have been changed halfway through the game renders the upcoming enlargement years uncertain and challenging, being Tirana and Skopje the main damaged stakeholders. Through this whole ordeal Kosovo needs to remain attentive and perceptive, following up every step these two countries take down the accession road. Some ways to do this include permanent monitoring of reforms' progress and retreat in Albania and North Macedonia; holding regular political contact via Kosovo's diplomatic missions abroad; and enlargement-focused discussions with representatives from these countries at high-level appointments. Authorities in Prishtina must take in as much political and technical know-how as possible from Albania and North Macedonia in order to be prepared when Kosovo's time for opening accession talks arrives. It will be thanks to this anticipation of events –tracking down potential ambiguities in the process, identifying particularly challenging reform areas, pinpointing measures to prioritize– that Kosovo, should it ever abide by the new enlargement methodology, will deliver.

- **How can Kosovo address these reforms?**

Implementation of reforms in Kosovo must translate into full compliance with the SAA and the ERA II. These should be considered the two fundamental cornerstones towards integration and, eventually, into accession. Institutions in Kosovo must engage head-on with the reform process and pay special attention to all measures that focus on the development of the rule of law and fundamental rights.

The implementation process must be transparent towards the civil society and the media. It is essential for measures to be drafted and reinforced in an open and accountable way so that the wider public can witness and track the course of reforms. The parliament, as the chamber of Kosovo's political representatives, is endowed with the duty of permanently monitoring and

overseeing the performance and fulfilment of ministries and committees involved in the policymaking and implementation process. To this end, participation of civil society members and representatives of the international community as external referees would enhance the legitimacy of the procedures overall. It is essential for authorities to understand and prove that the SAA and ERA frameworks are not only contractual obligations, but also guides for Kosovo towards a more prosperous future.

- **How are Kosovo's key reform areas reflected in the new enlargement methodology?**

The EC's *Kosovo 2019 Report* is clear about the rule of law and fundamental rights being one of Kosovo's utmost policy priorities and one of its most essential areas of reform. Stepping up compliance with measures enhancing and bolstering the rule of law will render Kosovo a stronger contender before, during and after the enlargement process inasmuch as the new methodology's cluster on *Fundamentals* –envisaging the establishment of an independent judiciary, fighting corruption, enhancing fundamental rights and cooperating against organized crime– will make an overarching, critical field of action. Working on reforming and implementing measures towards strengthening the rule of law can be a major game changer for Kosovo's chances when the time for launching accession talks arrives. The WB6 hold the reinforcement of the rule of law and fundamental rights as one of its foremost challenges and the new enlargement methodology is clearly reflective of this.

Kosovo's key reform areas could benefit from the new cluster system to a certain degree. Candidate countries, based on their context and specific needs, will be able to open clusters in the order they deem most convenient – an aspect *a priori* favourable but which can act as a double-edged sword. In order to circumvent the potential backfiring of this feature to the largest extent possible, Kosovo must undertake a strictly evidence-based assessment process when deciding which clusters are to be opened first and in which order they are to be opened. Critical reform areas for the country, as could be the internal market and external relations, should prevail over others. The relevant authorities should also take into account how many clusters are to be active simultaneously, since too high a number of open clusters can lead to a work overload and a lack of institutional-administrative coordination – whereas too low a number of open clusters could make the whole integration process lose traction and drag into a standstill.

- **Does the new enlargement methodology offer equal standing to Kosovo, and does it safely provide for a European perspective?**

Kosovo, unlike other countries in the region and in the continent, constitutes a unique case. Few doubts remain about the country's solid European perspective and its determined path towards EU accession, but its tense relations with Serbia within a broader picture of contested statehood have forced Kosovo's integration prospects to be addressed differently by EU institutions. Taking as an example the presence in Kosovo of an EU Special Representative –also present in Bosnia and Herzegovina– reveals a different treatment towards the country in relation to the majority of the WB6.

Article 49 of the Treaty of the EU (TEU) sets out three criteria a country must fulfil in order to be able to apply for EU membership: being a European state, respecting the values enshrined in Article 2 of the TEU<sup>48</sup> and complying with the three EU eligibility conditions, the so-called

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<sup>48</sup> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."



Copenhagen criteria<sup>49</sup>. Whereas Kosovo can prove itself willing and able to fulfil Article 49's second and third criteria, the first criterion –being a European state– is still highly contested. In this light, five EU Member States do not recognize Kosovo as an independent country to this day: Cyprus, Greece, Romania, Slovakia and Spain.

The European debate on Kosovo's statehood is and will be the country's heaviest burden to bear and its major challenge to overcome. Discussions on status were already circumvented when Kosovo's SAA was established: it was the EC –and not the individual Member States– which, on behalf of the EU as a legal entity, signed the Agreement. Via this legal safeguard, Kosovo was able to avoid facing the potential veto of the five non-recognizers. This could eventually be put forth as a justification for Kosovo's obtaining candidate status when the time comes.<sup>50</sup> In addition to this, being awarded candidate status by the EU would by no means have to imply recognition – it is Member States, and not the EU, which have the competence to recognize another entity's statehood. Therefore, in strictly legal terms, Kosovo could be able to move forward in the accession process even if not recognized by all Member States.<sup>51</sup>

The fact that the new enlargement methodology will build upon a stronger political steer, including a larger role of Member States, could anyway be a cause of concern in regard to Kosovo's status of partial recognition. Strengthening Member States' leverage will politicize the enlargement process to an even larger extent, making accession less technical and evidence-guided and more ideologically-driven and reflective of Member States' domestic interests. For the five EU non-recognizers this could effectively mean political obstruction and sabotage of Kosovo's enlargement process in order to send a clear message that Kosovo shall not be treated as an equal and, in all, as an independent State. In this sense, it will be more challenging for Kosovo to cope separately with several Member States instead of with an all-encompassing EC.

### III. CONCLUSIONS AND POLICY RECOMMENDATIONS

The primary aim of this policy analysis has been to provide an up-to-date account of Kosovo's achievements in the framework of EU integration and an assessment of what its prospects are in relation to the newly released enlargement methodology.

Kosovo's path towards full-fledged EU membership is, as of now, slow and partly steady. Implementation of the SAA has been lagging as barely half of its measures have been put into practice, and the poor compliance with the ERA has forced the country to devise an extension in the shape of a soon-to-come ERA II. Rule of law and fundamental rights are key areas of reform for Kosovo, according to the EC, which has additionally called upon the authorities to revoke the 100% tariffs for all goods imports from Serbia and Bosnia and Herzegovina – a unilateral measure that is severely harming the local economy. In addition, the problem of statehood is heavily conditioning Kosovo's chances for moving forward in the accession process, not least after the establishment of the new enlargement methodology.

All considered, the policy recommendations for Kosovo are the following:

#### *On compliance with SAA and ERA*

- Faster and more efficient compliance with reforms envisaged in SAA and ERA is essential, especially ahead of periods when parliamentary activity is set to decrease (f. ex. before parliamentary elections). Lack of compliance with ERA has forced institutions to extend to ERA II entailing further expenses, further resources and further energy;

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<sup>49</sup> "Stability of institutions guaranteeing democracy [...]; a functioning market economy [...]; and administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership."

<sup>50</sup> Dessus, Z. *et al.*, 2017. *Kosovo's EU candidate status: a goal within reach?* EPC/GLPS Discussion Paper, Brussels.

<sup>51</sup> *Ibid.*

- Understanding of SAA and ERA as not only obligations, but as guides towards the well-being of citizens in Kosovo, and forwarding this message actively to the population;
- Reforms must thoroughly bring to the fore the rights of women and minority groups, which are to be protected and granted a larger share of representation at an institutional level.
- Comprehensive application of accountability and transparency measures throughout the whole implementation process, including constant monitoring of the relevant ministries and committees by Parliament and by members of the civil society;
- Guaranteeing all-inclusiveness in the reform process and engaging members of the civil society as monitoring agents;
- Improvement of neighbourly relations with Albania, Montenegro and North Macedonia will strengthen regional cooperation and build mutual trust. Further engagement in the political dialogue with Belgrade is needed.

#### *On the new enlargement methodology*

- Rule of law and fundamental rights must constitute the cornerstone of Kosovo's domestic measures, rightfully embodied in the new enlargement methodology's cluster on *Fundamentals*. Should this methodology hold when Kosovo launches accession talks, progress in this area will be felt faster and momentum will be gained;
- Critical reform areas must prevail when selecting which policy clusters to open first and in which order they are to be opened. Evidence-based decisions made upon a strictly technical basis must predominate. A balance between open and non-open clusters is to be developed in order to neither lose traction nor deal with an unmanageable workload.
- Kosovo must attentively follow how Albania and North Macedonia will be faring within the framework of the new enlargement methodology, which is essentially experimental. Some ways to do this include:
  - permanent monitoring of reforms' progress and retreat in Albania and North Macedonia,
  - holding regular political contact and know-how exchange via Kosovo's diplomatic missions in Tirana and Skopje,
  - holding enlargement-focused discussions with representatives from Albania and North Macedonia at regional or EU-Western Balkans summits.
- Keeping up with Albania's and North Macedonia's enlargement endeavour must also serve for tracking down potential ambiguities in the new enlargement methodology, identifying particularly challenging reform areas and pinpointing measures to prioritize.

#### *On Kosovo's European perspective*

- Kosovo should be able to invoke Article 49 of the TEU in order to legally apply for candidate status and, eventually, join the EU. It is important to look carefully into this possibility and take the initiative politically should it be feasible once the SAA has been fully complied with.
- Kosovo needs to engage politically and diplomatically with the five EU non-recognizers in order to advance towards a scenario of full recognition by all EU Member States. Kosovo cannot afford any more potential obstruction in its integration process.

## **Policy Analysis**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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