

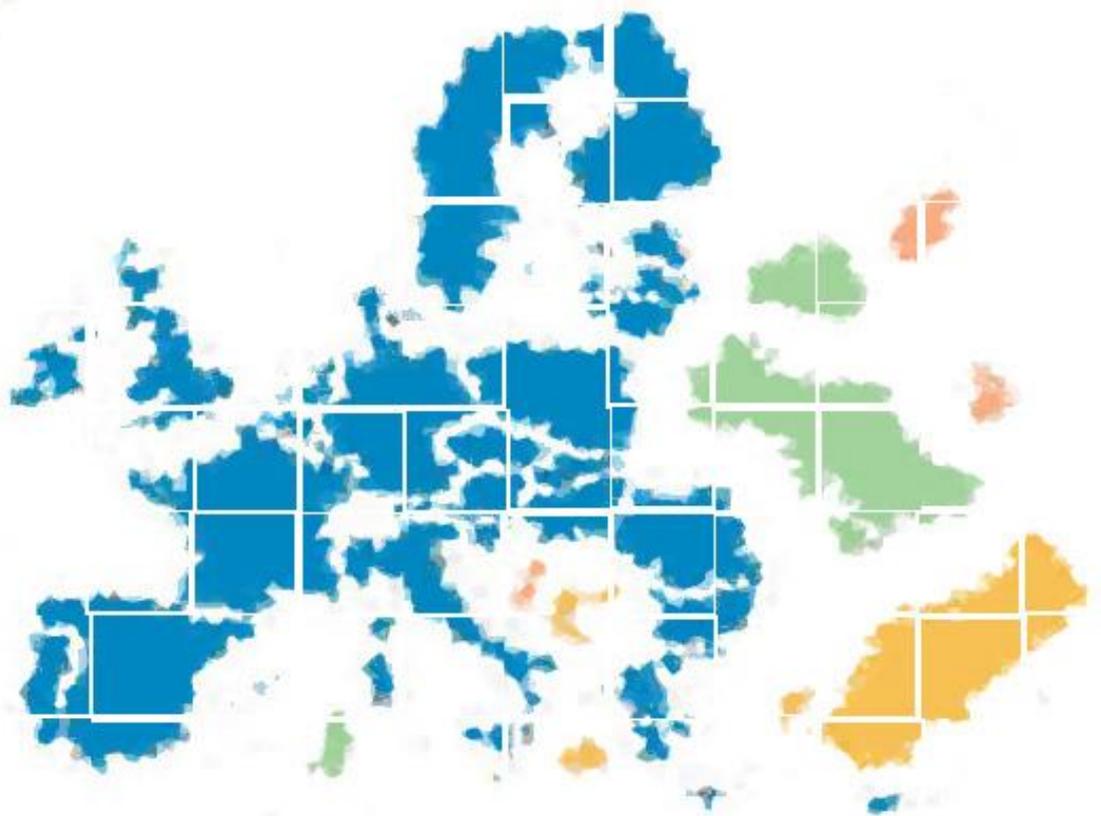
# EU Frontiers

**Policy Brief**

**No. 18**

## **The European Union's strategy towards the Western Balkans - "The stairway to nowhere?"**

**Jovana Marovic**



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## Center for European Neighborhood Studies

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The Center for European Neighborhood Studies (CENS) is an independent research center of the Central European University (CEU) located in Budapest, Hungary. Its main goal is to contribute to an informed international dialogue about the future of the European Union in the world, while capitalizing on its Central European perspective and regional embeddedness.

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## EU Frontiers

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The 'EU Frontiers' publication series aims to provide an account of actors and developments along the enlargement frontiers of Europe. It fills an academic gap by monitoring and analyzing EU related policies of the broad Central – and Eastern European region, studying the past and evaluating the prospects of the future. Furthermore, it follows and gives regular account of the EU Enlargement process both from an inside and an applicant perspective.



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## About the author

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Jovana Marovic is the Executive Director of the Politikon Network, a think tank based in Podgorica. Between 2004-2016, she worked as a counselor for the European Union in the Ministry of Foreign Affairs' multilateral department, an advisor for International Relations and European Integration within the Cabinet of the Budva Municipality's Mayor, the Research Coordinator at the Institute Alternative and a Special Advisor to the Minister of Labor and Social Welfare. Jovana is a member of the Balkans in Europe Policy Advisory Group. She is also engaged in lecturing and consulting, working on the World Bank, SIGMA and CARE's projects. She holds a PhD from the Faculty of Political Science in Belgrade. Her doctoral dissertation addressed the problem of the democratic deficit in the European Union. Jovana has successfully completed several specialized diplomatic programs, including the Diplomatic Academy organized by the Ministry of Foreign Affairs and the Faculty of Law, University of Montenegro. She is a member of the working group for Chapter 23 – Judiciary and Fundamental Rights - within the Montenegrin accession negotiations for EU membership.

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## Change in the EU accession approach: A case for a flexible membership

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### Abstract

*The policy brief argues that the EU's efforts to democratize the Western Balkan countries are insufficient and have limited influence. Some of the problems identified during the research indicate a lack of transparency, imprecise and insufficient reporting, a focus shifted from essential to technical issues, and important constraints on working conditions for civil society organizations. The integration framework requires a significant revision, which in the first place implies a change in the assessment of the implemented reforms, and a more constructive presentation of real efforts in that direction. The EU should be more precise in its demands and linking them to the guidelines. The prioritization of reforms is more than desirable in order to avoid entirely technical approach to the fulfillment of obligations by the WB countries in the future.*

### Introduction

Although at different stages of the European integration process, all Western Balkan countries have formally and technically made some progress. However, countries are burdened by various problems ranging from lack of media freedom, poor preconditions for holding free and fair elections, prevalent corruption and frequent abuse of power. Thus, despite the context that should be conducive to democratization, democracy is actually stagnating or backsliding over the past decade.<sup>2</sup> The European Union is not sufficiently involved in overcoming these problems, with eyes closed even for the most flagrant violations of law or human and civil rights, silently supporting autocratic elites in power. The necessity to act on multiple tracks, such as negotiating with the United Kingdom on Brexit issues or consolidating democracy both at the supranational and national level, will, potentially, despite assurances,<sup>3</sup> further shift the Union's attention away from the Western Balkans.

When it comes to Montenegro, accession negotiations are progressing in the formal sense of opening and closing chapters.<sup>4</sup> On the ground, instead of the strengthening institutions, the state apparatus is actually a tool in the hands

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<sup>2</sup> "The crisis of democracy in the Western Balkans. Authoritarianism and EU stabilitocracy", BiEPAG, March 2017. Available at: <http://www.biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf>

<sup>3</sup> "The Rome Declaration: Keeping door open to those who want to join", European Western Balkans, 25 March 2017. Available at: <https://europeanwesternbalkans.com/2017/03/25/the-rome-declaration-keeping-door-open-to-those-who-want-to-join/>

<sup>4</sup> 28 chapters are opened so far, while three are temporary closed.

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of the ruling elite to stay in power while frequent abuses remain unpunished. Rather than being encouraged to implement the EU acquis, Montenegrin officials are focused on simulating the reforms and pretending that they are committed to the European integration process. This implies that the opening of negotiation chapters and formal fulfillment of the technical requirements, without significant change of the European Union's approach in monitoring the reforms, does not mean substantial progress in practice.

This policy brief looks at reforms implemented in Montenegro with clear suggestions why the European Union's role in outlining benchmarks and assessing achieved progress is insufficient and imprecise. The arguments are grouped around four issues: the reporting process; the focus on technical rather than substantive issues; the lack of transparency; and limited influence of civil society. Finally, recommendations, applicable to all Western Balkan countries, are offered.

### Poor reporting mechanisms

Specific criteria, which Montenegro had to meet in order to progress step by step towards EU membership were initially set out by the European Commission in its opinion on the country's membership application in 2010.<sup>5</sup> These are further specified with the benchmarks for individual chapters.<sup>6</sup> The Commission measures the country's annual progress based on success in meeting the criteria.

Compared to previous accession waves, the EC is applying a new approach to Montenegro where the most difficult chapters on the rule of law are opened at the beginning of the negotiation process. This approach allows the EU to influence anti-corruption measures, the strengthening of judiciary independence, and the respect for human rights in the long run. In principle, this is a good approach. However, except for a broader time frame and context for following the developments within these areas, significant results are not visible, or at least not so far. The Commission is not amending defined criteria with the new requirements, or providing more specific directions on what should be done in order to make a decisive step towards tangible results. Moreover, requirements are formulated broadly. The progress in fulfilling them, emphasized by the rhetoric on both sides, mainly results from an excessive focus on implemented administrative and technical tasks.

After five years of negotiations, the progress, or lack of it, is still defined by qualifications such as "further efforts are needed", "it is necessary to further

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<sup>5</sup> Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 9 November 2010. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2010/package/mn\\_opinion\\_2010\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf)

<sup>6</sup> See for example benchmarks for the Chapter 23: "European Union Common Position, Chapter 23 - Judiciary and fundamental rights", Brussels, 12 December 2013

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strengthen the capacity" and the like. The Commission's annual report, though partially and structurally improved, still does not contain a precise link between the benchmarks, the degree of compliance and further guidelines on priority activities. State authorities, on the other hand, are reporting "continuously" on most measures without defining a clear agenda for what should be fulfilled on an annual basis. Action plans for the chapters relating to the rule of law were once adapted, at the beginning of 2015, without any further strengthening of measures.

### Quantity over the quality

A closer look at the benchmarks and indicators, agreed and approved by the European Commission, hints that a focus that is mainly placed on quantitative signs of progress.<sup>7</sup> The number of criminal charges, indictments or convictions can be indicators of the intensity of law enforcement activities, but do not provide a clear picture of how the reforms are implemented. This is suggested by several recent examples.

By responding to the need of improving the institutional framework for combating corruption, Montenegro has established an Agency for Prevention of Corruption merging several institutions into one. "Building" the anti-corruption institution was marked by the violation of several laws, including the laws on the State Audit Institution, conflict of interest prevention and public procurement.<sup>8</sup> Furthermore, even before its formal establishment, during early 2016, the Agency was the subject of much controversy, especially because of kinship ties of its director with the then Vice President and now the Prime Minister Dusko Markovic. However, while noticing that the agency has become operational, the European Commission's annual report didn't highlight any of these circumstances.<sup>9</sup>

A lack of transparency and capacity in the Agency's work still represents an important constraint. The agency is not proactive in checking the data submitted by political parties and institutions in order to strengthen control over political party financing.<sup>10</sup>

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<sup>7</sup> Action plan for Chapter 23, Judiciary and Fundamental Rights, Podgorica, February 2015, Available at: <http://www.eu.me/mn/23>

<sup>8</sup> Jovana Marović, Stevo Muk "Happy New Agency! – Establishment of the Agency for Prevention of Corruption in Montenegro", Institute Alternative, January 2016. Available at: <http://institut-alternativa.org/sretna-nova-agencija-uspostavljanje-crnogorske-agencije-za-sprjecavanje-korupcije/?lang=en>

<sup>9</sup> "Montenegro 2016 Report", European Commission, Brussels, 9 November 2016. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf)

<sup>10</sup> Anđelija Lučić, Dragan Koprivica, "Recommendations for improvement of work of the Agency for Prevention of Corruptions through the review of conclusions published in the report on the control over the parliamentary elections", Center for Democratic Transition, 2017. Available at: [http://www.en.cdtmn.org/wp-content/uploads/2017/02/preporuke-final\\_engl-verzija.pdf](http://www.en.cdtmn.org/wp-content/uploads/2017/02/preporuke-final_engl-verzija.pdf)

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Thus, the European Commission's logic in assessing improvements is "more is better"<sup>11</sup> failing to clearly indicate that the political influence on the institutions' performance is still dominant and that cannot, as it turned out, provide proactive and impartial measures against corruption.

### Restricted transparency

The executive's prevention of access for interested parties to documentation on key issues and developments is particularly limiting for the transparency of the process. For instance, statistical data on judicial reform or the fight against corruption, which are regularly submitted to the European Commission, are not public.<sup>12</sup> Moreover, the Commission itself refuses, from the beginning of the negotiation process, to make the information in its possession public, such as expert mission reports or commentary on draft laws.<sup>13</sup> Through this practice of withholding important documents which provide the Commission's opinion on key documents or activities of the executive, the process is further restricted since it provides a cover for the government to adopt certain solutions by simply claiming that they are in accordance with the Commission's recommendations.

### Framed without impact

The most important developments regarding the cooperation between the institutions and civil society organizations in Montenegro have been achieved by adopting regulations,<sup>14</sup> enabling CSOs to be consulted in the decision-making process. While the regulations governing these issues are mostly implemented and respected by the public authorities, the influence of civil society organizations on policy development is still extremely limited. Many proposals are simply rejected without proper clarification or justification.<sup>15</sup> Instead of being interested in comments received by impartial evaluators, the European Commission only requires access to draft laws and tables of its compliance with the EU acquis. In this way, the assessment of public

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<sup>11</sup> Martin Mendelski "The EU's rule of law promotion in Central and Eastern Europe: where and why does it fail, and what can be done about it?", Bingham Centre for the Rule of Law, February 2016. Available at: <http://anticorrrp.eu/wp-content/uploads/2016/02/Mendelski-2016.-The-EUs-rule-of-law-promotion-in-Central-and-Eastern-Europe.pdf>

<sup>12</sup> "Government & NGO", Politikon Network, 20 January 2017. Available at: <https://politikon.me/2017/01/20/vlada-i-nvo/>

<sup>13</sup> Jovana Marović, Stevo Muk "Negotiations between Montenegro and the EU: Data access for the privileged only", November 2015. Available at: <http://institut-alternativa.org/crnogorski-pregovori-informacije-samo-za-odabrane/?lang=en>

<sup>14</sup> Decree on the procedure and manner of conducting public debate in preparing laws, 2012; Decree on the Modalities and Procedure for Exercising Cooperation between State Administration Bodies and Nongovernmental Organizations, 2011

<sup>15</sup> Danijela Božović, Vanja Dolapčev, Jovana Marović, Tamara Branković, "Public debate in Montenegro and Serbia", Belgrade Open School, December 2016

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authorities during the evaluation (and rejection) of proposals and suggestions by the civil society turn out to be "uncontrolled".

### **What should be done?**

Despite the many challenges, the European Union cannot afford to withdraw from the Western Balkans, as it would display its inability to further implement the "European project" (no matter how it will look in the near future and after a potential redefinition) not only to potential but also to existing member states. Although it seems at first glance that this requires additional efforts, in practice the EU has to review/improve access to and requests for information from candidate and potential candidate countries. On the basis of a more critical emphasis on authoritarian practices and the lack of results, the European Union will in fact contribute to faster democratization and sustainable reforms that should be encouraging for all sides. Democratization processes at all levels (national and supranational) have to be applied hand in hand.

Therefore, in order to build stable democracies in the Western Balkans, the European Union needs to:

**Make a clear link between the criteria, benchmarks and recommendations in its annual reports.** To make this possible, the European Union needs to further develop a benchmarking system in a way that should provide more concrete suggestions and obligations that a country has to fulfill on an annual basis to advance in the European integration process. Hence, national reporting instruments should be improved by defining more precise indicators, but also by strengthening the mechanisms and activities for their fulfillment. It is essential to prevent arbitrary qualifications of the activities by candidate and potential candidate countries.

**Regularly address democracy backsliding in annual country reports.** The focus has to be placed on the independence of institutions notifying political influence, not only administrative strengthening.

**Prioritize reforms and secure better follow up activities.** Depending on the course of the integration process, the EU should provide special reports on the degree of fulfillment of the most demanding benchmarks. This would further enhance the approach to the most demanding chapters 23 and 24 opening at the very beginning of the negotiation process. Adaptation of the national plans to fulfill obligations in the European integration process has to take place regularly, once a year.

**Make the European integration process more transparent.** In addition to publishing its own reports of importance for the Western Balkans integration process, the EU has to secure additional pressure on institutions to prevent

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concealment of important information from the public with the justification that their publication may threaten security or national interest.

**Play an important role in securing a meaningful civil society role.** An improved framework for civil society participation in the creation and monitoring of public policy is insufficient given the discretion of the authorities in assessing received recommendations and comments. Therefore, it is necessary to provide frequent consultations of EU representatives with civil society organizations and an active role for the EU in evaluating proposals for improvement of the process and particularly demanding areas.

**Avoid projections on the Western Balkan countries accession pace.** Membership of the Western Balkans countries in the European Union is not a goal in itself, but democratization, respect for human rights, a better economic situation and quality of citizens' life, open societies and better conditions for the activities of civil society organizations. Bearing in mind that there is still no better framework for democratization than the one offered by the European Union and, it is important for the EU's rhetoric to avoid "calculations" of when and whether it will be ready for new members.

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