

EU ENLARGEMENT IN THE WESTERN BALKANS: FABRICATING REFORMS IN PUBLIC ADMINISTRATION

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Abstract:

There are many reasons for an enhanced the EU engagement with the countries of the Western Balkans, such as geostrategic investment and greater stability in Europe, a strong and united Europe, enhanced prosperity and social well-being, and so on. Therefore, an extremely ambitious perspective is for a part of the Western Balkan countries, namely Montenegro and Serbia, to become members of the European Union by 2025. This optimistic view in order to be achieved will need strong political will, involvement and the implementation of well sustained reforms in both countries. These countries must, above all, give utmost priority to the rule of law, justice and fundamental rights, and conduct EU-oriented reforms and projects. Unfortunately, the country reports emphasise the practices of fabricating reforms instead of implementing them, poor performance on specific indicators and deep problems of corruption and maladministration. Thus, this article aims to highlight practices that impair the enlargement objectives, the shortcomings faced in the public administration reform, and answer questions such as: „How should these countries cope with challenges?; How could they steer the reform design and implementation?“

Keywords: Western Balkans, enlargement, reform, corruption, maladministration

The EU's official position regarding the Western Balkans

The countries of the Western Balkans (Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Kosovo and Serbia), also called „enlargement countries“ due to their prospect of joining the European Union, must resort to implement structural reforms, rebuilding strong and democratic societies, delivering real solutions and completing their transformation in order to bind their future to the European Union. To support the European perspective of the Western Balkans, the EU is actively engaged in the whole process through recommen-

dations, financial support and participation in certain Union policies and programmes. Thus, as a matter of fact very recently on September 15 2021, the European Parliament adopted the new Instrument for Pre-accession Assistance for 2021-2027, through which the EU will provide over €14 billion to support candidate and potential candidate countries (previous budgets for the six Western Balkan countries amounted to €5.3 billion, IPA I, and €6.9 billion, IPA II 2014-2020)¹. Moreover, the supportive position of European leaders on the Western Balkans is evident in their official speeches or in the official written documents. Thus, in July 2019, among the political guidelines for the European Commission 2019-2024, the candidate for President of the European Commission at that time, Ursula von der Leyen, underlined the following: „I want to reaffirm the European perspective of the Western Balkans and I see the important role in the continued reform process across the region. We share the same continent, the same history, the same culture and the same challenges. We will build a common future together. I fully support and stand behind the European Commission’s proposal to open negotiations with North Macedonia and Albania. The accession process offers a unique opportunity to promote and share our core values and interests.“² On May 10, 2021, Josep Borell, the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission, chaired the Foreign Affairs Council in Brussels and mentioned that „the Western Balkans are a region of key geostrategic role for the European Union. Our commitment to the Western Balkans needs to be very visible and we should leave no doubt in this respect. [...] there was a wide agreement on the need for the Western Balkans to accelerate European Union-related reforms and reinforce positive and constructive narratives. We need to advance on the accession process of Albania and North Macedonia. [...] EU integration with Serbia and Montenegro needs to be taken forward. We need progress on visa liberalisation for Kosovo [...]. We recalled continued and strong support for Bosnia and Herzegovina’s territorial integrity and sovereignty [...]“³, while, in June 2021, David Sassoli, the European Parliament President, called the enlargement a „positive project for peace and prosperity“ and „a hope for all sides“⁴, a project that can bring large benefits both to the region and to Europe.

¹ European Commission, *Enlargement region: European Commission welcomes final adoption of EU’s new €14 billion pre-accession assistance budget for 2021-2027*, September 15, 2021, <https://ec.europa.eu/neighbourhood-enlargement/news/>, accessed on October 8, 2021

² Ursula von der Leyen, *A Union that strives for more. My agenda for Europe*, https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf, 16.07.2019, p. 18, accessed on September 14, 2021

³ Foreign Affairs Council, *Press conference by Josep Borrell Fontelles, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission*, <https://audiovisual.ec.europa.eu/en/video/I-205389>, Brussels, May 10, 2021, accessed on October 1, 2021

⁴ *Sassoli: Enlargement is a positive project for peace and prosperity*, Brussels, 07.06.2021, <https://europeanwesternbalkans.com/2021/06/07/sassoli-enlargement-is-a-positive-project-for-peace-and-prosperity/>; *Sassoli: Parliaments are key drivers of the enlargement process*, Brussels, 28.06.2021, <https://europeanwesternbalkans.com/2021/06/28/sassoli-parliaments-are-key-drivers-of-the-enlargement-process/>, accessed on September 27, 2021

Thus, the European Union and its Member States have expressed their support for the prospect of full EU membership of the Western Balkans, a membership that is conditioned to various factors, the convergence of these states in terms of socioeconomic and political development being at the centre. In addition to the rules defined at the Copenhagen European Council in 1993 which govern the enlargement rounds, stricter conditionality at all stages of the negotiations and the demand to address administrative and judicial reform as a matter of priority in the accession process for the Western Balkans will be endorsed.

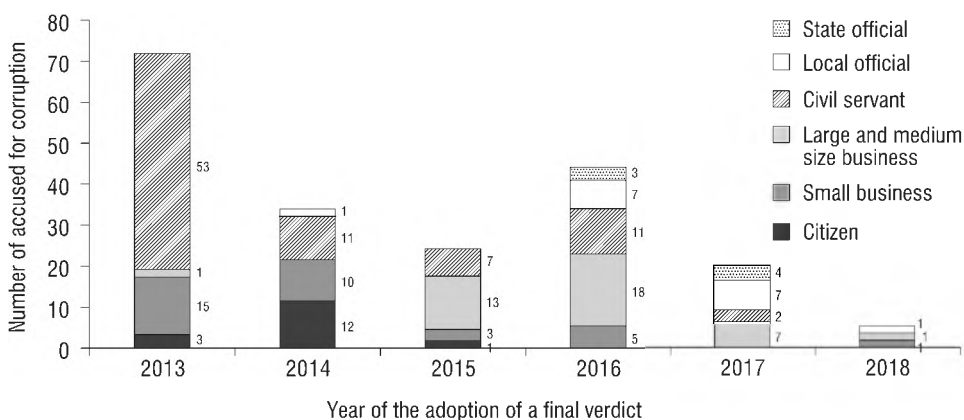
Current state of affairs

Previous research done in the field of Public Administration Reform in Western Balkan countries showed us that these countries „find themselves at different stages of implementing the European legislation“, an essential achievement being registered in the field of legislative package development, „but much remains to be done in the field of coordination, implementation, and monitoring“⁵. The main areas of concern are the rule of law, public administration reform, state capture and high-level of corruption. Taking these findings into consideration, we will focus on two countries, namely Montenegro and Serbia, Montenegro being the most advanced in its negotiation process, having opened all 33 screening chapters of the EU *acquis* and provisionally closed negotiations on three, while for Serbia 18 out of 35 chapters have been opened, two of them being provisionally closed. Moreover, the underlined problems in implementation directed our analysis on key shortcomings closely linked with the implementation process.

Thus, *State Capture Montenegro National Report*, issued on March 2021, analysed different typologies of laws and policies and emphasized deep problems with procedures regarding the preparation, adoption, and implementation of such laws in this country. The report underlines problems in all stages of the public policy cycle. Since the inception of the policy, public consultation is not conducted properly, while during the adoption phase a non-comprehensive parliamentary scrutiny frequently is in place, the time frame in which laws are discussed and adopted being shortened or not long enough to ensure a qualitative process. The implementation is characterized by informal practices, nepotism and corruption. The main findings of the report are the following: „courts tend to give milder penalties for high-level corruption than for administrative corruption“; courts „have a more lenient attitude toward high-level corruption in the public sector, which causes multi-million-euro losses in the state budget, than to corruption in the private sector, where damages are less harmful to state finances“; „high-level public officials receive more favourable treatment before the courts“; „the courts assess the same circumstances differently, depending

⁵ See for details Reianu Diana-Gabriela, *A comparative analysis of key public service areas in Western Balkans: where do we stand?*, Research and Science Today, No. 1(21)/2021, p. 24, doi:10.38173/RST.2021.21.1.2:15-26

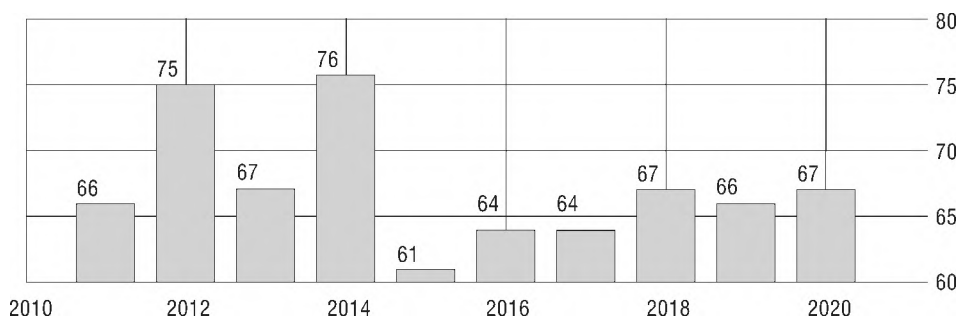
on the accused“; „political networks of patronage, nepotism and clientelism are spread across all branches of power“; „lack of transparency and free access to information, a weak and non-functional liability system, and the overwhelming political influence of the ruling elite“⁶. Moreover, the report shows that during 2013-2018 the proceedings referred mostly to cases of administrative corruption, and the number of persons convicted for corruption was decreasing, with a lot of „no final judgments“ for many criminal offenses with elements of corruption and rarely convicted public officials.



Graph 1. Identity of those accused of corruption

Source: NGO MANS, *State Capture. Montenegro National Report*, Podgorica, March 2021, http://www.mans.co.me/en/wp-content/uploads/2021/06/eng-state-captu_53661842.pdf, p. 8

According to *Transparency International*, corruption rank in Montenegro increased to 67 in 2020 from 66 registered in 2019, and signifies how corrupt the public sector is perceived to be.



Graph 2. Montenegro Corruption Rank 2010-2020

Source: *Trading Economics*, *Montenegro Corruption Rank*, <https://tradingeconomics.com/montenegro/corruption-rank>, accessed on October 2, 2021

⁶ NGO MANS, *State Capture. Montenegro National Report*, Podgorica, March 2021, pp. 4-5, http://www.mans.co.me/en/wp-content/uploads/2021/06/eng-state-captu_53661842.pdf, accessed on September 22, 2021

Despite its high score, Montenegro ranks the lowest among the other Western Balkan countries (the score of Serbia is 94, Albania 104, while North Macedonia scores 111⁷).

Similar evidence includes the *Montenegro 2020 Human Rights Report*. Political pressure, corruption and nepotism are mentioned as factors that influence prosecutors and judges, while the appointment of judges and prosecutors is a highly politicised process, although the law provides differently⁸. Furthermore, the report of the Council of Europe reiterates that Montenegro did not implement its recommendation regarding „developing the disciplinary framework for judges with a view of strengthening its objectivity, proportionality and effectiveness“⁹, and the authorities did not even give consideration to develop such a framework.

Moreover, the European Commission country report, issued on October 2020, categorised Montenegro as being „moderately prepared on the reform of its public administration“ and „moderately prepared to apply the EU *acquis* and the European standards in the area of the judiciary“¹⁰. In regard to the independence, professionalism, efficiency and accountability of the judiciary, serious negative trends were observed and the European Commission’s recommendations were partially addressed, thus the challenges still remain.

As concerns Serbia, public administration reform is high among the priorities of the Government, as it is declared on the official website of the Ministry of Public Administration and Local Self-Government¹¹, being a well-known fact that only with adequate administrative capacity the country can provide the implementation of all necessary reforms. Still, despite some progress was achieved in elaborating the legislative framework, there are many shortcomings related to the implementation of merit-based procedures, performance indicators, and a transparent system for capital investment. In the field of rule of law and fundamental rights, the European Commission report acknowledges that „Serbia has some level of preparation to apply the EU *acquis* and the

⁷ Transparency International, *Corruption Perceptions Index*, <https://www.transparency.org/en/cpi/2020/index/nzl>, accessed on October 1, 2021

⁸ United States Department of State, *Country Reports on Human Rights Practices for 2020*, pp. 10-11, <https://www.state.gov/wp-content/uploads/2021/03/MONTENEGRO-2020-HUMAN-RIGHTS-REPORT.pdf>, accessed on September 22, 2021

⁹ Council of Europe, Group of States against Corruption, *Fourth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second compliance report. Montenegro*, Strasbourg, 2-6 December 2019, p. 5, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809a5bdd>, accessed on September 7, 2021

¹⁰ European Commission, *2020 Communication on EU Enlargement Policy. Montenegro 2020 Report*, Brussels, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/montenegro_report_2020.pdf, p. 5, accessed on October 2, 2021

¹¹ Republic of Serbia, Ministry of Public Administration and Local Self-Government, <http://mduls.gov.rs/en/announcements/the-first-session-of-the-public-administration-reform-council-held/>, accessed on September 12, 2021

European standards¹², but there is an overall limited progress mainly due to inconsistent implementation. Corruption remains an important obstacle in implementing reforms, with scores as poor as in previous years. The anti-corruption law enforcement bodies are an indicator that assesses the activity of specialised anti-corruption law enforcement bodies, by taking into consideration their administrative capacity regarding staff, expertise, funds, professional training and their independence. Serbia, along with Montenegro and North Macedonia, has the legal framework for prevention of corruption. Thus, the Law on Corruption Prevention provides a comprehensive framework on conflict of interests, the Law on Civil Servants establishes the limits of the authorities and their jurisdiction, while the Law on Whistle-blower Protection contains provisions to protect whistle-blower. Moreover, Serbia has improved its capacity of law enforcement, but has serious problems with the assessment (monitoring and evaluation) of such measures, a systematic analysis being necessary for the effective repression of corruption.

Table 1. Investigation and prosecution scores

Sub-dimension	Qualitative indicator	ALB	BIH	KOS	MKD	MNE	SRB	WB6 average
Sub-dimension 16.5: Investigation and prosecution	Anti-corruption law enforcement bodies	2.5	2.0	2.5	3.0	3.5	3.0	2.8
Sub-dimension average score		2.5	2.0	2.5	3.0	3.5	3.0	2.8

Source: OECD, Competitiveness in South East Europe 2021: A Policy Outlook, Competitiveness and Private Sector Development, OECD Publishing, Paris, 2021, p. 605

Besides corruption, another major issue that affects the whole development of the Western Balkan countries and impede its economic, social and political progress would be the prevalence of informality and the existence of large informal sectors. Informality refers to the practice of working without contracts, employing people without contracts and under-reporting income and wages. Although it is difficult to assess the extent of informal practices and undeclared work, recent reports indicate that informal employment is widespread in Western Balkan countries. Serbia decreased informality by 5% in the last 5 years, mainly because of the implementation of the National Programme for Countering the Grey Economy adopted in 2015 with the main aims of reducing administrative burden and raising public awareness. Nevertheless, while informality averages 15-20% of GDP in EU member states, all six Western Balkan states have large informal sectors, and informality averages 25-35% of GDP¹³.

¹² European Commission, *2020 Communication on EU Enlargement Policy. Serbia 2020 Report*, Brussels, 6 October 2020, p. 18, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf, accessed on September 18, 2021

¹³ World Bank Group, *Western Balkans Regular Economic Report*, No. 19, Spring 2021, p. 37

Table 2. Informality in the Western Balkans

Country	Informal employment as percent of total employment	Informal sector contribution to GDP
Kosovo	>35	30-35
Albania	30-35	30-35
Bosna and Herzegovina	30-35	30-35
Montenegro	30-35	30-35
Serbia	20	25-30
North Macedonia	<20	20-40

Source: World Bank Group, Western Balkans Regular Economic Report, No. 19, Spring 2021, p. 37

Hence, the current status quo in the Western Balkans does not look good, and as things are standing currently, it is unlikely that these countries will progress substantially in the nearest future. Thus, a new initiative proposed by Think for Europe Network (TEN) and Centre for European Policy Studies (CEPS) is to strip the whole process of accession into simply institutional elements permitting gradual integration into EU policies and programmes, under rigorous monitoring and conditionality¹⁴.

Fabricating reforms in public administration

Overall, the Western Balkan's level of preparedness shows that countries are placed low particularly in areas related to the rule of law, trust in institutions, informality, corruption and state capture, issues discussed in the previous section. The main shortcomings mentioned in almost all the reports is the low level of implementation of the legislative framework, reduced monitoring and evaluation. The discussions are centred around the need for those states to redouble their efforts in assuring the expression and protection of fundamental values, such as human dignity, freedom, democracy, equality, the rule of law and the protection of human rights, not only through formal resolutions but through a proper implementation and monitoring of the current legislative framework, practices that assure everyone the fair judicial treatment and access to transparent and competent administrative processes.

Obviously, there is a strong need for the institutionalisation of EU laws and regulations, a break up with corruption practices, informality and superficiality. Apparently, Western Balkan countries stressed themselves to adopt legislative reforms for the purpose of compliance with the *acquis communautaire* and these

¹⁴ Euractiv, *Avant-garde proposal for EU enlargement to the Western Balkans*, July 15, 2021, <https://www.euractiv.com/section/enlargement/opinion/avant-garde-proposal-for-eu-enlargement-to-the-western-balkans/>, accessed on September 22, 2021

efforts were mentioned in each country's report. The problem is, as underlined by some specialists, that these efforts resulted in „a gap between formal and informal practices, which appears to be growing as states hurry to generate legal and regulatory frameworks that do not respond to actual conditions“¹⁵. Moreover, studies emphasized that „there are large portions of the system by which political power and influence operate that are not represented by the official structures of formal power and not described by law“¹⁶, people taking advantage by using them in their own interest. Thus, the problems lie, most probably, within a superficial way of assessing what is needed and what is done, and in a rush of adopting surface level reforms, complementary to a lack of accountability of the political elites, a tradition of informality, and a low capacity of stakeholders to adopt and apply required practices and rules.

Therefore, this section will provide a snapshot of where countries in the Western Balkan region, especially Serbia and Montenegro, stand with respect to the public administration reform and the implementation of good administration at governmental level, the state of regulatory and institutional frameworks, and the application of performance management in administration. Data shows good scores regarding the external audit and public procurement, while areas such as performance management and online access to primary and secondary legislation suffer badly.

Table 3. Performance in public administration areas

	Strategic frame- work for PAR	Policy making	Public service and HRM	Accoun- tability	Service Delivery	Public Financial Manage- ment	<i>Budget manage- ment</i>	<i>Public Procure- ment</i>	<i>External audit</i>
ALB	2.5	2.4*	3.4	2.6	3.3	2.8	2.6	2.8	3.5
BIH	1	1.3	1.6	1.8	1	1.7	1.2	2.2	2.5
XKV	2.5	2.8	3	2.6	3*	2.9	2.7	3	3.5
MNE	2.3	3.1	2.6	3.4	3*	2.6	2.4	2.6*	3.5
MKD	0.8	1.8	2.8*	2.6	3	2.8	2.4	3.4*	3
SRB	1.8	2.7	3*	2.6	3*	2.9	2.3	3.6	3.5
Western Balkans	1.8	2.4	2.7	2.6	2.7	2.6	2.3	2.9	3.3

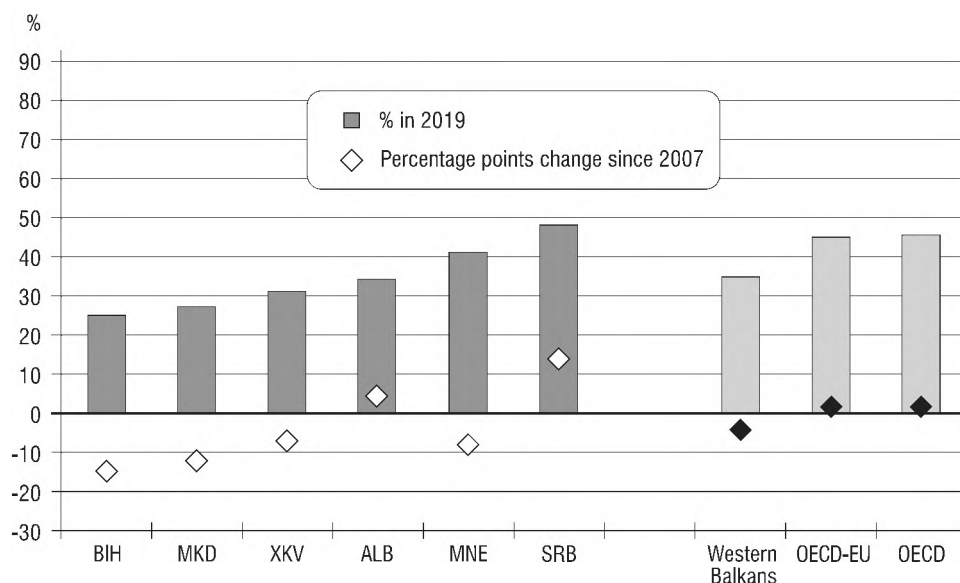
Source: OECD, *Government at a glance: Western Balkans*, OECD Publishing, Paris, 2020, p. 31

¹⁵ Eric Gordon, Adnan Efendic, „Engaging Policy to Address Gaps Between Formality and Informality in the Western Balkans“, in Eric Gordy, Adnan Efendic (eds.), *Meaningful reform in the Western Balkans. Between Formal Institutions and Informal Practices*, Peter Lang, Bern, 2019, p. 10

¹⁶ *Ibidem*

In both countries, Serbia and Montenegro, even in those areas where the law sets out clear rules, the drawback is in the system's implementation and monitoring, along with a lack of public consultation. For instance, in the public service and human resource management area, the implementation of the civil service legislation faces challenges to ensure merit-based recruitment and transparent selection. Similar situation is perceived in the field of public service delivery, the policy framework being in place, but implementation being very modest, with excessive bureaucracy and time-consuming procedures. In both countries, in the area of public financial management, the government's investment planning and management capacity needs to be improved. Hence, the authorities have to fully apply the methodology to all investments and to ensure that administrative procedures are in place. Moreover, public consultations in the legislative and policy-making process lack inclusion of all stakeholders and access to all public policy documents.

All these shortcomings, related to public administration reform, are intertwined with a low degree of trust in public institutions among citizens in the Western Balkans, in comparison with citizens from OECD-EU countries. In 2019, „52% of citizens were satisfied with the health system, 57% with the education system and 33% with the justice system compared to OECD-EU averages of 68%, 68% and 56%“¹⁷.



Graph 3. Trust in national governments in Western Balkans

Source: OECD, Government at a glance: Western Balkans, OECD Publishing, Paris, 2020, p. 29

¹⁷ OECD, *Government at a glance: Western Balkans*, OECD Publishing, Paris, 2020, p. 13

It is in the interest of both, citizens and governments, to ensure effective and efficient public services, good administration and proper coordination between the legal framework and its implementation, because if they are done in a poor manner, the results that could occur based on them will in turn be poor.

Conclusions

The area of rule of law, fundamental rights and good governance are the most pressing issues for the Western Balkans and require a fundamental improvement, being the key benchmark against which the future of these countries as part of the European Union will be judged. Fundamental values such as human dignity, freedom, democracy, equality, the rule of law and the protection of human rights must be embraced by all Member States, so that, as candidate and potential candidate countries, the Western Balkans should take all necessary measures to ensure their wellbeing, should multiply their efforts, should involve all levels of administration and society, trying to complement the technical process of elaborating reforms and legislation with the practical implementation, monitoring and evaluation.

Unfortunately, the latest studies and reports show a backsliding in terms of democracy and the rule of law throughout the region, clear elements of state capture and corruption at all levels of government and administration, and a development gap. Despite the fact that we have chosen to focus mostly on two countries, namely Montenegro and Serbia, given their advanced status regarding negotiations among Western Balkan countries, the results show that these countries are far from being the leader in the region in what concerns the public administration reform. The question would be if the solutions, already enclosed in the legislative framework, will become a reality for the citizens and the economy, and if the countries will find the resources to continue this reform. The whole process of accession is a merit-based process, dependent on the achievement of established objectives, and all stakeholders should be aware of that.

Therefore, the European Union officials urge Western Balkan countries to move over the technical process, to „redouble their efforts, address vital reforms and complete their political, economic and social transformation, bringing all stakeholders on board from across the political spectrum and from civil society“, being in their „historic window of opportunity to firmly and unequivocally bind their future to the European Union“¹⁸.

¹⁸ European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, Belgium, 2018, p. 3

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