

# **L'allargamento dell'Unione europea e le transizioni costituzionali nei Balcani occidentali**

Una raccolta di lezioni

a cura di

**LAURA MONTANARI**

Editoriale Scientifica



**L'allargamento dell'Unione europea  
e le transizioni costituzionali  
nei Balcani occidentali**  
*Una raccolta di lezioni*

a cura di

*Laura Montanari*



With the support of the  
Erasmus+ Programme  
of the European Union

Editoriale Scientifica

La pubblicazione si inserisce nell'ambito delle attività del Modulo Jean Monnet “*EU Enlargement and Constitutional Transitions in the Western Balkans*” (EU&WB) – 600091-EPP-1-2018-1-IT-EPPJMO-MODULE, coordinatrice prof.ssa Laura Montanari

Con la collaborazione del Progetto Jean Monnet “*We, the People of the United Europe: Reflections on the European State of Mind*” (WE-UE) – 612070-EPP-1-2019-1-IT-EPPJMO-PROJECT, coordinatrice prof.ssa Laura Montanari

Il sostegno della Commissione europea alla produzione di questa pubblicazione non costituisce un'approvazione del contenuto, che riflette esclusivamente il punto di vista degli autori, e la Commissione non può essere ritenuta responsabile per l'uso che può essere fatto delle informazioni ivi contenute.

*Proprietà letteraria riservata*

In copertina: *Sede della Delegazione dell'Unione europea a Sarajevo*

Foto di Paul Parillaud

© Copyright 2022 Editoriale Scientifica s.r.l.  
via San Biagio dei Librai, 39 - 80138 Napoli  
www.editorialescientifica.com info@editorialescientifica.com  
ISBN 979-12-5976-294-8

## INDICE

|                                                                                                                                                        |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| LAURA MONTANARI, <i>Prefazione</i>                                                                                                                     | 7   |
| ARMANDO PITASSIO, <i>La dissoluzione della Federazione jugoslava (1991-2008)</i>                                                                       | 13  |
| IVAN INGRAVALLO, <i>La Comunità internazionale e la transizione nell'ex Jugoslavia, tra legalità ed effettività</i>                                    | 41  |
| MARKO MILENKOVIĆ, <i>EU Enlargement, Conditionality Policy and Prospects for the Integration of the Western Balkans</i>                                | 61  |
| LAURA MONTANARI, <i>Le nuove Costituzioni: un'introduzione</i>                                                                                         | 77  |
| CARNA PISTAN, <i>Il ruolo di miti e simboli nei processi di nation-building e l'etnicizzazione della memoria nei Balcani occidentali</i>               | 95  |
| JUSTIN O. FROSINI, <i>Mere dichiarazioni o fonti costituzionali? Uno studio comparato dei preamboli alle Costituzioni dei Paesi dell'ex Jugoslavia</i> | 123 |
| MATTEO DAICAMPI, <i>Valori fondamentali, rule of law e meccanismi di garanzia post-adesione all'Unione europea</i>                                     | 143 |
| LAURA MONTANARI, <i>La tutela dei diritti tra previsioni normative ed effettività</i>                                                                  | 157 |

|                                                                                                                             |     |
|-----------------------------------------------------------------------------------------------------------------------------|-----|
| MARIA DICOSOLA, <i>I diritti delle minoranze tra condizionalità europea e nazionalismo</i>                                  | 181 |
| MARCO CUCCHINI, <i>Le forme di governo e le dinamiche elettorali</i>                                                        | 203 |
| FRANCESCO EMANUELE GRISOSTOLO, <i>Le Pubbliche amministrazioni nella transizione verso lo Spazio amministrativo europeo</i> | 233 |
| JENS WOELK, <i>Il potere giudiziario e le riforme per preparare l'adesione all'Unione europea</i>                           | 261 |
| CARNA PISTAN, <i>Giustizia costituzionale e transizioni di regime: l'esperienza dei Balcani occidentali</i>                 | 279 |
| <i>Gli Autori</i>                                                                                                           | 319 |

## *Prefazione*

La pubblicazione di questo Volume si colloca all'interno delle attività del Modulo Jean Monnet con lo stesso titolo – *“European Enlargement and Constitutional Transitions in the Western Balkans”* –, finanziato dalla Commissione europea nel 2018 e prorogato sino a quest'anno a causa della pandemia.

Come indicato nel sottotitolo, si tratta di una raccolta di lezioni ed è rivolto in primo luogo agli studenti. Il Modulo Jean Monnet prevede, infatti, una pluralità di iniziative, tra cui innanzitutto lo svolgimento di un insegnamento, che è stato offerto nell'ambito dei corsi di Scienze giuridiche, di Giurisprudenza e di Mediazione culturale dell'Università di Udine.

Prima di illustrare brevemente le caratteristiche di questo Volume, vorrei accennare alle ragioni della scelta di questa tematica per il Modulo Jean Monnet e soprattutto alle diverse esperienze che sono state realizzate in questi anni.

Presso l'Università di Udine è presente da oltre vent'anni l'insegnamento di Diritto dei Paesi dell'Est europeo, nel cui ambito sono state affrontate tematiche diverse, dalla transizione costituzionale nei Paesi dell'Europa centro-orientale all'evoluzione del sistema russo dall'epoca zarista ad oggi. Tuttavia, tra le declinazioni dell'esperienza dello Stato socialista, e il suo superamento, un particolare interesse riveste l'esperienza della Jugoslavia. Le ragioni sono molteplici, e i drammatici eventi che stanno sconvolgendo l'Ucraina nel momento in cui viene stampato questo Volume non solo ne richiamano purtroppo alcune, ma fanno sorgere ulteriori domande e timori per l'evoluzione futura dell'area.

Rispetto ai Balcani occidentali, la Regione in cui ha sede l'Ateneo udinese si caratterizza non solo per la vicinanza geografica, ma prima ancora per quella storica e culturale. Il “confine orientale” porta con sé ferite, ma anche memorie comuni, seppure spesso soverchiate da quelle contrapposte. Il crollo del sistema socialista e, soprattutto, il processo di allargamento dell'Unione europea sono due fattori che

hanno spinto, non senza difficoltà, a rafforzare il dialogo e il confronto con i Paesi della “ex Jugoslavia”, ed è proprio a questi che è circoscritto lo studio oggetto del Modulo Jean Monnet. Nonostante nel titolo vi sia un riferimento generale ai Balcani occidentali, infatti, vengono prese in esame solo le esperienze degli Stati nati dalla dissoluzione della Repubblica Socialista Federale di Jugoslavia, sia quelli già membri dell’Unione europea, sia quelli candidati e potenziali candidati, compreso il Kosovo, la cui indipendenza, com’è noto, non è stata riconosciuta da tutti i Paesi dell’UE.

Le iniziative che sono state immaginate al momento della presentazione della domanda avevano l’obiettivo di aiutare gli studenti a comprendere la storia più recente di quest’area, che nonostante la vicinanza cui si è fatto cenno è invece nella maggior parte dei casi lontana e quasi sconosciuta. Le immagini che in questi giorni ci giungono delle città bombardate dell’Ucraina non possono non far pensare a quelle della Bosnia ed Erzegovina e del lungo assedio di Sarajevo, ma per gli studenti le vicende di quella guerra ... – una nuova guerra nel cuore dell’Europa dopo la Seconda guerra mondiale, si diceva allora come oggi – probabilmente sono solo un breve capitolo nei libri di storia che hanno studiato alle scuole superiori.

Per tale ragione, una delle esperienze più significative offerte nell’ambito del Modulo è stata quella di un viaggio di studio/Winter School in Bosnia ed Erzegovina, organizzato grazie all’importante lavoro della *Module Leader* dott.ssa Carna Pistan (ora Marie Skłodowska-Curie Global Fellow, presso l’Harriman Institute, Columbia University), che già aveva curato viaggi analoghi per il Center for Constitutional Studies and Democratic Development (CCSDD) di Bologna, e alla collaborazione con il progetto Isto Nebo, che, nell’ambito dell’Associazione ImparArti di Cividale del Friuli, si occupa di realizzare programmi di formazione e viaggi per far conoscere la storia e la cultura dei Paesi dei Balcani occidentali. Siamo riusciti a fare due viaggi, nel 2019 e nel 2020, prima che la pandemia ci costringesse a rinunciare a questa esperienza. In Bosnia ed Erzegovina gli studenti hanno avuto modo di confrontarsi con i rappresentanti delle organizzazioni internazionali e dell’Unione europea che operano nel Paese, nonché delle istituzioni nazionali, in particolare la Corte costituzionale. Ma l’aspetto più importante di questa esperienza è stato visitare i luoghi

(la foto della copertina è stata fatta da uno studente nel corso del primo viaggio) e incontrare i testimoni, per cercare di avvicinarci a ciò che è accaduto negli anni della guerra e di comprendere la situazione attuale. La visita al Memoriale di Srebrenica e l'incontro con le donne dell'Associazione Madri di Srebrenica (Snaga Zene) è stato uno dei momenti più toccanti, rispetto al quale nulla si può dire, se non ricordare il cammino silenzioso tra le tombe bianche che ogni anno vengono "arricchite" dai nuovi ritrovamenti di corpi nelle fosse comuni.

Ma poiché si tratta di un Modulo di carattere giuridico, gli incontri con le istituzioni cui ho accennato hanno permesso agli studenti di riflettere sul ruolo della Comunità internazionale e dell'Unione europea nell'area, sia durante il conflitto, sia soprattutto ora nella fase del consolidamento democratico, approfondendo così la prospettiva di analisi che caratterizza l'insegnamento svolto in Università.

Sempre per rafforzare la conoscenza dei profili giuridici delle transizioni costituzionali e del difficile cammino di avvicinamento dei Balcani occidentali all'Unione europea sono state previste tre Conferenze. Solo la prima, purtroppo, si è svolta in presenza a Udine nel 2019 ed ha affrontato il tema generale del Modulo "*L'allargamento dell'Unione europea ai Balcani occidentali: problemi e prospettive*", dando la possibilità anche agli studenti di presentare brevi interventi. Le successive Conferenze sono state realizzate online a causa della pandemia. La seconda, nel 2020, è stata dedicata specificamente a "*La Bosnia ed Erzegovina a 25 anni dagli Accordi di Dayton*" e ha visto la partecipazione anche dell'Ambasciatore Nicola Minasi, che gli studenti avevano avuto modo di conoscere a Sarajevo, dove ci aveva accolti presso l'Ambasciata, aiutandoci a comprendere il lavoro che l'Italia svolge a favore della pacifica convivenza nel Paese. E l'ultima, nel 2021, sul tema "*Politiche di coesione e strategie macroregionali nel periodo 2021-2027*", volta a valorizzare le occasioni di collaborazione con i Paesi dei Balcani occidentali sostenute dall'Unione europea, nelle quali anche la Regione Friuli Venezia Giulia è coinvolta.

Quest'ultima Conferenza si inserisce in un ciclo di incontri organizzato in collaborazione con il Progetto Jean Monnet "*We, the People of the United Europe: Reflections on the European State of Mind*", finanziato dalla Commissione nel 2019, che in un certo senso costituisce uno sviluppo della riflessione avviata con il Modulo. Affrontare il tema

dell'allargamento e in particolare prendere in esame i "criteri di condizionalità" applicati dall'UE ai Paesi candidati e potenziali candidati impone di confrontarsi con la questione dell'identità europea: i principi e i valori che costituiscono parametri di valutazione dei Paesi in vista dell'ingresso nell'Unione, infatti, devono essere riaffermati anche all'interno dell'ordinamento europeo, soprattutto in un momento in cui il ritorno dei nazionalismi può diventare un pericolo per la stessa sopravvivenza dell'UE.

In questa prospettiva merita di essere segnalato il Workshop internazionale dedicato a "*Nationalism, Memory and Democratic Decay in the New EU Member States and Candidate Countries*", che – senza che lo si potesse neppure immaginare – si è svolto dal 23 al 26 febbraio 2022, in coincidenza con l'inizio della guerra in Ucraina. La riflessione su identità e memoria ha offerto ulteriori sollecitazioni, suscitando anche nuovi timori. Mai come in questo momento, purtroppo, la storia e le sue riletture appaiono come strumenti di contrapposizione e di divisione.

Il tema dell'allargamento ai Balcani occidentali rimane dunque di grande attualità e costituisce una sfida per l'UE. Si tratta di Paesi "circondati" dall'Unione, che sin dall'avvio della transizione costituzionale hanno guardato all'Europa – quella del Consiglio d'Europa e quella dell'Unione europea – come un obiettivo da raggiungere e rispetto ai quali le Istituzioni europee continuano ad affermare che il loro futuro è nell'Unione. Si può citare, ad esempio, la Dichiarazione finale del Vertice di Brdo (Slovenia) dell'ottobre 2021, dove si legge che «L'UE ribadisce il suo sostegno inequivocabile alla prospettiva europea dei Balcani occidentali e accoglie con favore l'impegno dei partner dei Balcani occidentali a favore della prospettiva europea, che è nel nostro reciproco interesse strategico e resta una nostra scelta strategica condivisa». Ma con quali tempi? Al rischio di integrare democrazie ancora non compiute si contrappone quello di non dare una prospettiva realistica all'aspirazione alla *membership*, alla possibilità di collocarsi in un ambito "protetto" dove il processo di consolidamento democratico potrebbe probabilmente compiersi più facilmente. Non mi nascondo i problemi che l'ingresso di questi nuovi Paesi nell'Unione potrebbe generare, ma forse proprio questa fase così drammatica – che ha visto l'UE affrontare prima la pandemia ed ora la guerra in Ucraina – po-

trebbe essere l'occasione per un passaggio ulteriore, che implichi anche un cambiamento delle modalità di governo dell'Unione (un'Europa finalmente federale?), che renderebbe meno problematici nuovi allargamenti.

Due recenti episodi, che hanno coinvolto la Regione Friuli Venezia Giulia, possono costituire una nota positiva in un quadro così complesso e confermare il ruolo pacificatore e propulsivo che la comune appartenenza all'Unione può assumere. Il primo è la visita che nel luglio 2020 il Presidente della Repubblica italiana Sergio Mattarella e il Presidente della Repubblica slovena Borut Pahor hanno fatto insieme, deponendo un'unica corona con i colori delle due bandiere nazionali, al monumento della Foiba di Basovizza e a quello dedicato ai quattro sloveni fucilati nel 1930 in esecuzione di una sentenza del tribunale speciale fascista. Anche le memorie più difficili possono essere condivise in un'Unione basata sui valori della democrazia, dello Stato di diritto, della tutela dei diritti in particolare di quelli delle minoranze come stabilito all'art. 2 del TUE. Il secondo episodio è la candidatura proposta dalla Slovenia di Nova Gorica e Gorizia come Capitale europea della cultura 2025, che il Presidente italiano ha commentato affermando che «Oggi il confine tra Italia e Slovenia da frontiera di divisione si trasforma in punto di incontro, di raccordo, di collaborazione per aggregazione e nuove idee».

Queste ultime considerazioni mi permettono di ritornare alla presentazione del Volume, che è dedicato proprio al processo di allargamento, che costituisce il prisma attraverso cui sono indagate le trasformazioni avvenute nei Paesi nati dalla dissoluzione della Repubblica Socialista Federale di Jugoslavia.

Si tratta di un libro rivolto agli studenti e questo spiega l'impostazione dei diversi lavori, che non prevedono note a piè di pagina, ma solo richiami nel testo alla bibliografia inserita alla fine di ciascun Capitolo. Bibliografia finalizzata a permettere l'approfondimento dei diversi argomenti trattati.

L'articolazione del libro riprende sostanzialmente la struttura del corso, con l'aggiunta di alcuni argomenti non trattati a lezione, ma utili per una ricostruzione complessiva della materia. L'idea è nata proprio dal lavoro fatto in questi anni, che in assenza di un manuale ha reso necessario proporre per la preparazione dell'esame articoli e contributi

tratti da fonti diverse. Ciò è certamente utile per permettere agli studenti di confrontarsi con tipologie di scritti differenti e costruire un proprio percorso di studio, ma rende più difficile cogliere la connessione tra le varie parti.

Questo testo mantiene, per così dire, l'aspetto positivo della soluzione appena descritta, poiché ciascun Autore ha dato al proprio Capitolo un'impostazione personale, ma nello stesso tempo tutti sono collegati nella prospettiva di mettere in evidenza la trasformazione dei sistemi costituzionali dopo il crollo dello Stato socialista. Gli Autori – che ringrazio per la disponibilità a collaborare alla scrittura di questo Volume – sono coloro che hanno partecipato al Modulo Jean Monnet e quindi hanno svolto le lezioni del corso, in particolare Matteo Daicampi, Justin O. Frosini, Francesco Emanuele Grisostolo, Marko Milenković e Carna Pistan, a cui si sono aggiunti altri amici e colleghi che hanno accettato di farsi coinvolgere in questa iniziativa Marco Cucchini, Maria Dicosola, Ivan Ingravallo e Jens Woelk. Un ringraziamento particolare va al prof. Armando Pitassio che ha accettato di scrivere il primo Capitolo di introduzione storica, essenziale per poter comprendere le peculiarità della transizione costituzionale nei Paesi della ex Jugoslavia e quindi poter affrontare anche i profili giuridici.

Infine, voglio dedicare questo libro agli studenti che negli anni hanno seguito le lezioni del Modulo Jean Monnet e partecipato al viaggio di studio in Bosnia ed Erzegovina, che mi hanno colpito per il loro desiderio di comprendere la complessa esperienza di questi Paesi, sperando che le problematiche con cui si sono dovuti confrontare li abbiano aiutati a comprendere l'importanza di poter essere “cittadini europei”.

Udine, 4 aprile 2022

Laura Montanari

## **EU Enlargement, Conditionality Policy and Prospects for the Integration of the Western Balkans**

MARKO MILENKOVIĆ

SUMMARY: 1. Introduction – the long road to EU membership for Western Balkan Countries. – 2. Outline of the EU enlargement process for Western Balkan Countries. – 3. Prospects of integration in the context of the EU crisis and enlargement fatigue. – 4. Concluding remarks.

### *1. Introduction – the long road to EU membership for Western Balkan Countries*

EU integration of the Western Balkans is a two-decade-long process with an uncertain future. The enlargement process has seen the EU expand from the original six founding Countries to the current twenty seven member states. However, after the big 2004 enlargement, which involved eight former communist Countries, the context changed significantly. Many external and internal factors now jeopardise the EU project, with the Union undergoing numerous crises over the past 15 years, making the setting for further enlargement uncertain. The Europeanisation and EU enlargement processes for the Western Balkans are much more complex than in the previous enlargement rounds to Central and Eastern Europe (CEE), which commenced in the 1990s and were completed in the 2000s. The overall successful reform processes in Central and Eastern Europe following the fall of the Berlin Wall saw the CEE countries manage to fulfil (at the time) the conditions for joining both the EU and NATO in the relatively short period of around fifteen years. However, this took place in a different political and economic context to WB enlargement, as will be outlined in this chapter. There are currently six candidates and potential candidates for EU membership – Montenegro, Serbia, North Macedonia, Albania, Bosnia and Hercegovina and Kosovo\* (See further: EU Commission, 2021a). Five (potential) candidates were part of former Socialist Federal Republic of Yugoslavia

(SFRY), except Albania. Two former federal units of the SFRY previously joined the EU – Slovenia in 2004 and Croatia in 2013. Each of the six WB candidates is in a different phase of the integration process, with its own set of challenges and impediments to obtaining EU membership. It is important to note that population of the WB region is relatively small compared to the EU as a whole and estimated at around 18 million. Furthermore, Countries of the region are also among continent's least developed with GDP per capita well below the EU average (Eurostat 2019). However, its geographical position and the fact that it is completely surrounded by the EU member States make the region crucially important both for stability and interconnectivity of the Union. This chapter offers a brief introduction to the EU integration process for the WB region. Part two gives an overview of the EU enlargement process for WB Countries; part three, considers the prospects of integration in the context of the EU crisis and enlargement fatigue and finally conclusions are offered with dilemmas regarding the future of the process. The EU integration of the Balkans is thus also considered from the perspective of differentiated integration (Milenković 2020).

## *2. Outline of the EU enlargement process for Western Balkan Countries*

Enlargement to the Western Balkans consists of a succession of structured processes, which to date have been completed by only one WB Country – Croatia. All the (potential) candidate countries are part of the Stabilisation and Association Process (EU Commission, 2021b). As will be examined later in this chapter, all the (potential) WB candidates have, since 2003, been eligible to apply for membership, and once this application has been accepted by the EU member States, the accession process is initiated based on comprehensive negotiation followed by the ratification of the accession treaty by the EU, all member States and the future member. The basic conditions for membership are envisaged in the Article 49 of the Treaty on European Union (TEU) as follows:

«Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a

member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements».

“Enlargement *acquis*” is rather scarce, and the procedure and criteria have been developed through the decades, but are still envisaged only by EC conclusions, white papers, and Commission communications. However, the development of enlargement policy has gone through several phases with the influence of member States gaining different prominence (see more: Hillion 2011). In terms of defining the conditions for joining the European Union, the most notable step was the introduction of the *Copenhagen criteria* in 1993, when the prospects of enlargement to the former communist bloc were opened. There are in essence three basic criteria: 1. Political – stable democratic institutions, rule of Law, respect of human and minority rights; 2. Economic – a functioning market economy (with the ability to withstand EU competition); 3. Legal – ability to assume the responsibilities of membership (obligation to undertake legal harmonisation) (European Council, 1993). The fourth, institutional criterion – the capacity to implement EU legislation – was added later (European Council, 1995). However, *conditionality* has been gradually increased over the last 25 years, subjecting Balkan candidates to the strictest set of conditions. As has been argued before (Milenković 2018, 2019), the reason for this is twofold. In the first place, the legacy of (ethnic) conflicts and civil wars in the WB region has made post-war reconstruction (at least in the first decade after the conflicts ended) and reconciliation considerably more complicated and sensitive than the usual hardships seen with economic transition and transformation into a market economy,

as was the case with CEE Countries. As has been argued, the region has «experienced manifold state disintegrations, violent and non-violent conflict between and within countries, as well as a delayed transition to democracy and a market economy» (Džankić, Keil, Kmezić 2019, 3). Secondly, the WB candidates, as the last to join the European Union, must undergo a profound check test and must fulfil a much larger set of requirements, in comparison to previous EU candidates. This can largely be attributed to the (not always positive) experiences of the previous large scale enlargement of ten new member States in 2004, and especially the entry into the EU of Bulgaria and Romania in 2007. The WB Countries were offered a perspective on becoming members of the EU relatively late in comparison to the other Countries of Central and Eastern Europe. This happened at the EU Thessaloniki summit in 2003, only one year before the big enlargement in 2004, and in a completely different political and economic context to today: it was several years after the conflicts in the region had ended, there was considerable enthusiasm regarding the integration process, including the big enlargement and the proposed EU Constitution.

In June 1999 the European Union introduced the Stabilisation and Association Process (SAP) for the region, comprising four components: political dialogue, pre-accession aid, autonomous trade measures and Stabilisation and Association Agreements (SAAs), which are international agreements between the EU, its member states and potential candidates (European Commission 2021a). The primary focus of these agreements is on trade liberalisation and the gradual creation of a free trade area. They are of crucial importance, because up until the entry into force of the Accession Agreements, they are the main contractual basis for relations between the Union and the third Country. In addition to trade, a part of the agreements which provide the widest and most privileged access to the EU market for goods from the Countries, they also stipulate a set of other legal and political reforms for partner Countries with fixed, precise time limits for the implementation of legislative transformation. This enables the EU Commission to further monitor the progress of reforms in the Country during the integration period.

In addition to the SAAs, a wide ranging cooperation between the

EU and WB is already in place, most notably the Energy Community Treaty, cooperation in the transport sector – Transport Community, Open Skies Agreement – and wide participation in EU programmes in the fields of science, education, youth, civil society development, and health, among others. The further wide and developing WB engagement with EU agencies already makes it possible to discuss the degree of differentiated EU integration for the region (see further: Milenković 2022).

As already outlined, the road to accession begins with the submission of the application for membership, upon which the potential candidate Country receives a comprehensive questionnaire covering wide ranging topics, after which the Commission gives an assessment and recommends the country be granted candidate status. After the candidate fulfils a certain number of conditions set by the EU, the Commission normally recommends setting a negotiation mandate, which is done unanimously by the Council. The negotiations between the EU and the candidate Country are conducted by the Commission, and take place in conjunction with the Commission's screening process, involving regular assessments of the Country's preparedness. In practice, conditionality is also implemented through benchmarks determined for each negotiation chapter/cluster as a pre-condition for starting the negotiation process.

In terms of the substance of the negotiations, prospective member States accede to the founding treaties and the existing body of the *acquis*, mostly agreeing to adhere to all previously set policies and standards. Issues that are usually negotiated at greater length include temporary restrictions on the free movement of workers upon entry into the EU, with member States keeping the right to restrict free movement for all or some categories of workers for up to seven years. More importantly, parts of the *acquis* are to be implemented only at a certain point following accession – traditionally in the most “expensive” and challenging areas such as environmental protection, state aid and agriculture. After the completion of negotiations, the Country becomes an acceding Country and gets the status of “active observer” in the EU which lasts until the ratification of the Agreement on Accession by all member States and the consent of the European Parliament is obtained according to article 49 TEU. The process is completed by EU accession.

The integration status of the WB Countries as of December 2021 is as follows. Firstly, Montenegro and Serbia are candidate Countries in the advanced stages of accession negotiations, with Montenegro being the frontrunner in the region with all the negotiation chapters (now grouped into six clusters) opened. Secondly, the EU decided to open negotiations with two further candidates, North Macedonia and Albania, in March 2020. Interestingly, after prospects of membership were initially offered in 2003, (North) Macedonia was granted candidate status by the Council as early as 2005 and the Commission recommended the opening of accession negotiations in 2009. However, the process was stalled for almost a decade due to a dispute with Greece over the name that the Country had claimed for itself on gaining independence in 1992. This dispute was only resolved in 2018 by the Prespa agreement, under which Macedonia agreed to change the name of the Country to North Macedonia (see further: Georgievski, Pandeva 2020a). Currently, the further progress of North Macedonia EU integration is hampered by recently (re)emerged bilateral dispute over identity and language issues with neighbouring EU member state – Bulgaria (Reuters 2020). While Albania had been granted candidate status in 2014, as previously stated the decision to open negotiations was only made in 2020. However, it is important to stress that no tangible progress has been made in negotiations with two Countries since the 2020 decision. Finally, there are two potential candidates: Bosnia and Hercegovina applied for membership in 2016; Kosovo\* is also considered a potential candidate. The use of “\*” with Kosovo refers to a designation in international fora which reads: «This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence» (European Union 2012). Kosovo\* declared independence from Serbia in 2008 while under UN administration. However, it is still not recognised by around half the members of the UN, including five EU member States – Spain, Romania, Slovakia, Greece and Cyprus. The EU Rule of Law Mission in Kosovo – EULEX, which began in December 2008, is still active, although it has gradually been scaled down from what was at one point the biggest EU peacetime mission (EULEX 2021, Wet 2009).

The lengthy process of applications, EU deliberations on whether

to grant candidate status and subsequently open negotiations which follows the offer of potential membership will be described later in the text. However, as already mentioned, only Croatia has made it through the process, joining the EU in 2013, with all the other WB countries still lagging behind at different stages of the integration path. In the 2018 Enlargement Strategy, the Commission anticipated the next possible enlargement in the Balkans for 2025, stressing that the EU's enlargement policy must be «part and parcel of the larger strategy to strengthen the Union by 2025» (European Commission 2018). The Commission did, however, underline at the time that only Montenegro and Serbia would have the possibility of concluding the whole process by 2025, with no projection given for the remaining candidates – North Macedonia and Albania – and potential candidates – Bosnia and Hercegovina and Kosovo\* – none of which had even opened negotiations at the time.

More recently, in November 2019, the French government put forward the Non-Paper on Reforming the European Union accession process, a document stressing the need for a process based on four principles: gradual association; stringent conditions; tangible benefits; reversibility. The main idea was to replace the large number (35) of thematic chapters with several successive stages and with the underlying idea that «the closing of negotiations corresponding to each stage completed by the country would open up the possibility to participate in EU programmes, to be involved in certain sectoral policies and, where appropriate, to benefit from certain targeted finance», while continuing to stress that «the final objective would be full and complete accession» (Politico 2019). This can be assessed as opening the doors for the differentiated EU integration of the WB Countries, as will subsequently be analysed in greater detail.

Following the French proposal for revamping the process and consultations among member states, the Commission presented the new Enlargement methodology in February 2020, with the idea of «bringing more dynamism into the negotiating process» (Milenković 2020). The Commission envisaged grouping the negotiating chapters into six thematic clusters: fundamentals; internal market; competitiveness and inclusive growth; green agenda and sustainable connectivity; resources, agriculture and cohesion; external relations. This would result

in a more credible process, involving a stronger political steer and the greater involvement of member States, greater predictability of the process (hence six clusters) including enhanced clarity on the conditions and benchmarks that must be achieved, which should result in candidates gradually being “phased in” to EU policies and allowed increased access to funding throughout the process, but would also include rolling back in the case of stagnation or backsliding in prospective members (European Commission 2020). The new methodology also allows fewer opportunities for member States to block the advancement of the process before the opening and closing of each of the current 35 negotiation chapters. This way, «[d]eeper political stocktaking should occur on eight occasions during negotiations (once interim benchmarks are met on fundamental reforms [chapters 23 and 24], before opening each of six clusters, and once overall negotiations are technically ready to close). This would be the major change in the approach leading to more focused and timed reform process pressing Government in the candidate countries to deliver tangible reforms. This should also prevent member states of introducing new conditionality once stocking is finished and clusters are opened» (Medjak 2020). The next major development was the opening of negotiations with North Macedonia and Albania in March 2020 (Council of the European Union 2020). However, in spite of the new methodology it is expected that enlargement fatigue will continue to dominate the process in the forthcoming decade (Milenković 2020).

Enlargement fatigue is one of the central issues affecting the prospects of WB accession. As outlined above, in comparison to the CEE Countries and their accession in 2004-2007, the attitudes of many member States towards expansion have changed. However, as O'Brennan has argued: «Enlargement fatigue is not a new phenomenon even if it has become increasingly associated with the Western Balkans (and Turkey). Similar patterns and impulses can be traced back through significantly longer periods of time in EU enlargement history» (O'Brennan 2014, 223). As he underlines: «concerns about the EU's ‘absorption capacity’ (defined as the EU's ability to absorb new members whilst maintaining the momentum of the European integration process) began to feature regularly in debate about future expansion, especially after the European Council requested the Com-

mission to re-visit the Copenhagen Criteria and re-evaluate the Union's 'absorption capacity' against future commitments. ... Whether invoked within the Member States or at EU level, and pertaining to a desire either to slow down or completely halt EU enlargement, the opinion usually expresses wholly negative views of expansion and alleges a fundamentally negative correlation between the widening and deepening impulses» (O'Brennan 2014, 224-225). As the 2018 Commission assessment states: «The enlargement perspective of the Western Balkans is *first and foremost in the hands of the countries themselves*. For its part, the EU *must remain credible, firm and fair*, while upgrading its policies to better support the transformation process in the region. And it must fulfil its commitments as the Western Balkans fulfil theirs – in Europe's own strategic interest». The assessment further outlines that «[t]he EU itself needs to ensure that it will be ready institutionally to welcome new Member States once they have met the conditions set. The Union must be stronger and more solid, before it can be bigger» (Commission Enlargement Strategy 2018). This phenomenon of enlargement fatigue is mirrored by its opposite – accession fatigue, which can be observed in some candidates at certain points of the long accession process (Milenković, Milenković 2013; European Parliamentary Research Service 2016).

### *3. Prospects of integration in the context of the EU crisis and enlargement fatigue*

The prospects of EU enlargement to the Western Balkans are the focus of this section, bearing in mind that multiple EU crises have diverted attention from enlargement, and that the willingness of some EU States to accept new members has decreased, while the prolongation of the process is jeopardising the Europeanisation of the region. The time has therefore come to (re)visit WB integration by exploring legal and political alternatives that would not necessarily entail full membership but would offer alternative modes of cooperation (Milenković 2020), which is done primarily from the perspective of differentiated integration (Milenković 2022).

Differentiated integration is an approach which has a long history

in the internal functioning of the EU (see Stubb 1996). It is within this internal context that differentiated integration, and its varied definitions and classifications – which include its being a «permanent and ‘normal’ feature of European integration» (Leruth and Lord 2015, 754), and a «stable characteristics of the EU legal order» (De Witte 2018, 48) – has hitherto been studied and understood. There is also, however, an external aspect to be considered, regarding the participation of (non)member States in a range of EU policies, including the Western Balkans (Milenković 2022). Holzinger and Schimmelfennig classified the differentiated integration concept in six dimensions: (1) permanent v. temporary differentiation; (2) territorial v. purely functional differentiation; (3) differentiation across nation states v. multi-level differentiation; (4) differentiation taking place within the EU treaties v. outside the EU treaties; (5) decision-making at EU level v. at [regulatory] regime level; (6) only for member States v. also for non-member States/areas outside the EU territory (Holzinger and Schimmelfennig 2012, 297).

We can consider the future of integration by looking into existing comprehensive modes of association and external differentiation. As outlined above, the 2018 projections were that the next enlargement might occur in 2025, with the immediate qualification that this perspective was highly ambitious. It therefore becomes feasible to consider the possibility of applying some aspects of the European Economic Area (EEA) model/experience in the region, or that of bringing the association process to the next level within the existing treaties. Out of seven founding members of the European Free Trade Association (EFTA, established in 1960) five – have subsequently joined the Union, and in one case – United Kingdom then left, the EU. Two members – Switzerland and Norway remained part of EFTA and two more States – Iceland and Liechtenstein – have joined. The EFTA and its members have close links with the EU: while Switzerland has its own system of bilateral agreements, the remaining EFTA Countries are also members of the EEA. As such, the EFTA Countries participate in the European internal market – whose policies have always been characterised by external differentiation (Schimmelfennig et al. 2015, 13) – and are part of the Schengen Zone. This membership of the internal market imposes an obligation to maintain alignment with the ever-

developing *acquis* governing it, «[y]et, this comes at the expense of democratic representation, as these countries do not have voting rights in EU institutions» (Leruth et al. 2022). The EEA model may have questionable applicability for the WB region, as these are rich nations intentionally opting out and not in need of the EU's stabilising/transformational power (Raik and Tamminen 2014, 48): they contribute to rather than benefit from EU funds in order to be part of internal market. It should be noted that this status entails adherence to the rules of the internal market even in the absence of participation in EU decision making. Interestingly, with SAAs this is already partially the case in the WB region, as the Countries have mostly agreed to adhere to changing *acquis* in areas such as state aid (Milenković 2019).

It is also worth considering the possibilities of extending association under the current treaties. Article 8 of the Treaty on European Union envisages the Union developing a special relationship with neighbouring Countries, aiming to establish an area of prosperity and good neighbourliness, founded on the Union's values and characterised by close and peaceful relations based on cooperation, with the Union concluding specific agreements with the Countries concerned to this end. Article 8 further allows such agreements to involve reciprocal rights and obligations as well as the possibility of undertaking activities jointly, and requires their implementation to be the subject of periodic consultation. In addition, article 217 of the Treaty on the Functioning of the European Union states that the Union may conclude with one or more third Countries or international organisations agreements establishing *an association involving reciprocal rights and obligations, common action and special procedure*. This short provision in essence provides wide possibilities for (re)imagining relations with the WB candidates. The main challenge remains how association may be extended to offer some or many benefits of membership. Gradual inclusion in the internal market would appear not be too challenging for the Union, bearing in mind the small scale of the region's economies and populations, and the safeguards on the free movement of people similar to previous enlargement rounds. This could also include the opening of structural and agricultural funds or re-creating pre-accession aid to match funds available to less developed member States, and the extension of the already wide participation of the WB

candidates in various programmes and engagements with bodies, agencies and networks.

An interesting initiative has recently emerged, calling for four step “staged accession” to the EU. It assumes candidates moving from 1) initial accession (funding level at 50% of conventional membership) – functioning association agreement; policy dialogue or observer status selectively in institutions to 2) intermediate accession (funding level at 75% of conventional membership) – more substantial participation in the institutions (e.g. with speaking rights but without voting rights in the Council and Parliament) with Countries becoming in step 3) new member states (funding level at 100% of conventional membership) – full participation in the policies of EU, possibility to accede to the Schengen area and eurozone on standard conditions (generalised QMV voting rights in the Council [no veto powers]; full participation in the institutions, subject to exclusion from veto power in Council and having a member of the Commission) and finally in the last step 4) conventional membership – full participation in all policies and institutions (CEPS, CEP 2021). This model would probably require an extensive change to the Treaties, but should be given more attention by all stakeholders.

Finally, it is worth considering three (un)likely options for the Western Balkans up to the end of next decade. Firstly, it is possible to assume that the current situation will continue. All or most of the WB Countries will remain candidates but in receipt of differing ranges of incentives and extensions/inclusions in EU programmes. This scenario is highly likely, given the unwillingness to extend membership, but would also allow some positive moves to extend funding and aid to the region as seen in recent years. The second option would be the open abandonment of the enlargement process, but with a tangible offer of differentiated integration through comprehensive association: some kind of quasi membership or offer to form a structure similar to the EEA. Lastly, the least likely scenario is granting the Countries of the region membership. Even though politically most prudent for the future and stability of both the region and the EU, this is highly unlikely, but might become acceptable if done in stages involving comprehensive cooperation and verification mechanisms (European Commission 2021c) and assuming a post-accession conditionality not previously implemented.

#### 4. Concluding remarks

The EU integration process for the Western Balkans has turned out to be a two-decade-long road to membership with no clear prospects of a conclusion in sight. With or without prospective membership, this has been and is a process of profound legal, economic and societal change. As outlined in the text, there are many obstacles and challenges in the process of joining, but the benefits are far more than merely economic. It is important to note that, bearing in mind the change it brings, there is a significant value in the process irrespective of (prospective) EU membership. The Countries of the region have benefitted and will continue to benefit from close relations with the EU and its member States, from comprehensive association agreements to cooperation in numerous fields such as energy, transport, education and science. However, given the uncertain future of enlargement, the time has come to (re)visit WB integration, including alternative integration scenarios, as recent strategic documents would indicate. Therefore, the debate on the future (non)membership options for the region, which would still afford the Union a transformative power and strong presence in the region, must be continued. Furthermore, concrete proposals and actions on the part of both the EU and the candidate Countries should follow.

#### References

Council of the European Union, Council conclusions on enlargement and stabilisation and association process – Albania and the Republic of North Macedonia, 25.3.2020, COM (2020) 57 final

CEPS, CEP, *A Template for Staged Accession to the EU*, 2021. Available at: [www.ceps.eu/ceps-publications/a-template-for-staged-accession-to-the-eu](http://www.ceps.eu/ceps-publications/a-template-for-staged-accession-to-the-eu)

De Witte, B. (2018), *An Undivided Union? Differentiated Integration in Post-Brexit Times*, in *Common Market Law Review*, 55(si), pp. 227-249

Džankić, J., Keil, S. and Kmezić, M. (2019), *Introduction: The Europeanisation of the Western Balkans*, in: Džankić, J., Keil, S., Kmezić, M. (eds.) *The Europeanisation of the Western Balkans – A Failure of EU Conditionality?*. Cham: Palgrave Macmillan, pp. 1-14

European Commission, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, 6.2.2018 COM(2018) 65 final

European Commission, Enhancing the accession process - A credible EU perspective for the Western Balkans, 5.2.2020, COM(2020) 57 final

European Commission, 2021(a), EU Enlargement [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/sap\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/sap_en)

European Commission, 2021(b), Stabilisation and Association Process [https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/stabilisation-and-association-process\\_en](https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/stabilisation-and-association-process_en)

European Commission, 2021(c), Cooperation and Verification Mechanism (CVM) [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en)

European Council (1993), European Council Conclusions, Copenhagen

European Council (1995), European Council Conclusion, Madrid

European Union (2012), EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol – press release, Brussels, 24 February 2012 5455/12 PRESSE 9, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/128138.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128138.pdf)

Eurostat (2019), Western Balkans 2019, <https://ec.europa.eu/eurostat/news/themes-in-the-spotlight/western-balkans-2019>

European Parliamentary Research Service (2016), *The Western Balkans and the EU Enlargement and Challenges*, Brussels

Georgievski, S., Pandeva, I. R. (2020), *Ending the Long-lasting “Difference over the Name”*, in *Southeastern Europe*, 44(1), pp. 1-27

Hillion, C. (2011), *EU Enlargement*, in Craig, P., de Burca, G. (eds.) *The Evolution of the EU Law*. Oxford: Oxford University Press, pp. 187-216

Holzinger, K., Schimmelfennig, F. (2012), *Differentiated Integration in the European Union: Many Concepts, Sparse Theory, Few Data*, in *Journal of European Public Policy*, 19 (2), pp. 292-305

Leruth, B., Lord, C. (2015) *Differentiated Integration in the European Union: A Concept, a Process, a System or a Theory?*, in *Journal of European Public Policy*, 22(6), pp. 754-763

Leruth, B., Gänzle, S. and Trondal, J. (2022) Chapter 1: *Differentiation in the European Union as a Field of Study*, in Leruth, B., Gänzle, S., Trondal, J. (eds.) *Routledge Handbook of Differentiation in the European Union* (forthcoming)

Medjak V., *New Methodology for Running EU Accession Negotiations*, 2020. Available at: <https://tiranaobservatory.com/2020/03/24/new-methodology-for-running-eu-accession-negotiation>.

Milenković, M. (2018), *The Transformation of State Aid Control in Serbia and EU Conditionality – Challenges of Integration Uncertainty and Reform Prospects*, in *European State Aid Law Quarterly*, 15(1), pp. 66-79.

Milenković, M. (2019), *State Aid Control in Serbia – EU Conditionality and the Challenge of Institutional Reform*. Wolters Kluwer, Cedam

Milenković, M. (2020), *EU Enlargement Strategy 2020 – Paving the Way for Differentiated Integration?*. Available at: [https://www.osorin.it/uploads/model\\_4/.files/54\\_item\\_2.pdf?v=1608022440](https://www.osorin.it/uploads/model_4/.files/54_item_2.pdf?v=1608022440)

Milenković M., (2021), *EU Enlargement to the Western Balkans – limited progress in 2021*. Available at: [https://www.osorin.it/uploads/model\\_4/.files/94\\_item\\_2.pdf?v=1639558069](https://www.osorin.it/uploads/model_4/.files/94_item_2.pdf?v=1639558069)

Milenković, M., Milenković, M., (2013), *Serbia and the European Union: Is “Culturalisation” of Accession Criteria on the Way?*, in: Laursen, F. (ed.) *EU Enlargement: Current Challenges and Strategic Choices*, Brussels, P.I.E. Lang, pp. 153-172

Treaty on the European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) (2008), Consolidated Version of the, 13 December 2007, 2008/C 115/01

The European Union Rule of Law Mission in Kosovo – EULEX. 2021. <https://www.eulex-kosovo.eu/>

O’Brennan, J. (2014), ‘*On the slow train to nowhere?*’ *The European union, ‘Enlargement Fatigue’ and the Western Balkans*, in *European Foreign Affairs Review*, 19(2), pp. 221-241

POLITICO (2019) politico.eu. Available at: <https://images.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf>

Raik, K., Tamminen, T. (2014), *Inclusive and Exclusive Differentiated Integration: Enlargement and the European Neighbourhood Policy*, in: Jokela, J. (ed.) *Multi-Speed Europe? Differentiated Integration in the External Relations of the European Union*, The Finnish Institute of International Affairs, Helsinki, pp. 45-59.

Reuters (2020), Bulgaria says North Macedonia must address historical issues or face delay on EU path <https://www.reuters.com/article/us-bulgaria-north-macedonia-eu-idUSKBN27F2VL>

Stubb, A. (1996), *A Categorisation of Differentiated Integration*, in *Journal of Common Market Studies*, 34(2), 283-295. doi: 10.1111/j.1