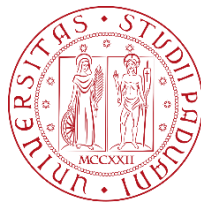


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THE IMPACT OF THE INSTRUMENT FOR PRE-ACCESSION  
ASSISTANCE ON DEMOCRATIC VALUES AND THE RULE  
OF LAW IN WESTERN BALKANS COUNTRIES

A CASE STUDY OF JUDICIAL INDEPENDENCE IN SERBIA

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## **ABSTRACT**

This thesis analyzes the impact of the Instrument for Pre-Accession Assistance on the promotion of democratic values and the rule of law in Serbia, with a specific emphasis on judicial independence. As Serbia aims to join the European Union, it is essential to observe EU standards, especially in the area of judicial reforms. The research investigates how Serbia's progress in establishing an independent judiciary is influenced by the perception of reachable benefits, EU support to meet pre-conditions, and the EU's commitment to Serbia associated with the IPA. The study uses a combination of literature-based analysis and semi-structured interviews with key stakeholders, including representatives from the European Commission, Serbia's government bodies, the European External Action Service, as well as external and independent consultants. The aim is to assess the effectiveness of IPA support in promoting institutional reforms. The mixed findings, along with other external factors, will stimulate further analysis of these issues and other case studies in the Balkan region. The thesis concludes with proposals to address the current issues affecting Serbia's judiciary, taking into account the expected future of the region.

*Dedicato a tutti quelli che stanno scappando*

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## **LIST OF ACRONYMS**

<b>AP</b>	Action Plan
<b>CAP</b>	Common Agricultural Policy
<b>CARDS</b>	The programme of Community Assistance for Reconstruction, Development and Stabilisation
<b>CBC</b>	Cross-Border Cooperation
<b>CEB</b>	Council of Europe Development Bank
<b>CEEC</b>	Central and Eastern European Country
<b>CFR</b>	The Charter of Fundamental Rights of the European Union
<b>CFSP</b>	Common Foreign and Security Policy
<b>EAR</b>	European Agency for Reconstruction
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EC</b>	European Commission
<b>ECSC</b>	European Coal and Steel Community
<b>EEC</b>	European Economic Community
<b>EIB</b>	European Investment Bank
<b>EIM</b>	External Incentives Model
<b>EU</b>	European Union
<b>EURATOM</b>	European Atomic Energy Community
<b>FFPA</b>	Financial Framework Partnership Agreement
<b>GDP</b>	Gross Domestic Product
<b>IPA</b>	Instrument for Pre-Accession Assistance

<b>IPARD</b>	Instrument for pre-accession assistance for rural development
<b>ISPA</b>	Instrument for Structural Policies for Pre-accession
<b>MFF</b>	Multiannual Financial Framework
<b>MDTF-JSS</b>	Multi-Donor Trust Fund for Justice Sector Support
<b>NIPAC</b>	National IPA Coordinator
<b>PHARE</b>	Pologne-Hongrie Assistance à la Restructuration des Économies / The Programme of Community aid to the countries of Central and Eastern Europe
<b>RoL</b>	Rule of Law
<b>SAA</b>	Stabilisation and Association Agreement
<b>SAP</b>	Stabilisation and Association Process
<b>SAPARD</b>	Special Accession Programme for Agriculture and Rural Development
<b>SME</b>	Small and Medium-Sized Enterprise
<b>TEU</b>	Treaty of the European Union
<b>USAID</b>	United States Agency for International Development
<b>WBC</b>	Western Balkans Country
<b>WBIF</b>	Western Balkans Investment Framework

## **INTRODUCTION**

The history of the European Union (EU) can be studied from different perspectives and through various theoretical frameworks developed since the first reflections about the functioning of the EU communities. The creation and development of an inexperienced supranational entity, often referred to as a “sui generis” international body, stimulated the production of theories and studies on its development. Nonetheless, while there continues to be noticeable interest in the literature regarding EU integration and the policy-making processes, the same cannot be said for broadening the number of member states. Since the inception of the EU, enlargement has been a pressing question. The main matter member states had to answer was which country was truly eligible and deserving to be a part of the Community. This issue didn't concern only rational factors such as economic indexes or the alignment with EU standards, but it was also about a fundamental overarching question: which country is truly European? This, in turn, raised another fundamental issue: does a real European identity exist? The history of enlargement and the related literature provided a partial answer to these doubts. Nevertheless, besides the cultural and economic questions that fueled debates among scholars, politicians, and even common people, the concept of enlargement has been influenced by other geopolitical issues, such as populism, economic crisis, and international wars, which slowed down the process leading to the so-called “enlargement fatigue” which will be explored later in this dissertation.

At the same time, the debate about the EU identity and enlargement is directly linked with the struggle of candidate states to join the Union, aligning with the standards and conditions set by the EU institutions. Several states – with more or less difficulties – answered the membership call expanding the Community decades by decades. Currently, the Balkan region is the last piece of Europe missing from the Union, raising new questions about the possibility of the Balkan states joining the EU

identity. The slow enlargement process regarding the Balkan region has become the principal question about whether the EU is correctly pursuing its application procedure. In the last seventy years, the EU adopted different approaches to ensure an effective enlargement strategy, but it has been always difficult to detach from functionalist, rationalist, and utility-maximization theories and to focus on the establishment of a European identity – and, in general, a constructivist approach – as a pillar of a new enlargement strategy. The same could be claimed for the candidate states, which have seen EU membership as the possibility to access several benefits such as the single market, no border control, free movement of goods and services, etc. Consequently, EU expansion has always been a matter of interest and cost-benefit calculation, which will keep shaping the actions of the EU, based mainly on conditionality. Similarly, most of the scholars and experts who addressed this topic followed the functionalist and rationalist visions since it is the most efficient way to study and understand the behavior of people and even states. Nevertheless, the current struggles of the Balkan states and the related “enlargement fatigue” have raised questions about whether a newfound approach is needed. Consequently, even in this thesis, the adopted approach will be based on analyzing the interests of both sides to pursue integration since the rationalist approach is the best way to address these topics. Nevertheless, setting a constructivist starting point may facilitate the understanding of determinate choices and preferences, establishing the ground for a new interest-based model founded on identity thinking.

Nowadays, the focus of the enlargement process mainly concerns the Balkan region, the last part of Europe not part of the community. This region is currently facing the inheritance of the communist era, which includes corruption, weak administrative capacity, poor economy, and other social issues. The European Union has always had a unique connection with this area because of its distinctive history and social

conditions. This area has been shaped by the presence of diverse religions, languages, traditions, and more making the coexistence of different populations difficult. Besides the internal issues of the Balkan region, the EU has always had an even more special relationship with Serbia, which has been holding a more influential position over its neighbors since the medieval era. As a result, the EU has adopted a different approach toward this region compared to the one it had with Central or Northern European countries due to their peculiar internal conditions, which have always required special attention.

Therefore, after the definition of the literature review and setting of the research background about the history of the EU and its enlargement strategy, the dissertation will focus on the main current measure set by the EU to facilitate Balkan states' admission: the Instrument for Pre-Accession Assistance (IPA), an economic tool to support reforms in candidate countries helping them align with EU standards and policies. The admission process of Serbia and other Balkan countries has been going on for almost twenty-five years while the IPA was launched in 2007, more than fifteen years ago. At the same time, several countries admitted to the Union in 2003 and 2007 have lately struggled to comply with the requirements and conditions in particular in the field of the Rule of Law (RoL) and democracy, which are two fundamental pillars of the EU and its identity. The current slowdown in the enlargement process after 2007 raised new questions about the validity of the EU approach and the strictness of the conditionality to access membership. The major concerns regarding the potential candidate focus on their ability to create a democratic landscape for future EU citizens. Since the main measure adopted to tackle current candidate states' issues is the IPA and considering the history of the enlargement and the related developed theories, this thesis aims to understand the impact of the IPA on the adoption of effective tools in the area of democracy, with a special emphasis on the most crucial field for Serbia, which is the judiciary.

## **CHAPTER ONE – LITERATURE REVIEW**

### **1.1. THE CONCEPT OF ENLARGEMENT IN THE HISTORY OF THE EUROPEAN UNION**

#### **1.1.1. Enlargement As a Political Weapon (1953-1960s)**

In 1957, the six founding states – Italy, France, Belgium, Luxembourg, Western Germany, and the Netherlands – signed the Treaties of Rome providing for the foundation of the European Atomic Energy Community (EURATOM) and the European Economic Community, known as EEC, which joined the European Coal and Steel Community (ECSC) already established in 1952. Four years later, in 1961, the member states had to deal with the first membership applications. The rapid economic recovery of the six states from the war convinced Ireland, Denmark, and Great Britain to apply to become part of the organizations – even though the latter always favored the special relationship with the US, establishing only intergovernmental cooperation with the continent (Emmert & Petrovi, 2014). While all the member states approved the accession of the insular state, French President Charles De Gaulle vetoed the application (unanimity was required at that time) claiming that Great Britain was too different from Continental Europe, had different economic interests, and hence would have jeopardized the development of the newborn organizations (*Enlargement of the European Union*, n.d.). Moreover, the former General feared that the US and the Commonwealth could exploit the UK to advocate for their interests: he claimed that British accession would lead to an “Americanization of Europe.” Nevertheless, De Gaulle’s adversity was not linked solely with EEC interests. In fact, his anti-British feelings developed since the Second World War (Centre Virtuel de la Connaissance sur l’Europe, n.d.). Furthermore, the French President had an interest in restoring France as a global power; for this reason, the admission of the UK would threaten France’s leadership position in the organization (Emmert & Petrovi, 2014). In the end, Great Britain was able

to become a member in 1973 only because De Gaulle resigned from the French Presidency in 1969.

Since the first enlargement round, scholars (Emmert & Petrovi, 2014) asserted that the membership procedure didn't just aim to accept new potential candidates who could improve and enforce the organization. Still, it could even be exploited to advocate for national interests or to constrain external factors that would influence the development of the EU. For this reason, in 1967, the members of the Council of Ministers were already debating about the real nature of enlargement and which directions the European Communities (ECs) would take:

“An economic community of this nature [...] would inevitably be something very different to the Community we have built up until now and to which we have grown accustomed, different from a political point of view, and naturally from an economic point of view also [...] So, ineluctably, it would not just be an enormous increase in the size of the Community as it currently exists. It would be the appearance of something entirely new and have only a distant link to what we call European integration<sup>1</sup>.”

In the following pages, it will be clear that enlargement has been a widely overlooked subject in the regional integration theory until “enlargement fatigue” emerged in the 2010s. In fact, for nearly sixty years, researchers have focused more on stabilizing the ECs rather than exploring their territorial growth. According to Schimmelfennig & Sedelmeier (2002), most of the literature on enlargement comprises descriptive and often policy-focused studies of individual cases – namely, single rounds of enlargement for particular organizations, individual member or accession countries, or even individual policy areas in the enlargement process. It

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<sup>1</sup> Council of Ministers Archives, Brussels (CMA). I/4/67 (GB2). Extract from Minutes of the restricted meeting held on the occasion of the 2nd session of the Council (Monday, July 10 and Tuesday, July 11, 1967, in Brussels)

is then assertable that in the first rounds, the enlargement was addressed from a purely rational perspective, where EU governments acted as utility-maximizers and behaved only to achieve their interests. In parallel, literature followed the same path to analyzing this concept. However, Eastern enlargement has triggered more theory-driven research, but these studies predominantly concentrate on a single round of EU enlargement. According to them, this deficit is caused by an insularity of the study of EU enlargement due to its peculiarity and the lack of comparative research designs.

#### 1.1.2. Another Piece: European Communities as Guarantors of Democracy (the 1970s)

As said before, the history of enlargement provided a partial answer to the evergreen question: does a real European identity exist? The Council of Ministers statement of 1967 traced an initial path stating that the widening of the ECs had to be faced as an entirely new concept and not as a simple broadening. In this matter, literature about the '70s added new pieces to the European integration puzzle. During the 1970s, the first criticisms emerged regarding the growth of the European Communities. Jarausch (2021) theorized that an increase in membership slowed the decision-making process and complicated the workings of the EC. This period – referred to as "Eurosclerosis" – was characterized by an economic decline triggered by the end of the post-war boom and rigid labor markets. This economic downturn fostered a deep pessimism that impacted European collaboration, with member nations reluctant to pursue integration. Furthermore, the Council of Ministers was stocked under more than a thousand European Commission (EC) proposals due to a French veto caused in turn by the "empty chair crisis" in connection with the Luxembourg Compromise. Nevertheless, the causes of the struggles of this era could be traced to other relevant grounds namely, the global economic crisis that occurred in 1973 and the downfall of the Bretton Woods system (Ludlow, 2013).

Even if the enlargement progress witnessed a decrease in speed, the following rounds didn't face any major problems. Additionally, if the 1967 Document delineated the first path of European integration, the Birkelbach Report of 1962 gave the foundation of the original discussion on what the enlargement principles are. In 1962, the European institutions answered Spain's interest to join the Communities. Nonetheless – even though the UK applied the previous year – Spain was still under the dictatorship of Francisco Franco. The opening toward new adhesion led the German member of the EU Parliament Willy Birkelbach to create the first-ever document to address the political and institutional properties of accession to the Community. The Birkelbach Report interpreted the Treaty of Rome, stating that any state eager to be part of the ECs had to meet specific criteria. The primary requirements were to ensure the existence of a democratic state and to acknowledge the values stated by the Council of Europe, including fundamental freedoms, human rights, and the RoL (Angelis & Karamouzi, 2016).

The end of dictatorships in Western Europe in the '70s opened the possibility of admitting Greece (1981), Spain (1986), and Portugal (1986) which successfully joined the Community. Some scholars claim that the negotiations ended with the membership of Spain and Portugal contributed to the transition to democracy of both countries; however, it is arguable to what extent the process impacted the transition (Fishman, 2003).

The debates characterizing the '70s enhanced the crucial view construct that the ECs represented the promoter and guarantor of European democracy. In 1973, European institutions honed this view of European integration through the Declaration on European Identity. From now on, the principles of respect for human rights, social justice, the RoL, and representative democracy were the essential foundations of the European Identity (Bulletin of the European Communities, 1973).

### 1.1.3. Pre-Accession Strategy and the Copenhagen Criteria (1980s-1990s)

The most fundamental turning point in the enlargement history occurred with the adoption of the Copenhagen Criteria by the European Council. In particular, the fall of the Soviet Union in 1989 and the deep strengthening of the Communities after the adoption of the Maastricht Treaty (1993) which introduced new political elements (namely, the Three Pillars of the European Union) pushed the member states to elaborate a gradual “pre-accession strategy” to favorite the transition of socialist countries to a liberal-democratic system. By doing so, the Eastern/Central European states had the chance to successfully reach the necessary political stability and economic development to join the Communities. This strategy created a unique opportunity to shape accession conditionalities allowing the remaining states to join. The Maastricht Treaty aimed to promote European integration to strengthen and merge the economies of each member state. The Union intended to create an economic and monetary union to unify its currency and allow for the establishment of common citizenship, as well as the free movement of all citizens between member states. This common citizenship aimed to create a vast European nation that would cross beyond the borders of individual member nations. According to the Copenhagen Criteria of 1993, a country that wants to be admitted must demonstrate:

- The presence of stable institutions that ensure democracy, uphold the RoL, protect human rights, and respect and safeguard minorities;
- A working market economy capable of withstanding competitive pressures and market dynamics within the EU;
- The capacity to fulfill membership responsibilities and commit to political, economic, and monetary union objectives.

After the Birkelbach Report (1962), the EU broadened the criteria to become a member. From 1993, a country not only had to respect fundamental principles already stated in the '60s and the '70s, but it had to become a valuable part of the Community. Consequently, having a functional economy and having the ability to commit to European obligations are now requirements to meet. The launch of these principles linked to the introduction of the co-decision procedure with the Treaty of Amsterdam (1999) and the new voting mechanisms in the Council of Ministers – which provided for the establishment of a population threshold by the Treaty of Nice (2001) – created the perfect condition to welcome the former Soviet bloc. These two conditions were necessary to ensure that many small member states would never be able to dictate what a handful of large member states would have to do.

From what has emerged until now, scholars could not identify a theoretical path to widening the European Union. EU enlargement has been viewed as a series of separate events, rather than an inherent aspect of the integration process. Most scholars faced the reasons why countries applied for membership and how the vision of member states changed throughout history. The debates on these topics contributed to establishing what can be intended as “European identity” but only a few contributions broadened the literature on enlargement (Piedrafita & Torreblanca, 2005; Wallace, 2000). It is assertable that the absence of such theories about EU integration could be also caused by the decision of EU institutions to never provide a comprehensive definition of the EU identity taking into account every aspect of European society. By doing so, scholars had difficulty elaborating an ideological path on which to base their theories.

#### 1.1.4. The Instruments of “The Agenda 2000” to Face the Challenge of Enlargement (the 2000s-)

To complete the picture, in 1999, the European institutions turned the EC Communication “*Agenda 2000: For a Stronger and Wider Union*” into a legislative package with profound consequences on the enlargement strategy. As part of evaluating the accession applications, the EC provided recommendations for strengthening the applicant countries' preparations. This was known as the “reinforced pre-accession strategy.” The strategy included a multi-year program that outlines specific commitments from the applicant country on diverse topics such as democracy, macroeconomic stabilization, and nuclear safety. The program also incorporated a national plan for implementing EU laws and regulations (known as the “Community acquis”), as well as funding from the EU to support the applicant country's preparations. The main one was the “*Pologne-Hongrie Assistance à la Restructuration des Économies*” (then changed to “*Programme of Community Aid to the countries of Central and Eastern Europe*”) known as the PHARE. The “*Instrument for Structural Policies for Pre-accession*” (ISPA) and the “*Special Accession Programme for Agriculture and Rural Development*” (SAPARD) were successively added. The PHARE program provided a budget of over EUR 10 billion (2000-2006) and had two priorities: institutional and capacity-building and investment financing (*Phare Programme*, n.d.); instead, SAPARD (2000-2006) budget amounted to EUR 520 million a year and it concerned the improvement of marketing channels, food quality control, and processing structure in the agricultural sector; finally, ISPA (2000-2006) had a budget of 1.040 billion EUR to provide financial support in the environment and transport sectors (*The Challenge of Enlargement*, n.d.). A horizontal regulation<sup>2</sup> guaranteed coherence between the

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<sup>2</sup> Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89

different assistant forms. Finally, after the admission of Austria, Finland, and Sweden in 1995, the EU was ready to face the greatest enlargement round it has ever had to face since its foundation. For WBCs another program was created in 2000: “*The programme of Community Assistance for Reconstruction, Development and Stabilisation*”<sup>3</sup> (CARDS) aiming to rebuild the Yugoslavian region with a budget of 4.65 billion EUR after the war that led to the end of the federal state. The program provided a strategic framework until 2006 setting long-term goals and primary fields that required communitarian action – namely, the RoL, democracy, stabilization of the region, defense of minority rights, and regional cooperation. The framework included multiannual programs with a conclusive assessment of progress and the amounts used. The multiannual programs were managed by the European Agency for Reconstruction (EAR) established in 2000.

Despite the mixed results of the three pre-accession support instruments, the Central and Eastern European Countries (CEECs) succeeded in reaching crucial progress in reorientating their economies from the communist to the capitalist-liberal approach. A decisive role was played by international and domestic investors in the transformation, moving massive amounts of money into the region and stimulating in turn social and economic development. The management of billions of euros of investments by the EU and the private sector represented a great challenge for the European institutions, which also had to deal with the admission negotiations with the CEECs. The Union area and population would have increased by one-third, but the Gross Domestic Product (GDP) would have only increased by 5%. Out of the hundred-five million people residing in CEECs, over ninety-eight million lived in areas where the per capita GDP was less than 75% of the average in the Community

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<sup>3</sup> Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia

(European Union, 2015). In parallel, the EU had to face severe consequences concerning cohesion policy. Economic, social, and territorial cohesion policies aim to decrease inequalities in the development levels in its various regions; this strategy is based on focusing the investments on the least developed territories of the EU states. Since the enlargement would have created a new group of member states with an income of less than 40% of the EU average, virtually the entire area would have been interested. PHARE, SAPARD, and ISPA helped to mitigate these differences (*The Challenge of Enlargement*, n.d.). Thanks to this policy, Hungary, Poland, Czech Republic, Slovakia, Slovenia, Latvia, Lithuania, Estonia, Malta, and Cyprus joined the organization in 2004, while Bulgaria and Romania did it in 2007. As shown, from the late '90s, the European institutions actively engaged the potential member countries by introducing tools to help them, membership is no longer considered a matter of who is eligible, but to support countries to become eligible. At the same time, the introduction of financial instruments to assist candidate membership shifts the debate on EU enlargement from defining what is the European identity and who can be considered part of it, to assessing the fulfillment of the EC requirements by the third countries. As will be clear in the following chapters, part of the literature from now on will address the benefits and the consequences of this innovative approach.

#### 1.1.5. The Accession Process of the Treaty of Lisbon (2007)

In 2007, twenty-seven member states ratified the Treaty of Lisbon, transforming the constitutional framework of the EU and outlining the accession process in Article 49 of the Treaty of the European Union (TEU). From that point forward, a country aiming to join the EU must meet three criteria:

- Must be a European state;

- Must respect the shared values outlined in Article 2 of the TEU (human dignity, freedom, democracy, equality, the RoL, and human rights);
- Must fulfill the eligibility conditions, known as the Copenhagen Criteria.

The first country to fulfill all the Accession Process steps specified in the Treaty of Lisbon was Croatia which became a member in 2013, ten years after its candidacy application in 2003.

The European Union is often referred to as a “sui generis” organization. Since its foundation, the main aim of the member states has not been to create just mere intergovernmental relationships, but to establish an inexperienced international organization based on the integration of the populations, the cooperation of governments in various sectors, and the shift of competencies toward supranational institutions. For this reason, admitting a new member didn't simply imply increasing the number of participants, but it meant adding a piece to the European integration puzzle. European leaders understood this concept ever since the Treaties of Rome; consequently, they carefully used this instrument in the past years, minimizing the possible collateral effects for the Union and the applicant and even maximizing the organizations' interests.

#### 1.1.6. Why Enlargement?

Considering what has been detected by the literature review and, consequently, the history of enlargement, three main reasons can be highlighted to understand why a country wanted to join the ECs. The first reason is related to the economic advantages. The fast recovery from the Second World War in the 1950s-1960s pushed the UK, Denmark, and Ireland to join the Communities. The appeal of greater commercial access linked to a wealthy market attracted many countries over the years, especially those with an economy heavily founded on agriculture. Since 1962, the EU has a greatly financed Common Agricultural Policy based

on substantial subsidies. Similar reasons regard labor mobility. The principle of free movement of workers helped those states with high unemployment and surplus labor force.

The second category of reasons concerns geopolitical motives. This issue dominated European debates during the end of the Cold War in the '90s. Joining the ECs meant moving far away from the Soviet Union's sphere of influence and not getting marginalized by the transatlantic security dialogue. Moreover, more involvement also meant having a voice in common foreign policy.

Thirdly, several political considerations motivated the country to apply to the ECs. For many nations that were once locked within the Soviet bloc, EU membership symbolized the "return to Europe" that their citizens had demanded when the communist regimes collapsed. The two reasons mentioned above still have a prime role in the membership debate. As highlighted in the following paragraphs, the post-Cold War transformation has not been achieved yet. Moreover, the tension in international relations caused by the US, China, and Russia has led scholars to question whether the EU will play a strategic geopolitical role in the future.

In all three instances, the symbolic act of becoming part of "Europe" was viewed as significant, if not more so, than any concrete advantages that EU membership could offer. A slightly more tangible hope was that membership could strengthen emerging democratic systems in prospective member countries. The process of Europeanisation could support democratization in at least three ways. Firstly, connecting to the economic aspects mentioned earlier could introduce a level of prosperity or the prospect of future wealth, reducing the likelihood of a resurgence of extremism. Secondly, aiming for EU membership could provide a clear roadmap for a country that might otherwise find it challenging to find its bearings after overthrowing a tyrannical regime. Thirdly, the EU

incorporated a conditional aspect in its membership offer that would serve as a powerful deterrent to straying from the path of reform and democratization.

## 1.2. THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE TO CHANGE THE ENLARGEMENT PROCESS

### 1.2.1. What Went Wrong?

Many scholars (Börzel et al., 2017; Hagemann, 2019; Verheugen, 2013) argue that the two rounds of EU enlargement in 2004 and 2007 happened too quickly and were not adequately prepared. The adopted measures didn't produce the desired results, and the 2008 recession further delayed the transformation process and weakened national economies. Additionally, in some Eastern and Central European countries, the RoL and respect for human rights had to be reinforced while corruption remains a significant problem. Meanwhile, the criteria for joining the EU have become tougher after the Treaty of Lisbon, which should have aimed to ensure proper preparation for potential members but has lacked any strategic direction and functions in a lengthy procedural way. As a result, Croatia was significantly affected as the first country to pass the new process. In this regard, the literature states that issues related to enlargement have various natures.

Börzel et al. (2017) addressed the economic point of view stating that the EU had a superior interest in defending the needs of its most advanced countries since they are those who govern EU integration. Consequently, implementing financial instruments – namely, the PHARE program, the SIPARD, and the ISPA – was required to help candidate countries reach the same economic level as member states. Nevertheless, the Eurozone crisis showed the lack of EU responses to the financial slowdown. Not only did the new members struggle to maintain an efficient national economy, but even the old ones encountered severe consequences. The authors argue that at the same time European legislation, mainly based

on the common internal market principle, worsened the development of the different economies. The large number of regulations and requirements raised the administrative costs for both the national states and the private companies.

At the same time, Hagemann (2019) pointed to the common currency claiming that it eliminated the principal state instrument of competitive adjustment (i.e., the exchange rate). Even though the free movement of people helped states manage unemployment and surplus, nothing has been significantly done to limit the member states' cultural, linguistic, and educational barriers. The same problem is traced to the slow national bureaucracies that increase the administrative obstacles reducing the passage of potential workers. According to him, one of the main causes of this issue could be the low capacity of the national administration to absorb European cohesion fund money.

Finally, Verheugen (2013) looked at the structural characteristics of candidate countries realizing that, after many years of integration, the culture of nation-states in the EU has proven to be much stronger than anticipated, carrying with it both positive and negative consequences. A study on corruption in the EU has revealed that the EU has limited ability to eradicate the underlying causes of corruption in any state, and may even exacerbate the issue through excessive rule-setting and transfers of EU funds.

In general, after the first three enlargement rounds, the literature shifted from analyzing the reasons why countries wanted to join the EU and the approach of EU institutions toward candidates, to assessing what were the consequences of the membership broadening. The instruments implemented by the EC have been deeply analyzed by experts and scholars which identified critical deficiencies in the EU approach toward the candidates. Moreover, only after the last enlargement round did the literature start to see the EU enlargement as a crucial part of the

European integration history, since it has played a fundamental role in defining the European identity.

### 1.2.2. The Instrument for Pre-Accession Assistance

In 2015, the Business and Strategies Europe institution released a Final Evaluation Report (2015) supported by the EC to address the benefits and the consequences of the main pre-accession instrument until 2007 – namely, the PHARE program. More specifically, the major issues were related to a lack of potential connection between the financial assistance programming and the policy dialogue with the candidates, poor preparation for the assimilation of the Acquis, and vague project design of the implemented plans. Regarding CARDS, even this program has been criticized by the EC. The EU institutions recognized the efficiency of the EAR support in implementing the programs, the quality of its results, and the attention raised among the beneficiaries in planning and strategic thinking. Nevertheless, the EC emphasized the difficulties of CARDS and the EAR in including beneficiaries in all the stages of the implementation of the programs due to the lack of capacity from the beneficiaries' side. Moreover, CARDS most of the time included goals that were unrealistic and impossible to reach considering the resources of the WBCs. The lack of a co-finance mechanism contributed to the low efficiency of the program (Aigner et al., 2013).

Therefore, the EC decided in 2007 to introduce the IPA, a pioneering mechanism that replaced the former assistance programs. Unlike the previous instruments, both EU candidate countries and potential candidates can access the IPA funds, expanding the scope of the assistance provided. Moreover, the new regulations smoothed the guidelines governing access to funds making the process more efficient and accessible. IPA III represents a policy-driven approach placing the central requirements for EU membership at the core of the program.

The pre-assistance instruments were introduced progressively over the last twenty-five years and aimed to give more responsibility to the applicants. After 2000, the focus shifted from establishing technical requirements of the EU acquis to facing general socio-economic and governance issues that affect WBCs. The new strategy should have benefits both for member states and the aspirants: focusing on rigorous political/social/economic goals will push the national governments to adopt new legislation that will facilitate the enlargement process. What has divided scholars' concerns about the IPA reaching its goals in the last seventeen years? Here, researchers have written several papers regarding the success of IPA both generally and addressing singular countries. Even though few attempts were made to launch an alternative to the IPA (Mihajlovic, 2023), currently, there are limited opportunities for substitute approaches. Others more pessimistic claim that if the successor of the IPA continues with the same approach, it would signify the end of any further hopes of enlarging the EU, marking the conclusion of the EU's most successful foreign policy ever. Koeth (2014) stated that before 2007, candidate countries showed an insufficient capacity to manage EU funds and their related projects. Consequently, the EU had to sharpen, and not broaden, the criteria for accreditation.

### 1.3. THE STRATEGY FOR THE WESTERN BALKANS: HELPING RATHER THAN IMPOSING

#### 1.3.1. A New Vision

Unlike most Central and Eastern European countries, the journey of Western Balkan Countries (WBCs) – namely, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Kosovo\*<sup>4</sup>, and Serbia – to membership started after the collapse of Yugoslavia in 1999. The same

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<sup>4</sup> From now on, Kosovo will be addressed with the asterisk due to its peculiar political position in the region. This decision respects its status and the UNSCR 1244/1999 Resolution.

year, the EC launched the “*Stabilization and Association Process*” (SAP) to reapproach the WBCs, a new framework part of the good neighborly relations of the EU that provided regional cooperation, financial assistance, and trade relations. The contractual relations were formalized under “*Stabilisation and Association Agreements*” (SAAs). Thus, the EC shifted from an approach purely based on setting principles, requirements, and standards that the candidate had to satisfy to a strategy characterized by helping and providing guidelines to facilitate the transition of WCBs. In other words, the EU didn’t just open the gates to these countries but it was also inviting them to join the organization. In parallel, the literature adopted a different study methodology to answer the original question: which country is eligible and deserving to be a member of the Community? The enlargement fatigue linked to the weaknesses of WBCs divided scholars on two sides: those who claim their access will jeopardize the European identity and will deteriorate the overall economic status of the EU – which is already facing serious issues such as the consequences of the pandemic, the Russia-Ukraine war, and the competition with USA and China – and a less popular side that believes the EU enlargement should not be addressed only from economic and political factors, but it must be faced as the process of “Europeanization” of the continent where the fundamental values of the EU constitute the pillars of the membership. Until the creation of IPA, EU institutions and scholars tried to move away from the instrument-oriented perspective and the logic of utility maximization; nevertheless, even now, literature has always stitched to these kinds of considerations without leaving the logic of interest. According to Piedrafita & Torreblanca (2005), the rationality of enlargement should be based on the “logic of appropriateness”, in this approach, actors consider not only the potential benefits of their actions but also how norms and principles might affect a negotiation process. This sociological institutionalist approach emphasizes the impact of rules and values, which are internalized by members of an organization so that decisions align with them. The

rationality of the actors is considered contextual and derives from the identity of the community they belong to, rather than being purely instrumental. Consequently, the EU's preferences should be established beforehand based on the definition of shared identity, leading to a similar approach. Alternatively, a collective decision-making process can occur to determine the appropriate course of action in line with common values. Either way, the goal is to foster a sense of unity and establish strong bonds of solidarity among those considered part of the same community. Only through this path, the EU mission of defending equality, pluralism, justice, tolerance, non-discrimination, and solidarity – which are the basis of the EU integration and the values of EU enlargement since the ‘70s – will be accomplished.

#### 1.3.2. Is Enlargement Fatigue a Symptom of a Weak European Identity?

With the introduction of the accession process by the Treaty of Lisbon, the EC gained the role of manager of the EU enlargement process implementing a strategy of “Europeanization” – which aimed to “modernize” and “democratize” transforming the fragile side of Europe. The immense effort to save the common currency destabilized by the eurozone crisis and to constrain its effects on old members such as Spain, Portugal, and Greece pushed the EC to reevaluate its approach. Inevitably, the change from an “enlargement enthusiasm” to an “enlargement fatigue” had the most profound impact on the remaining countries outside the EU – namely, the Western Balkans. “Enlargement fatigue” is intended as the inclination of the EU institution to not accept any other member after 2007 (besides Croatia in 2013) linked to the difficulties for candidate countries to match the accession criteria posed by the EU which is leading to a slowing down in the enlargement process (Szolucha, 2010). The EC’s will to be cautious is also funded by the fact that WB has an economic and institutional system way weaker than some EU countries – such as Bulgaria and Romania – which still present huge

lacks with the other members (O' Brennan, 2013). On the other hand, EU institutions have recognized the progress made by WBCs, considering the large number of reforms and standards the EU requested for this region. Indeed, what impedes the enlargement procedure is related to more profound issues rather than just observing membership requirements and enhancing institutional structures. In this regard, what matters concerns the capacity of WBCs to respect the values and principles stated in the fundamental Treaties. As emerged from the history of the EU, the progression of the EU integration has been characterized by a widening of the definition of what is the European identity. In the '70s, the Communities became the "guarantors of democracy" while in the '80s the Copenhagen Criteria included respecting the RoL, protecting human rights, and safeguarding minorities in the needed criteria to satisfy to be admitted in the international organization. Consequently, it is assertable that the above-mentioned values constitute the fundamental pillars of European identity. For this reason, someone could claim the membership of WBCs such as Serbia, Bosnia, or Montenegro – largely affected by corruption, organized crime, and weak institutional framework – could represent a weakening of this identity. To avoid regression, the new EC that will be elected in 2024 must rethink the enlargement concept as a process of "Europeanization" where the fundamental values of the EU lay the foundations of the membership procedure. Unfortunately, most of the relevant literature has been focused on this topic during the 2000s and the early 2010s when the enlargement enthusiasm prevailed over enlargement fatigue didn't affect yet. More recently, the deceleration of the membership process due to the candidate's complications in meeting the set goals linked to the occurrence of global events that affected the EU (namely, the Eurozone crisis and the mass migration of the early 2010s and then the recent COVID-19 pandemic and Russian-Ukrainian war) have swung the attention of the EU institutions and the scholars to other topics.

## **CHAPTER TWO – RESEARCH BACKGROUND**

### 2.1. DEFINING THE EU IDENTITY

#### 2.1.1. Multiple Faces of the EU Identity

The questions about the enlargement process that have affected the history of the EU are extremely close to what can be intended as the “European identity.” As asserted in the first chapter, the requirements set by the European institutions and the official statements that characterized the enlargement gave a partial answer to the question: is there really a European identity? The first doubts arose in 1961 – when De Gaulle stated the UK could not be part of the ECs due to its different interests in respect of the continental countries – then the debate recently reopened due to the enlargement boom of 2004 and 2007 and the subsequent opening of the enlargement fatigue period. Nowadays, the expression “European identity” encompasses different aspects and phenomena. Abandoning the logic of interests and approaching the idea of appropriateness, which involves defining what attributes distinguish the EU identity, could be a logical start to understanding who could be eligible to be part of the EU. Before starting, it must be stated that the term “European” cannot be limited to only one definition since it combines several cultural, historical, and geographical factors that contributed to the formation of the European identity (and, consequently, the EU identity).

#### 2.1.2. Why Defining Identity Matters

Defining the identity of a certain group of people, or in this case of a group of nations, is not only a matter of listing the specific characteristics that differentiate them from the other groups, but it is a necessary step in the evolution of every civilization and, in turn, of the EU integration process. The definition of an identity is composed of three different steps: firstly, the group sets a series of values, norms, and principles that normalize the ground rules of any political, sociological, and economic aspects of

that specific society to establish the “we.” Secondly, the process continues with self-identification through a self-recognition moment: people recognize those social rules by sharing their definitions or by re-interpreting their meanings, consequently developing a sense of belonging. When a certain degree of homogeneity is reached and the process of convergence is initiated, the group – by reflecting its unique features – comes in contact with other individuals that will reflect their image and characteristics. The outcome of this last step is defined by the degree of openness or closeness of both clusters and it will outline who will be included and excluded in the community. According to Cerutti & Lucarelli (2008), strong cultural and political identity are necessary features to stabilize institutions and to achieve consensus. Similarly, Fukuyama (2001) asserted that social capital – a network of relationships characterized by shared norms, expectations, practices of reciprocity, and the widespread presence of trust and civiness (or in other words, the identity) – determines the ability of people to cooperate and organize leading to a dense civil society, which is a pre-condition for a robust political community and, in turn, for a cohesive community of subjects. In other words, having a defined identity is fundamental for (political) legitimacy. A new political entity can only reach a critical point of acceptance when people realize that unity is not only beneficial for their well-being but also significant for their collective life. This means that they would understand that decisions on crucial matters like global openness or isolation should not be left to the veto power of national governments or the forces of globalization. Instead, these decisions should be made within the new political entity, regardless of the chosen method of governance (federal, semi-federal, multilevel, etc.). The core condition of substantial legitimacy is the political identity or self-identification of the people involved. Only when the public, when perceives itself as a single actor, sees institution building or policymaking as legitimate, can it create meaning for the recognition of the new political entity.

### 2.1.3. Theoretical Approaches Presented Over the Years

In their work, Schimmelfennig & Sedelmeier (2002) offered an analysis of the enlargement process from the perspective of the rationalist and the constructivist approaches. The latter affirms that costs and benefits determine the result of the application by potential members, the supreme goal here is to maximize the expected outcomes of both member states and third-state decisions. In other words, a member state is favorable to accepting an outsider into the EU and the outsider state is eager to strengthen its institutional connections with the organization only under the assumption that the benefits gained from the expansion will be positive and surpass the costs of both. However, this hypothesis raises the question of the addressed costs and benefits. On this matter, the predictions made by rationalist theories differ significantly. European institutions adopted this approach since the first enlargement rounds and still struggle to detach from it. In this regard, De Gaulle's intervention in 1961 on the UK application was emblematic when he stated the incompatibility of the insular state's interests with the rest of the continent. From the opposite perspective, constructivist theory explains enlargement toward a sociological lens, which does not start from actors' preferences but from an "organizational" level. Enlargement decisions, according to its supporters, are based on cultural factors intended, in this context, as the "community" or "cultural match" which signifies the level of shared collective identity and fundamental beliefs among both members and non-members. To analyze the EU expansion process, it is crucial to determine the values and norms that define this identity. The authors argue that the Eastern enlargement, which arose after the decline of Yugoslavia and URSS and the subsequent desire of CEECs to join the EU, is related to both constructivist and rationalist beliefs since the CEECs' pursuit of EU membership is driven by the ambition to "return to Europe" detaching their "Eastern" identity, and seeking

recognition as part of the European international community, aligns with constructivist arguments.

At the same time, Risse (2005) addressed the topic of collective identity from the point of view of the neofunctionalist theory. More specifically he started from the studies of Ernst B. Haas and Karl W. Deutsch who in the '50s included identity-related concepts in their work on European integration. This approach is founded on two strands: functional spill-over and political spill-over. In the first one, placing a specific sector under the authority of a supranational institution after the decision made by national governments provokes pressures to expand the competence of that institution to related policy areas. Completing this functional spill-over, there is the political spill-over, where both supranational and national actors advocate for additional power expansion for further integration to accomplish political interests. At the sub-national level, interest groups welcome the gains of integration transferring their demands and expectations to the new center. At the supranational level, the institutions would similarly upgrade the common interest encouraging the transfer of loyalties and supporting European policies and solutions. About transferring competencies, Haas discussed the idea of "shifting loyalties" toward supranational institutions, while Deutsch integrated the concept of "sense of community" into his understanding of integration. He suggested that collective identity plays a significant role in the integration process, even though it was not clear how identity formation would relate to it. While they shared the idea that collective identification with the community was a measure of integration, Haas didn't believe that common identity was EU integration starting. He suggested that the interests of specific national groups dominate the community formation, which in turn affects the benefits created by the transfer of competencies leading in turn to the creation of a common identity. In other words, integration is still driven by instrumental rationality but with an orientation to supranational solutions since they

represent the best ones to promote their interests. Values and ideas are fundamental parts of actors' interests; nevertheless, identification with Europe was not a necessary precondition for integration. Nonetheless, the increasing identification with the “new center” caused by the creation of a common supranational solution creates further integration. Fifty years after the publication of Haas’s work, the exploration of European identity has become a central focus in European studies. According to Risse, Haas correctly addressed the concept of multiple loyalties, but the European identity formation should not be faced necessarily as the decrease or the replacement of national ones. In this case, nations and Europe can be defined as “imagined communities” where individuals can be part of both without diminishing or canceling the other one. There are two ways to think about multiple identities. First, identities can be nested like Russian Matryoshka dolls. Nevertheless, a sense of hierarchy between the sense of belonging of people is still present. In this case, the EU defines the exterior border while regions or nations compose the core. Second, the conceptualization of the link between the EU and national identities can be addressed according to the “marble cake” model. Here, it is not possible to separate and hierarchically organize an individual's identities since one condition of the model is that European identity might mean different things to different people. For example, admission to the EU might provoke a profound change in the national identity and the meaning that people gave to it before membership. In the “marble cake” model, the EU identity is connected with existing national identities, leading to divergent identity results.

The question concerns now whether the EU can develop this identity and be recognized as legitimate by the European community. The current debate that is lighting up the European arena is the clash between those who believe further integration is needed to achieve the EU's full potential and those who claim that national sovereignty must be preserved since the EU is struggling to correctly tackle citizens' problems. In the last

twenty years, national governments and the EU have had to face several issues such as the effects of globalization, the financial crisis of 2008, the Eurozone crisis of 2011, the European migrant crisis of 2015, the Covid pandemic of 2020, and the Russian-Ukrainian war of 2022, that jeopardized the national and supranational European political system. From one perspective, states could not effectively tackle these issues due to their cross-border nature. Nevertheless, the EU lacked a common and strong response leading common people to ask whether the EU has the capacity (and the willingness) to fight for people's difficulties.

Regarding this debate, twenty years ago Fossum (2003) presented two solutions that can be exploited even nowadays. The first one concerns the building of constitutional patriotism: the integration of democratic values and human rights within a constitutional framework encourages the acceptance of an authority system embedded in the Constitution. This cohesion forms the basis of constitutional patriotism, binding citizens not through conventional pre-political ties invoked by nation-states, but rather through their commitment to democratic principles and human rights. Recognizing others as rights-holders is central to this allegiance, ensuring both individual self-awareness and a collective sense of community membership. The adoption of the Charter of Fundamental Rights of the European Union (CFR) in 2000 is the outcome of implementing this approach. The second one instead promotes the recognition of the so-called "deep diversity." Deep diversity is a term that describes a situation where a variety of ways of belonging are recognized and accepted within a single community. This type of diversity concerns not only ethnic and cultural variety but it is acknowledged and accepted politically and legally in three main ways. Firstly, the community is affected by the lack of consensus on a common societal goal. This can be caused by diverse perceptions of society's cultural, national, linguistic, or ethnic makeup, leading to varying views on collective objectives. This is evident in multinational and polyethnic communities like the EU.

Secondly, after acknowledging dissimilar collective goals, society seeks to satisfy all the sub-group interests, allowing them to maintain their distinct identities. Lastly, groups perceiving themselves as unique actively work to preserve their individualism.

#### 2.1.4. EU identity as a “community of values”

Now that the two perspectives have been presented, defining the EU and its identity is necessary. On this point, Lelieveldt & Princen (2023) presented their idea of the EU as a “community of values.” During the evolution of the communities, on several occasions, European institutions committed to promoting and defending a set of values and norms that are still considered the primary sources of European Union law. As we already know, in 1962, the Birkelbach Report specified that the primary requirements to join the Communities were to ensure the existence of a democratic state and to acknowledge the values stated by the Council of Europe. Besides, the EU's commitment toward these rights and values was clarified only in 1987 in the preamble of the Single European Act, where it is mentioned that the national governments are willing to promote democracy based on the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1953) of the Council of Europe. The importance of these rights became even stronger when the European Council included them in the Copenhagen Criteria that potential members have to satisfy to be accepted. From that moment, every country had to ensure institutions' stability to guarantee the respect of minorities, the RoL, democracy, and human rights. Subsequently, the Treaty of Amsterdam (1999) – besides asserting for the first time that these values are the EU funding principles – introduced a new procedure. This process enabled the European Council to identify a “serious and persistent breach” of these values by a member state. If the member state failed to rectify the identified issues, the Council was authorized to enforce specific sanctions. Finally, in 2009,

the adoption of the Treaty of Lisbon expanded the list of the principles asserting that:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the RoL, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Article 2 TEU).

Moreover, the Treaty of Lisbon made the CFR adopted in 2000 legally binding, which enshrines several economic, social, and political rights for European Union citizens and residents. Nevertheless, founding a democratic community does not mean just implementing a diverse political system but recognizing some values that concern three different societal levels. A democratic community is primarily defined by the concept of self-governance or the people's sovereignty and the mutual acceptance of citizens as free and politically equal which are the pillar values of democracy. Secondly, citizens must support their country's regime, provided it is a democracy and not an autocracy. The final level involves achieving political goals through the creation of collectively binding decisions. Such objectives are always subject to debate, which is an essential part of the democratic process. Therefore, democracy is not based on consensus on the political agenda, but rather on adherence to the actions enshrined in the Constitution to manage everyday political conflicts (Fuchs & Klingemann, 2002).

Unfortunately, the ongoing rise of far-right parties and populism changed (and will change) this interpretation. Currently, the EC started the infringement procedure toward only Hungary and Poland raising questions about the real commitment of the EU to supporting determined minorities such as immigrants or LGBT+ followers or to ensure the application of the RoL. These internal fights between national

governments and EU institutions jeopardize the common view against discrimination and the real meaning of protecting human rights and, in parallel, the enlargement process of WBCs. The majority of the WBCs indeed struggle to fulfill these commitments but if even member states are not able to respect such basic rights how would it be possible to ask the same to candidate states?

#### 2.1.5. EU as a Progressive Alternative

The last pages have been used to explain why identity is a fundamental matter for the EU integration process, what approaches have been used to address this topic, and what it intended as “EU identity.” In general, being able to define the identity of a certain community, in this case, the community of states that are part of the EU, is a fundamental step to recognizing the institutional framework that regulates that certain community as their legitimate representative and carrier of the common interest. Then, following the constructivist and neo-functionalism approaches, it has been shown as a valid alternative to the rationalist instrumental method. The EU can address the enlargement question by focusing on who can fit with the definition of the EU identity, which does not necessarily replace the national or local one. By “shifting loyalties” to a supranational institution, a community of people can better pursue their interests and at the same time maintain their identity. Finally, the logic of appropriateness concludes with the list of the principles that characterized the EU identity, which are enshrined in the Treaty of Lisbon and the Charter of 2000.

In his book “*Embattled Europe: A Progressive Alternative*” Jarausch (2021) presents his idea of the EU defining it as a “progressive alternative.” The end of the communist era represented a new beginning for the Eastern countries – including the WBCs – that opened new political, economic, and sociological horizons for the first time. Moreover, the European integration progress led to the adoption of several benefits that could

interest future potential members: the continued rise of living standards, no border controls, no internal taxation and the single market, the single currency, and the common monetary policy. Above all, what interested the CEECs was the end of the dictatorship, the possibility of regaining human rights denied for decades, and the opportunity to access the advantages of economic liberalization and the competitive market. Consequently, all the presented features characterize the progressive alternative that the EU offered to the former communist states. According to the author, the return of the East to Europe has inspired some convergence of values on the Continent showing that the response of the Eastern countries to join the EU was not dictated by purely ideological reasons but by the exhausted people who only wanted to improve their living standards joining a valid alternative to the dictatorship. The following sub-chapters will be exploited to understand how much the European institutions' tools – above all, the IPA – have helped the WBCs to tighten the gap between their communities and the EU standards.

## 2.2. THE EU STRATEGY TOWARD THE WESTERN BALKANS COUNTRIES FROM THE 1990s

### 2.2.1. The Balkan Wars and the Stabilization and Association Process

The history of the WBCs is peculiar to the formation of the European continental system. Several linguistic heritages, the influence of the Ottoman Empire, and the establishment of different religions enrich this special area, but at the same time create deep cleavages between all the countries which still now affect the life of Balkan people. The peak of the tensions among WBCs occurred after the death of Yugoslavia's leader Joseph Tito in 1980 which marked the end of a united WB region. In 1989, the Republic of Serbia stated it aimed to form a "Greater Serbia" that included all the Serbian minorities in North Macedonia, Bosnia, and Croatia. Nevertheless, in 1991, Slovenia and Croatia announced their independence which was tackled by Serbia with violent repression. At

that time, the relationships between the Yugoslavia Federation and the ECs were regulated by a Cooperation Agreement entered into force in 1983, which contained provisions concerning financial aid, trade, and cooperation in the different areas. Nonetheless, the lack of a common foreign affairs policy in the ECs left an open door for the United Nations and NATO to deal with the civil war that started after the Serbian repressions. Nonetheless, the bilateral relationships between the two parties continued even in the initial phase of the war, and in December 1993 they signed a new agreement to provide humanitarian aid: the Juppé-Kinkel Plan. The month before the signing of this provision, the Maastricht Treaty entered into force founding the Common Foreign and Security Policy (CFSP), but no military intervention was deployed by the EU which left the member states the liberty to join the UN and the NATO missions led by the United States. The clash (but not the acts of violence) ended in 1995 with the signing of the Dayton Agreement which recognized the independence of Croatia and Bosnia-Herzegovina (Centre virtuel de la connaissance sur l'Europe, n.d.; European Commission, 1990).

The end of Yugoslavia represented thus a new beginning for both the WBCs and the EU, which had to normalize its relationships with the recently established independent countries. Accordingly, in 1999, the EU adopted the Stabilisation and Association process for Bosnia-Herzegovina, Croatia, Macedonia, Albania, and the Federal Republic of Yugoslavia (Montenegro and Serbia with Kosovo). The strategy was part of a Communication<sup>5</sup> of the EC to advocate for the establishment of a region of political stability and economic prosperity based on:

- Democracy and the RoL;

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<sup>5</sup> Communication from the European Commission to the Council and the European Parliament on the stabilisation and association process for countries of South-Eastern Europe

- Respect for minorities and human rights; and
- Economic restoration.

The strategy included even the possibility of adopting Stabilisation and Association Agreements, which were bilateral agreements between the EU and the WBCs part of the SAP to help the beneficiaries fulfill the Copenhagen Criteria. Each of them included the creation of a Stabilisation and Association Council, a Stabilisation and Association Committee, and a Stabilisation and Association Parliamentary Committee to supervise and direct the implementation of the adopted projects.

The SAP and the SAA were also integrated with the Council's decision<sup>6</sup> to institute the Stability Pact for South Eastern Europe (1999). The decision sought to organize a conference involving third states and international organizations to develop measures for the region's longstanding stabilization, security, democratization, and economic reconstruction and development. Additionally, it aimed to establish lasting good-neighborly relations among these states and with the international community. In 2008, the tool was replaced by the Regional Cooperation Council.

#### 2.2.2. Thessaloniki Summit (2003) and the Following Programs

The end of the Balkan wars and the beginning of the enlargement negotiations, which led to the enlargement boom of 2004 convinced the European institutions to further strengthen the SAP and SAAs considering their (limited) success as well. Since 1991, thanks to its various programs, the EU allocated almost 7 billion EUR, while in the year 2000, another six-year program amounting to about 4.65 billion EUR was signed with the beneficiaries. Considering the 1998-2002

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<sup>6</sup> Common Position of 17 May 1999 adopted by the Council based on Article 15 of the Treaty on European Union, concerning a Stability Pact for South-Eastern Europe

period, 77% of all funds have been contracted and 58% disbursed. It must be noted that the rate of successful implementation varies between the countries. For example, Serbia and Montenegro (including Kosovo) had the highest rate of implementation – 98% and 77% of these have been paid (*The Thessaloniki Summit, 2003*). Consequently, the representatives of the EU institutions together with the beneficiaries met in Thessaloniki to introduce innovative features that would enrich SAP and to create a permanent forum to address priorities and obligations. The Thessaloniki Summit held in June 2003 culminated with the adoption of a Declaration of commitment by the WCBs to meet the Copenhagen Criteria and SAP principle to follow the same path as the ten countries that joined the EU in 2004. The endorsed commitments became part of the “Thessaloniki Agenda.” Furthermore, from that year on, it would be possible for WCBs to participate in some Community programs. Particular attention was paid to fighting organized crime and corruption (*Eu-Western Balkans Summit Thessaloniki, 2003*).

In 2006, the EC addressed the progress of the achievements of the WCBs in light of the upcoming introduction of the IPA instruments in 2007 (addressed in the following sub-chapter) and the consequent end of the previous three instruments – namely SAPARD, ISPA, and PHARE (addressed in the previous chapter). The EC recognized the efforts of the WCBs in advancing the enlargement fulfillment criteria and at the same time detected some weakness within the beneficiaries. More specifically, the EC asserted that WCBs still have weak economies, high unemployment, and inadequate social cohesion. The Thessaloniki provisions aimed at enhancing EU support for institution building and opening Community programs have been correctly implemented. There has been notable progress in the areas of Justice, Freedom, and Security, including efforts to combat organized crime, enhance institutional capability in the judicial field, expand police collaboration, implement an Action Plan (AP) for drug trafficking, and introduce measures to fight

money laundering and illegal migration (The Western Balkans on the Road to the EU: Consolidating Stability and Raising Prosperity, 2006).

### 2.2.3. The Path Toward the Credible Enlargement Perspective for the Western Balkans (2018)

After the Thessaloniki Summit, the supporting action of the EU did not fade. The need for an integrated tool and the beginning of the enlargement fatigue urged the creation of the IPA which entered into force in 2007. Nevertheless, even though the IPA has been deployed for more than fifteen years, no country part of the Balkans has achieved the status of a member of the EU. Contrarily to the Central states, the WBCs did not witness an economic boom that allowed them to meet the necessary economic criteria and to become part of the EU community. The so-called enlargement fatigue still affects the behavior of the EU concerning the WBCs which struggle to manage the huge quantity of money provided by IPA. After 2007, the EU adopted different measures in specific sectors and for single countries. The major tool institutionalized in those years was the Western Balkans Investment Framework a collaborative initiative created in 2009 involving the EU, financial institutions, and other private donors to increase coordination and collaboration in the growth of the area, contributing to the European perspective of the WCBs. The EC, the Council of Europe Development Bank (CEB), the European Bank for Reconstruction and Development (EBRD), and the European Investment Bank (EIB) are the principal benefactors of grants and investments to the region. The WBIF addresses the region's varied investment requirements through two key tools:

- Joint Grant Facility: pools grants from the EC's budget and the other benefactors addressed above.
- Joint Lending Facility: loans supplied by CEB, EBRD, and EIB, in cooperation with other financial institutions (*The Western Balkans Investment Framework*, n.d.).

Additionally, in 2009-2010 the Council of the European Union gave visa-free travel to the Schengen area for citizens of WBCs (*Visa liberalisation for Western Balkans countries*, n.d.). Furthermore, the SAA with Serbia was applied in 2013 (*Stabilisation and Association Agreement with Serbia*, n.d.) and the same occurred with Kosovo\* in 2016 (*Stabilisation and Association Agreement with Kosovo*, n.d.). In parallel, the EU launched another system of periodical meetings between 2014 and 2018 similar to the Thessaloniki Summit. The Berlin Process serves as a platform to enhance cooperation between the WBCs and the EU. High-ranking officials from the WBCs and their counterparts in the host countries meet once a year at the Summit and preparatory Ministerial meetings. The Process involves EU institutions, international financial institutions, and the region's civil society. It provides high-level political support and broad visibility to regional cooperation initiatives and EU connectivity projects in the region. Over the years, the Berlin Process has evolved to include the Summit, Ministerial Meetings, and various side events such as the Digital Summit, Business Forum, Youth Forum, Civil Society Forum, Gender Forum, Science Conference, and the Purchasing Initiative of German Business. The Process aims to accelerate legal and regulatory reforms in alignment with the *acquis*. Additionally, the Berlin Process has strengthened regional cooperation to address shared challenges such as the infrastructure gap, youth unemployment, and low economic competitiveness (European Parliament, 2016).

Besides, the adoption of these tools, the end of the five-round Berlin Process, and the worsening of the membership projections led to a new strategy in 2018: "*A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans.*" At this point, the EU has maintained a strong presence in the region for a long time. Since the Thessaloniki Summit in 2003, the EU institutions have supported the region's future as it was an integral part of the Community leading to political and economic reforms. In 2016, the WBCs' trade with the

Community was above forty-three billion EUR, while EU companies achieved the goal of becoming the largest investors in the region, contributing over ten billion EUR in Foreign Direct Investment in the 2010s (A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans, 2018). The new “EU engagement” is based on six flagship initiatives aiming at specific fields of interest. The six flagship initiative concerns:

- The RoL;
- Security and migration;
- Socio-economic development;
- Transport and energy connectivity;
- Digital agenda;
- Good neighborly relations.

The EC Communication introduced several innovations to enhance EU engagement with the Western Balkans, which had not been adopted before. Firstly, the initiative to strengthen the RoL included new consultative missions in all WBCs integrating the already established APs. Secondly, Europol liaison officers were deployed in the WBCs to conduct Joint Investigation Teams. Thirdly, to strengthen socio-economic development, the EC Communication provided an expansion of the Western Balkans Investment Framework boosting provisions concerning private investments and support to start-ups and SMEs. Moreover, the funding under Erasmus+ was doubled. Regarding the fourth and the fifth flagship initiatives, new investments were adopted to enhance the transport and energy connectivity within the region, while a strategy to advocate for lowering roaming costs and to foster the development and digital skills was created. Finally, the “Enhanced EU Engagement” comprised supporting transitional justice and increased regional cooperation in different civil society areas such as education and culture. The strategy had also the goal of facilitating the overcoming of the heritage of the past, by solving open issues, in particular regarding border

challenges. The EU highlighted in this case the need to normalize the relations between Serbia and Kosovo\* to allow their advancement in their respective EU routes (European Commission, n.d.-e).

#### 2.2.4. The Last Step: The New Growth Plan for the Western Balkans (2023)

WBIF provided relevant outcomes to the development needs of the Western Balkan countries. However, some strategic adjustments were needed. The effectiveness of the results varied widely from case to case. According to the final evaluation of the EC (2021), efficiency in terms of management, monitoring, and coordination has been adequate. The commitment by respective beneficiaries, with some exceptions, mostly appeared in the initial phase of project preparation. Most of the investment projects, once contracted, are expected to make a substantial impact, at least in the medium term (European Commission, 2015).

Besides the evaluation of the WBIF, in 2023 the EC released the “*2023 Enlargement Package*” opening the negotiations for membership to Moldova, Ukraine, and Georgia and assessing the situation of each WBC. Due to deep political instability, Montenegro has witnessed a significant slowdown in EU accession reforms. The EU welcomed the establishment of the new parliament and government, expecting them to quickly show their commitment to Montenegro's EU path and implement necessary reforms. Serbia has continued its EU accession reforms, especially in the RoL. The country enhanced judicial independence and adopted new legislation to better regulate the environmental field. Nevertheless, Serbia has to line up with the EU's common foreign and security policy adopting restricting measures against Russia. While the EU succeeded in the adoption of an Agreement on normalizing relations with Kosovo\*, both Serbia and Kosovo\* must implement their commitments crucial for their European paths. North Macedonia continues to respect the EU Common Foreign and Security Policy and has achieved improvement in justice,

freedom, and security, including in combating organized crime and managing migration. North Macedonia must implement reforms in the judiciary field and fight against corruption and organized crime. Albania has shown determination in implementing EU reforms and making progress in the “fundamentals cluster” but more norms must be adopted to guarantee the freedom of expression, minority issues, and other crucial areas of the RoL, such as fighting corruption and organized crime. Bosnia and Herzegovina experienced a positive dynamic with last year's candidate status due to the reforms delivered by the new government introducing integrity assessments in the judiciary. However, adopting crucial rules of law and constitutional and electoral reforms to ensure equal rights for all citizens is required. Kosovo\* remains committed to its European path since the latest legislative accomplishments, comprising significant electoral change. However, more work is needed for justice reforms. In general, the EC recognized the lack of substantial progress among the WBCs emphasizing the major weaknesses and the difficulties of these states in tackling corruption and organized crime at all state levels. After almost twenty years of financial support currently, none of the WBCs possesses a functioning market economy or has the economic and administrative capacity to handle the competitiveness of the single market pressures and forces.

This assessment report was used in 2023 by the EC to elaborate the new “*Growth Plan for the Western Balkans*” recommended for the period 2024-2027 (the same as the IPA III). The EC paid great attention to the lack of economic convergence between WCBs and the EU. In 2023, considering the purchasing power, the average GDP per capita in WBCs was between 30% and 50% of the EU average. Consequently, a reformed strategy was needed. The Plan is structured around four key pillars. The first one is Enhancing Economic Integration with the EU's Single Market. This requires the WCBs to line up with single market requirements and simultaneously open significant fields to the other WBCs, in line with the

Common Regional Market. The second key pillar refers to Boosting Economic Integration within the Western Balkans: adhering to EU rules and standards through the Common Regional Market could potentially increase their economies by 10%. Thirdly, another focus is posed on Accelerating Fundamental Reforms, which includes reforms in improving sustainable economic growth and strengthening regional stability. Finally, the EC's fourth pillar is Increasing Financial Assistance. The European institution proposes a new Reform and Growth Facility for the Western Balkans for 2024-2027 of 6 billion EUR. In 2024, the EC approved an additional 1.2 billion EUR investment package for infrastructure and support to entrepreneurship in the WCBs including 300 million EUR in EU grants from the IPA III.

## 2.3. THE CHARACTERISTICS OF THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE

### 2.3.1 IPA I (2007-2013)

As addressed in the previous chapter, from the 1990s to 2006, the EU institutions adopted a series of funding programs concerning different economic and social sectors to help the WBCs in their transition period and meet the requirements set by the Copenhagen Criteria. After the reasons that led to the decision to change to only one supporting instrument have been explained, it is the moment to address the specific characteristics of the IPA. The tool has been adopted for the first time through the “*Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)*” allocating almost eleven billion EUR to WBCs, Turkey, and Iceland under the form of “multi-annual or annual programmes, established by country [...] or [...] by group of countries or by theme in accordance with the priorities defined in the multi-annual indicative planning documents” (Article 7). Each beneficiary country then negotiated with the EC the “*Framework Agreement setting out the general rules for implementation and cooperation of the EU assistance under the IPA.*” The addressed fields (the so-called

“components”) were Transition Assistance and Institution Building; Cross-Border Cooperation; Regional Development; Human Resources Development; and Rural Development. The responsible institution here was the EC, which also had monitoring competence. It must highlight that mandatory requirements to access the funds concern the respect for principles enshrined in Article 2 of the TEU.

The European Court of Auditors issued an evaluation report in 2016 regarding the performance of the IPA I and its programs. The Court evaluated the success of the EC's supervising of the IPA and its impact on strengthening the region's administrative capacity. The EU's pre-accession assistance was largely evaluated as effective with the IPA I contributing to the enhancement of the administrative capacity in the region, despite significant challenges faced by the national authorities in the Western Balkans. The objectives of the IPA I were not consistently specific and quantifiable, while assessments from some beneficiaries in the RoL sector revealed significant deficiencies due to some countries' weak administrative capacity and the stringent requirements associated with the management of EU funds. Under the IPA I, the EC did not consistently enforce strict conditions or their follow-up. For RoL projects, the EC failed to adequately enforce conditionality and only a small section of the IPA I funds has been allocated to crucial parts such as media freedom, public prosecution, and the fight against corruption and organized crime. The sustainability of these projects was hindered by beneficiaries' lack of political ambition to transform institutions, insufficient resources, and poor coordination. The EC has stressed the importance of improving regional cooperation and enhancing administrative capacity in the region, particularly through the Western Balkans Investment Framework. Political dialogue in the Western Balkans had a limited effect on the RoL in several instances, but it did achieve some progress in public administration reform. (Milasiute et al., 2016).

### 2.3.2. IPA II (2014-2020)

The “*Regulation (EU) No 231/2014 of the European Parliament and of The Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II)*” came into force on 16 March 2014 and involved Albania, Bosnia and Herzegovina, North Macedonia, Kosovo\*, Montenegro, Serbia, and Turkey. The budget for 2014-2020 was increased from 11.5 billion EUR to 12.8 billion EUR. The policy areas addressed were the following:

- Institution- and capacity-building reforms to prepare the EU membership;
- Regional development;
- Social policies, education, and employment;
- Agriculture and rural development;
- Regional cooperation.

Differently from the IPA I, this time the EC decided to adopt a so-called “sectoral approach” which consisted of gathering EU aid around a limited number of sectors with national sectoral strategies supplying as principal management of the program. In comparison to the first IPA, the second programming period experienced several changes to address the weaknesses identified. Via the sector approach, the EC lets the beneficiary countries set strategic priorities. This strategy mainly works in well-developed nations with a strong institution framework, and a solid civil society where such an approach is jointly developed with significant stakeholders (Koeth, 2014).

Furthermore, the IPA II focused on a more strategic and result-driven approach, concentrating on sectors aligned with EU policies to ensure more efficient fund utilization. Moreover, incentives (the so-called “Performance reward”) were introduced to reward countries for better performance in reforms and to reallocate funds in case of underperformance. In 2017, the total reward resources allocated was 78

million EUR in favor of Albania, Kosovo\*, North Macedonia, Montenegro, and Serbia. Secondly, the IPA II also allowed for increased flexibility in programming and fund management, enabling targeted resource allocation. Emphasis was placed on results performance measurement, with specific indicators for monitoring progress and measuring performance. Additionally, the introduction of the Indicative Strategy Papers for seven-year periods aimed to integrate beneficiaries' internal reforms and development plans into the EU support priorities. Additionally, a Multi-Country Indicative Strategy Paper addressed primacies for regional cooperation. In other words, the EC started to support beneficiaries with stronger guidance to efficiently select EU-financed programs, changing the assistance to a more “acquis-driven” approach rather than a “demand-driven” one. Only those projects that matched the list of set priorities adopted by the EC could be financed. By doing so, the European institutions made sure that the *acquis communautaire* – on which the priorities were based – was respected and achieved. Lastly, the policy areas covered were expanded to include transport, environment, energy, and social policies, as well as crucial areas such as public administration reform and justice. The IPA II was evolving to effectively meet its goals, which include preparing potential and candidate countries for EU accession. When there is clear overlap and homogeneity between the IPA II sectors and national sectors, coherence becomes apparent, leading to potential performance improvements, Budget support has stimulated institutional changes in countries where it's implemented, such as Serbia, Montenegro, and Albania, encouraging also policy dialogue. However, the direct impacts are not yet visible at the program level. Nevertheless, beneficiaries have faced challenges in producing high-quality documents. The methods used to ensure ownership have varied among recipients. As a result, the anticipated improvements were yet to be realized. The Performance Framework's indicators can be deemed sufficient, but the quality of indicators in country programs continues to be a concern. This was partly

due to the inability of the country/sector systems to generate, gather, and analyze suitable data. The innovations introduced by the IPA II improve the consistency and coordination of the IPA II actions within each WBC and between the IPA II and the IPA I (Aigner et al., 2017).

### 2.3.3. IPA III (2021-2027)

The IPA was established through “*Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession Assistance (IPA III)*” that allocated more than 14 billion EUR for Albania, Bosnia and Herzegovina, Iceland, Kosovo\*, Montenegro, North Macedonia, Serbia, and Turkey. The provision partly follows the structure of the previous ones. For the 2021-2027 period, the specific goals set by the EU institutions are the following:

- Promoting the enforcement of the values adopted in Article 2 of the TEU (RoL, democracy, human rights, freedoms, etc.);
- Enhancing public administration effectiveness and supporting transparency, good governance, and structural reforms;
- Supporting the transition process to conform rules and standards of the beneficiary countries;
- Promoting regional cooperation and good neighborly relations by also exploiting strategic communication methods;
- Reinforcing social and economic development and cohesion focusing also on youth, education, employment policies, and small and medium-sized enterprises (SMEs);
- Improving environmental protection policies and the fight against climate change;
- Strengthening territorial cohesion, interregional collaboration, and cross-border cooperation.

Differently from the previous programming period, the implementation of the IPA III is governed by the so-called “*Programming Framework for the*

*period 2021-2027*,” the central document for the IPA III implementation for the 2021-2027 Multiannual Financial Framework (MFF) period replacing country strategy papers used for the previous IPA II. The preparation of bilateral annual plans follows a two-step programming process according to the Programming framework to address the specific goals mentioned above (the so-called “Windows”). Firstly, the IPA III beneficiaries formulate solutions comprehending policies and sector-specific strategies following the recommendations and prerequisites of the IPA III and regarding how to achieve the goals of the IPA III Programming Framework. Secondly, the EC selects actions based on their policy relevance, which are then elaborated in action documents WBCs. The IPA III continues to promote regional cooperation under the name of Cross-Border Cooperation (CBC) between WBCs (IPA-IPA CBC) and the EU countries (Interreg-IPA CBC). Similar to IPA II and I, IPA III has a review mechanism to assess progress at the strategic, sector, and action levels. Under the IPA III, implementation measurement relies on indicators specified in the IPA III Programming Framework and in the annual and multi-annual programs. In contrast, the IPA II's performance measurement is based on indicators outlined in the indicative Strategy Papers. The IPA monitoring committees, comprising EC representatives and beneficiary delegates, continue to evaluate the general efficiency, consistency, management, and accordance of all IPA-funded programs. The focus is on evaluating how the support aligns with the goals of the IPA III Programming Framework and the Strategic Response. (European Commission, n.d.-c). Activities under the IPA are implemented according to the Financial Regulation<sup>8</sup> and the EC Implementing Regulation (EU) 2021/2236 in three ways:

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<sup>7</sup> EC Implementing Decision of 10.12.2021 Adopting the Instrument for Pre-Accession Assistance (IPA III) Programming Framework for the Period 2021-2027

<sup>8</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (European Commission, Euratom) No 1605/2002

- The EC or other European institutions directly manage the implementation of the funds (direct management) until the national authorities meet the requirements to control the budget;
- The EC delegates entities to implement the budget and other tasks (indirect management). These entities can be the IPA beneficiaries, national agencies, international organizations, and EU-specialized – but not executive – agencies.
- For regional cooperation programs with member states, the implementation is delegated to the involved EU members (shared management).

The possible instruments that can be adopted in the IPA framework are procurements, grants, financial instruments, budgetary instruments, contributions to the EU Trust funds, and the Team Europe Initiatives – an international partnership with third countries to implement programs together with the European Investment Bank and the European Bank for Reconstruction and Development.

Considering the main differences with the previous programming period, the main news in the most recent fund program is that the beneficiaries do not have a pre-defined budget but there is a unique budget for all of them. By doing so, the EC sped up the implementation program by encouraging the parties to apply and elaborate projects keeping into account the equal distribution of resources between participants. In the IPA III, the EC approves projects primarily considering their strategic relevance and maturity of the proposed plans. Every year, the EC elaborates a ranking where only the best ones – according to the set criteria – will get the funds (EU4ME, 2021).

## **CHAPTER THREE – BUILDING A NEW MODEL: THE ANALYTICAL FRAMEWORK**

### **3.1. THE EXTERNAL INCENTIVES MODEL AND THE RESEARCH QUESTION**

#### **3.1.1. Enlargement Through the Theory**

Firstly, a small recap is necessary to understand this thesis's direction. The literature review highlights how deep the hole in the EU enlargement landscape has been since the establishment of the Communities. Both EU politicians and scholars overlooked this topic and based their considerations only on a utilitarian view. Even though the founders of the European Communities project thought to create an inexperienced international body with the future goal of promoting economic and political integration, since the beginning the European communities were guided by some economic or social interest causing trouble in the enlargement field. As highlighted before, the picture of the member states feelings can be represented by De Gaulle's statement of 1961 that Great Britain's interests were not in line with the rest of the continent. Whether or not this was his real thought, this approach has been adopted for most of the rest of the century. This view of looking at enlargement has been limiting and led to the "enlargement fatigue" explained in the first chapter. More specifically, addressing the enlargement topic only by basing decisions on whether or not a certain country could lead benefits to the EU following its interests was only a way to avoid another major issue: defining what the EU is. As explained in the first part of the second chapter, to understand who is eligible to be a member of a given community (of people or states), it is necessary to establish an identity. Only those who match the identity of the group can be part of it, after that moment it will be possible to determine interests and advocate for them, benefiting the whole community. As it is visible nowadays, this logical path has not been followed. Different interests even among the

same Union, the admission of not fully democratic states, and the rise of populism with the consequent decline of people's political participation have jeopardized the definition of the EU identity leading to a deviation in the European integration process and, in turn, to the sanctioning of different member states such as Hungary and Poland. Nevertheless, not everything is wasted. The history of the EU and its enlargement can be intended as a huge contribution to the description of the factors that influence the formation of the EU's identity.

The second and third chapter serves this purpose, gathering information from the past and linking it with the recently elaborated theories. In these two parts, the general characteristics of the EU approach concerning WBCs are presented. During the years of the institutions of the first supporting tools – when for the first time, the EU stopped only posing conditions and started to offer help to the candidate countries – Schimmelfennig & Sedelmeier (2002) applied the logic of appropriateness to offer a new vision of the EU enlargement that did not involve utilitarian purposes presenting an alternative to the conditionality approach (which they called “External Incentives Model” or EIM, that means the EU provides external aid to help candidate countries to comply with its conditions) adopted by the EU since the ‘60s. The theory was introduced by March & Olsen (1989) and it was then applied to the enlargement topic by Schimmelfennig & Sedelmeier. Whether candidates and the EU states view enlargement as the right choice is based on how they perceive each other at the community level. The more states that identify with a community identity composed of shared values and norms, the more willing the member states are to pursue institutionalization with this state. The same authors further developed this theory during the whole 2000s decade (Schimmelfennig, 2003; Schimmelfennig & Sedelmeier, 2004, 2005), until 2019 when they published their work “*The Europeanization of Eastern Europe: The External Incentives Model Revisited.*”

Besides that, the chapter addresses the neo-functional approach introduced by Haas & Deutsch in the '50s and further developed by Risse in 2005 where the main drivers of the European integration process are the functional spill-over and political spill-over. In this case, Haas & Deutsch recognized that there must be a “common interest” that would lead the EU integration process. At the same time, the formation of a collective identity is just a consequence and it does not provoke the loss of national identities: the EU acts as a new center where interest groups can advocate for their interests. This idea is supported by Risse, who also compensated for the lack in Haas & Deutsch’s work in explaining how multiple identities do not overlap.

Besides Risse’s work, Džankić et al. (2019) based their book “*The Europeanisation of the Western Balkans. A Failure of EU Conditionality?*” on the studies made by Schimmelfennig & Sedelmeier from 2002. According to them, the concept of Europeanization has become crucial for understanding the transformative dynamics of norm transfer between states and the EU. The fatigue of the accession for the WBCs is based on their difficulties in addressing the significant transformative period from the communist regime to the liberal one and fights in the WCBs linked to their national identities. According to the authors, the Europeanization process could be central to these dynamics. In this book, “Europeanization” is seen as a two-way process: it involves not only the domestic adaptation to EU norms, laws, and rules (top-down) but also changes in the dynamics of Europeanization resulting from domestic changes (bottom-up). Consequently, even though the authors did not refer directly to the enlargement, their definition of Europeanization closely matches what is intended in this thesis as “defining the EU identity” since they also use the constructivist institutionalist ideas elaborated by Schimmelfennig & Sedelmeier in the early 2000s. As the history of the EU approach toward the WBCs shows, the adopted support instruments did not accomplish in more than twenty years the ultimate

goal of allowing WBCs to access the EU. Consequently, the authors offer a new paradigm known as the “lesson-drawing” model. This model suggests that countries are likely to adopt EU rules and principles if they view them as effective solutions to domestic issues, rather than due to the EU's coercive or normative power. Non-member states adopt EU rules without needing incentives or persuasion from the EU. Policymakers examine policies and regulations implemented elsewhere and assess their potential effectiveness in their domestic context. Accordingly, this process of “Europeanization” occurs only if candidate states meet several conditions. Firstly, domestic actors need to be dissatisfied with the current national rules' effectiveness or legitimacy. Secondly, these actors should pursue policy solutions at the EU level. Lastly, the EU rules must be appropriate for addressing domestic problems encountering minimal resistance from influential domestic actors. Unfortunately, the studies Schimmelfennig & Sedelmeier made since 2003 showed that the logic of appropriateness and the related lesson drawing model are inconsistent and marginal due to their weak explanatory power. The rational approach based on conditionality and its practical application with EIM – even with some limitations – has led to the expansion of the Community from six to twenty-seven members. Negotiations, rewards, punishments, and cost-benefit calculations seem to be still the appropriate tools to advance EU membership. These statements find their foundations in the successful enlargement rounds of CEECs in 2004 and 2007, where conditionality had a positive effect on the democratization and stabilization processes (Grabbe, 2014; Zubek & Goetz, 2010). Nevertheless, Zhelyazkova et al. (2019) highlighted that WBCs are failing to meet these conditions due to their weak administrative capacity, strong corruption and organized crime, and the strictness of the EC toward the candidate countries leading to the enlargement fatigue addressed before.

### 3.1.2. The External Incentives Model

At this point, after all the considerations about the EU identity and the evolution of Europeanization theories, it is useful to appraise whether or not the EU acted following any logical path. In this sense, revealing that the EU approach followed a specific pattern could be a demonstration that the EU identity exists and the EU institutions work basing their action on it. The logic of appropriateness affirms exactly this point: institutions move and act depending on the values and principles that share and characterize their identity. In other words, the logic of appropriateness and the other constructivist theories cannot be used to explain the success and the failure of the enlargement process; nonetheless, they can be intended as the starting point to demonstrate the existence of an EU identity. Since the Birkelbach Report of 1962, the EU presented itself as the guarantor of democracy and, since 1993, as a supporter of certain values enshrined in the Copenhagen Criteria (namely, guaranteeing democracy, the RoL, human rights, and respect for and protection of minorities). These principles were expanded and enhanced with the following Treaty of Nice of 2001 and the Treaty of Lisbon of 2009. Consequently, we can assert that the EU has constructed a community identity based on these principles, and respecting them is a necessary condition to be part of the community. Moreover, respecting such principles is a mandatory task to be part of the IPA program. At the same time, specifically with the WBCs, the EU has tried since the fall of Yugoslavia to tackle the major issues that afflict the region such as the problematic relationships among certain regions (e.g. Serbia and Kosovo\*) or the spreading of organized crime and corruption, affirming their will to become a valid and legitimate alternative to face these problems and following, consequently, the ideological path drawn by the lesson-drawing model. As stated by two Schimmelfennig & Sedelmeier who have developed the two constructivist models, the logic of appropriateness and the lesson-drawing model cannot be used to analyze

the WBCs' path toward membership. Nevertheless, they have been exploited in this thesis as the starting point of the research based on the EIM, the strategy adopted by the EU regarding the enlargement policy.

The EIM operates as a negotiation framework where conditionality is the main tool for Europeanization. The EU requires target states to adopt its norms and rules as conditions for receiving rewards, which can vary from funding to membership. More substantial rewards come with tougher conditions. Governments of candidate states can choose to accept or reject these conditions, based on whether the benefits of the reward outweigh the compliance costs, a decision heavily influenced by domestic politics. If the target government fails to meet the conditions, the EU withholds the reward; otherwise, the reward is granted. The EIM also highlights several factors that influence the target government's cost-benefit analysis and the overall effectiveness of conditionality. These include the size and proximity of the EU's rewards, the clarity of the conditions, the credibility of the conditionality, and the costs of adoption for the target government. (Schimmelfennig & Sedelmeier, 2019).

In this sense, the IPA can be intended as a tool of conditionality since the implementation of its projects and their success are conditions necessary to reach a “reward” – in this case, the benefits produced by the IPA plans – which in turn is unavoidable to achieve the membership. Finally, following the logic enshrined in the EIM, the thesis intends to analyze how much the action of the EU – specifically, the IPA – has promoted the adoption of these democratic values and, therefore, its identity in the WBCs. To better develop the thesis, the research will focus on the area of the judiciary since this area, as it will emerge in the following chapters, is the one that requires the most urgent reforms. Consequently, the research question of this thesis will be:

*How has the Instrument for Pre-Accession Assistance influenced the adoption of reforms in the judiciary of Serbia in its path toward EU membership and EU identity?*

Addressing democracy and the RoL is not just useful for this thesis, but it is also necessary considering the direction our continent has taken in the last few years. Several indicators show that most of the EU and third countries are crossing a period of democracy weakening. The main sign here is the rise of populism. According to Encyclopædia Britannica, populism is defined as a “political program or movement that champions [...] the common person, usually by favorable contrast with a real or perceived elite or establishment. [...] Populism is most often associated with an authoritarian form of politics.” Jarausch (2021) also asserts that this phenomenon is characterized by a lack of trust in democratic institutions and governments. All these elements contributed to the formation of the so-called “cultural backlash” theorized by Pippa Norris & Ronald Inglehart (2019). According to them, the rise of progressive and post-materialist values during the seventies in Western societies concerning LGBT rights, same-sex marriage, secularization, and cosmopolitanism catalyzed a cultural backlash among social conservatives. The intolerance of this slice of the population regarding these new topics and the dissatisfaction toward democratic governments in facing contemporary challenges led to the ascent of a new authoritarian-conservative ideology – namely, populism – based on the critics of the political establishment, the contraposition between honest citizens and the corrupted politicians, and the anti-political feeling that parties and democratic institutions slow down the decision-making process due to the lack of responsiveness and accountability. There are currently several parties in the EU that perpetrate these values with a high consensus from the population – namely, Lega and Fratelli d’Italia in Italy, Rassemblement National in France, and Alternative für Deutschland in Germany. At the same time, the continuous decrease in

affluence during the latest political elections demonstrates that people care less about politics and do not trust them to solve their problems. This is no longer a national issue. The consequences of the weakening of democracy have hit the EU institutions as well. If people consider their national government distant, how can they perceive a supranational institution with limited power in various sectors as the right arena to address their problems? Moreover, populist parties often address the EU as a corrupted establishment that must be overthrown to re-launch the national values again (*Giorgia Meloni, 2022; Alice Weidel, 2024; Matteo Salvini, 2024; Marine Le Pen, 2022*). Consequently, fighting for the reinforcement of democracy and the RoL must be a pillar in the policy of the EU and, in turn, in its enlargement strategy. Creating an identity based on these principles can be the beginning of a new approach that can reverse the path of democracy evolution. Conditionality must still be the main approach to evaluating the admission of candidate countries. Nevertheless, the adoption of a strategy that does not pose these values as the center of the action and does not have a strong identity as its fundamental background will considerably limit the EU's capacity to advance democratic principles in WBCs.

Besides the concepts of democracy and the RoL, Freyburg and Richter (2010) examined the role of identity in the EU enlargement process. They highlighted how the identity of candidate states, in this specific case Croatia, influences the EU's conditionality-based approach and the external democratization process. National identity is essential as it filters out concerns beyond the goal of governmental action. In their case, the authors showed that compliance with the EU criteria is inconsistent or absent when the external conditional incentives clash with national identity. Appropriate actions and fulfillment of admission criteria can only be achieved through partially changing identity without jeopardizing the sense of "what is right" in that specific country. Freyburg and Richter recognized that this change would occur thanks to the democratic

transition toward a more common identity. Contemporaneously, as said before, the EU and its member states are crossing a turbulent period and a democratic backsliding that is menacing the effectiveness of the EU actions and at the same time its strategy toward the WBCs. Relaunching the democratic debates and establishing a precise common identity can be a solution that can help both parties in their respective struggles.

## 3.2. WHY SERBIA?

### 3.2.1. Influence of Serbia over the Balkans

The reason why Serbia has been chosen as the case study for this research is based on the peculiar history of this country. The EU has always had a favorite relationship with Serbia due to its power over the region during the Yugoslavia period and the negotiation stage to settle the terms and conditions of the Balkans wars as well. Serbia has been at the center of several ethnic and political conflicts with other countries and regions pushing the EU to conduct several rounds of negotiations with the Balkan state to avoid other escalations that would worsen the situation in the area. After Tito died in 1980, the EU communities worked to ensure the integrity of the former Yugoslavia. Nevertheless, in 1991 the adoption of the *Common Position for the Recognition of the Yugoslav Republics* Communication marked the beginning of a new approach of the EU based on advocating for democracy, human rights, and the defense of minorities. The change in the EU institutions' attitude concerning the independence of the federal states and the Kosovo\* region too led to a wave of anti-European feelings from the Serbian people, which even worsened after the support of some member states to the NATO bombing of Yugoslavia mission (1999). Currently, in a February 2024 poll, only 42.8% of respondents supported joining the EU, while 36.8% were against it. The remaining participants either declined to answer or were undecided. Another poll asked, "Would you support joining the EU if recognizing the independence of Kosovo\* was a condition for joining it?" In response, 76% said no, and 12.2% said yes (NSPM, 2024). The

unwillingness to join the EU can be also traced to the strong national identity existing in the state. Serbian has been and still is the dominant ethnic entity in the Balkan area and has been present in the peninsula since the Middle Ages, thanks to the Nemanjić dynasty that dominated the Serbian Empire from 1346 to 1371 (Ivetic, 2020). Moreover, the Serbian Orthodox Church has been a cornerstone of Serbian national identity considering it has provided spiritual guidance and cultural continuity, especially during times of foreign rule. The church's influence is evident in the veneration of Serbian saints and the celebration of religious festivals (Morozova et al., 2022). Similarly, the Serbian language and the Cyrillic script are important symbols of national identity. The use of the Cyrillic script is enshrined in the Constitution of Serbia, and it is a co-official script in Montenegro and Bosnia and Herzegovina. Nevertheless, the strong national identity and the anti-European Union feelings did not stop Serbia on its path toward EU membership. Besides joining SAP in 1999, the Thessaloniki Summit in 2003, and adopting the SAA in 2013, Serbia is also the country in the Balkans that received the highest share of money from the IPA budget in all of the programming periods. Furthermore, in 2018, the EC indicated that 2025 was the potential year for Serbia to join the EU, conditional upon the recognition of Kosovo's independence (A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans, 2018). Serbia received from 2000 to 2018 more than 3.6 billion EUR considering the IPA I, the IPA II, CARDS, and the multi-annual programs created between 2014 and 2017. Moreover, The EU allocated more than 4.3 billion EUR in loan agreements thanks to the investments of several donors such as EIB and EBRD in the 2007-2018 period. Other donations directly came from the EU member states which provided more than 500 million EUR from 2007 to 2016, while private actors invested almost 6 billion EUR in the 2014-2017 range (*EU Assistance to Serbia*, n.d.).

### 3.2.2. Current Condition of Serbia

Consequently, the predominant position of Serbia over the region, its peculiar history and related national identity, and its advanced status in the EU enlargement process make it the perfect candidate for this research. The research will provide insights into the mechanisms and criteria for EU membership, helping academics and scholars to further develop theories enlargement process advocating for a new approach based still on utilitarian indicators but with a different starting point founded on the centrality of the EU identity. At the same time, the work will also encourage greater involvement of these organizations in advocating for reforms and monitoring government actions, thereby enhancing democratic governance. Finally, the findings may provide strategic recommendations for the Serbian government on how to effectively utilize the IPA funds and other EU resources to implement reforms, particularly in areas like judicial independence. This last area has been indeed specifically addressed in the EC Staff Working Document “*Serbia 2021 Report*” (2021). More precisely, the EC said that even though Serbia is making progress in adopting EU standards regarding the 23rd Chapter of the Acquis, the Balkan state still achieved limited advancement at the end of the second cycle of the IPA (2014-2020). In 2018, the national government launched a constitutional reform to accomplish the conditions set by the EU strengthening the autonomy of this sector since the Serbian legal framework at that time did not provide enough independence of the judiciary from the political power. Consequently, this aspect of human rights needs further investigation, the progress made in Serbia must be investigated and assessed with a study of the implementation of IPA in the field of judiciary independence considering the apprehension expressed by the EC with the guarantees adopted by Serbia.

### 3.3. ANALYTICAL FRAMEWORK AND METHODS

#### 3.3.1. Research Hypothesis and Methodology

The whole chapter has been exploited to generally summarize what has been stated in the previous parts and also to premise the logical reason that led to the creation of the analytical framework to analyze the Serbian path to EU membership. Based on the literature reviewed and in line with the research question presented in Chapter 3.1., the hypothesis that will be tested is:

*The Instrument for Pre-Accession Assistance has significantly contributed to the strengthening of the Rule of Law in Serbia, and more specifically to the independence of the judiciary, thus facilitating the Country's progress toward EU membership.*

The analytical framework to test the hypothesis will be based on the EIM introduced by Schimmelfennig & Sedelmeier (2004) and adjusted by the same authors in 2019 in their work *“The Europeanization of Eastern Europe: The External Incentives Model Revisited.”* Their revised work involved comparing the pre-accession Europeanization of the CEECs with different circumstances, involving a comparison of the post-accession stage of the CEECs and the pre-accession point of the WBCs and Turkey. They argued that providing credible incentives was essential to explaining the pre-accession Europeanization of the CEECs and their continued accordance with the *acquis* after accession. In this model, different factors can determine the conditionality and its effectiveness by influencing the cost-benefit estimates, these are:

- Rewards, conditionality will be effective if the reward is significant and tangible.
- Determinacy, if candidate states precisely know what actions they must take to get the reward, there is a higher chance for them to meet the conditions.

- Credibility, this term refers to the odds of not getting funds or support by the EU whether the candidate does not meet the conditionality or, in the opposite case, the chance that the EU holds its promise to pay the reward in case of success. Credibility is mainly affected by the benefits of EU countries provoked by the fulfillment of conditionality or the internal consensus about enlargement.
- Costs, this last condition is out of the influence of the EU and concerns the domestic spending of candidate countries for implementing EU rules.

In this thesis, the same analytical framework will be used to evaluate how Serbia's policies and actions have aligned with EU norms and values, such as democracy, human rights, and the RoL, thanks to the implementation of IPA support. The logic involves comparing several actions taken in different time ranges and empirically studied by past authors. The same reasoning will be used in this thesis but with some differences to adjust the study of the impact of the indicators not on the compliance of WBCs on conditionality, but to analyze their effect on the execution of the IPA.

The main differences between this dissertation and Schimmelfennig & Sedelmeier's work rely on the fact that this thesis will only focus on Serbia and not on the Balkan area and not even the CEECs, to provide a case study analysis of the progress of one country. Secondly, when the authors did their research, they only considered the democratization process since the several chapters on the acquis had not been opened yet. Thirdly, concerning the acquis, the authors solely focused on the provisions taken about the single market, while in this case, the thesis will consider the ones concerning RoL and the independence of the judiciary. Fourthly, this research will study only one instrument, the IPA and the related measures, since in the last fifteen years, it has been the main tool to advance WBCs' membership. More specifically, it will focus on the last

two periods (2014-2020 and 2021-2027) to have a more recent analysis. Finally, the authors defined the “reward” as any kind of goal the candidate states is aiming for, while, in this case, it refers to the benefits produced by the implementation of democratic reforms under the IPA in the matter of judiciary independence.

These differences are fundamental for the development of research. Schimmelfennig & Sedelmeier provide too general assessments of the progress made by the CEECs and the WBCs in their respective path toward membership without really considering the differences that are provoking the slowdown of the overall EU enlargement approach. Addressing the issues related to the democratization process by considering the WBCs as unidentified regions is an important lack that needs to be integrated with a case study to evaluate the impact of each indicator on every national state.

### 3.3.2. Sub-RQ1

Different sub-research questions must be stated to study rewards, determinacy, credibility, and the costs that influence Serbian’s path toward EU membership. Regarding the “rewards”, the related sub-research question will be:

*How do the perceived rewards associated with the Instrument for Pre-Accession Assistance impact Serbia's progress in aligning with EU standards regarding judiciary independence?*

Schimmelfennig and Sedelmeier studied this indicator by comparing the rewards offered to CEECs during their pre-accession phase with those available to SEE candidates. They assessed how the size of the rewards (such as financial assistance, technical support, and the promise of EU membership) influenced the compliance of these countries with EU conditions. Here, the analysis will then take into account the relevant documents related to the implementation of the IPA and the Annual Actions Plans to understand whether the perceived reward pushed

Serbia's government to include the EU-set priorities. If Serbia realized projects that took into account the priorities set by the EU, it means the Balkan state perceived the reward as sizeable and tangible. To study the size and the tangibility of the reward, the thesis will consider the extent of the scope – whether Serbia prioritized the top concerns of the EU about the judiciary or, in other words, the size of the reward – and the clarity or tangibility of the set goals of the IPA projects, which means Serbia set clearly defined the targets and the indicators to meet. The studied projects will be then compared, similarly to what the authors did in their work.

### 3.3.3. Sub-RQ2

About determinacy, the thesis will explore:

*To what extent do guidelines, standards, and feedback provided by the EU on the Instrument for Pre-accession Assistance impact Serbia's progress in aligning with EU standards regarding judiciary independence?*

The authors assessed the extent to which the EU provided clear and specific feedback for compliance. This clarity should help governments understand what is required to meet the conditions and obtain the rewards. They compared the determinacy of conditions across different policy areas, such as the *acquis* and democratic norms. The authors pointed out that determinacy was generally less problematic for the *acquis* due to established procedures like the infringement procedure, which clarifies the EU's interpretation of the rules. In contrast, the conditions related to democratic values were less clear, as they often depended on member states' consensus rather than a binding legal framework. Regarding the IPA, to let Serbia know what to do, the governmental bodies must possess the technical and managerial skills to efficiently run the projects regarding judiciary independence and get the benefits from their correct implementation. Consequently, the study will first test the presence of any kind of guidelines, “feedback” or standards

under the IPA and beyond to help the candidate state take the right measures. Then, the same analysis will be done with other projects related to the same area to compare the different effects the determinacy on the implementation of the projects. To do this, the research will take into account the IPA Annual APs and any other type of technical support of the EU.

#### 3.3.4. Sub-RQ3

Regarding “credibility” Schimmelfennig and Sedelmeier conducted a comparative analysis of compliance patterns across various countries and periods, assessing the changes in the credibility of EU rewards noting that even when incentives were strong in principle, a lack of credibility could lead to poor compliance outcomes. They highlighted the need for contextual specification of the abstract concepts within the EIM. By examining specific cases, such as the differences in domestic adoption costs and the credibility of membership promises, they were able to illustrate how these factors varied across regions and influenced compliance. Consequently, due to the need for more contextual specifications, a study of the impact of credibility on the WBCs is even more needed. To do this, the research will focus on the evolution of the feelings and attitudes of the EU and the member states toward a possible improvement of the conditions of Serbia regarding judiciary independence. Then, the thesis will consider the perception of the credibility of Serbia’s politicians and people. The identified outcome will then be compared with the implementation progress made by the IPA projects in trying to identify a pattern. The results of the analysis will answer the following question:

*How does the perceived credibility of the EU's commitments affect Serbia's willingness to undertake reforms and achieve a more independent judiciary?*

### 3.3.5. Sub-RQ4

Schimmelfennig and Sedelmeier addressed the “costs” indicator claiming this is the only one that is not under the control of the EU but it is completely associated with state action. They highlighted that these costs could vary significantly depending on the existing political and institutional frameworks within each country. Again, the authors conducted a comparative analysis of compliance patterns across different countries, focusing on how the costs of compliance influenced the likelihood of meeting EU conditions. In particular, they noted that political conditions, such as the stability of governments and the level of public support for EU membership, could influence the domestic costs associated with adopting EU rules. Nevertheless, in the case of Serbia, developing research about the political and economic costs that it must address to implement the IPA and the related democratic reforms requires specific knowledge about the financial and social situation of Serbia that the author of this thesis does not possess. Besides this, other issues hinder the correct advancement of the analysis: several websites of Serbia’s government are not accessible, different documents and reports are not published, and, finally, most of the documents are in Serbian language. The analysis of this indicator is not impossible but it urges an amount of time that the author of the thesis doesn’t have. This lack can be exploited as a starting point for future research.

### 3.3.6. Other Sources and the Semi-Structured Interviews

To further integrate the study, academic articles and research papers will be utilized to incorporate as much information as possible about the four indicators. As already stated, the thesis aims to assess the impact of IPA support on institutional reforms in Serbia. Additionally, the research will consider public opinion and support for EU membership within Serbia as indicators of the internalization of EU norms and values. By doing so, the

level of engagement of civil society organizations in the planning of the IPA projects will also be analyzed.

Moreover, the research will involve several semi-structured interviews to complement the findings of the desk-based research. The interviews have the main goal of studying the opinions of people involved in all the steps regarding the implementation of the IPA projects. Semi-structured may be the best way to gather information about these topics. This type of interview involves the outlining of the topics by the interviewer which will be addressed during the dialogue. Having a conversation without a fixed border gives both the people engaged the discretion to address the topic most appropriately. Considering the qualitative type of research and the expertise of the people interviewed, having the possibility to elucidate further and having a crystal-clear picture of the situation is necessary to ensure correct research on the independence of the judiciary. Consequently, the author elaborated a list of broad questions about the topics from which it will be possible to detach. By doing so, it would ensure the freedom to address correctly the most relevant themes following the guidelines provided at the beginning (Corbetta, 2003).

Thus, the thesis will include statements from (i) Serbia's officers of the Ministry of European Integration, the body in charge of elaborating and monitoring the plans; (ii) representatives of the EC, the main institution that approves or not the proposed projects and dialogue with the relevant institutions during the implementation phase; (iii) staff from the EU delegation in Serbia, the competent body in the management of the projects; and, finally, (iv) external and independent consultant who is in charge of evaluating the progress achieved by Serbia. To gain a complete picture, the thesis should involve also judgments from people who are part of the civil society organizations involved in the policy cycle; experts or academics who have studied the enlargement process and Serbia's progress; representatives of NGOs in Serbia who monitor the EU accession process and advocate for transparency and accountability in

the implementation of reforms. The people involved have chosen to give space to every participant involved in the IPA: the EU, Serbia, external consultants, the Serbia's population. Nevertheless, due to a lack of responses, the dissertation will include only part of these people. Before the interview, interviewees were informed about the process and the privacy issues related to GDPR and, as required by the university policy, each signed the related "*Policy on Personal Data Processing*" document. Besides the representatives of the Ministry of the European Integration and EC, all the respondents agreed that their names could be used in the thesis and also allowed to be recorded. However, all their names have been anonymized. All the interviews have been conducted in English. The choice of the respondents was not random. The Ministry of European Integration is the body in charge of elaborating and monitoring the plans under the IPA, the representative of the EC is directly involved in the implementation of projects related to the judiciary; the representative of the EU delegation in Serbia was in charge of the management of the projects related to the judiciary in Serbia; and, finally, the external and independent consultant has been involved in the evaluation of WBCs' progress achieved.

To code the obtained information, the author used the three-phase coding model developed by Heather E. Price and Christian Smith in 2021 for their cultural model analysis. According to them, after the interview is performed, the author should code data in three phases: (i) a first-order theme coding; (ii) a second-order pattern coding; and (iii) quantitative summaries. First-order coding means recognizing extracts in the interviews that confirm the presence or absence of certain ideas, attitudes, or dispositions in the interviewee connected to the identified themes. Instead, the second-order coding aims to categorically code the patterns identified in the first-order coding. In this phase, the findings are linked to each other in order to identify a pattern and recognize the related construct. The third phase covers the quantifying of the data,

which will not be exploited in this thesis (Price & Smith, 2021). In practice, the coding will happen under a “tree scheme” that will allow to gathering of the findings without compromising the anonymity of the interviewees. The trees of substantive codes describe the themes and subthemes of the coded passages.

In Table 3.1., all the information discussed in this chapter has been summarized.

INDICATOR	DATA STUDIED	DOCUMENTS ANALYZED	RESEARCH GOALS	INTERVIEWEES
REWARD	<ul style="list-style-type: none"> <li>• “SIZE” AS THE ADOPTION OF EU PRIORITIES</li> <li>• “TANGIBILITY” AS CLEARLY DEFINED GOALS</li> </ul>	<ul style="list-style-type: none"> <li>• EU STRATEGIC DOCUMENTS</li> <li>• ANNUAL ACTION PLANS AND PROGRESS REPORTS</li> </ul>	<ul style="list-style-type: none"> <li>• TESTING WHETHER THE EU-SET PRIORITIES AND DEFINED GOALS ARE INCLUDED IN IPA PROJECTS</li> <li>• COMPARING THE “REWARDS” IMPACT OF DIFFERENT PROJECTS</li> </ul>	<ul style="list-style-type: none"> <li>• EXTERNAL CONSULTANT OF IPA PROJECTS</li> <li>• EU DELEGATION OFFICER</li> </ul>
DETERMINACY	<ul style="list-style-type: none"> <li>• “CLARITY” AS THE EXISTENCE OF GUIDELINES, STANDARDS, OR FEEDBACKS</li> </ul>	<ul style="list-style-type: none"> <li>• EU DOCUMENTS ON STANDARDS TO MEET</li> <li>• ANNUAL ACTION PLANS AND BUDGET SUPPORT DOCUMENTS</li> </ul>	<ul style="list-style-type: none"> <li>• TESTING WHETHER SERBIA ADOPTED THE “GUIDELINES”</li> <li>• COMPARING THE “DETERMINACY” IMPACT OF DIFFERENT PROJECTS</li> </ul>	<ul style="list-style-type: none"> <li>• EU COMMISSION OFFICER</li> <li>• SERBIA’S MINISTER OF EUROPEAN INTEGRATION OFFICER</li> </ul>
CREDIBILITY	<ul style="list-style-type: none"> <li>• “CREDIBILITY” AS THE EU (POSITIVE OR NEGATIVE) COMMITMENT</li> </ul>	<ul style="list-style-type: none"> <li>• STATEMENTS BY THE EU AND SERBIA NATIONAL GOVERNMENTS</li> <li>• PUBLIC POLLS</li> <li>• ANNUAL ACTION PLANS</li> </ul>	<ul style="list-style-type: none"> <li>• TESTING THE EU COMMITMENT</li> <li>• IDENTIFYING A PATTERN</li> </ul>	

3.1. The Indicators and Research Information – Source: Table Made by the Author

## **CHAPTER FOUR – THE CASE OF SERBIA**

### **4.1. SERBIA’S GENERAL PROGRESS IN THE AREA OF JUDICIARY**

#### **4.1.1. The National Judiciary Reform and Other Relevant Measures**

In the last ten years, the EU institutions, particularly the EC, have adopted several decisions and communications to assess the situation of the RoL in Serbia. As stated in the previous chapters, the EC, and in general the EU institutions, have paid great attention to integrating democratic values in all the candidate countries. Already in 2014, when the IPA II started, the EC adopted together with Serbia the “*Indicative Strategy Paper for Serbia*” indicating the area of judiciary and fundamental rights, which falls into Chapter 23 of the acquis, as one of the main weaknesses since Serbia struggled into guarantee the independence and efficiency of the judiciary. This situation was also linked to other related issues that worsened the condition of human rights, such as the increasing backlog of cases, widespread corruption, and the insufficient work of administrative capacity. Subsequently, the EC expected profound improvements to establish judicial independence in the matter of the negotiations of Chapter 23 of the acquis (Indicative Strategy Paper for Serbia, 2014). Serbia officially opened the accession negotiations of Chapter 23 in 2016, three years after the adoption of the National Judicial Reform Strategy (2013-2018), from now on addressed as the Judicial Reform (2013-2018), one of the most important projects started by Serbia’s institution in this area. It provided the creation of a new court network to reduce the case backlog, amendments to past laws – which did not change the constitutional provisions – to ensure the independence of the judicial sector and innovative rules for the election and evaluation of judicial officers. The Serbian government confirmed this sector achieved a high level of transparency, independence, and competence of the officers (Judicial Development Strategy, 2019).

The Judicial Reform (2013-2018) was accompanied by another document: the “*Action Plan for Chapter 23*” elaborated by the Ministry of Justice of Serbia and adopted in 2015. This is a policy document to implement the decisions taken during the negotiations to open Chapter 23 of the acquis. The document referred to the legislation introduced by the Judicial Reform (2013-2018) affirming that the judiciary of Serbia is completely independent and that the election of judicial officers is merit-based and not biased by the political hand. These achievements have apparently been recognized by the EC as well (Republic of Serbia - Negotiation Group for Chapter 23, 2015), on the same line, the Minister of European Integration Jadranka Joksimovic claimed that the Balkan state achieved extraordinary outcomes in the improvement of the RoL (“Chapter 23 Action Plan Review,” 2019). In the revised version of 2019, the European institution pointed out the continuing strong influence of the political sphere over the recruitment of judges highlighting the limits of Serbia's legal and constitutional framework and stating that the National Judicial Reform Strategy started in 2013 was not satisfying and not following the EU standards (Republic of Serbia - Negotiation Group for Chapter 23, 2019). In 2018, when the Council for Implementation of the AP for Chapter 23 adopted the Report 2/2018 on Implementation of the AP for Chapter 23, most of the reforms included in the AP were implemented except the most important one: the adoption of the new Constitution enshrined in Point 1.1.1.5 (Council for Implementation of the Action Plan for Chapter 23, 2018).

Nonetheless, the conclusion of the IPA's second programming period in 2020 and the statements by the Serbian institutions did not represent the end of the EC's interest in improving the RoL in Serbia. The EC has assessed the progress of Serbia since 2020 in the context of enlargement. In the general report of 2020, the EC confirmed Serbia made no progress in the field of the “functioning of the judiciary” considering the previous years and still advocated for constitutional reform. Furthermore, the

reforms undertaken – namely, the National Judicial Reform Strategy and the ones related to the AP of 2015 – were concluded without an integrated impact assessment. Consequently, the successive legislation adopted by the Serbian governors started without a clear definition of what outcomes and weaknesses resulted from the implementation of the two reforms. The latest National Judicial Development Strategy (2019-2024) and the revised AP for Chapter 23 of 2019 have additionally no well-defined economic analysis to set the costs of the reforms. At the same time, the EC reiterated the lack of measures to ensure the independence and impartiality of the judicial sector (European Commission, 2020). The National Judicial Development Strategy adopted by the Ministry of Justice of Serbia in 2019 included less optimistic comments than the AP of 2015. Here, the independence of the judiciary was still the top concern for Serbia and, to solve it, the Ministry included as the main measure to tackle it the introduction of several amendments to the Constitution (Judicial Development Strategy, 2019), which occurred between 2018 and 2019.

In the Serbia 2021 Report, the EC acknowledged the Constitutional reform undertaken by Serbia's Parliament (2019) and the revised AP for Chapter 23 (2019) remarking on the limited progress achieved due to the lack of impact assessment reports adopted before the elaboration of the two latest reforms. Secondly, the adoption of the constitutional amendments witnessed several delays between 2018 and 2020 impacting the possibility of adopting new legislation (European Commission, 2021a). The reports of the following years still highlighted the lack of substantial progress in ensuring the independence of the judiciary, but the EC recognized the improvement of the monitoring and reporting mechanism adopted through the revised AP of Chapter 23 (European Commission, 2022), even though Serbia continued not to deliver a comprehensive impact analysis of the reforms (European Commission, 2023).

In conclusion, the action of the Balkan state between 2007 and 2020 has materialized mainly with the Judicial Reform (2013-2018) and the constitutional amendments of 2019, which caused a process of innovation in the field of justice that is still ongoing today, even though several modifications provided by the Judicial Reform (2013-2018) were still in progress or not yet completed at the end of the programming period and some did not even have a final report (Council for the implementation of the Action Plan for Chapter 23, n.d.). Nevertheless, the adoption of new provisions to change Serbia's Constitution witnessed some difficulties. After the State of Serbia and Montenegro dissolved in 2006, Serbia faced significant challenges in establishing strong constitutionalism and effective RoL, especially within the judiciary. The adoption of the Constitution in the same year led to accusations from various groups, including experts, academics, and civil society, as it was seen as rushed and lacking transparency. Already the following year, the Venice Commission – an internal body of the Council of Europe – highlighted the main issue concerning the articles of the Constitution, revealing a lack of measures to ensure the independence of justice (Antonijevic, 2018). During the Judicial Reform (2013-2018), these deficiencies did not permit the adoption of effective provisions in the area of the judiciary, allowing only some limited progress as emphasized by the various reports published by the EU institutions in those years. Consequently, when the programming period terminated, the Ministry of Justice proposed a constitutional reform to improve the judicial framework. Nonetheless, the proposal received different criticisms from judges' associations, prosecutors' associations, bar chambers, academics, and numerous civil society organizations which even stated that the proposed amendments would worsen the precarious condition of the Serbian justice system (Ministry of Justice of the Republic of Serbia, n.d.). Moreover, the National Assembly was not involved in the constitutional reform process. The main criticism related to the political influence on the justice officers, for example, the 2018 reform stated that

the selected members of the High Judicial Council must be confirmed in parliament. The High Judicial Council is an autonomous judicial institution established in 2009 to guarantee the independence of Serbia's courts and judges. As expected, the EC criticized the lack of progress in the Serbia Report 2020 and Serbia Report 2021 pushing for more constitutional changes.

#### 4.1.2. Serbia's Action Under the IPA

Considering the project directly implemented under the IPA, several proposals were realized in the domain of the RoL:

- During the IPA I, under Chapter 23, Serbia implemented the renovation of a judiciary building in Kraljevo in 2012, the reinforce the organization capacities of the Judicial Academy in 2013, and the restructuring of the prison in Pozarevac in the same year (Delegation of the EU to the Republic of Serbia, 2015).
- In 2014, the IPA support for the sector of RoL and Fundamental Rights focused on the innovation of the court management system, the renovation of the penitentiary system, the fight against corruption, the improvement of the immigrant management system, and the enhancement of the board control (Annual Action Programme for Serbia, 2014).
- In 2015, the IPA stressed the urgency of fully sustaining the Judicial Reform (2013-2018) to improve the quality of the Ministry of Justice's capacity, following the AP elaborated the same year (Support to Justice Sector, 2015). This year had one the most important projects in this sector which is the "*Project Improvement of the Capacities of the Ministry Competent for Justice in Accordance with the Requirements of their Negotiation Process with the EU*" to support the Ministry of Justice in fulfilling its crucial role in further implementation of judicial reform processes (Support to Justice Sector, 2017).

- In 2016, under Result 3, the IPA projects aimed to enhance the administrative capacity of the High Judicial Council and Supreme Court of Cassation concerning its competence in financial and operational planning (Support to Justice Sector, 2016).
- In 2017, Serbia's government decided to strengthen the State Prosecutorial Council and the Republic Public Prosecutor's Office capacities in their respective competencies under Result 2 (Support to Justice Sector, 2017).
- In 2018, no major projects related to the establishment of an independent judiciary were deployed, only some plans associated with the improvement of the EU integration facility under Actions 1 and 2. Nevertheless, several projects adopted between 2016 and 2017 started their implementation phase in 2018 (Annual Action Programme for Serbia, 2018).
- In 2019, the activities funded under Result 1 aimed to support the independence of the judiciary, advocate for the impartiality and accountability of the judiciary, and facilitate access to justice (Annual Action Programme for the Republic of Serbia, 2019).
- In 2020, as happened in 2018, no major projects related to establishing an independent judiciary were deployed, only some plans associated with improving the EU integration facility under Action 1 (Annual Action Programme for the Republic of Serbia, 2020).

The call for depoliticization was listened to in November 2021 when Serbia's National Assembly approved the "*Akt o Promeni Ustava Republike Srbije*" (Act on Amending the Constitution of the Republic of Serbia) and the decision to call a referendum letting the population accept or not the modification. The amendments included provisions to stop the National Assembly from electing the President of the Supreme Court of Cassation, as well as presidents of courts and public prosecutors. Nonetheless, the National Assembly still had the right to appoint part of the High Judicial

Council, as provided by the amendments of 2019 (the number of people appointed by the National Assembly was however reduced), while its competencies were broadened transferring all the Assembly's competencies related to the appointments and dismissals of justice officials to the Council (Mitrović, 2022). Thanks to the amendments of 2021, most of the recommendations set by the EC in the past years were met, but several were not included, such as the introduction of an anti-deadlock mechanism for the appointment of High Judicial Council's members or the suggestion to not change the composition of the High Prosecutorial Council (Venice Commission, 2021). On the 16<sup>th</sup> of January 2022, the Serbian population was called to vote on the constitutional solutions proposed the previous year, which received 60% of the approval votes, even though 70% of registered voters did not participate in the referendum. Consequently, in the last two years, the national government worked to draft legal norms that would put into practice the constitutional amendments and the decisions of the Serbian population. The EU and the Council of Europe financially sustained the process through the joint three-year project "*Support for the implementation of judicial reform in Serbia*" (2022-2024) aiming to adopt the legal regulation within one year. Thanks to the extra support of the Venice Commission, the laws were presented in the first half of 2023. The project provided the creation of working groups to deliver reports, research, assessments, training, interventions, etc. to support the adoption of legislation to solve the issues of judicial independence in Serbia (Council of Europe, n.d.).

Finally, about IPA III (2021-2027), the measures related to the RoL fall into the so-called Window 1 (the RoL, fundamental rights, and democracy). The Action Document for EU for RoL adopted this year contains no measures regarding the independence of the judicial sector, but only ones referred to enhancing justice for children, improving the health treatment of prisoners, and advocating gender equality (Action Document for EU for Rule of Law, 2024). During the current year, the EC

presented a novelty by carrying out a RoL report even for the candidate states, including Serbia. According to the report, the Serbian justice system has witnessed substantial changes in the last fifteen years, the deep commitment of the Balkan state led to the implementation of constitutional reforms aimed at enhancing judicial independence, which are still ongoing, with additional amending laws. A new appeal procedure to the Constitutional Court for judicial appointments has been established, but many judge and prosecutor positions remain unfilled. However, limited progress in constraining political pressure over justice officials and prosecution services has been achieved. Although measures have been taken to limit political influence on these bodies, their practical effects are yet to be fully observed (European Commission, 2024).

#### 4.1.3. Other Third-Party Projects Related to the Area of Judiciary

During the first programming period, the World Bank created the Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS), an international financial support started in 2008 that gathered several donors – such as the United Kingdom, the Netherlands, Denmark, Spain, Slovenia, Sweden, Switzerland, the Delegation of the EU in Serbia, and Norway – to help Serbia’s path toward the EU membership by enhancing its justice sector. As of 2018, the contributions to the program totaled almost 11 million USD. To ensure integrated support to Serbia in line with the action related to the implementation of Chapter 23, all the activities were coordinated with the EC involving also civil society, academics experts, and other external stakeholders (World Bank, 2016).

Another relevant program here is the Rule of Law Project in Serbia, a 10.4 million USD initiative of the United States Agency for International Development (USAID) that started in 2017 and lasted until 2022. The project aimed to support the implementation of the 2019-2024 Judicial Development Strategy in Serbia to improve court operations, reduce delays in court proceedings, and increase public confidence in the courts.

Secondly, other goals included strengthening the capacity of court enforcement departments and supporting the State Attorney's Office to improve the quality and timeliness of legal advice and guidance provided to government bodies (USAID, n.d.).

## 4.2. ANALYSIS OF REWARD

### 4.2.1. EU Priorities and the Expected Reward under the IPA

In the previous sub-chapter, several papers and documents from the EU's side have been assessed to study the direction traced by the European institutions for Serbia's path toward membership. To obtain the "reward", the Balkan state must include in its IPA-related projects the priorities set by the EU before the start of the programming period. The most authoritative source of Serbia's priorities in the judiciary is the Venice Commission which has followed the progress of the Balkan state delivering opinions and recommendations since 1995. In 2011, the Venice Commission assessed the Law on amendments of the Constitutional Court of Serbia stating the overburdening of the Constitutional Court due to the enormous number of pending cases in Serbia and suggesting that the Supreme Court of Cassation should be involved to support the fast solving of the backlog (Venice Commission, 2012). Similarly, in the same year, the Venice Commission adopted another recommendation advocating for the separation of powers between the Ministry of Justice and the High Judicial Council (Venice Commission, 2011). These opinions were reiterated in the Opinion on Draft Amendments to Laws on the Judiciary of Serbia of 2013 (Venice Commission, 2013). Back in 2005, the Venice Commission adopted several recommendations regarding the draft of the Constitution adopted the following year stating the urgency of better defining the competencies of the High Judicial Council and improving its independence from the Ministry of Justice (Venice Commission, 2005). Related to the IPA II, the main document in this regard is the "*Indicative Strategy Paper for Serbia (2014-2020)*" adopted by the EC in 2014. The main weaknesses

addressed regarding the independence and the efficiency of the judiciary concerned the judicial network, electronic case management, capacities of the key stakeholders, procedural laws, prosecutorial investigation, availability of legislation, and case law with a particular focus on the increasing number of backlog cases and the poor capacity of the judicial system. The overall expectation was to improve the impartiality and efficiency of the judiciary, enhance the constitutional and legal framework, increase the technical and administrative capacities of the judicial network, and reduce the backlog of cases. Nonetheless, in this document the EC did not write any explicit outcome or impact indicators, asserting they would be developed in the Annual Actions Plans (Indicative Strategy Paper for Serbia, 2014).

The Indicative Strategy was broad and did not provide any expectations about the potential benefits of implementing the IPA. The most important ones adopted in the area of judiciary independence are the “*IPA 2016 – Support to the Supreme Court of Cassation*” and the “*IPA 2016 – Support to the High Judicial Council*” to provide technical assistance to both bodies reinforcing their capacities in the execution of their mandates and reducing the backlog of cases; and the “*IPA 2017 – Support to the Prosecutorial System*” to deliver technical assistance ensuring the independence and efficiency of the Prosecutorial system (Annual Action Programme for the Republic of Serbia, 2019). These projects represented a meaningful opportunity for the Balkan state to enhance all the major judicial bodies with the technical assistance of the EU. All the projects were fully implemented by the end of the programming period highlighting a strong commitment from Serbia’s side to enhance the capacity of its judicial bodies (Republic of Serbia - Negotiation Group for Chapter 23, 2019).

Another relevant project implemented in Serbia during IPA I (2007-2013) is “*IPA 2007 – Improvement of Efficiency and Transparency of Judiciary System*” implemented between 2009 and 2011. The project's goal was to

enhance the RoL and ensure the efficient operation of the judiciary in Serbia. This was achieved by supporting the Judicial Academy in elevating the quality of its programs and playing a crucial role in advancing the professional qualifications of judges, prosecutors, and other legal and judicial staff. IPA I had the general goal of improving transition and institution-building and the judiciary was under the political criteria Serbia had to meet. Thus, Serbia did not directly face the problem of judiciary independence (Government of the Republic of Serbia - Ministry of European Integration, n.d.).

#### 4.2.2. What is a “Sizeable” and “Tangible” Reward?

As discussed in Chapter 3.3., Schimmelfennig & Sedelmeier defined the “reward” as any kind of sanction or prize a candidate or member states can get. Contrarily, since the topic of study here is the implementation of the IPA, the research, in this case, will focus on related benefits WBCs and Serbia aim to acquire for implementing projects related to democratic reforms and judiciary independence. Several documents addressing the RoL and the judiciary field have been adopted since 2013 by both Serbia’s government and the EU institutions. Nevertheless, to complete the study it is necessary to study whether the “reward” is perceived, which means that it is sizeable and tangible, as defined in the previous chapter. After the definition of these two indicators, the results of each project under IPA will be compared with each other to assess the impact of different rewards in the same area.

Focusing on the size of the reward of IPA II projects, the EU allocated more than 1.5 billion EUR in the period 2014-2020, 265 million EUR of this budget was assigned to the area of the RoL and fundamental rights (Indicative Strategy Paper for Serbia, 2014), then lowered to 246 million in 2018, less than the budget for “Environment, climate change, and energy” (321.8 million EUR) and “Competitiveness, innovation, agriculture, and rural development” with a budget of 336.58 million EUR

(Indicative Strategy Paper for Serbia, 2018). For the 2021-2027 period, Window 1 (RoL, fundamental rights, and democracy) had the second lowest budget: 2.089 billion EUR. Considering specifically the projects related to the IPA and judiciary independence, “*IPA 2016 – Support to the Supreme Court of Cassation*” had a budget of 1.5 million EUR, “*IPA 2016 – Support to the High Judicial Council*” had a budget of 2.8 million EUR, while had a budget of “*IPA 2017 – Support to the Prosecutorial System*” had a budget of 1.5 million EUR. The first one aimed at reducing the backlog of cases and assisting the Supreme Court of Cassation in the adoption of laws harmonized with the EU standards; the second intended to enhance the capacity of the High Judicial Council by improving its organizational structure and its financial management, budget planning, reporting and oversight of budgetary funds (Support to Justice Sector, 2016); while the last one targeted the adoption of a strategy regarding the human resources and financial management capacity and skills of the State Prosecutorial Council and the Republic Public Prosecutor’s Office improving also the effectiveness of their cooperation (Support to Justice Sector, 2017). In other words, Serbia included all the priorities set by the Venice Commission and adopted by the EU. Nevertheless, according to the priorities set, the project related to the Supreme Court of Cassation and the High Judicial Council seems to fill a more fundamental role in the path of Serbia toward membership, even though the enhancement of the State Prosecutorial Council and the Republic Public Prosecutor’s Office is a fundamental part of achieving strong independence. The IPA I project instead had a budget of 3 million EUR and aimed at three general goals:

- Reducing the backlog of cases at court;
- To build institutional capacity to better monitor and evaluate the functioning and efficiency of the judicial system;
- To improve the transparency of the judicial system (Improvement of Efficiency and Transparency of Judiciary System, 2007)

To study the tangibility of the projects mentioned above, the Annual AP will be considered to discover if they actually aimed to reach specific targets and goals. For example, the IPA 2016 plans had specific objectives and encompassed sub-activities to effectively consolidate the Supreme Court and the High Judicial Council dedicating most of the Annual AP of 2016 to both campaigns. The project related to the Supreme Court of Cassation had the target of resolving 100% of backlogged cases of that year by 2022, reducing 70% of all first-instance cases resolved in two years by 2020, and increasing of 15% the number of cases resolved through alternative dispute resolution system by 2020. Considering the project related to the High Judicial Council, it aimed to transfer 100% of responsibilities from the Ministry of Justice to the High Judicial Council by 2022 and trained forty-seven employees in the administrative office by 2020 (Support to Justice Sector, 2016). Furthermore, the Annual AP of 2016 had the general goal of implementing 100% of the priorities included in the AP for Chapter 23 by 2020. Finally, the IPA 2017 project related to the Prosecutorial system did not provide any measurable indicators but it just required the adoption of the guidelines, human resources strategy, training, and other measures by 2023; another general objective was the closing of Chapter 23 of the acquis by 2023 (Annual Action Programme for Serbia, 2017). Similar to the IPA II project related to the Prosecution system, the “*Improvement of efficiency and transparency of judiciary system*” aimed at no measurable targets. In conclusion, similarly to the previous paragraph, only those related to the Supreme Court of Cassation and the High Judicial Council had tangible targets.

#### 4.2.3. Possible Challenges

**The interest is noticeable but commitment is needed.**

As seen in the previous sections, the EC delivered several reports and recommendations setting guidelines to help Serbia in conforming its

judicial field to the EU standards. Most of the adopted documents are not directly linked to the IPA. Nevertheless, considering the Action Document for EU for RoL adopted to implement the projects provided by IPA III, the EC addressed the EC Report on Serbia and the AP for Chapter 23 – and, consequently, the related response of Serbia, that is the adoption of the Judicial Reform (2013-2018) and the constitutional amends of 2019 – as part of the EU strategy to improve the conditions of the justice system in Serbia (Action Document for EU for Rule of Law, 2024). Considering all these actions, the Serbian government has shown great interest in aligning its judicial sector on various occasions since 2013. Besides the legislative measures adopted during the last ten years, the political inclination to follow the voice of the EU is traceable in the statements by the President of Serbia Aleksandar Vučić who claimed in 2021 that the IPA support is fundamental to accelerate reforms and reaching the ultimate Serbia’s goal to achieve the EU membership. Under its guide, 40% of IPA II’s resources were allocated to strengthen the RoL (The Government of the Republic of Serbia, 2021). At the same time, in 2017 the National Assembly adopted the law to constitute the Ministry of European Integration, the competent body in programming and assessing the IPA funds. On the other hand, considering the targets set by Serbia, the efforts required to reduce the number of backlog cases and to separate the competencies between the High Judicial Council and the Ministry of Justice need a long commitment and, moreover, a considerable amount of financial and human resources which Serbia might now have. By analyzing the various annual action programs in the area of justice reform, it will be clear whether the projects followed the right direction to tackle the problem of the weak independence of the judiciary or to constrain the political influence over it. At the same time, different plans – such as the National Judicial Reform Strategy and the ones related to the AP of 2015 – were implemented without conducting previously detailed assessments of the achieved results confirming the poor commitment of Serbia’s government to adopting high-quality

documents. A similar fluctuation is noticeable in the implementation of the IPA program. In different Annual APs of the last ten years (i.e. 2014, 2018, 2020, and 2021), there has been no major action to improve judiciary independence even if the attention toward this sector has considerably increased lately from both sides.

**The difference between what is required and what is done may be too wide.**

The statements, the legislative and constitutional measures, and the creation of new bodies in this field, such as the Council for the Implementation of the AP for Chapter 23 and the Ministry of European Integration all played a significant role in the progress of Serbia in the field of justice, showing a great political willingness to achieve the benefits derived from the alignment of the conditions set by the EU under the IPA framework. At the same time, there may be a discrepancy between what was done and what was required. For example, in the same year as the end of the Judicial Reform (2013-2018), the EC criticized it asserting that constitutional provisions had to be adopted to correctly tackle the issue related to the RoL. Nevertheless, the constitutional reform that started in 2019 was still not satisfying and did not completely follow the recommendations stated by the EC and the Venice Commission in various papers. Only in 2021, the Serbia's government succeed in delivering new provisions that took into account European advice. Nonetheless, it must be highlighted that the modification of Serbia's is a process that started basically right after its adoption in 2006 and since then it has been affected by serious deferrals that delayed the renovation of the justice system until today. So not only, Serbia has had to deal with the internal slowdowns, but even with the difficulties in absorbing the recommendations from the EU. The second possible challenge here can be caused not by a lack of commitment by Serbia but by a lack of competencies and capacity to carry out the projects

## **The divergent opinions of Serbia and the EU about the progress made may affect the advancement of the IPA projects.**

Some discrepancies have been already highlighted in the previous section regarding the AP for Chapter 23 (2015) when Serbia's government used too positive words to describe the condition of the national justice system. The current progress achieved is assessed in the "*Judicial Development Strategy*" (2020-2025) adopted by the Government of the Republic of Serbia together with the Revised AP for Chapter 23 (2020). In this document, the Government used enthusiastic words referring to the progress accomplished by the Balkan country since 2013, when the Judicial Reform (2013-2018) started. Terms such as "substantial progress", "significant results", "exceptional progress", "considerably enhanced", and "significantly contributed" dominate the third chapter of the document about "*The Current Situation Regarding the Judicial Reform*" concerning the various sectors interested by the policies introduced in the last ten years (Government of the Republic of Serbia, 2020). From the EU's side, on several occasions, the EU institutions repeated that Serbia did not address the topic correctly and a further commitment was required. The discrepancies in assessing the progress achieved may have repercussions on the needed adjustment for future support.

### 4.3. ANALYSIS OF DETERMINACY

#### 4.3.1. A Different Path for WBCs

*"Target governments must know what exactly they need to do to meet the conditions and get the reward"* (Schimmelfennig & Sedelmeier, 2019: p. 817). This is how Schimmelfennig & Sedelmeier intended the determinacy. Several conditions must be met to be part of the EU and to effectively achieve the benefits caused by the correct implementation of the IPA. Considering the RoL and democratic values, the EU enlargement strategy comprises several papers and documents – with a special focus on WBCs – highlighting how much the EU strongly cares about correctly

implementing these principles. Further emphasis on RoL also meant major strictness from the EU due to the troubles the CEECs had in following European instructions. These difficulties and the start of the “enlargement fatigue” addressed in the previous chapters are the reasons the EU had to pose more rigorous conditions in the area of RoL. For example, the EC introduced opening, interim, and closing benchmarks in the acquis’ chapter negotiations to facilitate WBC’s actions. As a result, the EU's requirements are now more specific, but also more difficult to meet. While clearer conditions should increase the chances of successful European integration, tougher requirements make it more costly to comply, reducing the probability of successful Europeanization. (Zhelyazkova et al., 2019).

The different approach of the EC is highlighted in the history of the WBCs’ enlargement process which followed a different way than the other candidate states that joined the EU in 2004 and 2007. WBCs are part of the SAP – introduced in the first chapters – created by the EU in 1999 to direct the WBCs on their route to membership through a stabilization process of the region and advocating for partnership among them. In practice, SAP is an aggregate of political and economic objectives that states must meet to gain the rank of candidate. The SAA adopted between the European Communities and Serbia provided only general principles and goals the candidate state must pursue (Stabilisation and Association Agreement, 2013). Other pertinent conditions are the famous Copenhagen Criteria presented in 1993 by the European Council and the guarantee that the candidate state can fulfill all the duties member states must observe. Moreover, they need approval from the EU institutions (and consequently from the member states) and their citizens through a referendum or a decision made by the national parliaments (European Commission, n.d.-b). Every country since 1993 has been actively followed by competent EU institutions by setting several conditions and criteria to satisfy and adopting guidelines to facilitate the implementation of reforms

needed. In conclusion, since the focus of the thesis is the IPA, the analysis will not concentrate on the study of the conditions set by the EU to access the rank of full member as Schimmelfennig & Sedelmeier did. Instead, the determinacy of Serbia's action will be measured by studying whether the EU adopted any guidelines, standards, or feedback to support the efficient implementation of projects under the IPA. The existence of these guidelines will serve in the comparative analysis to assess their impact on the progress made by Serbia.

#### 4.3.2. General "Guidelines" for IPA Management

General instructions can be found in the regulations establishing IPA. The only reference to standards to adopt from the former one states that the implementation of the plans (direct, indirect, or in shared management) must refer to Regulation (EU) No 236/2014<sup>9</sup> to institute uniform conditions for employing the IPA II (Article 7). Regulation (EU) No 236/2014 has been now replaced by Regulation (EU) 2021/947<sup>10</sup> as stated in the regulation establishing IPA III (Article 9). Regulation 2021/947 specifies what legislative tools must be used for programs involving third parties. As happened with the IPA, the EC carries its plans through annual or multi-annual APs based on programming documents (Article 23). The Regulation then specifies what kind of supporting measures can be adopted (Article 27), the eligible persons and entities (Article 28), and other technical details about the EU programs involving third parties (Chapter IV). Unfortunately, there are still no provisions addressing how third parties should carry out the adopted plans.

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<sup>9</sup> Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action

<sup>10</sup> Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009

Similarly, the EC adopted in 2014 the Delegated Regulation (EU) No 240/2014<sup>11</sup> proving principles about how to establish partnerships in the matter of structural and investment funds. Nonetheless, even in this case the legal measure incorporated just general provisions on how to identify relevant partners and what main principles and good practices should the member states follow in their partnership agreements. Considering the centralized projects under IPA I programming frameworks, even in this case there are no references to any guidelines or support measures Serbia can draw, only general principles.

Regarding IPA II and III, projects can be implemented via direct management, when the budget is administered by the EC or other EU institutions; indirect management, the budget is overseen by bodies belonging to the beneficiary countries entrusted by the EC (or even by the beneficiary countries themselves); or shared management, this is lonely for cross-border cooperation programs with member states, the budget here is managed by EU countries. Accordingly, the EU should provide the bodies and the beneficiary countries with guidelines on how to correctly and effectively implement the plans under indirect management. The delegated competent entity in Serbia is the National IPA Coordinator (NIPAC), who is currently the Minister of EU Integration Prof. Tanja Mišćević. The NIPAC has the support of the Technical Secretariat of the National IPA Coordinator, who helps the Ministry of European Integration in several activities such as the coordination of EU funds, the performance of administrative and technical tasks, and the monitoring and evaluation of IPA projects. Another relevant institution is the National Authorising Officer appointed by the government to manage the financial aspect of the APs and to guarantee an operative internal control system for the reliability of funds transactions (MEI, n.d.). Both the

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<sup>11</sup> Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

names of the Technical Secretariat of the National IPA Coordinator and the National Authorising Officer are not currently available. As emerged in the APs from the beginning of the IPA II, in 2014, there were no major reforms in the field of judiciary independence. However, in Sector 1 (Democracy and Governance), under Action 4 (EU Integration Facility), the EU allocated a budget of more than 24 million EUR (almost 50% of the overall budget for Sector 1 of 2014) to sustain Serbia in the implementation of investments. The management of this Action was given to the EU delegation in Serbia. Nevertheless, no specific AP for Sector 1 was provided (Annual Action Programme for Serbia, 2014). Conversely, since 2015, the EU has always adopted a detached Annual AP for the integration facility (in some years, even two, one for direct management and one for indirect management) allocating substantial resources to support the correct management of the EU funds.

Lastly, the IPA is considered a program falling into the Budget support (2011), which is the cluster of projects dedicated to funding and technical assistance of the EU. Budget support assists third countries in improving in implementing reforms to upgrade their performance and capacity building. The projects under the Budget Support must take into account the guidelines set by the EU in 2017 (European Commission, n.d.-a). The document mostly concerns the principles and the design of budget support policies. Generally, third parties and member states must commit to the fundamental values of the EU such as respect for human rights, democracy, and the RoL; they moreover must promote gender equality, sustainability, public administration reform, economic development, and competitiveness. Chapter 4 of the document focuses on the design and implementation of budget support, outlining key principles, processes, and considerations necessary for effective budget support programs. Firstly, the chapter outlines specific eligibility criteria that must be met for budget support contracts. These criteria include:

- The alignment with the partner country's development strategies and policies
- The assessment of the economic environment to ensure stability and predictability.
- The evaluation of the effectiveness and efficiency of the fund management system.
- The commitment to transparency and accountability in budget processes.

Secondly, the project takes into account the relevance and credibility of the partner country's policies which are assessed based on their alignment with international benchmarks and best practices. This includes evaluating the country's fund management reform programs and the involvement of civil society in budget oversight. Thirdly, the chapter discusses how to determine satisfactory progress during the implementation of budget support. This involves monitoring key performance indicators and assessing whether the expected outcomes are being achieved. It also emphasizes the importance of timely publication of budgetary documents to enhance accountability.

#### 4.3.3. Other IPA-Related Standards Set by Relevant Institutions

In December 2021, the Republic of Serbia jointly with the EC adopted the Financial Framework Partnership Agreement, a document addressing all the specific procedures to correctly implement the plans financed by the IPA III. The document is composed of almost a hundred articles focusing on every phase of the IPA process from the founding principles which form the base of the projects to the reporting and evaluation stage. Again, even though the title of the document should concern every type of implementation modality (direct, indirect, or shared), the document provides standards and guidelines only for the indirect management mode (Financial Framework Partnership Agreement, 2021).

In 2021, the European Parliament released a briefing document discussing all the documents adopted by the Council of Europe and other EU and non-EU institutions concerning judicial independence. Here, the definition of “independence” was remarked, which contains a distinction between “external” and “internal” independence. The former means that non-judiciary institutions and their decisions cannot improperly influence the judges and cannot be challenged by the executive and legislative branches. “Internal independence” is the right of justice officers to act without any restriction or improper influence by the judge's hierarchical superiors. Even in this case, the document provides just general directions and definitions in the matter of judiciary referring to several cases addressed by the Court of the European Union, without properly explaining how countries would achieve this level of independence (European Parliament, 2021). In this document, it is also stated that the European Commission for Democracy through Law, or simply the Venice Commission, is the competent body to provide legal support to states in their process of aligning with European standards. The Venice Commission has provided since 2013, assessments and recommendations to Serbia to better adopt effective projects in the area of judiciary.

#### 4.3.4. Possible Challenges

##### **The interest is noticeable but commitment is needed.**

In almost every IPA project, the EU includes a component to support the governmental institutions in their managerial, monitoring, and evaluative tasks. These “guidelines” and the assistance are integrated into the IPA documents and the report about Serbia’s situation of the judiciary, but the Balkan countries still struggle to put into action what is required in the annual APs and the AP for Chapter 23. Addressing the general situation, the EU and the other European institutions involved in human rights and RoL have always provided support to the candidate states to

tell them what they have to do to achieve their reward. Serbia is not the only country that is having difficulty in its administrative duties, the whole Balkan region is affected by poor managerial competencies. The same problem arose during the enlargement rounds of 2004 and 2007 when different post-communist countries from Central Europe joined the EU. Nevertheless, the WBCs are more affected by the heir of communism and the former dictatorship and, consequently, this issue must be addressed with more and, above all, more commitment.

**The difference between what is required and what is done may be too wide.**

Similarly to the reward indicator, the effort required to correctly implement the projects is not only about the need for a long-term commitment that may or may not be lacking during the time, but it is also about the existence of managerial capacity by the involved staff that may not be prepared to deal with such large amount of adopted financial resources. In this sense, the support provided by the EU may not be enough to cover this absence. The IPA includes in all of his programming periods an “Action” called the European Integration Facility to firstly assist the implementation of the *acquis* and to provide institutional bodies of capacity building capability for accession negotiations and secondly to support the technical preparation of strategic investments. Since 2014, the EU allocated almost half of the budget for the Democracy and Governance sector just for the European integration facility without any reference to the independence of the judiciary, the same happened the following year (the only fields involved in this Action are energy, agriculture and rural development, food safety, veterinary and phytosanitary, education and regional policy, and other related fields). Not even the adoption of different APs for projects under direct and indirect management in 2018 led to any major changes in addressing judiciary independence.

## **Old and general guidelines, standards, or codes of conduct may be insufficient**

In the last years, the EU has adopted several documents to establish and regulate the creation of the IPA. All of these regulations and other legislative measures mainly contain general standards to follow during the implementation process. The regulations often refer to others determining codes of conduct or guidelines, but only for the member states. In the matter of the RoL, only the Council of Europe provided general definitions and standards that countries must meet to respect the *acquis*, but, at the same time, it did not provide any recommendations on how to accomplish these rules. Nevertheless, as emerged from the analysis, the EU has provided the Balkan state with different supportive tools to let it know what to exactly do. Finally, the guidelines provided for the Budget Support projects were adopted in 2017 and apply to every project involving third parties. Having a common strategy for all the programs may seem an effective measure to promote convergence for every involved partner. Nonetheless, this approach risks underestimating the national characteristics that influence the correct implementation of the plans.

### 4.4. ANALYSIS OF CREDIBILITY

#### 4.4.1. Fall in Enlargement Enthusiasm

Credibility refers to the odds of not getting funds or support from the EU whether the candidate does not meet the conditionality or, in the opposite case, the chance that the EU holds its promise in case of success. Credibility is mainly affected by the benefits of EU countries provoked by the fulfillment of conditionality or the internal consensus about enlargement. The first chapters have already implicitly addressed this topic. A great variation in the view of the enlargement characterizes European history since the birth of the EU communities in the '50s and the first enlargement rounds. Recently, the EU's perception of the

benefits of enlargement became again a hot topic. During the 2000s, the EU witnessed a great expansion when the number of members increased from sixteen to twenty-eight signing the era of “enlargement enthusiasm.” The rush in the enlargement process, the struggle of new members to comply with basic EU standards, the democratic backsliding that is crossing Europe, and the application of the WBCs with evident administrative and governmental lacks, turned the “enlargement enthusiasm” into the “enlargement fatigue.” The EU is currently applying stricter conditionality on the WBCs’ applications to avoid having new members with the same problems as the ones who became part of the EU in 2004 and 2007. Nevertheless, stricter conditionality does not necessarily mean that the EU is holding back from awarding WBCs with full membership status. Accordingly, a fall in enlargement enthusiasm does not necessarily mean that the EU does not want to include other members in the community even though their path has been long and full of difficulties. Following this idea, this sub-chapter will now try to study how the changes in the approach and feelings regarding enlargement have affected the path of Serbia toward a more independent judiciary. More specifically, the chapter will explore whether the EU is willing to hold its promise to continue supporting Serbia in case of success or, in the opposite case, to not support Serbia whether Serbia does not meet the conditionality. To do this, the thesis will analyze the opinions and statements of the EU’s and Serbia’s politicians to understand whether the commitment is real and perceived. By using these sources, it will be possible to measure the commitment of the EU and at the same time also how perceived the EU’s credibility is. The disbursement of the funds and the continuation of the projects will then be used to test the trend of perceived credibility.

#### 4.4.2. EU Member States’ Attitude to Serbia

The political and financial relationships between the Balkan region, moreover with Serbia, and the EU started a long time ago and witnessed

several ups and downs in the last thirty years. The changes in the opinions from the EU's side about for example the Balkan Wars and the independence of the Kosovo\* region jeopardize the credibility of the EU about the real commitment of the community to solve Serbia's population problems. Nonetheless, in the last decades, the EU has become the largest donor to Serbia providing almost 3 billion EUR until 2020 only by the IPA. Furthermore, other funds have been provided through loans, grants, members' donations, and third-party contributions. The financial support to Serbia has been also enriched with several statements by high figures of the EU landscape. In 2020, for example, Joseph Borrell, the former EU High Representative for Foreign Affairs and Security Policy stated that "Europe is not complete without the Western Balkan" after the adoption of the "*A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans*" and candidate countries 2020 report. President of the EC Ursula von der Leyen confirmed the same feeling in a visit to the Balkans that occurred during the EU-Western Balkans Summit asserting again the EU support for WBCs (EEAS, 2021). In "*A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans*," the EC indicated 2025 as a possible year for the membership of Serbia and Montenegro (A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans, 2018). Considering singularly member states, on several occasions national governments remarked their strong support for Serbia's path toward the full membership position. Sergio Mattarella, Italy's President of the Republic, stated in 2022 that the unification of the continent will not be complete without the entrance of WBCs (*Italian President Backs North Macedonia's EU Membership Bid*, 2022), the statement goes with the Giorgia Meloni's, Italy's President of the Council, assertion of 2023 that Serbia can count on Italian support (Nikolić, 2023). In the early 2000s, Italy as the rest of the EU was cautiously optimistic about Serbia's EU membership due to its role during the Balkan Wars and the allegation related to the former President of Yugoslavia Slobodan Milošević. The

focus was indeed on stabilizing the Balkans after the conflicts of the '90s, rather than advocating for its membership. Italian politicians supported Serbia's EU aspirations but emphasized the need for Serbia to meet the necessary democratic and economic reforms. During the early 2010s, Italy was generally supportive of Serbia's EU accession. Italian politicians saw Serbia's membership as a way to stabilize the Balkans and strengthen economic ties. Italy, being one of Serbia's major trading partners, had a vested interest in Serbia's integration into the EU. More pragmatic affirmations came from Angela Merkel, former German Chancellor, who opened to Serbia's membership in 2021 but only Serbia would enhance its action to converge toward EU standards solving long-going issues such as the tensions with Kosovo\* (*Merkel in Serbia: "Long Way to Go" until EU Membership, 2021*). More recent developments regarded the visit from current Germany's Chancellor Olaf Scholz to Serbia to ensure a cooperation agreement between the EU and the Balkan state on importing critical raw materials. The visit raised several criticisms due to the accusation of election fraud, which occurred in 2024 (Von Der Burchard et al., 2024). Germany has in fact always adopted a more cautious approach when addressing the possible membership of Serbia. After the creation and enhancement of the SAP during the 2000s to stabilize the region, Germany supported Serbia's integration into the EU sharing the idea that it would enhance regional stability and economic cooperation. However, it has always stressed the need for Serbia's alignment with EU values and standards. Lately, the relationship between the two countries worsened due to the constant political relations between Serbia and Russia even after the Ukrainian invasion provoked by the latter (Kreizer, 2022). A peculiar relation is traceable between France and Serbia where after the stabilization process of the 2000s, Serbian and French former Presidents Boris Tadić and Nicolas Sarkozy signed in 2011 a strategic partnership agreement to support Serbia's EU integration (*Serbia, France Sign Strategic Partnership Agreement, 2011*). France has always had a singular connection with

Serbia due to their history signed by the first diplomatic contacts established in 1839 between the Kingdom of France and the Principality of Serbia (Republic of Serbia - Ministry of Foreign Affairs, n.d.). Nevertheless, in recent years, the support has become more pragmatic and strategic. French President Emmanuel Macron has been involved in significant bilateral agreements with Serbia, including deals on fighter jets and nuclear energy. Despite concerns over Serbia's ties with Russia and China, Macron has emphasized respecting Serbia's sovereignty and maintaining strong bilateral relations (Hajdari et al., 2024); nonetheless, it highlights the lack of enthusiasm in Serbia for accession (Giordano, 2024). Spain followed a similar path and in 2022 the Prime Minister of Spain Pedro Sanchez visited Belgrade advocating for Serbia's EU integration and stating that the Balkan state is part of Europe (Pascual, 2022).

To summarize the timeline, after the Balkan Wars and the end of the "great" Yugoslavia, the member states looked at the region with the top goal of stabilizing it. The EU has always had a special relationship with Serbia due to its large historical and social influence over the other Balkan countries. Thus, Serbia's internal and external integrity was necessary to avoid any other crisis in the WBCs. The end of the conflicts and the adoption of the IPA in 2007 opened the path toward full membership which became official in 2012 when Serbia gained the rank of candidate member state. After the 2000s, member states generally followed a more skeptical or open behavior in the path traced by the EU providing national or common tools and financial measures enhancing its economic conditions. From the history of the various statements and attitudes of the member states, it seems that the main concern of the national governments focuses on the close relationships with Russia and China and also the permanent tensions with the Kosovo\* region. Nevertheless, the EU's action regarding Serbia has been constant since the establishment of financial tools such as the IPA. In this sense, the

measures taken by the community could be interpreted as a way to lead Serbia closer to the EU and to move it away from the hands of third states.

#### 4.4.3. Serbia's Perception of the EU's Credibility

Given the attitudes and opinions of member states and the EU as a whole, it is necessary now to understand whether the credibility of continuing the support projects and, as the ultimate goal, reaching the rank of member states is not only present but also perceived. To do it, the thesis takes into account the statements expressed by Serbia's politicians and the public opinion polls since even civil society should be involved in the implementation process. The evolution of the perception of credibility will follow the action.

The journey of Serbia started in 2000 with the end of the Balkan Wars and the following end of Milosevic regime in the same year. After decades of a totalitarian communist dictatorship and wars in the Balkan area, the urge for a democratization process and renovation of the economy pushed the new Serbian leaders to join the SAP (and the SAA in 2008) and the Thessaloniki Summit of 2003. Since the beginning, the main focus concerned the adoption of reforms in the area of the RoL and democratization (Chapters 23 and 24 of the acquis) adopting a clear Europeanization perspective (Mihajlovic, 2024). During the 2010s, Serbia was quite optimistic about joining the EU due to the several projects launched under the freshly adopted IPA that promoted the relaunch of Serbia with several investments. During these years, Serbia gained the assistance of the World Bank with its Multi-Donor Trust Fund for Justice Sector Support (2008-2018) and the USAID Rule of Law by the US (2017-2021). The government was committed to meeting the necessary criteria and aligning its policies with EU standards. In this period, the progress continued, with Serbia making significant reforms to align with EU requirements. The general sentiment among politicians was positive, and

EU membership was seen as a strategic goal. Besides the financial measure, the motivation was also indicated by the opening of various Chapters of the acquis such as Chapters 23 and 24 opened in 2016. At the same time, as already said in the previous section, in 2018, Joseph Borrell stated that Serbia could become a member by 2025. Nevertheless, the lack of progress made and the war in Ukraine started in 2022 with the related shift toward Russia, increased the political pressure from the EU's side asking Serbia to enhance its action. According to the Serbia 2020 and 2021, in the early 2020s, Serbia achieved limited progress in the matter of Chapters 23 and 24 ("Key Findings of the 2021 Report on Serbia," n.d.). The weaknesses in the area of the RoL and democracy rose in 2023 during the presidential election won again by Vučić. Here, the Members of the European Parliament expressed their preoccupations about the procedural deficiencies that marked the elections and the lack of institutional response to the alleged manipulation (European Parliament, 2024).

The path of Serbia has been moreover marked by different statements from different politicians which followed a similar pattern. For example, in the 2000s, the former President of Serbia Boris Tadić had a positive attitude concerning a possible membership of Serbia emphasizing the importance of EU integration and believing that Serbia's future lay within the EU ("Deklaracija o Pomirenju DS i SPS," 2008). This view was also shared by Serbian Prime Minister Mirko Cvetković who always highlighted the significance of EU membership ("Boris Tadic Former President of Serbia," n.d.). The fall in the commitment to the EU integration process is noticeable even in the statements of the successor of Boris Tadić, who is Tomislav Nikolić, who on two different occasions claimed that Serbia wants to join the EU without dropping its rights over Kosovo\* (*Profile: Tomislav Nikolic*, 2012) and asserting that the EU's conditions for WBCs are "humiliating" (*Serbian President: EU's Membership Conditions "Humiliating,"* 2016). Differently, in 2014, Vučić,

during its mandate as Prime Minister (2014-2017), highlighted Serbia's commitment to EU integration and determination to fulfill all necessary criteria for membership (Majstorovic, n.d.). His opinion changed after the invasion of Ukraine by the hand of Russia when many politicians and newspapers called Vučić and its country "Putin's puppet" due to the historical and economic relationships between the countries. The worsening of relationships between the EU and Serbia dressed with the scandal linked to the 2023 elections, made both sides not as enthusiastic anymore about the potential membership as they used to be (Preussen, 2023). In 2024, Vučić affirmed Serbia will likely be part of the EU by the end of the decade (Reuters, 2024). In other words, even though the EU tried to maintain a high credibility about the future membership of Serbia, the national government did not keep the same enthusiasm and optimism as in previous decades.

Before addressing whether the perceived credibility somehow affected Serbia's action under the IPA, it is necessary to analyze the public polls about a possible membership of the WBC in the EU. The Minister of European Integration gathered public opinion polls from 2006 to 2022. In 2006, 70% of Serbian people supported the EU integration of the country, but at the same time, the greatest fear of an enhanced integration was the loss of the national identity while the judiciary was perceived as the last sector that would benefit from EU integration (Republic of Serbia Government - Serbian European Integration Office, 2006). Six years later, in 2012, when Serbia officially became a candidate country for EU membership, only 40% of the interviewees positively answered supporting the EU membership while 30% said they would vote against it. In the 2012 poll, the Government of Serbia highlighted also that since 2009, support for EU integration constantly decreased, while the negative opinions continued to increase. This year, the greatest fear was the damage that EU membership would provoke and the strict conditions set by the Community institutions. Nevertheless, in this case,

the Serbian people pointed at the judiciary as the second area that required the most significant reform (Republic of Serbia Government - Serbian European Integration Office, 2012). In 2018, the year of the end of the Judicial Reform (2013-2018), one year after the election of Vučić, and two years after the opening of Chapters 23 and 24, the support increased again up to 55% for a hypothetical referendum on supporting the accession of Serbia to the EU, with 25% of Serbian population that would vote against. The main critiques this time concerned again the damage that would be caused by EU membership and the role of member states concerning the independence of Kosovo and the bombings of Serbia. Moreover, 75% of Serbia's population believes that the reforms should be carried out even if they weren't a condition for EU accession, to create a better Serbia for our own sake. In this regard, the judiciary remains at the top of the areas that need the most urgent reforms. Nevertheless, people claim this is the sector that achieved the lowest progress in the past years (Republic of Serbia - Ministry of European Integration, 2018). Finally, after a long decrease in EU support in Serbia that lasted from 2009 to 2016 and a timid rise between 2017 and 2021, in the latest poll of 2022, the advocacy for EU integration reached one of the lowest points in the analyzed years (43% would vote for the EU membership in the hypothetical referendum) while the opponents reached one of the highest rates (32% would vote against). The fears again concerned the non-benefits of membership and the dictatorial conditions set by the institutions. The judiciary was no longer one of the areas that required specific attention. Probably, the 2022 poll was affected by the events in Ukraine and the following critiques by member states regarding the behavior of Vučić and Serbia toward Russia (Republic of Serbia - Ministry of European Integration, 2022).

To summarize what has been said until now, Serbia's population support partially followed the same path as the EU and Serbia's politicians. The first years were characterized by great enthusiasm thanks to the launch

of SAP and the Thessaloniki Summit, and generally the end of the Balkan Wars and the dictatorship. The enthusiasm progressively faded probably due to the beginning of the “enlargement fatigue” and the related struggle of Serbia to meet the strict conditions set by the EU. Nevertheless, since 2016/2017 the support for EU integration witnessed a rise that has been jeopardized by the beginning of the Ukraine war. In other words, while the second half 2010s and the beginning of the 2020s were marked by a pessimistic view of the heads of the EU and Serbia, Serbia’s population support rose. Unfortunately, the 2022 poll is the most recent data available on this topic.

#### 4.4.4. The Actual Disbursement of the Funds and the Other EU Tools for Enlargement

Considering the IPA II, even though the programming period ended in 2020, the payments from the EC continued until the end of 2023, when the European institutions had executed 99.4% of the committed budget and 78% of the payments. Most of the plans required long-term investments to ensure the correct execution of the programs. According to the EC, the average time to pay the total committed payments is 2.3 years, which is way less than the expected target of the four-year limit required by the EC for external action programs. Furthermore, the payments for projects under IPA II will continue in 2024 and 2025, when Serbia will be expected to use all the envelope money for the programming period. Considering IPA III, the EC at the end of 2023 had disbursed 42% of the total budget and executed only 11% of the total payments. (European Commission, n.d.-d). During the implementation of IPA 2015, the EC decided to include in the project a so-called “envelope” which is a detached budget to address all those actions that cannot be programmed in advance. In other words, this is a flexible clause adopted to solve the technical issues that can emerge during the implementation of the projects. Thus, starting in 2015, all the IPA actions had a proper “global budgetary envelope.” By doing so, the EU committed to pay all the

committed budget and also to financially support the candidate states with other resources in case of unexpected costs (Negotiations and Communication Facility, 2015).

As discussed in the previous chapters, besides the disbursement of the budget related to the IPA, the EU in recent years has implemented several other financial tools to integrate the action of the IPA. The most prominent one is the SAP established in 2000, a policy measure aimed at stabilizing the Balkan region focusing mostly on improving regional cooperation between all the countries. This measure includes several principles and standards on which the WBCs must base their national initiatives. Another non-financial instrument to improve the relations within WBCs and between WBCs and the EU is the Thessaloniki Summit created in 2003, a permanent meeting that culminated with the Declaration of Thessaloniki, a commitment by the WBCs to pursue the Copenhagen Criteria and SAP principles. In the first chapters, it was analyzed the Western Balkans Investment Framework as well, “*A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans,*” and “*The New Growth Plan for the Western Balkans,*” innovative ongoing support measures launched in the last ten years in collaboration with third parties and international organizations highlighting the effort by the EU to advance the membership of WBCs. These tools have been deployed to integrate and expand the action under the IPA providing WBCs with more resources and a stronger commitment in several sectors to push the political and economic convergence towards the EU standards. The fact that the EU has always implemented a different approach toward the Balkan area creating detached instruments just for them indicates that the community allocates specific attention and resources.

#### 4.4.5. Possible Challenges

**The partial implementation of the plans and the related insufficient outcomes jeopardized the EU and member states credibility.**

The path of Serbia in establishing an independent and efficient judiciary has been marked by several struggles. In the previous chapters, it was clear that Serbia, even if committed, did not achieve all the set goals. Several projects about the judiciary have been developed under the IPA but, in most cases, the results did not satisfy the expectations set by the EU and by Serbia itself. Consequently, a poor implementation of IPA projects may affect the opinions of the heads of member states about the future membership leading to a fall of enthusiasm in the European political landscape. Both sides do not consider closing the entrance of Serbia to the EU due to deep deficiencies of the country in implementing democratic reforms. The process of EU integration has been going on for almost twenty-five years and will probably end after 2030. Nevertheless, even though the singular member states are not convinced about the future of Serbia within the EU community, the EU as a detached body is maintaining its commitment toward the Balkan state keeping the IPA as the main tool to tackle the national issues of Serbia, and, at the same time, adopted new plans and strategies to boost the decadent integration process providing new supporting measures to Serbia.

**Strict conditionality makes the EU less credible.**

The action of the EU toward Serbia and the WBCs in general has enhanced in the last years regardless of the decrease of political commitment by Serbia and member states' politicians. More than twenty years have passed since the first communitarian engagement in 2000 with the SAP, more than 3 billion EUR have been allocated, and several projects have been developed and renovated. The commitment of the EU did not even fade during the COVID-19 crisis when the European community donated more than one million vaccine doses and other

general health equipment to the WBCs to reinforce their countermeasures and allocated almost 2 billion EUR for more socio-economic support (European Commission, 2021b). Usually, the EU has always strengthened its support to the candidate countries during crisis periods such as the COVID-19 pandemic or the invasion of Ukraine by Russia to avoid Serbia and WBCs moving away from its sphere of influence. Nevertheless, in almost twenty-five all these measures have not led to any impactful progress in Serbia's path toward membership. Indeed, currently, Serbia has been able to close only two chapters out of thirty-five of the acquis, while twenty-two chapters are still open. The long procedure is mainly provoked by the experience of the candidates that joined the EU in 2004 and 2007 and the current democratic backsliding we are witnessing in several member states. The struggle to conform with the European standards pushed the community institutions to pose a stricter conditionality regarding the enlargement policy which is affecting Serbia and the other candidates. An enhanced methodology to better evaluate the candidate countries was necessary to have prepared member states possessing the required capacity to face the challenges of joining the EU such as having a capable national economy that can compete in the single market or adopting the essential democratic reforms to respect the European principles and values. Nevertheless, the strict conditionality has inevitably stretched the enlargement procedure completely consuming the enthusiasm of both sides, consequently reducing the credibility of a possible reward and membership. The late future and the freshly created project will try to relaunch the WBCs' candidatures.

### **External events jeopardize the EU's perceived credibility.**

One of the noticeable points that emerged from the analysis is the multiple references to the relationships between Serbia and other countries such as Russia and China and the situation of Kosovo\*. Furthermore, according to the polls, tensions with Kosovo\* and the bonds

with Russia are still relevant matters to Serbian people who would like the EU to not be part of the issues' resolution. At the same time, the COVID-19 pandemic and the subsequent economic crisis may have diverted people's and politicians' attention from the enlargement perspective to the other problems considered more relevant. The EU has of course no control over these events but at the same time, it is respectable the efforts made by the EU to keep Serbia closer and to avoid any other moving away. Nevertheless, by looking at the latest trend in the polls, the EU's action on this matter may have been considered an intrusion and an attempt to make only the EU's interests rather than supporting Serbia jeopardizing the EU's credibility. In other words, the commitment of the EU can be affected by the perception of the credibility of the population which can wrongly interpret the real intentions of the communitarian institutions. Serbia always received "special" attention from Western countries and the EU which considered this country as the main influencer of the region dynamics, thus keeping it closer means maintaining necessary stability in a region that has been afflicted by numerous recent events that still today produce social and economic effects shaping the relationships between the WBCs.

#### 4.5. OUTCOME OF THE PROJECTS AND THE SEMI-STRUCTURED INTERVIEWS: THE IMPACT OF THE INDICATORS

##### 4.5.1. Implementation of the Projects

The three major plans adopted in the matter of judiciary are the "*IPA 2016 – Support to the Supreme Court of Cassation,*" the "*IPA 2016 – Support to the High Judicial Council,*" and "*IPA 2017 – Support to the Prosecutorial System.*"

The first one related to the Supreme Court of Cassation had the objective of ensuring the independent and efficient functioning of courts by reducing case backlog and promoting case law harmonization. The goal was to increase 20% of resolved backlog cases by 2020 and to achieve

100% of the full resolution of currently backlogged cases by 2022 (Support to Justice Sector, 2016). There is no information about the results and the progress of the program on the website of the Supreme Court of Cassation. However, some conference reports are available but only in Serbian language. From Serbia's side, only the Ministry of Justice provided a final report about the achieved results. The analysis shows that starting in 2016, there is a continuous decrease in the number of unresolved old cases. Thus, comparing the number of old pending cases on June 30, 2020, and December 31, 2012, the total number decreased by 69.54%. Without the subject of enforcement, this reduction amounts to 34.66%. By the end of November 2020, the basic courts reduced the number of old enforcement cases by 34.38% compared to the number of these cases on January 1, 2020. Since the beginning of the implementation of the project in 2018, the number of old cases fell from 708.728 (2018) to 432.106 (2020). The set goal of the project was successfully achieved and exceeded by 9% (Ministry of Justice of the Republic of Serbia, 2020). At the same time, the EC in its "*Serbia 2020 Report*" stated that even if the program continued without significant issues and with a positive impact, the progress has been limited and even reduced. Generally, the overall number of backlog cases was still too high (685.456 cases more than two years old at the end of 2019 compared with 781.137 at the end of 2018), at the same time the clearance rate did not significantly change in 2019 (102.1%) considering 2017, the year before beginning of the program. Moreover, the average duration for solving cases was almost the same in 2018 and 2019 which is 270 and 267 days, respectively (European Commission, 2020). In the same Report of 2022, the EC stressed that the reduction program continued with its progress since the number of cases solved in 2021 (375.567) overcame the ones solved in 2022 (353.563). Nevertheless, the number of pending cases was still a concern for the EC (European Commission, 2022). It must be underlined that the Annual Reports of the EC are the only source of information about the progress of the IPA but there are no references

to the set goals and their achievements. Similarly, the EU delegation in Serbia (direct manager of the project) and the implementation consortium (British Council, 4 Digits Consulting, and Alternative Consulting) provide no information on the respective websites. The Supreme Court of Cassation as well underlined the limited success of Serbia's plan to reduce backlog between 2016 and 2020 stating that the set goals were not achieved in the "*Annual Report on the Work of the Courts in the Republic of Serbia for 2022*," the "source of information" for the progress of the project as indicated in the Serbia 2016 Report (Republic of Serbia - Supreme Court of Cassation, 2023).

The second project, "*IPA 2016 – Support to the High Judicial Council*," aimed at increasing the efficiency, accountability, and transparency of the judicial system through financial management/budget planning, reporting, and monitoring support to the High Judicial Council by transferring responsibilities from the Ministry of Justice to the High Judicial Council as enshrined in the AP for Chapter 23. The project started in 2018 and ended in 2022 with the target of transferring 100% of the responsibilities from the Ministry of Justice to the High Judicial Council by 2020, by creating working groups (established in January 2019) that will propose a sustainable legislative solution regarding the transfer of competences from the Ministry of Justice to the High Judicial Council. The "source of information" was the reports on the implementation of the AP for Chapter 23 (Support to Justice Sector, 2016). According to the APs for Chapter 23 adopted in 2022, the year of the end of the project, and 2024, the involved bodies created only one working group that still needs to adopt the harmonization law, remarking on the partial success of the project (Republic of Serbia - Negotiation Group for Chapter 23, 2022, 2024).

The last IPA II project, "*IPA 2017 – Support to the Prosecutorial System*" was implemented between 2021 and 2023 and aimed at strengthening the capacities of the State Prosecutorial Council in performing its

competencies related to prosecutorial governance and coordination. The activities associated with achieving this goal encompassed adopting a human resources strategy, new strategic planning guidelines, and financial management regulations. The target was to reach 80% of the percentage of implemented Human Resource Strategy by 2023 which would be monitored through the annual reports of the State Prosecutorial Council and Republic Public Prosecutor's Office (Support to Justice Sector, 2017). The latest released evaluation document is the "*Report on the work of the State Council of Prosecutors for 2022.*" According to it the State Prosecutorial Council, as part of the implementation of the Project's activities, concluded a Protocol on cooperation with the Ministry of Justice, which has as its subject the development of an information system for the Republic Public Prosecutor's Office and the Ministry of Justice for the management of finances and human resources in the public prosecutor's office, in order to automate and rationalize the internal business processes of the Republic Public Prosecutor's Office and its integration into e-justice of Serbia. The analysis of the situation determined that the tasks of financing the prosecution system (planning, management, and supervision) in the Republic of Serbia are divided between the Ministry of Justice and the State Prosecutorial Council. To digitize and automate the process of planning and monitoring budget execution, the recommendation of the experts who prepared the analysis is to create an information system that will be used by the State Prosecutorial Council and other competent public prosecutions. In this way, the process of planning and monitoring budget execution will be even more transparent. To best meet the needs of users, a series of workshops were held from March to July 2022 with representatives of the (State Prosecutorial Council of the Republic of Serbia, 2023) and other prosecutor's offices, as well as the Ministry of Justice. The production of the software, the Financial Management module, began on July 14, 2022, while the production of the Human Resources Management module with the database of identity cards and the selection of public prosecutor

function holders began on September 22, 2022. Nevertheless, the Negotiation Group for Chapter 23 which worked on the Revised AP for Chapter 23 claimed that the actions were partially implemented due to a lack of activity reports from the working groups that organized the workshops. While all the other set activities were successfully implemented (Republic of Serbia - Negotiation Group for Chapter 23, 2024).

Regarding the project “*Improvement of efficiency and transparency of judiciary system,*” it is not possible to find any progress report but some information can be obtained from the EC general reports on Serbia. For example, the EC stated that the backlog of court cases was not reduced significantly; the transparency of the justice system was still a concern; nevertheless, in the area of monitoring and evaluation, sectoral monitoring committees have been established and they have met regularly (European Commission, 2013).

#### 4.5.2. Do the Perceived Reward Lead to Democratic Reforms?

In this thesis, “perceived reward” has been intended as the adoption of sizeable (the objectives are the same as proposed by the EU and the number of resources is appropriate) and tangible (the benefits are measurable and empirical targets are set) goals. The aim of the thesis now is to understand the impact of the perceived rewards on Serbia’s progress toward an independent judiciary. The path of Serbia toward a more democratic state witnessed several ups and downs which caused some difficulties in straight answering the Sub-RQ1:

*How do the perceived rewards associated with the Instrument for Pre-Accession Assistance impact Serbia's progress in aligning with EU standards regarding judiciary independence?*

The EC has always assessed the progress made by Serbia with reports and strategic papers regarding the general action of the Balkan country in improving the condition of the RoL. Concerning the specific projects of

the IPA, it is hard to find evaluative reports elaborated by the EU institutions. Most of them focused on the first programming period (EC & HTSPE Limited, 2011; European Union & Ecorys, 2013) or the cross-border programs (European Union & AETS, 2017). The only relevant document is an external assessment report approved by the EC in 2017. Nevertheless, it must be highlighted that there is a lack of annual or bi-annual evaluation reports about the progress of the implementation of IPA projects. The first one is the “*External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014 – mid-2017)*” adopted in 2017 by a consortium composed of Particip, Ecorys, ECDPM, Fiscus, Itad, and OPM on behalf of the EC. Unfortunately, it is not possible to find any evaluative documents focusing solely on Serbia’s effectiveness or the IPA III development. One of the main questions the report answered is “*To what extent do the overall objectives [...] and the design of the IPA II respond to (i) EU priorities and beneficiary needs identified at the time the instrument was adopted (2014)?*” (Aigner et al., 2017: p. 7) finding the beneficiaries generally matched the set priorities with the implemented projects, in particular in the sector of the RoL ensuring the continuity between IPA I and IPA II. Moreover, the report stated that the Indicative Strategy Papers adopted by each country follow the general goals set by the enlargement strategy of the EU. The IPA II regulation allowed for assistance to be targeted and adjusted based on the specific circumstances of the beneficiaries. This flexibility means that WBCs can adapt their reform strategies to align with changing EU priorities, thereby enhancing their motivation to implement reforms that are viewed favorably by the EU. The ability to respond to crises and emergencies, as demonstrated in past reallocations of funds, further emphasized the importance of maintaining a robust judiciary to handle such situations effectively. Moreover, the close cooperation required during the planning and implementation phases of budget support programs encouraged Serbia to engage in meaningful reforms, as these reforms are seen as essential for receiving ongoing support. The expectation that budget support will lead to

increased efficiency and improved policy dialogue further motivates WBCs to prioritize judiciary independence. Nonetheless, as noted before, even here it is stated that most beneficiaries possess a certain rate of uncertainty over the sector approach planning, this is noticeable in the adoption of sector planning documents of good quality, which is clearly poor in some cases and their value is not clearly understood (Aigner et al., 2017). The European Court of Auditors also affirmed the correct alignment of the IPA II with the EU priorities based on the national obstacles (European Court of Auditors, 2022)

Considering IPA I, the “*Mid-term Meta Evaluation of IPA Assistance Evaluation Report\**” elaborated by the EC together with HTSPE Limited addressed the status of the implementation of IPA I. Regarding the priorities size and tangibility, the report highlights that the quality of IPA set objectives should have been assessed by eight technical assistance and institution-building evaluations, which, however, were not carried out on a uniform basis and with different interpretations of these. Furthermore, on the alignment of the priorities the report affirms that strategic objectives are judged not to be sufficiently linked to specific priorities identified in the EC strategic documents and, overall, they are too wide to be achievable within the lifetime of the programming period, confirming thus the poor reward stated in the previous sections. The quality of the set goals is related to the production of substantial outcomes in the implementation of the projects (European Commission & HTSPE Limited, 2011).

Considering the project under the IPA to enhance the Supreme Court of Cassation, the Prosecutorial system, and the High Judicial Council, the goals set by Serbia and the EU are one of the top priorities to establish an independent judiciary. Making these institutions more efficient and autonomous are the necessary steps to improve the conditions of the judicial system. The sector approach, together with the size and the tangibility of the priorities, may have impacted Serbia’s motivation to

pursue this action instead of others. Considering the other IPA I project, setting too broad and not tangible goals may have led Serbia in the wrong direction, weakening its action in this area.

About the theme of the reward, the thesis included the expertise of an external and independent Croatian consultant (CON) who worked on implementing the IPA and other support programs (such as the PHARE) in the Balkan region, specifically in Serbia, providing technical assistance to the national government offices. CON was also involved in similar projects in Bosnia and Herzegovina, North Macedonia, Kosovo, Turkey, and Albania working on grant management and training. According to CON, one of the main problems regarding the implementation of national reforms was the delays and the slow-down due to the constant replacement of national officers in project designing and implementation which occurred every six months after the election of Vučić in 2017. According to CON, who was in Serbia during the transition period, the personnel in charge of the projects changed periodically and constantly leading to numerous changes in the strategies and priorities set and consequently to a slowdown in the enlargement progress. CON asserted that this occurred due to the lack of political motivation to pursue the access of Serbia.

The knowledge of an officer of the EU delegation in Serbia (EU-DEG) who has worked for many years on the IPA and the related conditionality has been included as the second intervention regarding the reward. Regarding the inclusion of the EU priorities in the IPA projects, EU-DEG suggests that there has been a substantial change between IPA II and IPA III. During the programming period 2014-2020, the EU set a budget for each candidate state, which could then propose their plans and get the funds. Conversely, in the ongoing IPA III, the EU established a common budget and, based on the size and the tangibility of the project (that is what has been called until now the “perceived reward”), the EC allowed the disbursement of the funds. By doing so, the EU increased the impact

of the indicator “reward” since the WBCs and Serbia prioritized the EU’s top concerns in their proposals. According to EU-DEG, this mechanism is enough to push Serbia to elaborate projects to make the judiciary more independent.

The last person interviewed was an officer of the Minister of the European Integration of the Republic of Serbia (MEI-SER) in charge of monitoring and developing assistance for all the IPA projects related to the judiciary. According to MEI-SER, due to the strong monitoring system created by the EU to control the correct adoption and implementation of the plans. The size and tangibility of the priorities are respected and fully present in the IPA projects.

#### 4.5.3. Do Guidelines, Standards, and Feedback of the EU Improve the Management of the Funds?

The first part of the analysis of determinacy focused on finding appropriate and relevant guidelines, standards, and feedback to facilitate the management of the IPA funds. Now, to conclude the analysis, the research will examine their impact on the management of the funds. In the last fifteen years, the EU adopted several documents to improve the management of the funds of the IPA. It is time to understand now:

*To what extent do guidelines, standards, and feedback provided by the EU on the Instrument for Pre-accession Assistance impact Serbia's progress in aligning with EU standards regarding judiciary independence?*

In their External Evaluation of the IPA (2017), the authors assessed the efficiency of funds delivery. They noted that the EC had improved its administrative and financial management in the initial years of IPA II, demonstrating an ability to meet current regulatory demands effectively. However, ongoing performance issues among some IPA II beneficiaries remained a concern. On a positive note, there has been an increase in the coherence of strategies, approaches, and procedures. Although sector budget support is growing, the expected gains in sector expenditure

efficiency and public financial management systems have not yet materialized. Before 2016, the sector-based approach's integration initially decreased efficiency due to the time needed to adapt to the new programming method for pre-accession assistance. Additionally, there has been greater scrutiny regarding the relevance and maturity of proposals, with those not meeting the criteria being deferred to future programming years. NIPACs hold consultations and information meetings with civil society organizations and donors regarding preparing IPA II Programming, notably through Sector Working Groups. The EC has actively promoted budget support, gradually increasing its use for supporting sectoral reforms based on specific eligibility criteria. The authors expect budget support to increase further, potentially enhancing sector expenditure efficiency. However, inefficiencies in the implementation system have caused chronic delays in many policy areas, impacting the programming and implementation of IPA II actions. These systemic inefficiencies force programmers to focus on what can be implemented within the existing arrangements, rather than on planned results. Thus, the sector approach's logic, which aims to drive change in priority sectors, is compromised by the implementation system's weaknesses and the prevailing annual programming exercises (Aigner et al., 2017).

The sector approach has been effectively utilized in the IPA to promote reforms in various sectors. By targeting specific sectors, the IPA tries to advance structural modifications that help change these areas reducing the gap with the EU standards. This method ensures that the assistance provided is more strategic and impactful, addressing the key areas necessary for the candidate countries to align with EU values and standards. According to the evaluation elaborated by the EC on the sector approach under IPA II, key institutional stakeholders (such as the NIPAC, the Ministry of the European Integration, and the other involved Serbian judiciary bodies) have formally taken ownership of the Sector Approach

gaining a solid understanding of the concepts underlying the Sector Approach. However, there has been a notable discrepancy between the formal implementation of sector approach processes and the actual political support and resources allocated by key stakeholders (including the EU). At the same time, the final report highlighted other deficiencies in the management of the funds. For example, the report affirmed that the working groups created in different projects in the judiciary generally did not play a significant role in improving sector policy management, as well as the civil society organizations that were not included in the IPA II policy process, apart from the programming (European Commission, 2018b). This is clear in the “*IPA 2016 – Support to the High Judicial Council*” which provided the creation of working groups to manage the transfer of competencies from the Ministry of Justice to the High Judicial Council. Nevertheless, even though the working groups to manage the transferring of the competencies were established in 2019 – as also required in the Judicial Reform (2013-2018) and the recommendations of the Venice Commission, they did not yet succeed in implementing the necessitated measures to fully implement the IPA project. Similarly, even the other two IPA projects witnessed a partial implementation of the set measures. The problem related to the weak involvement of civil society is also addressed by the European Court of Auditors (European Court of Auditors, 2022).

Concerning IPA I, the success and productivity of program management by beneficiaries largely hinge on the presence of well-defined administrative processes that guide each step. The evaluations indicate that all NIPACs have put effective project selection mechanisms in place and have given appropriate technical advice to line institutions, aiding in the selection of relevant and impactful projects. Hence, the support role of the EC or other EU entities was minimal. Nevertheless, in certain beneficiary countries, the efficacy of NIPAC's management process was found wanting, particularly in terms of evaluating project proposals from

line institutions. Indeed, most of the IPA I projects in Serbia faced several delays, at the same time, it is highlighted that the EC's monitoring mechanisms and structures were appropriate and correctly functioning (European Commission & HTSPE Limited, 2011).

The poor management skills in implementing IPA projects are also confirmed by CON who confirmed that the continuous change in the personnel in the relevant national bodies is one of the main causes of the lack of constant progress in the advancement of the projects. According to CON, the weak administration is also caused by a deficit in capacity-building, financial management, and other relevant activity skills that should be addressed by the EU delegation in Serbia. CON confirmed that the staff of the judiciary bodies attend workshops and training on how to effectively manage the budget as provided by the budget support program of the EU. Nevertheless, according to CON, knowledge on these topics should be delivered through other more advanced and impactful projects including them in the IPA plans. At the same time, CON points again to the heavy hand of the political landscape over the plans asserting that the national experts and evaluators are appointed by Serbia's government with the only goal of receiving the funds from the EU. Possible solutions to these problems are offered. CON firstly explains that the communication between the EU and Serbia should not involve lonely the national government's representatives, but it should include external experts and technicians to better instruct them about what they should do. Instead, to improve the quality of the work, CON suggests a provision adopted in Croatia during the 2000s when it struggled with the management of the funds, which is the increase of the salaries of the officials and the staff involved. By doing so, there would be fewer changes in the personnel and improved motivation to work. CON finally highlights that this provision was adopted in 2012 but was canceled during the Vučić mandate.

An officer of DG-NEAR of the EC (DG-NEAR OFF) has been interviewed about the IPA's determinacy and its effect on implementing democratic reforms regarding Serbia's judiciary. DG-NEAR OFF affirmed that the candidate countries must reach minimum levels of democratic and RoL standards to get the funds (DG-NEAR OFF calls them pre-conditionality), and meeting these standards is to most important part of the IPA policy programs. EC care focuses mostly on supporting Serbia's body in meeting the minimum levels. According to the DG-NEAR OFF, conditions are well-defined and support by the EC is strong. In order to monitor and ensure the engagement of candidate states and Serbia, the EC has established several interim benchmarks. The interim benchmarks are essentially milestones set by the EU for candidate states. These benchmarks are part of the *acquis communautaire* and cover various areas such as judiciary, fundamental rights, and the RoL. The EC support aims to help Serbia fulfill the pre-conditions and consequently meet the interim benchmarks through several activities such as training, workshops, and the adoption of guidelines and standards.

Similarly, on this topic, EU-DEG addressed again the effort made by the EC concerning the Budget Support to improve the implementation of IPA funds asserting that the EC is strongly improving its assistance in this sector. Nevertheless, EU-DEG recognized that Serbia still struggles in the implementation process phase. As the main resolute tool, EU-DEG affirms that stricter conditionality could be the way to enhance the control and monitoring of the implementation process by the EU. EU-DEG does not believe that stricter conditionality will affect the implementation of the projects or the motivation of Serbia. Furthermore, Budget Support represents a good tool to support Serbia in meeting the targets to get the funds and, consequently, to implement correctly the project. The EU monitoring system is strong and efficient including also measures to establish transparency and effective management.

About the difficulties of Serbia in meeting the targets set and improving judiciary independence, MEI-SER points to the poor education provided by the university and the low wages that public administration officers have as the main causes of the weak administration capacity of the Ministers. If this was true, the EU budget support activities would not be enough to face the obstacles that national officers have to deal with during the implementation of the plans. One step forward was already made in the transition between IPA I and IPA II. During the first programming period, the management of the projects in the judiciary was decentralized, which means that the national governments were in charge of every aspect of the implementation procedures. With the centralization of the management of the projects, the adoption and the elaboration of the projects became way more efficient. The Minister of the European Integration elaborates all the necessary documents to get the funds and signs the financial agreements with the EC. They also have competencies in programming and monitoring projects. The beneficiaries of funds (such as the Supreme Cassation Courts or the Prosecutorial Offices) are in charge of the implementation of the project. MEI-SER confirms the officers of the Minister receive training and guidelines to manage the funds. Nevertheless, the Minister itself mostly organizes these formation activities. The EC periodically provides assessments of the preparation of the officers involved in the management. NIPAC also assists in the development of the projects. Regarding the support, MEI-SER believes that the efforts applied by the EU in this regard are satisfactory. MEI-SER addresses also the problem related to the continuous change in personnel due to the political elections that lead to switches in the heads of the administrative offices.

#### 4.5.4. Do the Mixed Commitment of the Member States and the EU Affect the Path of Serbia?

This last indicator is the most difficult to analyze due to the hardness of testing the causality between the actions of the EU and its member states

with Serbia's motivation to continue the integration process. The question to test is the following:

*How does the perceived credibility of the EU's commitments affect Serbia's willingness to undertake reforms and achieve a more independent judiciary?*

Regarding the general statements of the member states concerning the enlargement and the chances of Serbia joining the EU, it is clear that the main member states continue to support the enlargement process even though the enthusiasm started to fall in the late 2010s due to a lack of impactful progress in the judiciary in Serbia. Nevertheless, between the second half of the 2010s and the first half of the 2020s, the EU adopted new plans and funds to relaunch the mission of EU integration. Similarly, the EU has always held its promise to disburse financial resources under the IPA policy and never applied any sanctions due to the poor management of the funds and the related weak implementation. It is also noticeable that Serbia profoundly counts on these resources for the improvement of the judiciary and the general advancement of the country (The Government of the Republic of Serbia, 2021; The President of the Republic of Serbia, 2020). At the national level, Serbia has different opinions as well. The principal leaders of Serbia recognized a lack of enthusiasm provoked by the long duration of the integration process and the poor quality of the outcome delivered. The boost of the EU integration process based on new funds and methodologies did not have (yet) the desired effect on the population who are still not convinced that joining the EU will be the right path to endorse. Nevertheless, the fact that Serbia committed to a third programming period and other various EU supporting measures shows that the mixed credibility of the EU and its member states, linked with a poor implementation of the projects, is not significantly affecting Serbia's motivation to endorse EU integration.

Regarding this topic, CON believes that the process of enlargement and related financial measures are currently occurring to maintain stability in the Western Balkans region. The EU has acknowledged the importance of Serbia's influence on neighbor states and, consequently, it cannot allow other escalation or instabilities. All the support measures aim to keep Serbia close to the EU and prevent third countries (e.g., Russia and China) from putting their hands over Serbia and the other WBCs. Consequently, according to CON, the disbursement of the funds occurs regardless of the performance of Serbia's management of the funds. The main sign in this sense is the lack of sanctions from the EU. The statements of CON are however in contrast to what DG-NEAR OFF said about credibility. DG-NEAR OFF claims that there is still motivation to pursue EU integration by both parties and denies that funds aim at maintaining stability and keeping Vučić on the EU side. DG-NEAR OFF also claims that membership is close.

#### 4.5.5. Conclusions

Each indicator has affected the EU's approach and Serbia's related action regarding implementing democratic reforms to improve the judiciary's independence in different ways. The analysis of reward, determinacy, and credibility has been fundamental to answering the following question:

*How has the Instrument for Pre-Accession Assistance influenced the adoption of reforms in the judiciary of Serbia in its path toward EU membership and EU identity?*

The reward indicator and its perception of size and tangibility had a lower impact on Serbia's motivation to align with EU standards. IPA I approach emphasized that having a too broad and centralized strategy left a broad range of action to Serbia but, at the same time, it did not push for the prioritization of the required reforms to conform with the values and principles of the EU. Contrarily, during IPA II, Serbia implemented new reforms regarding the strengthening of fundamental bodies such as the

High Judicial Council and the Supreme Court of Cassation, which are pivotal institutions to ensure an efficient and independent judiciary. Having the same priority as the EU and setting well-defined targets is the correct way to get closer to the membership showing that the reward of getting benefits is perceived since the elaboration of the plans. Nevertheless, some criticalities must be highlighted. In different passages analyzed in the sub-chapter related to the general progress of Serbia in the matter of judiciary (Chapter 4.1), different times the EU expressed concerns regarding the lack of requested evaluative and monitoring documentation which is fundamental to setting right and reachable goals. Without comprehensive reports on the progress achieved, it will be impossible to understand which points and difficulties should be addressed the most in future projects. At the same time, another issue concerns the discrepancies between the assessments of the EU and Serbia. In this case, several times it is noticeable differences between the progress accomplished by Serbia in the area of judiciary in the final documentation of the Balkan state's institutions and the EC. Even here, not having a clear picture of the results of the adopted strategy may be disorienting for the elaboration of plans. The analysis of the interviews may answer the problems that arose before. CON points to the continuous changes in the public personnel as the main cause of the delays and lack of constant strategy within the offices of the Ministers. CON claims that this issue in particular occurred right after the election of Vučić, who did not intend to become a member of the EU.

The indicator determinacy has also impacted the path of Serbia toward membership. The EU has provided candidate states with several guidelines and support plans to ensure the correct implementation of programming plans involving third countries. The action of the EU has also been integrated with several documents by the Council of Europe and Venice Commission including better definitions, guidelines, and standards that states willing to join the EU must meet. The occurrence

of these support measures increased after the 2010s. The lack of them is noticeable in the IPA I period when the projects were also centralized and the hand of the EU over them was still light. Consequently, as has also been reported in the evaluation documents of the IPA, if states know exactly what to do, it will more likely meet conditionality. Nonetheless, some possible challenges occurred. As also confirmed by some interviews, the lack of capacity and financial management is so deep in Serbia that the support measures adopted by the EU have a limited impact on the implementation of the projects. This seems to be the main issue concerning the poor quality of the outcome of the IPA II. About this, CON claims that the presence of the EU should be even stronger in Serbia to improve the determinacy of conditionality and its impact on the overall IPA implementation process. By comparing the membership process of Serbia with Croatia, CON proposes for both Serbia and the EU to elaborate a program to increase the salaries and improve the education of the public administration officers, since the workshop and training are not enough to tackle the deep gap in capacity knowledge and skills (this problem was also confirmed by MEI-SER). Only proper public administration preparation can lead to the achievement of large rewards. On the same page, EU-DEG OFF affirms similarly that the EU should strengthen the conditionality and pre-conditionality to adjust from the beginning of the project the aim toward the correct implementation of the plans. From Serbia's side, MEI-SER – after affirming that the decentralization of the projects was a first step to solving this issue – suggests that the Balkan state should focus mostly on meeting the interim benchmarks.

Thirdly, even though it is hard to establish a specific correlation between the odds of not getting funds or support from the EU whether the candidate does not meet the conditionality or, in the opposite case, the chance that the EU holds its promise to pay the reward in case of success and Serbia's motivation to pursue the EU integration. Conditionality is

the main difference between CEE and WBCs. The opinions of member states concerning the enlargement policy have deeply shifted from great enthusiasm to a downfall toward “enlargement fatigue.” The lack of incentives is also visible among Serbian politicians and the population who are not supportive anymore and do not think there will be membership soon. Logically, the fall in interest would inevitably cause changes between IPA I and II, since the first was characterized by a high credibility. Contrarily, IPA II witnessed no delays in the disbursement of resources and, despite the lack of high-quality results, the EU has decided to start a new programming period in 2021 and to establish new supporting measures to relaunch the enlargement policies with the WBCs. Nevertheless, the interviews in this case have been useful to understand what other factors may have influenced the perception of credibility in Serbia. For example, CON claims that credibility does not affect the EU’s motivation to pursue (or not pursue) enlargement since the only goal of the member states and the communitarian institutions is to maintain stability in the WB region. Since the first chapters, it was clear that the EU recognized the importance of Serbia and its influence on WBCs. Consequently, avoiding the turning back of the country toward China or Russia is not the only way to advocate for the stabilization of the region. Nonetheless, DG-NEAR OFF has a different opinion on this and ensures that the EU has still a great and sincere motivation to support Serbia and its membership. According to DG-NEAR OFF, the main problem concerns the advertisement of the results achieved through the IPA and the engagement with civil society. DG-NEAR OFF in fact believes that the great internal enthusiasm is the main reason why Montenegro is in a more advanced position in respect of Serbia. This last idea about boosting internal consensus is shared also by EU-DEG, MEISER, and CON. SER seems less optimistic than the other interviewees claiming that the lack of interest of the EU member states in ensuring membership to Serbia is affecting its motivation to implement efficient projects.

Generally, the perceived reward has motivated Serbia to adopt national legislation and projects funded by the IPA that prioritized the recommendations adopted by the EU and other associated institutions. A great difference is noticeable between the projects under IPA I – with general targets that did not aim at any specific priority – and IPA II – with well-defined indicators to measure the progress achieved toward a high-reward plan. Conversely, the determinacy of conditionality, even though it had an impact on the progress of IPA II projects, does not seem to have caused an efficient implementation of the projects. The reasons for this lack, according to the interviews, seem to have roots in the poor national education system and the low salaries which cause great deficiency in capacity-building and financial management. Similarly, the credibility of the EU and its member states seems to be mixed and not conformed causing a fall in the enthusiasm of the population which now is losing interest in achieving membership and engaging with the relevant institutions involved in the IPA. About the future of Serbia, there is still a large dissensus not only at the national or communitarian level but even among the interviewees. CON and EU-DEG do not believe that membership is close, while DG-NEAR OFF and MEI-SER are very optimistic about the chances of Serbia in the enlargement process. For sure, the EU integration route of Serbia has been long and witnessed several (internal and external) difficulties that delayed even more the reach of membership. Nonetheless, the chances of success are purely in the hands of Serbia and the EU which now have to implement most efficiently the mechanisms and supporting measures deployed in the last few years.

## CONCLUSIONS

### 5.1. POSSIBLE SOLUTIONS

#### 5.1.1. Solutions Concerning Generally the IPA

The IPA has produced several achievements in Serbia's judiciary in more than fifteen years. The projects of IPA II had a high commitment to "adjust" the principal judicial bodies: the Supreme Court of Cassation, the High Judicial Council, the Prosecutorial Council, and the Republic Public Prosecutor's Office. The aspired reward may have been set too high for the capacity, creating insurmountable obstacles for a country that needs first to address basic problems whose solutions would generally improve the current conditions of the judiciary in Serbia. For example, even before the analysis part, it was noticeable a lack of Annual APs focusing lonely on justice or RoL in several years, namely 2023, 2021, 2020, 2018, and 2014 (DG NEAR, 2022). In every EC report on Serbia, the EU institutions always address the judiciary as the sector that requires the highest concern from Serbia's national bodies. Consequently, adopting an Annual AP (almost) may be a good start to set the right direction. Focusing on the resources assigned, the EU allocated 265 million EUR of the IPA II budget (1.5 billion EUR) to the area of the RoL and fundamental rights (Indicative Strategy Paper for Serbia, 2014), then lowered to 246 million in 2018, less than the budget for "Environment, climate change, and energy" (321.8 million EUR) and "Competitiveness, innovation, agriculture, and rural development" with a budget of 336.58 million EUR (Indicative Strategy Paper for Serbia, 2018). Such a crucial field needs the highest share of the budget, as also noted by CON and MEI-SER. For example, the "agriculture and rural development" area has its pre-accession tool called "*Instrument for pre-accession assistance for rural development*" (IPARD), which still falls under the IPA but it has a separate budget and a proper implementation process. The same approach could be used for the judiciary sector.

### 5.1.2. Solutions Concerning the Indicators

Besides the general solution that can be undertaken regarding the improvement of the IPA, some actions may solve the issues regarding specifically the indicators studied in the previous chapters. Regarding the reward indicator, the introduction of the sector approach has led to more coherence between the priorities set for each WBC and the related IPA action due to the need to conduct deeper studies to identify the sector's issues. At the same time, this approach requires greater dialogue between the EC and IPA beneficiaries, but also among IPA beneficiary institutions involved. The meeting of the eligibility preconditions requires significant administrative and/or legislative changes and also the existence of a credible public administration reform program. Without that, the set goals will be useless and the action to achieve them will be ineffective (Aigner et al., 2017). In this regard, Serbia has adopted budget support tools both to identify precise goals and also to correctly implement the plans. Nevertheless, according to the implementation reports and the statements from the interviews, these support tools did not have any effect on the implementation of projects. In other words, while the perceived reward pushed Serbia to adopt plans in line with the priorities set by the EU, their determinacy did not play a significant role in the implementation process. By playing with both indicators, it could be possible to adjust Serbia's direction toward membership. For example, even though the size and the tangibility of the projects were correct, the goals set in their respective areas needed a high administrative capacity, which Serbia did not hold as emerged in the various reports enacted by the EC. In other words, a high reward cannot be adopted regardless of a low internal determinacy. Between IPA II and IPA III, the EU has launched several plans to improve WBCs' facility and capacity. In 2018, the EC launched "*A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*" with a special focus on the RoL in Serbia and Montenegro. In particular, the EC aimed to improve its

monitoring system of implementation to deliver specific assessment reports together with members and candidate states that would in turn endorse better reforms in the area. Nevertheless, the analysis of documentation about the IPA did not raise any particular issues concerning the monitoring system of the EC, while great concerns were expressed about the assessments produced by Serbia (A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans, 2018). In 2020, the lack of high-quality progress in WBCs led to the adoption of a “revised enlargement methodology” to have a stronger focus on fundamental reforms of RoL, establish a robust political steer, increase the dynamism of the enlargement process, and advance the predictability of the EU integration procedures. The new methodology provided the grouping of the chapters of the acquis in six thematic clusters. The EC evaluates each cluster to detect the primary weaknesses for opening the entire clusters, this will make the process more dynamic. Besides this new provision, according to the new methodology, in Serbia “no further chapters will be closed before the interim benchmarks for chapters 23 and 24 are met” (Revised Enlargement Methodology in Montenegro and Serbia, 2021). This strategy seems to be the most efficient way to impose to Serbia the improvement of the RoL and the adoption of democratic reforms. Nevertheless, given assumed the political willingness to pursue these modifications, Serbia does not have the administrative capacity to meet the interim benchmarks. The call for a different approach was listened to in 2023 when the EC adopted the “*New Growth Plan for the Western Balkans*” including the “*Reform and Growth Facility for the Western Balkans*” (2024) an additional financial measure of 6 billion EUR in the form of grants and loans from the WBIF and other partners. This financial boost aims to help the WBCs align with EU regulations, standards, policies, and practices, fostering their gradual EU integration. The facility focuses on supporting several socio-economic and fundamental reforms, including those related to the RoL (Reform and Growth Facility for the

Western Balkans, 2024). Nevertheless, it will be necessary to analyze the Reform Agenda that Serbia has to present in the future to understand the validity of the project.

Generally, as asserted before, Serbia urges to address firstly the basic problems that affect the judiciary. Having programs to reduce the backlog of cases or adopt a human resources strategy is useful. Nevertheless, the EU should first ensure that the staff and officers in charge of these projects possess the necessary competencies to effectively implement them. Consequently, as suggested by the various interviewees, the EU should ask for a raise in wages to motivate people, a reform of the education system to prepare the staff, and a merit-based employing strategy for the public administration officers. By doing so, it will be also possible to cover the lack of a national monitoring system. In different years (2024, 2022, 2021, 2019, 2018, 2017, 2016, and 2015), the EU adopted the so-called “EU Integration Facility AP” to enhance Serbia's institutional capacity in projects under direct and indirect management. Nevertheless, in some years the APs considered only the indirect management projects or did not separate the two types (i.e., 2024, 2022, 2021, 2016, and 2015). Moreover, the APs just address general public administration about other fields such as energy and gender equality, without addressing specifically any problem or setting clear targets. In 2018, the AP aimed at closing all the chapters of the acquis by 2025 (European Commission, 2018a). In any plan, the judiciary is addressed. Considering that in integration facility plans, the EU allocated in some cases more than 50% of the budget for the referred sector, it could be a starting point to adopt Integration Facility APs for each sector involved. Furthermore, including new projects aiming uniquely at the improvement of the technical capacity and financial management of the judiciary can be another way to reform the use of the IPA funds. In the last programming period, the EU delegation in Serbia adopted two plans with these goals:

- The “*EU for the Judiciary Reform in Serbia (2022-2025)*” aims at developing the administrative capacity of courts, public prosecutors’ offices, and the Judicial Academy (Delegation of the EU to the Republic of Serbia, n.d.-b);
- The “*EU for Technical Capacities in Chapters 23 and 24 (2022-2025)*” aims to identify the basic needs of the judiciary in terms of equipment, training, management skills, financial control, etc. (Delegation of the EU to the Republic of Serbia, n.d.-a)

Nonetheless, both projects are still ongoing and it is hard to find any information about the advancement of the projects. In 2025, the results could be exploited for further analysis. It must also be asserted that on these issues the EC should identify risks related to weak administration and political will and design the necessary measures to tackle. Nevertheless, the EC has never used the IPA monitoring indicator to assess the consultation with civil society.

In their work on EIM, Schimmelfennig & Sedelmeier (2019) demonstrated that the main difference in the enlargement process of CEECs and WBCs is the lack of credibility regarding the latter. Generally, their comparative study showed credibility is the indicator that primarily affects the pattern of compliance. The lack of credibility can influence the path of a candidate country even when the rewards and the credibility are high. Coming back to the thesis research, the diminishing of enlargement enthusiasm can be considered one of the main causes – together with the poor national administrative capacity – of the weak progress achieved by Serbia. In several papers, and as also confirmed by the interviewees, during the implementation of the IPA projects, the national bodies did not involve civil society as requested by the EU. The deficiencies here have been mainly caused by the continuous changes in the opinion of the principal EU leaders and the current external events – such as the war in Ukraine and China's influence on the peninsula – which weakened the population support for a possible entrance into the

EU. According to the analyzed public polls, the main concerns regard the absence of evident advantages and the intromission of the EU in national issues (e.g., the normalization of the relationship with Kosovo). A new enlargement methodology will be presented in the last part of this chapter considering the topics linked to credibility.

## 5.2. OTHER ISSUES AND THE FUTURE OF THE ENLARGEMENT PROCESS

### 5.2.1. Addressing the Elephants in the Room: The Kosovo\* Situation and Third Countries' Influence on the Balkans

During the writing of the thesis, several topics have not been considered on purpose due to their unlinked nature with the judiciary topic. Nonetheless, as emerged from the various papers and reports, the EU has always considered addressing these situations as unavoidable for the accession of Serbia to the EU. This means that – currently – Serbia must meet even these standards to achieve membership. The first of these topics is the normalization of the relationships with Kosovo\*. In 2023, Serbia and Kosovo\* signed the Ohrid Agreement, an international agreement promoted by the EU that obligates Serbia to not contrast the accession of Kosovo\* to any international organizations, even if Serbia still does not recognize its independence (United Nations, 2023). In 2024, the EU officially included the normalization of the relationships of Kosovo\* and the fulfillment of the obligations enshrined in the Ohrid Agreement in Chapter 35 of the Acquis, which concerns any issue covered by no other chapter. On this topic, the EU does not seem to have any kind of plan to facilitate the normalization of the relationships between both parties. Besides advocating for political dialogue and the Ohrid Agreement (2023), it does not seem the EU has a strategy to solve this situation. At the same time, as emerged from the analyzed public polls, the population of Serbia considers Chapter 35 of the Acquis as an interference in a national problem, that only Serbia can solve. The situation between both parties has created a standoff that stuck Serbia

and Kosovo\* in limbo which is not favoring anyone involved. In this sense, the EU should work to benefit not normalize the relationships between the two governments, but it should aim to offer a solution that will take into consideration the needs of the two populations. Nevertheless, this thesis is not about this situation and other researchers have addressed this complicated topic.

Another recurrent problem addressed by several EU politicians and in the EU reports is the alignment of the foreign policy of Serbia with the EU standards. In 2022, the war in Ukraine provoked several political and economic retaliations from the EU member states countries which comported the adoption of several sanctions toward Russia. At the end of 2024, Serbia was the only European country that did not adopt any sanctions against the actions of Russia in Ukraine. Although, in 2012, President Aleksandar Vučić came to power on a strongly pro-European-oriented political platform, a few years have seen the collapse of Serbia's foreign policy alignment with that of the EU, from 89% in 2013 to 53% in 2019 (Belloni, 2023). Moreover, considering the public polls analyzed, it emerged that the Serbian people still consider Russia as its best partner due to the cultural, historical, and economic reasons that make Moscow a valuable ally for Serbia. The relationships between Belgrade and Moscow have been going on for centuries and the current political and economic situation in the Balkan country does not allow any sudden decisions that will comport not only economic repercussions to Serbia's citizens but also political disorders due to the high presence of Putin supporters in Serbia. Even in this case, the analysis of the situation will be given to researchers better prepared on this topic.

#### 5.2.2. It is Time for a New Staged Accession Process

To conclude the thesis, it could be useful to deliver a proposal for a new accession process that considers the lack and struggles that affect the actions of the EU and Serbia and the solutions for the indicators that

have already been proposed in the conclusion chapter. In general, the most notable issues concerned the low resources and the lack of annual AP about the improvement of the judiciary. In this case, creating a detached IPA program for the judicial system with proper financial resources would be ideal for adopting effective programs. Considering the indicators, during the research emerged that Serbia lately aimed to high quality targets to get sizeable and tangible rewards, but the lack of a proper internal administrative capacity limited the progress achieved by the Balkan state. The EU in this case is trying to relaunch the enlargement process by creating new plans that specifically address the administrative and facility weaknesses. Nevertheless, it is still too early to evaluate their advances. Overall, the EU should always consider these issues for future plans. On the same page, it emerged that the mixed opinions about the possible membership of Serbia and the long enlargement process have affected people's opinion on the EU integration, which also caused a low engagement with civil society. The EU should focus on this deficit as well aiming at increasing again the enthusiasm for enlargement. The causes of the absence of political commitment or the low support of the population can also be linked to the strictness of conditionality, which in any case is necessary to achieve valuable results.

In this case, the European Policy Centre and the Centre for European Policy Studies discussed the possibility of introducing a reformed version of the EU enlargement policy in their work "*A Template for Staged Accession to the EU*" (2021). Here, the candidate state would go through four stages before becoming a full member of the EU. Each step opens to new rewards (e.g., the right to participate in EU institutions, to vote, to access the Euro, to accede to Schengen, etc.) and new funding possibilities. The only way to advance is to reach a minimum level of standards in each chapter. The IPA in this sense will provide the necessary support for the initial stages, which would require the adoption

of an effective administrative and monitoring system. By doing so, the IPA will also serve as a performance evaluation system. This staged accession process would also increase the people's perception of the reward since passing from one stage to another will be perceived as a success and a step closer to membership (Emerson et al., 2021). The European Parliament and the European Council are also open to this possibility (European Council Meeting, 2022; Stanicek et al., 2023).

In 2023, the European Policy Centre and the Centre for European Policy Studies delivered another proposal to reform the pre-accession assistance tools whether the EU adopted a staged accession process. In the document, the authors highlighted the same results presented in this thesis. First, since 2007, the funding given to each candidate state has been allocated even if they did not achieve substantial progress in the addressed areas and membership conditions. The funds were allocated only considering the level of preparedness and relevance of the set objectives. Nevertheless, the IPA III funds should be assigned based on the performance and orientations of reforms. Moreover, in the last years, the EU has given more space to other horizontal issues such as energy, gender equality, and digitalization, which do not fully match the objective of membership preparation. To tackle these issues, the authors offered several options which partially include also the ones included in the thesis. In fact, they proposed to first increase the budget for the IPA and second to create a detached program in parallel with the IPA III to support the implementation of the Staged Accession Model. As said in this chapter, the same logic could be used for the improvement of the actions linked to the judiciary. In the same document, the authors also analyzed in detail the adoption of a hybrid model where the implementation of the Staged Accession Model would occur under the MFF (Mihajlovic, 2023).

### 5.2.3. The End: More or Less Conditionality?

Many authors addressed the effectiveness of conditionality considering and comparing diverse temporal and location characteristics. One of the most recent, which also addresses the application of conditionality in Serbia, was delivered by Mirta Bašelović in 2019. As emerged in the first chapters, the weak enforcement of conditionality in the CEEs facilitated their entrance into the EU but the post-accession compliance did not occur as expected causing partly a democratic backsliding in the European Community. At the same time, the enhancement of the conditions together with the impact of the indicators analyzed during the thesis and the non-compliance of CEECs have provoked “enlargement fatigue.” The strictness of conditionality did not lead to an increased commitment from Serbia’s side as expected by the EC but instead brought to light the real problems of Serbia, which are the weak administrative capacity and the lack of political commitment. In response, the EC has launched in the last five years new supporting measures to tackle these issues and boost enthusiasm for enlargement. As emerged in the analysis chapter, the determinacy and the reward increased between IPA I and II. Nevertheless, several weaknesses limited progress. The main issues concerned the lack of a consistent monitoring system and the political unwillingness of Serbia’s elite to commit together with the poor action of the EC to tackle deficiencies and the absence of sanctions for the inadequate achieved progress. Bašelović also noted that in some cases, the EU adopted double standards, further undermining the perceived credibility of its purposes. For example, the author noted that Croatia did not show any real commitment to ensure fundamental freedoms during the accession negotiations but it was still accepted to join the EU. In general, the author was not completely against conditionality but it advocates for its renewal due to the lack of consistent progress (Bašelović, 2019).

A more critical analysis of the RoL was instead conducted by Marko Kmezić in 2019. After showing that the most impactful indicators (in a negative way) are the weak administrative capacity and the mixed credibility of the EU, he focused on the political side of the process showing that the lack of commitment and sanctions from the EU could be linked to one topic emerged during the interviews, that is the EU aimed lonely to the stability of the region and not to the membership of these countries, addressing the region as a “Stabilitocracy” (Kmezić, 2019). This topic has been also further analyzed in the publication “*The Crisis of Democracy in the Western Balkans. An Anatomy of Stabilitocracy and the Limits of EU Democracy Promotion*” by M. Kmezić and F. Bieber of 2017.

Considering specifically the IPA, pre-conditionality did not succeed in achieving the expected results. The EU has never adopted any reduction measure to sanction the ineffectiveness of the projects implemented. Overall, the EU reduces the funds to redirect them toward other areas, but this approach only makes conditionality weak and perceived as recommendations rather than a guideline that must be followed. Consequently, Serbia’s government has no incentive to pursue plans with high standards and to strictly follow conditions since the credibility of the EU is generally mixed. A staged accession model would be based on a merit-based approach where the EC has the right to freeze or withdraw the promised funds in case of poor conditionality (Mihajlovic, 2023).

In conclusion, strong conditionality is necessary to set high standards and to avoid post-accession complications as has occurred with the CEECs. The WBCs display profound lacks in several areas, especially in the field of RoL, and the EC must tackle these issues from the beginning. Conditionality is currently the only weapon the EC has to ensure that candidate countries align with the EU standards, nevertheless, until now it has not delivered the intended objectives. The mechanisms created by the EC to monitor the progress made are insufficient. They also changed based on the countries, which created confusion and decreased public

support for EU integration. Moreover, the presence of a performance award and the absence of sanctions in case of failure weakened the credibility of the EU and raised concerns about the real target of the Community and its member states (European Court of Auditors, 2022). In 2027, IPA will reach its fourth programming period and a reformed (and staged) approach is necessary now more than ever. Strong conditionality will be the pillar of the enlargement policy but only if the EU decides to seriously commit to establishing real leadership in the fundamental areas and becoming the legitimate arena to solve the issues faced by the WBCs' people, and, more specifically, Serbia's people.

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## **APPENDIX**

### CHECKLIST

Questions about the Reward indicator:

- How do you assess the ease with which Serbia can access IPA funds?
- Does the size of IPA projects (intended as the number of financial resources involved and the importance of the areas addressed) affect Serbia's motivation to implement a certain plan?
- Does the tangibility of IPA projects (intended as the explicit reference in the enlargement documents of specific objectives) affect Serbia's motivation to implement a certain plan?
- In your opinion, how directly do perceived rewards from the IPA correlate with Serbia's willingness to implement necessary reforms in areas such as democracy and the rule of law?
- What mechanisms are in place to ensure that Serbia meets the conditions required to access these rewards?
- Looking ahead, what recommendations would you make to enhance the effectiveness of IPA rewards in motivating Serbia to undertake necessary reforms?

Questions about the Determinacy indicator:

- Can you explain the specific conditions and criteria that the EU has set for Serbia in its accession process concerning the democratization process? What mechanisms are in place to ensure they are understood?
- In your opinion, how do clearly defined conditions influence Serbia's motivation and ability to align their policies with EU standards about the democratization process?
- How does the EU assess Serbia's progress in meeting these conditions? Are there regular evaluations or reports that inform this process?

- Are there any guidelines to ensure the correct action of Serbia?
- Looking ahead, what changes or improvements do you think could be made to the way conditions are defined and communicated to enhance Serbia's alignment with EU standards?

Questions about the Credibility indicator:

- In your view, how does the EU's conditionality framework influence Serbia's perception of the credibility of EU commitments?
- What mechanisms are in place to ensure that the EU holds its promises regarding rewards for compliance with conditionality?
- How does the internal consensus among EU member states regarding enlargement impact the credibility of the EU's commitments to Serbia?
- What steps can the EU take to improve its communication strategy to enhance its credibility with Serbia?
- Looking ahead, what strategies do you believe the EU should adopt to strengthen its credibility with Serbia and support its reform agenda?

## ATTRIBUTE CODES

<b>CON</b>	External and independent Croatian consultant who worked on implementing the IPA and other support programs
<b>EU-DEG</b>	Officer of the EU delegation in Serbia who has worked for many years on the IPA and the related conditionality.
<b>MEI-SER</b>	Officer of the Minister of the European Integration of the Republic of Serbia in charge of monitoring and developing assistance for all the IPA projects related to the judiciary.
<b>DG-NEAR OFF</b>	Officer of DG-NEAR of the EC with competencies in implementing democratic reforms regarding Serbia's judiciary

## GDPR FORM

### **POLICY ON PERSONAL DATA PROCESSING**

[Art.13 of EU Regulation 2016/679 - General Data Protection regulation]

This policy is provided pursuant to art. 13 of EU Regulation 2016/679 (General Regulation on Data Protection, "EU Regulation"), in relation to personal data of which the University of Padova (the "University"), in its capacity as Data Controller, acquires during activity of scientific research developed within the project "The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia" of the Department of Political Science, Law and International Studies (SPGI) of the University of Padova.

Personal data is processed fairly, lawfully and transparently, as well as in a manner that safeguards the privacy and rights of all data subjects, as per what specified below.

**TITLE:** "The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia"

**DATA CONTROLLER:** Department of Political Science, Law and International Studies (SPGI) - University of Padova via del Santo n. 28, Padova, +39 049 827 4202 [dipartimento.spgi@unipd.it](mailto:dipartimento.spgi@unipd.it).

**SCIENTIFIC COORDINATOR:** Francesco Cautiero

**PRIVACY INFORMATION:**

1. Data protection officer
2. Sources and types of data
3. Purposes for data processing
4. How data is processed

5. Legal basis of the processing and type of provision
6. Audio and images
7. Data recipients
8. Data storage
9. Rights of the data subject
10. Exercising one's rights
11. Changes to the policy

### **1. Data protection officer**

The Data Controller has its own Data-protection officer, who is appointed pursuant to Article 37 of the EU Regulation. The Data-protection officer may be contacted at [privacy@unipd.it](mailto:privacy@unipd.it)

### **2. Sources and types of data**

The personal data provided directly by the interested parties can be:

- a) Common data. Personal data, identification and contact data (e-mail, telephone contacts);
- b) Career data. Data on the role played in the institution.

### **3. Purposes for data processing**

Data is processed exclusively for carrying out all the activities related to the institutional, dissemination and public interest activities of the University. In particular, data is processed for the research purposes connected with the project “The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia”.

The following are the specific research objectives:

- How has the Instrument for Pre-Accession Assistance influenced the adoption of democratic values and the rule of law in Serbia in its path toward EU membership and EU identity.
- Whether The Instrument for Pre-Accession Assistance and conditionality have significantly contributed to the strengthening of democratic values and the rule of law in Serbia, facilitating its progress toward EU membership and fostering a European identity.
- To study the four indicators stated in the thesis – namely, rewards, determinacy, credibility, and costs.

#### **4. How data is processed**

The data is collected through semi-structured interviews with interested parties carried out by interviewers. The University takes appropriate organizational and technical measures to protect the personal data in its possession, through appropriate security measures to ensure the confidentiality and security of personal data, in particular against loss, theft, and unauthorized use, disclosure or modification of personal data.

The Data Controller does not resort to automated decision-making processes relating to the rights of the data subject on the basis of personal data, including profiling, in compliance with the safeguards provided for in art. 22 of the EU Regulation.

The data will be collected through audio recording (or video-recording in case of video-conference). The processing of data is carried out in such a way as to guarantee maximum security and confidentiality and can be implemented using manual, IT and online tools suitable for storing, managing and transmitting them. The personal data collected are processed by manual coding. The institutional and private pc are accessible only by staff member. The transcribed interviews are shared with interviewers through the university's sharing system based on the

Google Drive suite, protected by the passwords of the individual interviewer and staff member.

The data gathered during the interviews will not be disseminated. In the event that the interview or parts of it should prove to be of particular interest, such as to justify its dissemination for the purpose of disseminating the results of the study, it will be published without any identification reference of the interested party, with indication only of the role covered by the interviewed, in order to guarantee anonymity.

## **5. Legal basis of the processing and type of provision**

Legal basis of the processing is the execution of public interest tasks of research, teaching and the so-called “third mission”, of the University as defined by law, by the Statute and by internal regulations (pursuant to art. 6, par. 1, lett. f) of EU Regulation).

For special categories of personal data the legal basis of the processing is based on your explicit consent (pursuant to art. 9, par. 2, lett. a) of the EU Regulation).

Since participation in the research is on a voluntary basis you are not formally obliged to provide data. On the other hand, if you wish to participate in the research, the processing of your personal data is indispensable; if you refuse to provide such data, you will not be able to take part in the research.

## **6. Audio and images**

By participating in the project “The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia” the interested parties expressly authorize the University of Padova and the Department of Political Science, Law and International Studies (SPGI) to use the audio (or video in the case of video-interviews) recorded during their own participation in the interviews for the project

"The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia", on the university computers. By signing the release, the participant grants all rights to use the audio as described above. This transfer is expressly intended free of charge.

## **7. Data recipients**

The data may be communicated, exclusively for the purposes indicated in point 3, to University staff, students involved in the research and to collaborators, including self-employed ones, who provide support for the implementation and management of the activities envisaged by the research project. The collected data are not normally transferred to countries outside the European Union. In any case, the University ensures compliance with the safety rules for the protection of the privacy of the data subjects.

## **8. Data storage**

Personal data are therefore kept for the entire period necessary to achieve the research purposes indicated in point 3. Personal data may be kept even beyond the period necessary to achieve the purposes for which they were collected or subsequently processed, in compliance to art. 5, § 1 lett. e) of the EU Regulation.

## **9. Rights of the data subject**

The following rights are granted to the data subject:

- a) right to access their personal data (art. 15 of the EU Regulation);
- b) right to amend or complete their data (art. 16 of the EU Regulation);
- c) right of cancellation (right to be forgotten), pursuant to art. 17 of the EU Regulation;
- d) right to limit data processing under the conditions set out in Article 18 of the EU Regulation;

- e) right to data portability, as provided for by art. 20 of the EU Regulation;
- f) right to object to the processing of their data in any moment (art. 21 of the EU Regulation);
- g) right to lodge a complaint with Italian Data Protection Authority (Garante per la protezione dei dati personali).

The interested parties can withdraw consent to the processing of their personal data at any time. Any withdrawal of consent by the interested parties does not invalidate the legal basis for the processing of personal data collected for the research purposes indicated in point 3. In this case, no further personal data of the interested party will be collected, without prejudice to use of any data already collected to determine, without altering them, the results of the research or those that, originally or following processing, are not attributable to an identified or identifiable person.

#### **10. Exercising one's rights**

In order to exercise their rights, the data subject may contact the Data Controller by writing to this certified e-mail address [amministrazione.centrale@pec.unipd.it](mailto:amministrazione.centrale@pec.unipd.it) or to the following e-mail address: [dipartimento.spgi@unipd.it](mailto:dipartimento.spgi@unipd.it), [urp@unipd.it](mailto:urp@unipd.it). Alternatively, the data subject may write to: University of Padova, via VIII Febbraio 2, Padova.

The Controller shall respond within one month of the request, although this may be extended by up to three months should the request be particularly complicated.

#### **11. Changes to the policy**

Any amendments and additions to this policy are published in the privacy section of the department website at <https://www.spgi.unipd.it/privacy-policy>

## **DISCLAIMERS**

I, the undersigned \_\_, born in \_\_(\_\_),  
on \_\_/ \_\_/ \_\_, resident in \_\_(\_\_), address:  
\_\_\_\_ n ° \_\_ ZIP code \_\_\_\_,  
e-mail: \_\_\_\_ Tel: \_\_

as part of the participation in the survey developed in “The Impact of the Instrument for Pre-Accession Assistance on Democratic Values and the Rule of Law In Western Balkans Countries: A Case Study of Judicial Independence in Serbia” of the Department of Political Sciences, Law and International Studies,

## **I NOTICE**

that the use, including the preservation of audio-video recordings takes place:

- a) completely free of charge;
- b) for the purposes and in the manner specified in the attached privacy policy in accordance with art. 13 of the 2016/679 EU Regulation;
- c) respecting the honour, reputation and decorum of the people portrayed;
- d) without the responsibility of the University in case of incorrect use by third parties of the published data;

## **I NOTICE**

the University of Padova - Department of Political Sciences, Law and International Studies, pursuant to Article 96 and 97 of Law 633/1941 (copyright law), as well as Article 10 of the Civil Code, to

- record the statements made, speeches, reports, dissertations and related supporting material in the
- context of the interview using computerized, photographic and phonographic means;

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**I DECLARE**

that the authorization to make the recordings and subsequent reproductions and dissemination of the same is granted free of charge.

Place and date \_\_\_\_Signature \_\_\_\_

**I GIVE MY CONSENT**

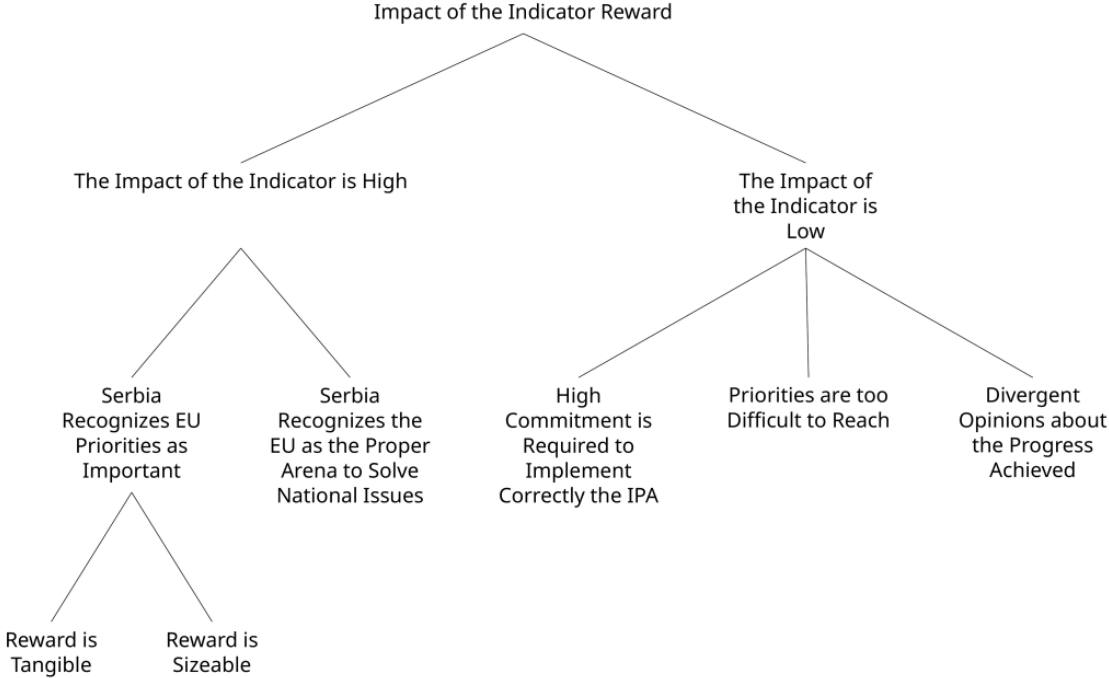
**I DO NOT EXPRESS CONSENT**

to the processing of my particular personal data for the purposes and methods specified in the attached privacy policy.

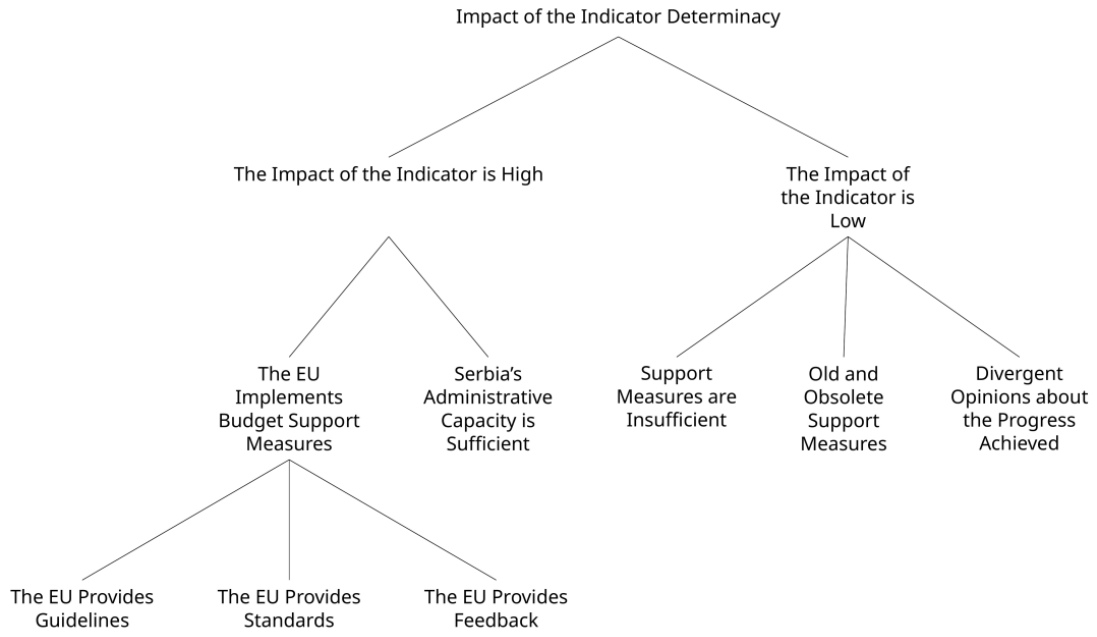
Place and date \_\_\_\_Signature \_\_\_\_

# SUBSTANTIVE CODES TREES

## First Sub-Research Question



## Second Sub-Research Question



### Third Sub-Research Question

