

CHAPTER 7

SERBIA



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Abstract

This report provides an overview of the accession process of the Republic of Serbia to the European Union (EU). It examines the prerequisites that the Republic of Serbia had to fulfil before formally applying for EU membership and scrutinises the historical and political peculiarities of Serbia's accession. The process of European integration of Serbia has been influenced by the disintegration of Yugoslavia, regional conflicts, and relations with the international community, among other such factors. The report covers the long period starting from the Yugoslav era through the State Union of Serbia and Montenegro, and the harmonisation efforts of the Republic of Serbia. Central to Serbia's accession process have been its commitments to the rule of law and judicial reforms, cooperation with the International Criminal Tribunal for the former Yugoslavia, and the normalisation of relations between Belgrade and Pristina. The report also explores the impact of the principle of conditionality in the EU's relations with Serbia. Despite some progress that has been made, the report notes challenges in areas such as judiciary independence, freedom of expression, anti-corruption measures, and normalisation of relations with Pristina, which continue to pose obstacles in Serbia's pace of EU integration. The report concludes by situating Serbia's accession within the context of the EU's new enlargement methodology and assessing Serbia's readiness to open further negotiation chapters contingent on reform milestones.

Keywords: Republic of Serbia, European Union accession, European integration, European Union conditionality, European Union enlargement methodology

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1. Initial Requirements on Candidate Countries

This section of the report examines the prerequisites that the Republic of Serbia was required to meet prior to formally submitting its application for membership in the European Union (EU). It provides a brief overview of the historical relationship between Serbia and the EU, outlining the trajectory towards integration and the subsequent adoption and implementation of the EU acquis.

Before addressing the specific conditions that the Republic of Serbia had to meet prior to formally applying for EU membership, it is important to provide some contextual background. Unlike other post-communist states, Serbia did not follow the conventional path of Europeanisation, which typically involves fulfilling the political criteria established by the European agenda. Serbia's journey towards EU membership was heavily influenced by the disintegration of Yugoslavia, regional conflicts in the Western Balkans, and internal political crises. These factors shaped Serbia's negotiation process, becoming unavoidable preconditions for further progress, and ultimately set a precedent in terms of both the substance and nature of its accession negotiations, distinguishing them from previous EU enlargement processes.

At the time of the establishment of European Communities, Serbia was part of the Federal People's Republic of Yugoslavia, later known as the Socialist Federal Republic of Yugoslavia (SFRY). Following the 1948 Cominform Resolution and the subsequent blockade by Eastern European countries, Yugoslavia began to shift its focus towards the West and progressively engaged in European integration processes.¹ Furthermore, socialist Yugoslavia sought to establish closer commercial ties with the West and became the first socialist nation to permit foreign investment through joint ventures in 1967.² That same year, the Declaration on Relations between SFR Yugoslavia and the European Economic Community (EEC) was signed, aiming to establish a framework for future economic cooperation. This was followed by two trade agreements in 1970 and 1973, which granted SFRY the status of most-favoured nation and led to its inclusion in the Generalised System of Preferences (GSP). The Joint Declaration signed in Belgrade on 2 December 1976 marked a turning point in relations between Yugoslavia and the EEC, formalising Yugoslavia's intent to strengthen cooperation with the EEC on the basis of equality and acknowledging its unique status as a non-aligned, Mediterranean country and a member of the Group of 77.³ In 1980, another agreement granted the former SFRY preferential trade treatment with the European Communities, along with provisions for financial assistance through financial protocols.⁴ In 1990, the SFRY signed a framework agreement under the PHARE program (Poland and Hungary: Assistance for Restructuring their

1 Bazić, 2019, p. 305.

2 Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor, Official Gazette of SFRY, No. 31/67.

3 Commission of the European Communities, 1979, p. 3.

4 European Commission, 1986.

Economies) expanding cooperation to include financial support for social and economic reforms. However, relations were suspended during the 1990s due to conflicts in the territory of the former SFRY.⁵ The legal climate of Yugoslavia was perceived as 'conducive to further integration with the West'.⁶ However, the disintegration of Yugoslavia was inevitable, leading to the emergence of new sovereign states, which subsequently sought integration into the European Communities.

Following the disintegration of the SFRY, the Federal Republic of Yugoslavia (FRY) was formed, consisting of the Republic of Serbia and Republic of Montenegro. These two republics experienced nearly a decade of international isolation, during which there were no substantial efforts to pursue integration into the EU. Nevertheless, the FRY's aspiration to join the European Community was explicitly stated in the constitutional declaration adopted on 27 April 1992, alongside the Constitution of the FRY. In 1996, at the initiative of the Republic of Serbia, the FRY established the Commission for the Harmonisation of its legal system with the legislation of the EU and the Council of Europe.⁷ Despite the democratic revolution in 2000, which marked a significant political shift, Serbia remained part of the FRY. Consequently, the initial steps towards European integration were undertaken by the joint state of Serbia and Montenegro. Significant developments occurred shortly after the democratic changes in Serbia. On 8 October 2000, just three days after the revolution, the President of the FRY was invited to the EU Summit in Biarritz under the French presidency, and the FRY formally joined the Stabilisation and Association Process.⁸ In November 2000, the FRY officially participated in the EU summit held in Zagreb. During this summit, the EU reiterated that 'In this context, the way is now open to all the countries of the region to move closer to the EU as part of the stabilization and association process'.⁹ Furthermore, within a month, autonomous trade measures granted to the Western Balkans were extended to the FRY. In conclusion, the initial steps towards Serbia's association with the EU were taken within the framework of the FRY, immediately following the democratic revolution of 2000.

After the democratic changes in Serbia, the political elites in Montenegro raised questions regarding the future legal and political relationship with Serbia. At this time, the EU played a decisive role in shaping the political landscape, opting to create the State Union of Serbia and Montenegro rather than allowing the formation of two independent states. The EU's primary objective was 'to avoid the risk of a hasty separation which might jeopardize the stability achieved in the region after

5 Mission of the Republic of Serbia to the European Union, no date, para. 1.

6 Getter, 1990, p. 790.

7 *Odluka o osnivanju Komisije za harmonizaciju pravnog sistema Savezne Republike Jugoslavije sa pravom Evropske unije i Saveta Evrope* (Decision on the Establishment of the Commission for the Harmonization of the Legal System of the Federal Republic of Yugoslavia with the Law of the European Union and the Council of Europe), *Službeni list SRJ* (Official Gazette of FRY), No. 45/1996.

8 Government of the Republic of Serbia, Ministry of European Integration, no date a.

9 europa.rs, 2024.

the intervention in Kosovo'.¹⁰ The first constitutional document in Serbia to establish accession to the EU as a key state objective was the Constitutional Charter of the State Union of Serbia and Montenegro.¹¹ According to Art. 3 of the Constitutional Charter, the goals of Serbia and Montenegro include, among others, joining European institutions, particularly the EU, and aligning their regulations and practices with European and international standards.¹² Therefore, the State Union has commenced, without legal obligation, the process of harmonising the legislation with the *acquis communautaire*.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join the EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

In April 2005, the State union of Serbia and Montenegro received a positive assessment of the country feasibility study for concluding the Stabilisation and Association Agreement (SAA) with the EU.¹³ In June 2005, the National Strategy of Serbia for the Accession of Serbia and Montenegro to the EU was adopted. This strategy sought to incorporate the obligations of the Stabilisation and Association Process and the goals of Serbia's integration into the EU into a broader framework of Serbia's development.¹⁴ The negotiation process between the State Union of Serbia and Montenegro and the EU encountered significant challenges. One of the primary obstacles was the lack of consensus between the two constituent republics regarding the terms of the agreement and the failure of achieving a minimum level of common trade policy and internal market integration. Consequently, the EU adopted a 'twin track' approach, whereby negotiations for the SAA were conducted separately with each republic, as well as with the State Union.¹⁵ However, this approach did not yield the expected results.

During this period, the initial conditions for advancing the European integration of the Western Balkans were established. In accordance with the EU–Western Balkans Summit Declaration, adopted in Thessaloniki in June 2003, the Western Balkan countries committed to full and unequivocal cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), including the transfer of

10 Vejvoda, 2004, p. 40.

11 Tišma, 2010, p. 145.

12 Ustavna povelja državne zajednice Srbija i Crna Gora (Constitutional Charter of the State Union of Serbia and Montenegro), Službeni list SCG (Official Gazette of Serbia and Montenegro), No. 1/2003 and 26/2005.

13 Government of the Republic of Serbia, Ministry of European Integration, no date b.

14 Government of the Republic of Serbia, Ministry of European Integration, no date c.

15 Commission of the European Communities, 2005.

remaining indictees to The Hague.¹⁶ Although the State Union of Serbia and Montenegro passed a Law on Cooperation with the Hague Tribunal in 2002,¹⁷ the European Commission deemed its cooperation insufficient, particularly in locating and extraditing individuals accused of war crimes during the Yugoslav wars. Consequently, negotiations with the EU were suspended on 3 May 2006, just three weeks before Montenegro's referendum on secession. This suspension symbolised the final phase of the State Union's existence. Following the referendum on 21 May 2006, Montenegro declared its independence in June. As in previous Yugoslav states, independence was seen as a path towards further European integration. The two constituent republics of the State Union were now able to separately continue their negotiations with the EU and support their integration processes.

The Republic of Serbia, shortly after gaining independence, adopted the new Constitution, which stipulates in Art. 1 that,

Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.¹⁸

The explicit reference to future EU membership and integration has been omitted, with future negotiations inferred from general provisions on the role of international law within Serbia's legal system.

In addition to the complexities of economic transition and democratisation, Serbia faced two key conditions that needed to be met to begin negotiations on the SAA. The first was cooperation with the ICTY, which required Serbia to arrest and extradite war crime suspects to The Hague: 'Compliance with ICTY-related conditionality comprises many different subfields such as the arrest and transfer of indictees to The Hague, access to documents, witness protection or domestic war crimes trials'.¹⁹ In October 2005, the EU approved the start of negotiations on the SAA with Serbia. However, the negotiations, conducted between May 2006 and September 2007, were suspended following the Hague Tribunal Chief Prosecutor's assessment that Serbia had not sufficiently cooperated with the Tribunal. The SAA was effectively

16 European Commission, 2003. Another important criterion reiterated in the Thessaloniki Summit Agenda is regional cooperation, which remains a precondition for the EU integration of the Western Balkan countries.

17 *Zakon o saradnji Srbije i Crne Gore sa Međunarodnim Tribunalom za krivično gonjenje lica odgovornih za teška kršenja Međunarodnog humanitarnog prava počinjena na teritoriji Bivše Jugoslavije od 1991. Godine* (Law on Cooperation of Serbia and Montenegro with the International Tribunal for the Prosecution of persons Responsible for Serious Violations of International Humanitarian Law Committed in the territory of the Former Yugoslavia since 1991, *Službeni list SRJ* (Official Gazette of FRY, No. 18/2002 and *Službeni list Srbije i Crne Gore* (Official Gazette of Serbia and Montenegro), No. 16/2003.

18 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

19 Menz, 2014, p. 17.

used by the EU as a diplomatic incentive,²⁰ with the start of negotiations, the ratification, and the SAA's entry into force in 2008 all being contingent on Serbia's level of cooperation with the ICTY. Serbia was not the only country to experience the 'ICTY conditionality'. It was rather inconsistently applied towards Croatia during the accession negotiations.²¹ The standards for ICTY conditionality appeared lower in Croatia's case than in Serbia's. This disparity stems from two factors: first, EU decisions are driven by political negotiations among member states rather than fixed rules; second, the policy of conditionality evolved over time, becoming stricter due to concerns about 'enlargement fatigue' and the EU's ability to absorb new members, especially after the premature accession of Romania and Bulgaria in 2007.²²

The second condition for Serbia's EU integration, which remains a central issue to this day, was the participation in negotiations on the status of its southern province of Kosovo and Metohija. This province was placed under international supervision, with a special civil mission established to provide interim administration. United Nations (UN) Security Council Resolution 1244 (1999) suspended the legislative, executive, and judicial authority of the FRY and Serbia in Kosovo and Metohija, while formally reaffirming the commitment to the sovereignty and territorial integrity of the FRY (now Serbia). In addition to its mandate to maintain regional stability and promote cooperation among the countries of the former Yugoslavia, the EU made the negotiations between Belgrade and representatives of the Kosovo Albanians a key political priority. The situation deteriorated in February 2008 when ethnic Albanians in Kosovo and Metohija unilaterally declared independence. This declaration has not been recognised by five EU member states (Cyprus, Greece, Romania, Slovakia, and Spain), two regional countries (Serbia and Bosnia and Herzegovina), three 'new applicants' (Georgia, Moldova, and Ukraine), and two permanent members of the UN Security Council (China and the Russian Federation). Serbia's further progress in EU integration remains conditional upon the EU-facilitated dialogue between Belgrade and Pristina. This was particularly evident when Serbia was granted EU candidate status after Belgrade and Pristina reached an agreement on regional representation of the Serbian southern province.²³ Moreover, the accession negotiations with Serbia only began after Serbia signed the First Agreement of Principles Governing the Normalisation of Relations (commonly known as the Brussels Agreement). The link between European integration and the dialogue between Belgrade and Pristina is a

20 Dobbels, 2009a, p. 15.

21 Menz, 2014, p. 33.

22 Dobbels, 2009b, p. 28.

23 European Parliament, 2024.

unique precondition imposed by the EU specifically in Serbia's case, unlike any other country in a comparable situation.²⁴

As with all previous instances preceding the initiation of accession negotiations with a candidate country, Serbia was required to conclude the SAA and obtain candidate status. Owing to prolonged interruptions in the SAA negotiations, which extended alongside the signing process, the Republic of Serbia voluntarily commenced the harmonisation of its national legislation with the *acquis communautaire*. At the 2003 European Summit in Thessaloniki, the EU introduced the European Partnership as a central pre-accession strategy for potential membership candidates from the Western Balkans, including the State Union of Serbia and Montenegro. The partnership established short- and mid-term priorities for EU integration and was intended to govern relations until the signing of the SAA. Subsequently, the Government of the Republic of Serbia formulated an Action Plan in 2004 for the implementation of the European Partnership's priorities. This plan outlined a schedule of short- and medium-term activities to be undertaken as part of the country's stabilisation process and its path towards EU accession.²⁵ In a few subsequent years, action plans for harmonisation were adopted to ensure that certain areas of law would be sufficiently advanced by the time the first agreement with the EU is signed. In 2006, the Government of the Republic of Serbia adopted the Action Plan aimed at enhancing institutional capacity to fulfil obligations in the process of European integration.²⁶ This initiative was also a consequence of implementing the European Partnership. However, while the scope of the voluntary phase of legal order harmonisation was limited, it demonstrated Serbia's commitment to European integration and could yield advantages in the negotiation process.

Negotiations on the conclusion of the SAA between the EU and Serbia were relaunched in mid-2007. This time, the Republic of Serbia participated independently for the first time in negotiations with the EU. The negotiations resulted in the signing of the Agreement on Visa Facilitation and the Agreement on Readmission between the European Community and the Republic of Serbia on 18 September 2007.²⁷ Shortly thereafter, on 7 November 2007, the SAA was also initialled. Additionally,

24 Cyprus is an EU member state with an unresolved territorial dispute, but unlike Serbia, participation in dialogue or resolution of the dispute was not a formal precondition for Cyprus' EU integration or accession. According to the 1999 Helsinki Presidency conclusions, while a political settlement would facilitate accession, it was not a prerequisite. The European Council stated that if no settlement was reached by the end of negotiations, the decision on Cyprus' accession would still proceed, taking into account all relevant factors, without making settlement a precondition. European Parliament, 1999.

25 Ministarstvo za evropske integracije, 2004a.

26 Ministarstvo za evropske integracije, 2004b.

27 Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas – Declarations, Official Journal L 334, 19/12/2007 P. 0137–0147. Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, Official Journal L 334, 19/12/2007 P. 0046–0064.

the EU Council adopted a decision on the principles, priorities, and conditions of the European Partnership with the Republic of Serbia, which includes Kosovo, in accordance with UN Resolution 1244.²⁸

The SAA was finally signed in 2008 and entered into force only after ratification by all member states.²⁹ On 14 June 2010, the EU decided to initiate the ratification process for the SAA, which lasted three full years. Lithuania was the last EU member to ratify the SAA, paving the way for its entry into force on 1 September 2013. In the meantime, the Interim Association Agreement on Trade and Trade-Related Matters,³⁰ which Serbia voluntarily applied unilaterally, entered into force in February 2010. The SAA granted the Republic of Serbia the status of an associated country to the EU. The two most significant commitments undertaken by Serbia upon signing this Agreement were to establish a free trade zone and align its domestic legislation with EU standards. By signing both the SAA and Interim Trade Agreement, the Republic of Serbia advanced to the second phase of legal order harmonisation, assuming contractual obligations in accordance with the signed agreements. Even at this stage, there remained an element of voluntariness on the part of the Republic of Serbia, as the EU decided not to apply the Interim Trade Agreement signed with the SAA. On 16 October 2008, Serbia decided to unilaterally apply its provisions starting 1 January 2009.³¹

In 2008, the Government of the Republic of Serbia adopted the National Program for Integration (NPI) of the Republic of Serbia into the EU.³² The NPI served as a preparatory framework for the National Programme for the Adoption of the Acquis (NPAA), a requirement for all candidate countries for EU membership. The National Programme replaced the annual Action Plans and covered all 35 negotiation chapters of the EU acquis, including detailed measures for the period 2008–2012.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Serbia officially applied for EU membership on 22 December 2009. On 25 October 2010, the Council of Foreign Ministers of EU Member States decided to forward Serbia's candidacy for membership to the European Commission for review. Shortly thereafter, on 24 November 2010, the European Commissioner for Enlargement

28 Council Decision of 18 February 2008 on the principles, priorities, and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, Official Journal of the European Union, L 80/46.

29 Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, Official Journal of the European Union, L 278.

30 European Commission, 2008.

31 Government of the Republic of Serbia, Ministry of European Integration, no date a.

32 Ibid.

handed over the European Commission's Questionnaire for Serbia to prepare its response regarding its EU membership application.³³ The questionnaire contained 2,563 questions and sub-questions, divided into six annexes and 33 chapters.³⁴ Its aim was to allow the Government of the Republic of Serbia to explain the country's ability to adopt and implement legislation in all areas of EU law. At the end of January 2011, the prime minister of the Republic of Serbia handed over the answers to the questionnaire to the European Commissioner for Enlargement. Additionally, on 22 April 2011, Serbia sent answers to a supplementary set of questions from the European Commission.³⁵

On 12 October 2011, in its Opinion on Serbia's candidacy, the European Commission recommended that Serbia be granted candidate status for EU membership, contingent upon further substantial progress by Belgrade in normalising relations with Pristina.³⁶ This underscores the distinct character of Serbia's negotiations with the EU, particularly in comparison to other Western Balkan countries. The European Council, in its decision of 1 March 2012, endorsed the conclusions of the General Affairs Council, affirming that Serbia had demonstrated a credible commitment and had made significant progress in implementing agreements reached in the dialogue with Pristina, including those related to integrated border management, thereby granting Serbia candidate status for EU membership. The European Commission's positive Opinion on Serbia's application began by referencing Art. 2 and Art. 49 of the EU Treaty, as well as the Copenhagen criteria, which provided the legal and political framework for evaluating Serbia's candidacy.³⁷ On 27–28 June 2013, the European Council agreed to launch accession negotiations with Serbia by January 2014 at the latest. The Council adopted the negotiation framework on 17 December 2013 and agreed to hold the 1st Intergovernmental Conference with Serbia by the end of January 2014.³⁸ On 21 January 2014, the First Intergovernmental Conference was held in Brussels, marking the formal opening of Serbia's accession negotiations with the EU. Just a few weeks earlier, EU delivered its General Position for Ministerial meeting, opening the Intergovernmental Conference on the Accession of Serbia to the EU, in which the Negotiating Framework adopted by the EU Council was included together with basic principles governing the negotiations.³⁹

33 Ibid.

34 mei.gov.rs, 2010.

35 Government of the Republic of Serbia, Ministry of European Integration, no date a.

36 Government of the Republic of Serbia, Ministry of European Integration, no date d.

37 European Commission, Commission Opinion on Serbia's application for membership in the European Union, COM(2011) 668 final.

38 European Union, 2014.

39 Ibid.

2. Institutions and Procedures of Accession

Question No. 5

What Was the Legal Framework of the Accession Procedure (Since the Application to Join the EU Till the Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

Before the official start of negotiations at the First Intergovernmental Conference in 2014, to prepare its legal system for the next phase of negotiations, the Government of the Republic of Serbia adopted the first NPAA 2013–2016. The second NPAA was adopted for the period 2014–2018 in July 2014, while in November 2016, the Serbian Government adopted the revised NPAA. The structure of the NPAA consists of three main sections and three annexes. The main sections cover the political criteria, economic criteria, and the ability to assume the obligations of EU membership. The annexes are as follows: Annex A, which outlines the plan for aligning Serbia's legislation with the EU *acquis* and a review of implementation measures; Annex B, detailing the measures planned for translating and preparing the national version of the *acquis*; and a final annex focusing on administrative and procedural aspects. Overall, it outlines not only the obligations for incorporating EU legislation into national law but also the necessary steps to meet the political and economic criteria for EU membership (Copenhagen 1993 and Madrid 1995). The NPAA sets out both developmental and strategic goals, as well as policy reforms and actions required to achieve them. Additionally, it includes a detailed plan, schedule, and priorities for adopting regulations and specifies the bodies responsible for their implementation. The NPAA will be updated as needed in the future, considering the progress made during accession negotiations and the ongoing development of the EU *acquis*, which candidate countries must adopt at the time of accession.⁴⁰

The EU initiated the first screening meeting on 25 September 2013, focusing on Chapter 23 – Judiciary and Fundamental Rights. This marked another confirmation of the revised approach in the accession process for new candidate countries introduced by the EU, considering that the screening process is officially conducted after the formal opening of negotiations. However, in the case of Serbia, as well as Montenegro, screenings for chapters of fundamental importance to the harmonisation process with EU law were held before the negotiations officially began.

The purpose of the screening meetings is to conduct a detailed analysis of Serbia's legislative alignment with EU law for each negotiation chapter. The outcome of the screening provides an overview of what remains to be done to bring the candidate country's legislation in line with the EU *acquis* before membership. This analysis forms the basis for the candidate country's negotiating positions, particularly for

40 Ministry of European Integration, no date a.

chapters that require transitional periods for the implementation of certain EU regulations. For the European Commission, the screening process indicates the candidate state's readiness to open specific chapters.

One distinct aspect of the screening process is that EU Member States do not participate in screenings, leaving this task to the Commission. However, there are exceptions for Chapters 23, 24 (Justice, Freedom, and Security), and 31 (Foreign, Security, and Defence Policy), where Member States actively participate, underscoring the significance of these chapters in the overall accession process for Serbia.

The analytical screening of Serbian legislation is conducted through explanatory and bilateral screenings. The explanatory screenings involved the European Commission presenting the EU *acquis* for each chapter, while the bilateral screenings were more crucial, as they allowed Serbia to present its domestic legislation to the Commission. Differences between Serbian law and EU law were then identified. Following the bilateral screening, the Commission evaluates the candidate country's readiness to open the chapter, and the Council assesses whether the country is sufficiently prepared to submit its negotiating position.

Serbia's negotiating position outlines the remaining legislative harmonisation tasks, reviews the existing administrative capacities, and details the application of legal norms within the relevant chapter. After the submission of Serbia's negotiating position, the EU adopts a Joint Position, followed by an Intergovernmental Conference to officially open the chapter.

In many cases, however, the Commission concludes that a candidate country has not yet achieved sufficient alignment to open negotiations on a specific chapter, leading to the establishment of opening benchmarks. These benchmarks include the adoption of laws; administrative strengthening; and, in complex cases, the creation of action plans to meet these requirements. Serbia, for instance, was granted immediate alignment only for Chapters 25 (Science and Research) and 26 (Education and Culture), while most other chapters required opening benchmarks.

Once the opening benchmarks are met, the European Commission drafts an Opening Benchmark Assessment Report (OBAR), and upon a positive evaluation, the chapter is opened. After a chapter is opened, the candidate country must continue working towards closing benchmarks, updating action plans, and ensuring the full implementation of previously adopted legislation. Once the closing benchmarks are met, the Commission submits a report to the Council, along with the EU's Joint Position, recommending temporary closure of the chapter. The Commission continues monitoring compliance even after the chapter is temporarily closed.⁴¹

A particular feature of the negotiations between Serbia, Montenegro, and the EU is the introduction of interim benchmarks for Chapters 23 and 24 under the revised methodology. Based on these benchmarks, Serbia adjusts its legal framework and action plans. The European Commission then submits a report to the Council, recommending a Joint Interim Position to advance the negotiations further.

41 Ministry of European Integration, no date b.

Serbia has signed several important agreements with the EU that facilitate its EU integration. These include the SAA (2008); Visa Facilitation and Readmission Agreements (2007); Open Skies Agreement (2006); and Energy Community Agreement (2005), which integrates Serbia's energy market with the EU. Additionally, Serbia signed the CEFTA Free Trade Agreement (2006) to boost regional trade and the Treaty Establishing the Transport Community (2017), which enhances cooperation in transport infrastructure and policies between Serbia and the EU. Finally, the Financial Framework Partnership Agreement between the European Commission and the Republic of Serbia regulates specific arrangements for implementation of EU financial assistance to the Republic of Serbia under the Instrument for Pre-Accession Assistance (IPA III).⁴²

With the entry into force of the SAA, three new joint bodies were established to oversee its implementation: (1) The Stabilisation and Association Council, composed of representatives from the European Commission, the Council of the EU, and Serbian government ministers, monitoring implementation of the agreement at the highest political level. Its main role is to address unresolved issues arising during the implementation process. (2) The Stabilisation and Association Committee supports the council in its duties, consisting of expert-level representatives from both the European Commission and the Serbian government. This committee plays a crucial role in overseeing implementation of the agreement and refining its provisions. (3) The Stabilisation and Association Parliamentary Committee serves as a platform for members of Serbia's National Assembly and the European Parliament to meet and exchange views.⁴³

Question No. 6

What Institutions Were Set up for the Purposes of Accession at Both the EU and National Levels?

Before the official start of negotiations, the Government of the Republic of Serbia established a negotiating team for leading the EU accession negotiations and appointed a chief negotiator.⁴⁴ The Negotiating Team of Serbia is responsible for preparing negotiation positions and conducting accession talks with the EU across all chapters and stages. It operates under guidelines set by the Serbian Government and coordinates with EU institutions, member states, and other candidate countries to fulfil its tasks and advance the accession process. In March 2016, the Negotiating Team adopted the Guidelines for cooperation of the Negotiating Team for Accession of the Republic of Serbia to the EU and negotiating groups with the representatives of civil society organisations, the National Convention on the EU, and the Chamber

42 Ministry of European Integration, no date c.

43 Ministry of European Integration, no date d.

44 Decision on Establishing the Negotiating Team for Accession of the Republic of Serbia to the European Union, Official Gazette of RS, No. 71/2015.

of Commerce and Industry of Serbia. Meanwhile, in April 2016, it adopted the Rules of Procedure of the Negotiating Team for Accession of the Republic of Serbia to the EU.⁴⁵

The Serbian Ministry of European Integration, established in 2017, coordinates the country's EU accession process. Its tasks include managing negotiations with the EU, aligning national regulations with EU standards, and implementing the SAA. The ministry also oversees the use of EU funds, promotes international cooperation, and ensures public communication on integration efforts. It plays a key role in programming and monitoring IPA funds and supports collaboration with EU institutions and member states.⁴⁶ Each Ministry has a sector for EU negotiations, including the Serbian Ministry of European Affairs.⁴⁷ The minister of European Integrations is also a Chief Negotiator and National Coordinator of the Reform Agenda of the Republic of Serbia for the period 2024–2027, in accordance with the Growth Plan for the Western Balkans.

The National IPA Coordinator (NIPAC) in Serbia manages the planning, coordination, and monitoring of EU pre-accession assistance (IPA funds). This role ensures alignment between national priorities and EU financial support, fostering effective use of resources to advance European integration. NIPAC works closely with state institutions, civil society, and international partners, facilitating Serbia's progress towards meeting EU accession requirements.⁴⁸

The Coordination Body for the EU Accession Process in Serbia ensures efficient collaboration among state institutions involved in EU negotiations. It shall consider the most important issues and guide operations within the scope of the public administration in the process of accession of the Republic of Serbia to the EU.⁴⁹ The Coordination Body Council performs operations regarding current issues within the process of accession of the Republic of Serbia to the EU.⁵⁰ Furthermore, 35 negotiation groups have been established to negotiate the accession of the Republic of Serbia to the EU. Each negotiation group manages key tasks in Serbia's EU accession process, including participating in the screening process, drafting negotiation positions, and monitoring the NPAA. It also assigns responsibilities for tracking EU regulations and proposes communication strategies for negotiation chapters.⁵¹ Finally, the Mission of the Republic of Serbia to the EU operates in Brussels, while the Delegation of the EU to Serbia is based in Belgrade.

45 Ministry of European Integration, no date e.

46 Ministry of European Integration, no date f.

47 Ministry of European Integration, no date g.

48 Ministry of European Integration, no date h.

49 Ministry of European Integration, no date i.

50 Ministry of European Integration, no date j.

51 Ministry of European Integration, no date k.

3. European Integration and the Serbian Constitution

Question No. 11

In What Way Was the Constitution of Your Country Changed to Accede the EU?

Serbia has yet to join the EU; however, amendments to the 2006 Constitution have been deemed necessary to align the country's legal framework with EU standards. In its 2007 Progress Report, the European Commission devoted special attention to the Serbian Constitution, identifying specific provisions as inconsistent with European standards. These included concerns related to the independence of the judiciary, the role of parliament in judicial appointments, the lack of clear and objective criteria regarding the re-election of judges, political party control of mandates of individual members of parliament, the level of corruption, and the presence of organised crime. At the same time, the report commended the constitutional protections afforded to minorities in Serbia and the provisions safeguarding human rights.⁵²

The process of adopting constitutional amendments was lengthy and complex, requiring sustained dialogue with European experts, particularly with the European Commission for Democracy through Law – better known as the Venice Commission. As Serbia advances towards EU membership, the constitutional reforms exemplify efforts to align the national legal framework with the requirements of accession. After nearly two years of stagnation, the newly formed Government of Serbia submitted a proposal in December 2020 to amend the Constitution, marking a renewed commitment to reforms to adapt its legal and constitutional system with European rule of law standards among which the independence of the judiciary is the core pillar. On 26 October 2021, the Committee on Constitutional and Legislative Issues of the Serbian Parliament finalised the draft amendments following consultations with the Venice Commission. The Venice Commission's involvement was pivotal, given that the European Commission relies heavily on its recommendations when assessing Serbia's progress in judicial reforms and constitutional compliance.

Throughout the discussions, a dominant argument in favour of adopting the amendments was Serbia's commitment to its European path and the fulfilment of obligations expected from EU candidate countries. The reform effort was further aligned with the new Judicial Development Strategy (2020–2025) and the revised Action Plan for Chapter 23,⁵³ which set a deadline for the adoption of constitutional amendments by the end of the fourth quarter of 2021. During this period, dialogue was initiated with professional associations, legal experts, and civil society representatives. European stakeholders, including the Venice Commission, European Commission, and EU, actively participated in the process. Both government officials and

52 Serbia 2007 Progress Report, p. 6.

53 Strategy of judicial development for the period 2020–2025, Official Gazette of Republic of Serbia, No. 101/2020 and 18/2022. Revised AP23 adopted at the Government session on 10 July 2020.

experts viewed the adoption of constitutional amendments as a crucial step towards European integration, signalling progress in aligning Serbia's legal system with European constitutional principles.

The Venice Commission welcomed the amendments and expressed particular support for several key changes:

the introduction of the principle of non-transferability of judges, functional immunity for judges and prosecutors, the removal of the probationary period for judges and prosecutors, that the High Judicial Council will no longer be dissolved if it does not render a decision within 30 days and, most importantly, the removal of the competence from the National Assembly to elect court presidents, the Republic Public Prosecutor and public prosecutors and to decide on the termination of their office as well as to elect judges and the deputy public prosecutors. The relevant amendments are in line with European standards and address previous recommendations, including of the Venice Commission.⁵⁴

After the adoption of the amendments, a second and arguably more important phase commenced. This stage focuses on passing judicial laws and by-laws essential for the practical enforcement of constitutional reforms. These legislative actions aim to supplement the amendments, ensure their proper implementation, and promote a legal culture aligned with European values, thereby bringing Serbia's legal framework into closer conformity with EU standards.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

Question No. 7. and No. 10

What Legal Criteria Were Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in a Comparable Position? Has Your Country Experienced any Particular Difficulty Meeting Some of the Accession Criteria?

The classical fulfilment of the Copenhagen criteria in the case of the Republic of Serbia has been modified with additional conditions contained in democratic conditionality. While this type of conditionality is not new for countries involved in the Stability Pact, in the case of the Republic of Serbia, each of these conditions has been expanded with specific requirements, such as cooperation with the ICTY and regional cooperation. In Serbia's case, the latter condition involves dialogue at the

54 European Commission for Democracy through Law, 2021, p. 20.

Belgrade–Pristina level and implementation of the agreements that resulted from this dialogue. While progress in cooperation with the Hague Tribunal was key to opening negotiations, the normalisation of relations between institutions in Belgrade and Pristina became the central precondition of Serbia's further integration.

The normalisation of relations between Belgrade and Pristina became a new priority for the EU, as Kosovo Albanian's unilateral declaration of independence in 2008 had the potential to compromise regional stability in the Balkans. Furthermore, with its territorial integrity questioned, Serbia was in a different situation from all the other candidate and potential candidate countries since the very beginning of its negotiations. This is reflected by the inclusion of political dialogue between Belgrade and Pristina in the negotiation framework, specifically in Chapter 35 – Other Issues. In the case of Serbia, this chapter, typically reserved for technical or additional matters in other countries, contained only one point: normalisation of relations between Serbia and Kosovo.⁵⁵

The asterisk next to the word Kosovo became an unavoidable condition for Serbia's participation in regional initiatives and other forms of regional cooperation involving representatives from the provisional institutions in Pristina – necessary for fulfilling the requirement of good neighbourly relations. Additionally, this politically challenging chapter became the greatest burden in Serbia's negotiations, entirely diverting the process from its original objective of aligning with the *acquis communautaire* and fulfilling the Copenhagen criteria. This was clearly reflected in the EU Common Position on Chapter 35:

the advancement of Serbia's EU accession negotiations will be guided by Serbia's progress in preparing for accession, which will be measured in particular against Serbia's continued engagement towards a visible and sustainable improvement in relations with Kosovo, as well as the other requirements contained in point 23 of the Negotiating Framework.⁵⁶

Throughout the decade-long dialogue, it became evident that the clause stating, 'any view expressed by either Serbia or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters',⁵⁷ had little practical significance. After the first agreement on principles governing the normalisation of relations was signed in Brussels on 19 April 2013 between representatives of Belgrade and Pristina under the EU's auspices,⁵⁸ the EU gave the green light to reward Serbia for its progress and participation in the dialogue. The agreement

55 This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

56 European Union, 2015, Chapter 35, p. 2.

57 Ibid.

58 The Government of the Republic of Serbia, no date.

was used as a political incentive to open negotiations. In its Progress Report on Serbia's Alignment with Membership Criteria, the European Commission noted:

Overall, Serbia has taken significant steps towards visible and sustainable improvement of relations with Kosovo⁵⁹ which have already led to a number of irreversible changes on the ground.⁶⁰

According to point 14 of the first agreement, Belgrade and Pristina committed that they will not 'block, or encourage others to block, the other side's progress in their respective EU path'.⁶¹ However, little progress has been made on this point or the other 14 points of the first agreement. Nevertheless, Chapter 35 has largely determined every phase of progress or stagnation in Serbia's negotiations, setting a precedent in the EU's enlargement policy.

Furthermore, the EU has introduced more stringent conditions for Chapters 23 and 24, which now form Cluster 1. It has also established a monitoring system for progress in these chapters: the Commission is required to report to the Council twice a year on the overall progress of candidate countries in the rule of law area. This is carried out through the annual Enlargement Package or country reports, followed by a second report in the form of non-papers.⁶²

5. Brief Overview of the Current State of Affairs

As previously mentioned, the First Intergovernmental Conference, marking the formal commencement of Serbia's accession negotiations with the EU, took place on 21 January 2014 in Brussels. Between 2014 and 2019, 11 intergovernmental conferences were held, during which the following chapters were opened: 4, 5, 6, 7, 9, 13, 17, 18, 20, 23, 24, 25, 26, 29, 30, 32, 33, and 35.⁶³ In 2020, the EU introduced a new enlargement methodology aimed at providing stronger political steer and establishing a more credible, dynamic, and predictable integration process.⁶⁴ The negotiating chapters were reorganised into thematic clusters, each covering broad policy areas. This clustering approach enables a more focused political dialogue, particularly by prioritising critical reforms within core sectors. The new methodology is intended to enhance the impact of reform processes by incentivising

59 This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

60 Serbia Report, 2013, p. 6.

61 The Government of the Republic of Serbia, no date.

62 Pejović, 2018, p. 81.

63 Government of the Republic of Serbia, Ministry of European Integration, no date a.

64 European Commission, 2020.

sectoral improvements that benefit both citizens and businesses. Negotiations on each cluster will be opened as a whole – after fulfilling the opening benchmarks – rather than on an individual chapter basis.

Although the adoption of the new methodology was not mandatory for Serbia and Montenegro, both countries accepted it, and the European Council approved its application to their respective accession processes.⁶⁵ However, two chapters remain outside the cluster structure: Chapter 34 (Institutions) and Chapter 35 (Other Issues). Chapter 34 will be addressed at the conclusion of the negotiations, while Chapter 35, specific to Serbia, focuses on the normalisation of relations with Pristina.⁶⁶ A significant development in the accession process occurred on 22 June 2021, when the Twelfth Intergovernmental Conference was held in Luxembourg. This conference marked the opening of Cluster 1 – Fundamentals – and was particularly notable as the first held under the revised enlargement methodology. Another milestone followed on 14 December 2021, when the Thirteenth Intergovernmental Conference, also in Luxembourg, resulted in the decision to open Cluster 2 – Green Agenda and Sustainable Connectivity. The period from 2020 to 2024 can be defined as a time of change, but not of significant progress for the Republic of Serbia in aligning its legal system with European values and the EU *acquis*. Serbia is prepared to open negotiations on Cluster 3, but the opening remains contingent on further progress in the areas of the rule of law and normalisation of relations with Pristina.⁶⁷ Alongside the introduction of the new (revised) methodology, this period was marked by the COVID-19 pandemic, multiple election cycles, and foreign policy challenges. The focus on values was evident only through the preparation of constitutional amendments, as mentioned before.

Serbia has engaged in the implementation of the new Growth Plan for the Western Balkans. The Commission has noted Serbia's engagement across the four pillars: gradual integration with the EU single market, regional economic integration, fundamental reforms, and increased financial support.⁶⁸

Judicial reform remains one of the key strategic priorities of the Republic of Serbia, aimed at ensuring the rule of law and consistent application of the principle of separation of powers in a democratic society. The European Commission noted in its latest report that 'Serbia is between having some level of preparation and a moderate level of preparation in the area of judiciary', while the adoption of by-laws to the laws implementing the constitutional amendments has been recognised as limited progress.⁶⁹

Regarding human rights protection and fundamental rights, Serbia has established a legislative and institutional framework, as acknowledged by the European

65 European Council, 2021.

66 Ministry of European Integration, no date 1.

67 Subotić, 2024.

68 Serbia Report, 2024 Report, p. 4.

69 *Ibid.*, p. 5.

Commission, but the challenge remains the consistent and effective implementation of these frameworks. The EU places particular emphasis on freedom of expression and media freedom, as well as the transparency of their implementation. It is especially stressed that ‘the overall environment for the exercise of freedom of expression without hindrance still needs to be further strengthened in practice’.⁷⁰ Serbia adopted the Strategy for the Development of Public Information System for the period 2020–2025,⁷¹ but the Commission noted no progress in its implementation. Nevertheless, a positive development is the newly formed Ministry for Human and Minority Rights and Social Dialogue, which since 2021, has been engaged in drafting and adopting anti-discrimination laws and strategic documents.

Frequent elections in Serbia have caused additional challenges for both the adoption and implementation of legislative measures. Many reform activities within Cluster 1 were put on hold, including the drafting and adoption of regulations. The Commission noticed that some progress was made in the fight against corruption and that ‘Serbia is between having some level of preparation and a moderate level of preparation in the fight against corruption’.⁷² Furthermore, alignment with the Common Foreign and Security Policy became highly relevant for the estimation of further progress of a candidate country, such as Serbia.⁷³

70 Serbia Report, 2024, p. 41. In the 2024 report, the Commission noted that Serbia ‘has made no progress on the recommendations from last year, which therefore remain valid’. Serbia Report, 2024, pp. 6–7.

71 Strategy for the Development of the Public Information System in the Republic of Serbia for the Period 2020–2025, Official Gazette of the Republic of Serbia, No. 11/2020.

72 Serbia Report, 2024, p. 6.

73 Serbia Report, 2024, pp. 95–96.

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