

# Sticky or stuck? Challenges of Bosnia's and Moldova's accession into the EU<sup>1</sup>

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## Abstract

This article explores the contemporary dynamics surrounding EU enlargement and the rapid momentum that was ignited by the circumstances of 24 February 2022. To explore this topic, the article looks at Bosnia's and Moldova's similar, yet distinct paths towards the EU and examines how they measure up to the prospect of accession in the context of a possible fast-track enlargement. Through the application of content analysis of EU and national policy documents concerning EU enlargement published after 24 February 2022, as well as findings gathered from EU enlargement progress trackers, shadow reports, indexes, and commentaries by independent civil society, the article identifies significant gaps between the EU's own assessment of progress and domestic realities in both Moldova and Bosnia. Accordingly, the article identifies and discusses four particularly problematic areas, common to both states that are potential "sticking points" standing in the way of their respective EU accession paths: polarisation, oligarchy and corruption, accountability and democratic institutions, as well as fundamental rights and civil society. The article posits that because of problems in these spheres, the countries' paths towards the EU are "sticky", but still far from "stuck".

**Keywords:** European Union, EU enlargement, Bosnia and Herzegovina, Moldova, comparative analysis

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## Przylepione czy ugrzęźnięte? Wyzwania związane z przystąpieniem Bośni oraz Mołdawii do UE

### Streszczenie

W niniejszym artykule zbadano współczesną dynamikę towarzyszącą rozszerzeniu UE oraz szybki impet, który został wywołany wydarzeniami z 24 lutego 2022 roku. Aby zgłębić ten temat, w artykule przyjrano się podobnym, choć odrębnym ścieżkom Bośni i Mołdawii do UE oraz zbadano, w jaki sposób dostosowują się te kraje do perspektywy przystąpienia w kontekście ewentualnego przyspieszonego rozszerzenia. Dzięki zastosowaniu analizy treści unijnych i krajowych dokumentów politycznych związanych z rozszerzeniem UE opublikowanych po 24 lutego 2022 r., a także wniosków zebranych na podstawie indeksów, raportów uzupełniających i komentarzy niezależnego społeczeństwa obywatelskiego, w artykule wskazano istotne luki między własną oceną UE dotyczącą postępu i realiów wewnętrznych w Bośni i Hercegowinie oraz w Mołdawii. W związku z tym, w artykule zidentyfikowano i omówiono cztery szczególnie problematyczne obszary, wspólne dla obu państw, które stanowią potencjalne „punkty sporne” stojące na drodze ich ścieżek przystąpienia do UE: polaryzacja, oligarchia i korupcja, odpowiedzialność i instytucje demokratyczne oraz prawa podstawowe i społeczeństwo obywatelskie. W artykule wysunięto tezę, że ze względu na problemy w tych obszarach drogi obu krajów do UE są „lepkie”, ale wciąż dalekie od „ugrzęźnięcia”.

**Słowa kluczowe:** Unia Europejska, rozszerzenie UE, Bośnia i Hercegowina, Mołdawia, analiza porównawcza

Almost immediately after 24 February 2022, the topic of EU enlargement was thrust back into the spotlight. New geopolitical circumstances not only enhanced the membership prospects of Georgia, Moldova, and Ukraine, but also reignited the enlargement dynamic in the Western Balkans. Subsequent events moved at a striking speed, and culminated on 14 December 2023, when the European Council gave Moldova and Ukraine the green light to open accession negotiations, and for Georgia – to become an official EU candidate country (see: European Council 2023: p. 5). Although initially delayed, on 21 March 2024, the EU decided to officially open accession negotiations with Bosnia and Herzegovina (see: European Commission 2024).

Considering the swift pace of developments since February 2022 there is still a dearth of research on the new EU enlargement dynamic and especially in terms of analysis of the prospective new members, pertinent domestic factors, and their readiness for accession. New research on this topic has tended to delve into the geopolitical aspects of enlargement and/or the costs and benefits of enlargement for the EU itself (Sciocluna, Auer 2023; Karjalainen 2023). Consequently, far less attention has been given to exploring the specific characteristics of the candidate countries, and how enlargement looks from their perspective. Meanwhile, official EU reports on the unfolding enlargement tend to emphasise progress and to overlook backsliding and has a particular blind spot for identifying systemic problems in the new accession states.

## **Article's aim and used methodology**

With the above-mentioned observations in mind, this article's aim is to fill a research gap by mapping recent developments in Bosnia and Herzegovina's (hereafter Bosnia) and Moldova's paths towards the EU, and by identifying specific challenges associated with their respective routes to membership. By doing this, we aim to advance the nascent state of the art in enlargement research by nurturing a fresh analytical lens focused on a domestic-level of analysis. The added value of the article also derives from its comparative approach, which considers Eastern Europe and the Western Balkans and, more specifically, two small countries that are situated in challenging geopolitical neighbourhoods and also beset by internal political and identity-related fissures. We focus on two research questions. Firstly, how do Moldova and Bosnia measure up in relation to EU accession criteria to do with the fundamentals' negotiating cluster? Secondly, what are the main sticking points in the way of Bosnia's and Moldova's accession paths to the EU? To answer these questions, we use content analysis of the EU's and national policy documents on EU enlargement published after 24 February 2022, as well as findings gathered from EU enlargement progress trackers, indexes, shadow reports, and commentary by independent civil society as a means to juxtapose and assess the varying and often contradictory views presented in the literature concerning the progress of two states under research. Consequently, we identify four salient EU accession-related issues, which we regard as particularly problematic in both similar and different ways of Moldova and Bosnia. These are: (1) polarisation, (2) oligarchy and corruption, (3) accountability and democratic institutions, (4) fundamental rights and civil society. We posit that these issues deserve scholarly attention since they not only afflict both states, but also present significant barriers to their EU accession prospects. Crucially, we argue that because of these factors the two countries' paths towards the EU are "sticky", but still far from "stuck".

This article proceeds with a brief discussion of the similar but different paths taken by Moldova and Bosnia towards the EU and briefly considers the extents, to which they measure up to the fundamentals of accession. In this regard we point to the pervading shortfalls in both countries performances *vis-à-vis* the EU's expectations, which were overlooked when official accession state status was awarded. Subsequently the article discusses the four sticking points in relation to Bosnia and Herzegovina, as well as Moldova, and highlights the possible dangers they present if an accelerated enlargement comes about which could promote the continuation of a methodology, which sidesteps these problematic sticking points. By way of conclusions, we consider the next steps for enlargement and also point to future research issues and avenues of enquiry.

## **Moldova and Bosnia: similar but different paths to the EU**

Bosnia and Herzegovina, as well as Moldova are interesting cases to examine the unfolding EU enlargement dynamic due to their points of similarity and points of difference.

Both are small states with protracted conflicts – largely frozen in the case of Moldova and more prone to secession in the case of Bosnia. The complex relations of these two countries with Russia also influence their strategic manoeuvrability and their evolving relations with the EU. Popular support for the EU in both countries, whilst currently stable, is inclined to fluctuate. The issue of joining the EU is highly politicised in domestic political arenas in both states, with significant portions of society rigidly contesting accession (National Democratic Institute for International Affairs 2021; International Republican Institute 2023). Elements of Moldovan society retain a pro-Russian allegiance and the main opposition party in parliament – the Bloc of Communists and Socialists – favours active alignment with Russia. Meanwhile in Bosnia and Herzegovina, the President of Republika Srpska (RS) Milorad Dodik, who is accused of maintaining close ties with Russia, sustains a strained relationship with the EU and insists that RS will only engage in Bosnia's EU membership negotiations once foreign influence is removed and Sarajevo stops obstructing RS's participation in the integration process (Chiappa 2023).

Bosnia and Herzegovina, as well as Moldova also have similar performances across several governance-related indicators salient to the EU's membership criteria. Their scores in the 2022 *Corruption Perception Index* are comparable: Moldova – 39, Bosnia and Herzegovina – 34 (Transparency International 2023a). In the World Bank's 2022 worldwide governance indicators the two countries both lie in the 41st percentile with regards to the rule of law (World Bank WWW). According to Freedom House's report *Nations in Transit 2023*, on the question of democracy, Bosnia and Herzegovina's scores – 37/100, Moldova's – 36/100 (Freedom House 2023b). These two countries also have similar scores on economic freedom, according to the Heritage Foundation: Bosnia and Herzegovina – 62.9, Moldova – 58.5 (Heritage Foundation 2023).

With regard to their relations with the EU, these two countries' have been progressing for several decades, albeit along different tracks. Moldova's relations evolved in the context of the *European Neighbourhood Policy* (ENP) and – since 2009 – the *Eastern Partnership* (EaP). Although this formula facilitated the development of closer trade and political ties with the EU, it kept Moldova at arm's length as a 'neighbour' rather than a prospective member. Moldova's key achievements included a visa-free regime with the EU and *Association Agreement with the Deep and Comprehensive Free Trade Agreement* (DCFTA), which saw the EU swiftly become Moldova's largest trade partner replacing Russia and the CIS (Gerasymchuk 2022).

In contrast, Bosnia and Herzegovina was identified as a potential EU Member State as far back as 2003 in the context of the Thessaloniki Council, which in its conclusions (see: European Commission 2003) declared that the future of the Western Balkans lay in Europe. Thereafter, Bosnia and Herzegovina's relationship with the EU advanced through the signing of *Interim Agreement on Trade and Trade-related Issues* entered into force in 2008, and later – via the *Stabilisation and Association Agreement* (SAA) entered into force in 2015. Both of these documents significantly facilitated Bosnia's trade. Furthermore, Bosnia and Herzegovina has been a beneficiary of the *Instrument for Pre-accession Assistance*, whereby up to 2020, the country received EUR 822 million of development aid.

Alongside these developments, Bosnia and Herzegovina's citizens were also granted visa-free travel to the EU in 2010. Unlike the other six Western Balkan states that applied for EU membership as early as 2005, Bosnia and Herzegovina was only able to apply on 15 February 2016 due to delays in addressing state and military property ownership issues and constitutional reforms.

Despite their apparent rapid shift towards the EU since February 2022, both Moldova and Bosnia still demonstrate weak alignment with the Copenhagen criteria<sup>2</sup>, and especially towards the fundamentals' negotiating cluster, which includes chapters on the judiciary and fundamental rights, justice freedom and security, public procurement, statistics, and financial control. This is consequential, since in the context of membership negotiations, the fundamentals' negotiating cluster is the most demanding to achieve and relates to core EU values, such as democracy and the rule of law. Furthermore, as previously stated, it is both the first to open and the last to close, which means that the finalisation of negotiations in their totality and, therefore, actual membership hinges on states' capacities to fulfill their commitments within this cluster.

Table 1 illustrates multiple shortcomings between the EU's prescribed steps and priorities and Moldova and Bosnia's performances, which were arguably underplayed when these countries received the EU's support to become accession states in 2023 and 2024 respectively. Evidently, as mentioned above, in the current politically charged context of enlargement which emphasises speed, the EU has sought to stress progress and 'completion' above all else.

**Table 1: Moldova's and Bosnia's fulfilment of the EU's 'steps' and 'priorities'**

	Moldova's nine steps (assigned in 2022)		Bosnia's 14 priorities (assigned in 2019)	
Step / priority	Objective	EU Assessment, November 2023	Objective	EU Assessment, November 2023
1	Comprehensive justice system reform	Incomplete	Elections framework in line with EU standards and recommendations	Incomplete
2	Addressing shortcomings from OSCE/ODIHR, Venice Commission	Completed	Functioning at all levels of the coordination mechanism on EU matters	Incomplete

<sup>2</sup> The Copenhagen criteria include: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law and adherence to the aims of political, economic and monetary union.

3	Deliver on the commitment to fight corruption	Incomplete	Functioning of the Stabilisation and Association Parliamentary Committee	Completed
4	Implement the commitment to de-oligarchisation	Incomplete	Improve institutional framework, including constitutional level	Incomplete
5	Strengthen the fight against organised crime	Completed	Promote reconciliation to overcome legacies of the war	Incomplete
6	Public Administration reform	Completed	Adopt judicial reform laws	Incomplete
7	Public Financial Management/ procurement	Completed	Strengthen prevention against corruption and organised crime	Incomplete
8	Enhance the involvement of civil society in decision-making	Completed	Coordination of the border management and migration management capacity	Incomplete
9	Strengthen human rights/sustain commitments to gender equality	Completed	Strengthen the protection of human rights/sustain commitments to gender equality	Incomplete
10	-		Ensure right to life and prohibition of torture	Completed
11	-		Upholding EU standards on freedom of association and freedom of assembly	Incomplete
12	-		Guarantee freedom of expression and of the media and protection of journalists	Incomplete
13	-		Improve protection of vulnerable groups	Incomplete
14	-		Public administration reforms	Incomplete

Sources: European Commission 2023c; European Commission 2023e.

## Bosnia and Herzegovina's sticking points

To date, Bosnia and Herzegovina, as shown in *Table 1*, has only completed two of the fourteen priority areas that were assigned by the European Commission in 2019 (see: European Commission 2019). Nevertheless, on 12 March 2024, the European Commission provided a positive recommendation to the European Council to open accession negotiations (see: European Commission 2024). This decision reflects efforts that have been underway since 2020 to revise the EU's enlargement methodology, towards one that places a stronger emphasis on fundamental reforms, including the rule of law, fundamental rights, economic development and competitiveness, strengthening democratic institutions and public administrative reform, but at the same time keeps the enlargement momentum credible and on track. These changes were reflected in the European Commission's communication in 2022 to recommend to the European Council to grant Bosnia and Herzegovina the status of candidate country on the presumption that this country would satisfy eight steps.<sup>3</sup> Later, in December 2023, the European Commission reported that it 'welcomed' Bosnia and Herzegovina's efforts to satisfy the eight steps and recommended the European Council to consider opening accession negotiations after a necessary level of compliance had been achieved. On 12 March 2024, the European Commission commended Bosnia and Herzegovina's commitment to take decisive steps to address the backlog of outstanding reforms, including the adoption of the law on prevention of conflict of interest and the law on anti-money laundering and countering terrorism financing (European Commission 2024: p. 2) and had taken significant steps to improve the judicial and prosecutorial system, migration management, the fight against corruption and organised crime (European Commission 2024: p. 1, 2). Attention was also placed on Bosnia's efforts to reach and maintain full alignment with the *EU Common Foreign and Security Policy*" (European Commission 2024: p. 4, 6).

We have grouped Bosnia and Herzegovina's "sticking points" as follows.

### 1) Polarisation

Polarisation remains a prominent feature of Bosnia and Herzegovina's political set-up. At the heart of the problem is the country's constitution, which was drawn up in the context of the post-war Dayton Agreement<sup>4</sup>. The constitution institutionalises a complex consociational federal system, represented by the country's three dominant ethnic groups: Bosniaks, Bosnian Croats, and Bosnian Serbs. However, there is tremendous asymmetry between two entities – the Federation of Bosnia and Herzegovina, and Republika Srpska (the former is highly decentralised, and the latter is centralised). Both

<sup>3</sup> The eight steps concern coordination of EU integration; judicial reforms; prevention of conflicts of interest; prevention of corruption and organised crime; border and migration management; prohibition of torture; and freedom of expression. See: *2022 Communication on EU Enlargement Policy* (European Commission 2022b).

<sup>4</sup> General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) is the peace agreement reached near Dayton in United States, finalised on 21.11.1995, and formally signed in Paris, on 14.12.1995. These agreement ended the Bosnian War. The parties agreed to peace and to a sovereign state – Bosnia and Herzegovina composed of two parts (entities): the largely Serb-populated Republika Srpska and mainly Croat-Bosniak-populated Federation of Bosnia and Herzegovina.

entities enjoy significant autonomy, while state institutions remain weak and although peace has been preserved, the state remains contested as the constitution is viewed as 'imposed' and the federal system 'internationally administered' (Keil, Anderson 2021).

Bosnia and Herzegovina has been categorised as a "frozen conflict" since the deeply rooted causes of the violent conflict remain unresolved (Perry 2019). Thus, Bosnia and Herzegovina remains a deeply fractured society with persistent ethnic tensions that have been on the rise over the past few years. The RS entity has become increasingly polarised and nationalistic under the leadership of pro-Russian leader Milorad Dodik, the current RS president, and the Serbian Radical party, who routinely uses provocative and divisive rhetoric to undermine the sovereignty, unity, and territorial integrity of Bosnia and Herzegovina. The authorities has even threatened to hold a referendum to merge RS with Serbia.

In the case of the Federal entity, polarisation is readily apparent in the education system, whereby the practice of 'two schools under one roof' is maintained. Despite attempts to abolish it, which was originally intended for the return of post-war refugees, the practice persists. As late as 2018, the OSCE reported: "56 schools (in 28 locations), including central and branch schools, [are] affected by the phenomenon of 'two schools under one roof' (46 primary schools and 10 secondary schools)" (OSCE 2018: p. 10). Consequently, generations of children (in this case, Bosniak and Bosnian-Croat children) are attending the same schools but are taught different histories in the language of the given ethnic group.

Hyper-polarisation and unhealed social scars from previous ethnic conflicts, will hinder Bosnia and Herzegovina's ability to adequately fulfil the EU accession criteria, especially the important fundamentals' negotiating cluster, without far-reaching constitutional reforms. As Berta López Domènech argues: "The allocation of power along ethnic lines, stubborn veto mechanisms, and the continuous presence of the High Representative as the country's highest authority hinder Bosnia's advance on its EU path" (Domènech 2023: p. 3). An un-reformed Bosnia and Herzegovina continuing along its path to the EU would also mean that the EU would acquire a new Member State with an inherently problematic political system characterised by polarisation and lacking legitimacy and trust from the perspective of the bulk of its citizens.

## **2) Systemic corruption**

Although legislative progress was made to tackle organised crime and to improve judicial integrity, tangible progress was curtailed, because parliament proved inept at adopting new laws (European Commission 2022a). Consequently, during the fifth EU–Bosnia Stabilisation and Association Council, the country was warned that if reforms were not passed it would be 'grey-listed' (Council of the European Union 2023).

In *Evaluation Report* published in March 2023, the Council of Europe's *Group of States against Corruption* (GRECO) noted that Bosnia and Herzegovina had failed to make any real progress in tackling corruption due to political blockages. The report argued that failure to develop a state-level anti-corruption strategy inhibits the country's ability "to prevent corruption amongst persons with top executive functions [...] and members of the Border Police and State Investigation and Protection Agency (SIPA)" (GRECO 2023: p. 4). The European Commission, in its *2023 Report on Bosnia and Herzegovina*, added:

"There are systemic shortcomings in the operational cooperation between law enforcement agencies fighting organised crime, due to non-harmonised criminal legislation, weak institutional coordination, and a very limited exchange of intelligence" (European Commission 2023b: p. 2). Deficiencies in this sphere arguably correspond to significant shortfalls in Bosnia and Herzegovina's capacity to fulfill accession criteria. A weak record in anti-corruption also drains public trust in law enforcement bodies and the judiciary. Crucially, corruption is widespread and normalised as a "way of being"; and by failing to tackle this phenomenon, Bosnia risks approaching a legal and institutional vacuum with weak state institutions, which could inhibit EU accession negotiations.

### **3) Institutional paralysis**

In 2022, the World Bank's *Political Stability Index* cited Bosnia and Herzegovina as one of Europe's five most unstable countries owing to its dysfunctional governance set-up (Kaufmann, Kraay 2023). Unsurprisingly, Bosnia is considered the most 'over-governed' country in Europe (Šiljak, Nielsen 2023). These characteristics are illustrated in the fact that the country has five presidents, thirteen prime ministers, fourteen governments and parliaments, one hundred and thirty-six ministers, and hundreds of parliamentarians. Consequently, Bosnia and Herzegovina represents a classic example of a weak state with extractive institutions, whereby power is allocated along ethnic lines, excluding large segments of society.

Although Bosnia and Herzegovina made some notable progress in the prompt entry of executive and legislative bodies at the state and entity levels after the 2022 general elections, the country continues to underperform in meeting European standards (European Commission 2023b). This is in part due to the existence of four separate court systems – the state-level, the RS, the Federation, and the self-governing Brčko District – an arrangement, which contributes to overall ineffectiveness. In the case of the RS, for example, the entity's president Dodik has undertaken legislative initiatives that not only undermine the country's constitutional order and territorial integrity, but also the country's EU prospects.

The European Commission identified a number of outstanding issues in the judicial system, including inconsistencies in the rules of appointment of judges and prosecutors, and the need to regain the public trust and improve its performance to fight corruption and organised crime (European Commission 2023b: p. 2). Furthermore, Bosnia and Herzegovina has continued to fail to make improvements in constitutional and electoral reforms to bring the Constitution in line with the *European Convention on Human Rights* (ECHR) and implement the historic ruling by the Grand Chamber of the European Court of Human Rights (ECtHR) on the Sejdić-Finci case in December 2009 that found the barring of Jews and Roma from the presidency and from membership in the House of Peoples a clear violation of human rights (Otieno 2023). Fourteen years later, the country still maintains the discriminatory provisions that political rights are contingent on ethnic background and place of residency (Freedom House 2023a).

Despite the Council of Ministers' appointment of a new supervisory body to oversee the implementation of the national war crimes strategy, the independence and impartial-

ity of the judiciary have arguably not improved, moreover, RS has threatened to eliminate altogether the rulings of the Constitutional Court of Bosnia and Herzegovina. Recently, for example, RS refused to accept the final and binding decisions of the Constitutional Court, as well as the decision of the High Representative to ban the 9<sup>th</sup> January, a holiday that celebrates the proclamation of RS as an independent Republic of Bosnia. This holiday is controversial, because it marks the event that triggered the beginning of the Bosnian war that lasted from 1992 to 1995, resulting in estimated 100,000 deaths and a genocide in Srebrenica, a claim that Bosnian Serb officials and neighbouring Serbia continue to refute. UN expert Ní Aoláin warned that “the failure to address the legacy of the past in Bosnia and Herzegovina, including through comprehensive transitional justice measures and substantive rule of law reform in key justice and security institutions, creates conditions that enable the rise of violent extremism” (OHCHR 2023).

Without fundamental reforms Bosnia and Herzegovina's institutions are likely to remain paralysed and ill-equipped to manage the complex and demanding EU accession process at both political and technical levels. The EU's accession criteria require democratic institutions that ensure transparency and accountability, as well as cross-party cooperation, all of which are currently undermined in Bosnia and Herzegovina's excessively decentralised and dysfunctional arrangements.

#### **4) Fundamental rights**

Bosnia and Herzegovina continues to underperform in the areas of political rights and civil liberties. It is apparent in the report *Freedom in the World 2023*, which designated this country as only “partially free” (Freedom House 2023a). CIVICUS Monitor also downgraded Bosnia and Herzegovina from having a ‘narrowed’ to ‘obstructed’ civil space in its annual report, citing increases in attacks on activists, journalists, and LGBTQIA+ groups, which, it argued, jeopardise the stability of the country (CIVICUS 2023).

In terms of social inclusion and the rights of LGBTQIA+, the country made some notable progress. Since 2020, for example, the European Commission commended advancements made concerning the rights of LGBTQIA+, noting how pride marches have been held more frequently and an action plan on the rights of such persons was adopted in July 2022 (European Commission 2023c). However, in the RS entity, the European Commission's report expressed concerns about regression, where the entity's president Dodik and his SNSD party have assertively tried to undermine the work of Bosnia and Herzegovina's state-level institutions, and the international community's high representative – Christian Schmid (European Commission 2023c). In March 2023, for example, Dodik sought to pass restrictive legislation on LGBTQIA+ activities, almost mirroring that was passed by Vladimir Putin in Russia.

The European Commission also noted shortcomings, especially concerning freedom of expression, where no progress has been made (European Commission 2023c: p.7). Reports of journalists receiving online threats continue to emerge and political pressure on broadcasters also (Wiseman 2023). Freedom of expression is under acute pressure in the RS especially in light of the reversal of the decriminalisation of defamation in July 2023, which prompted disquiet and criticism from civil society and the EU. Reclassifying defamation as a criminal

act represents a major step backwards in the protection of fundamental rights by restricting independent civil society and stifling free speech (Transparency International 2023b).

Although freedom of assembly and association is generally respected in Bosnia and Herzegovina, NGOs dealing with sensitive topics (i.e., LGBTQIA+, corruption, migration, women's rights, and the environment) are subject to threats, intimidation, and violence with little or no condemnation by authorities (Moratti 2023). The RS entity has recently made efforts to further restrict freedoms by proposing the foreign agents law and the media law. If adopted, the foreign agents law (which passed in the first reading by the National Assembly in September 2023 but is still waiting for a second reading) will limit non-profit organisations from engaging in 'political activities', require their enrolment in a special registry and place them under increased surveillance (Kurtic 2023). The *Law on Public Information and Media* (that was recently passed) allows the government to legally own and control the media through telecommunications company *Telekom Serbia* that it has a majority share in and thereby is able to silence any critical opposition.

Crucially, despite being granted candidate country status in 2022, and in 2024 – accession state status, Bosnia and Herzegovina continues backslide in fundamental rights and in the extent to which independent civil society can flourish, particularly in the RS entity. In these spheres, the country appears to be heading in the polar-opposite direction of EU norms and thus away from the standards embedded in the accession process and the fundamentals' negotiating cluster more specifically. If unchecked such discrepancies would see the country potentially accede to the EU with authorities in charge with insufficient domestic accountability, effective civil society oversight and with a negligibly independent media.

### **Moldova's sticking points**

In December 2023, European Council has given Moldova the "green light" to proceed to EU accession negotiations (see: European Council 2023). This decision was forthcoming even though the nine priorities or 'steps' that the Commission had set for Moldova in July 2022 (when it was given candidate country status) had only partially been met, as noted in *Table 1*. According to the Commission's own appraisal, given in an update in June 2023 by Commissioner for Neighbourhood and Enlargement Oliver Varheyi, Moldova had successfully met three steps: judicial reforms in relation to Venice Commission's recommendations, inclusion of civil society in policy-making and gender equality, including measures for tackling gender-based violence (GBV). Good progress was also noted in de-oligarchisation, wider justice system reforms, and public finance management. Three areas with only 'some' progress were: anti-corruption, the fight against organised crime, and public administration reform (European Commission 2023d). Whilst the following analysis generally concurs with the Commission's conclusions regarding Moldova's strengths and weaknesses, the following discussion shines a sharper light on specific issues that, if left unattended, can bring sizable problems into the EU. As in the case of Bosnia and Herzegovina discussed above, we have grouped these problems into four "sticking points".

Interestingly, the EU does not regard ending the frozen conflict in Transnistria as a condition for Moldova to move along its accession path. The EU talks about supporting "a comprehensive, peaceful and sustainable settlement of the Transnistrian conflict", based on "the sovereignty and territorial integrity of Moldova in its internationally recognised borders, with a special status for the Transnistrian region" (European Commission 2023e: p. 3). Thus, as eloquently described by Ceban (2023), the EU institutions appear to believe that "the process of European integration will stimulate a final settlement on the breakaway region, dragging the territory back under its control as part of growing closer to the EU" (Ceban 2023).

### **1) Polarisation**

Polarisation has been a feature of Moldovan politics and society since 1991. In the decades after obtaining independence, this country ricocheted between pro-Russian and pro-reform governments, which was caught within a net of oligarchic influences which corroded political pluralism and sustainable reforms. Overcoming Moldova's polarisation seemed to become possible in 2020, when Maia Sandu was elected as a president on a pro-Europe/anti-corruption ticket. Consequently, expectations were high that the country would emerge from its 'political swamp', and a new pro-EU consensus would be on the ascent (Emerson, Blockmans 2023).

Notwithstanding the achievements that have been made in the past few years to align with the EU, political polarisation remains sufficiently potent to frustrate and potentially undermine the president's and government's plans towards EU membership. For example, though the pro-EU governing coalition has a large parliamentary majority (63 out of a total of 101 seats), MPs from the communist/socialist parties, parties aligned with Russia or with close links or even funded by fugitive oligarchs still hold sway in the legislature. This reality demonstrates that a significant portion of Moldovan society does not align with pro-EU parties, that a parliamentary cross-party consensus on EU integration has yet to transpire and consequently, that EU accession remains an adversarial topic in Moldova and subject to the debilitating effects of polarisation.

Political polarisation is already becoming sharply apparent in the run up to the 2024 presidential elections/EU referendum, which will test Maia Sandu's leadership and the stage of EU accession negotiations. New and supposedly pro-EU parties have recently emerged, which are supported and funded by fugitive pro-Moscow oligarchs with vested interests in delimiting the extent of Moldova's drift to the EU and to keep it Russia-friendly. According to the Anti-Corruption Prosecutor's Office, these parties filled their ranks by bribing existing members of the parliamentary bloc of communists and socialists to switch allegiance to help usurp Sandu's position as the sole pro-EU candidate (Necsutu 2023). There were also indications that Ion Ceban, Chisinau's current mayor and former member of the Moscow-friendly Socialist Party, would stand for president in 2024 on a 'pro-EU' platform with his newly formed National Alternative Movement. Commentators remain sceptical about Ceban's pro-EU 'rebranding' and believe that he is part of Russian networks and using a pro-EU card to seize domestic advantage and win over the EU, whilst at the same time keeping the door open to Russia (Damian, Ile 2022).

Polarisation has the potential to disturb Moldova's path to the EU, not least because it is unclear how communist/socialist, Russia-friendly, and oligarch-controlled parties in parliament will behave when it comes to passing new laws associated with EU accession. Either they will be ambivalent, obstruct the process and/or see EU integration as an opportunity to maximise their own political interests and possibly also to pursue their personal enrichment activities. In the context of the presidential election / EU referendum, polarisation might also foresee a split in the pro-EU vote to the detriment of an efficient EU accession and clear national leadership.

## **2) Corruption and oligarchy**

Oligarchic influences and systemic corruption became entrenched in Moldova soon after independence in 1991, which overtime turned the country into a captured state (Longhurst 2020). The current government has made some headway in the fight against corruption and dismantling oligarchic structures, but the path to systemic change is prone to relapse and from a current vantage point is uncertain.

Moldova's anti-corruption ecosystem has undergone a qualitative transformation to bring it more in line with European best practices, nevertheless public confidence is low. Polls in 2023 demonstrated that only 4.2% of respondents had a "great deal of trust" in the National Anti-Corruption Centre, with a weighty 39.2% declaring that they are "highly distrustful" of this key public institution (Institute for Public Policy 2023). Distrust in anti-corruption bodies is historical and is built on decades of inaction on the part of authorities. However, current levels of distrust also stems from the fact that few high-level officials and oligarchs have been prosecuted for their roles in corruption, including oligarchs who were responsible for the theft of 1 billion USD from Moldovan banks. Two of Moldova's most prominent oligarchs – Ilan Shor and Vladimir Plahotniuc – have had their assets seized, been placed under EU and U.S. sanctions, and in the case of the former, been sentenced in absentia. However, since both are fugitives residing abroad with the backing of the Kremlin, they have managed to escape justice and continue to palpably shape the Moldovan political scene by undermining the rule of law, as seen in the November 2023 local elections.

To meet the EU's accession criteria, Moldova adopted a de-oligarchisation action plan in consultation with the Council of Europe's Venice Commission to ensure that it aligned with European best practice. In accordance with the recommendations of the latter, Moldovan legislators crafted a plan which emphasised a systemic approach to overcoming and preventing oligarchy. This systemic approach involves the adoption and strengthening of legal tools across several areas of law (including legislation on media, anti-monopoly, political parties, elections, taxation, anti-corruption, and anti-money laundering) and is viewed as being fully compliant with democracy, fundamental freedoms, and the rule of law (Venice Commission 2023).

However, though Moldova's de-oligarchisation law and action plan met with European approval, it has yet to be fully road-tested, especially *vis-à-vis* high-profile cases. Moreover, Moldova's recently reconfigured anti-corruption ecosystem has not yet had time to take root and cope with the increased workload. When it comes to the

consequences for Moldova's accession to the EU, without a track record in anti-corruption, Moldova could potentially enter the EU with chronic corruption problems, which would be hard to tackle post-accession, as the cases of both Bulgaria's and Romania's accession to the EU in 2007 demonstrated. Moreover, sustained public disavowal for anti-corruption bodies and popular hesitancy concerning the government's capacity to deliver reforms can spill over into EU-scepticism in Moldova. This is potentially critical, because the EU-sceptic portion of society is already significant, and it is open to anti-Brussels disinformation campaigns, which are set to surge in the run up to the election / EU referendum.

### **3) Fragile state institutions**

Although progress in justice system reforms have transpired, the complex demands associated with systemic change to bring institutions in line with EU normative frameworks means that the pace of transformation is slow and occasionally meets resistance from the judiciary itself. Justice reform is also limited by apparent shortcuts in civil society's involvement in the selection of members of judicial evaluation bodies, as per European best practices in transparency and consultation. Also marring reform is the length of judicial proceedings and low case clearance rates, leading to bottlenecks, which diminish society's perceptions of the system's effectiveness and its credentials as an efficient guardian of the public interest.

Polls carried out in Moldova in August 2023, revealed that 44.5 % of survey respondents were "highly distrustful of the courts", with only 2.5 % declaring a "great deal of trust" in the courts (Institute for Public Policy 2023). Similarly, 43.3 % of people were "highly distrustful" of the General Prosecutors Office, whilst only 2.9 % of respondents had a "great deal of trust" (Institute for Public Policy 2023). Crucially, though public opinion trends over the past seven years suggest that more people are starting to "somewhat trust" the justice system, there has not been a significant shift of opinion so as to indicate systemic change. This is consequential for European integration, because Moldova's accession path will need a verifiably reformed justice system aligned with European standards and also characterised by stable public trust in judicial processes and the independence of judges.

### **4) Fundamental rights**

In the area of fundamental rights, gender equality is an area where Moldova has progressed towards EU norms, yet at the same time it remains a sticking point in relation to EU accession. Gender parity in the Moldovan judicial system and the national parliament is better than in other countries in the region. However, systemic gendered problems to do with poverty and socio-economic wellbeing remain strong, and stereotypes and gender-based hate speech are commonplace (Center Partnership for Development 2021). Moldova joined the *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Istanbul Convention, see: Council of Europe 2011) in May 2022, which signified alignment with European norms, and has since taken steps to adjust domestic legislation and to train law enforcement agencies and the judiciary. However, insufficient political efforts have been put in place, thus, far to diminish victims' economic dependence on their aggressors, which – as elsewhere in Europe – creates an enabling

context for violence and abuse of all types to fester (Vatavu 2023). Furthermore, reform efforts in this sphere are stymied by domestic opposition to the Istanbul Convention, including from the church, which uses the convention as a proxy for anti-EU and 'anti-gender ideology' disinformation campaigns and hate speech.

In terms of consequences for EU enlargement, if outstanding gender imbalances are not addressed and new reforms enacted, Moldova would accede to the EU with systemic gender disparities that would be more problematic to re-balance after accession, especially if domestic anti-gender groups and parties remain strong in the country. Secondly, there is a risk that Moldova's accession to the EU, including the current screening process will give insufficient attention to gender-related factors, especially in a fast-track geopolitically charged enlargement context, in which the EU loosens its conditionality and gender-based impact assessments are not rigorously carried out in line with best practice. Thirdly, the deep economic modernisation that EU accession prompts will invariably have strong gendered effects, as was apparent in the 2004 and 2007 EU enlargements. Crucially, based on evidence from previous enlargement rounds, it is highly probable that Moldovan women, especially those of 60 years of age and/or low-skilled, are more likely to suffer from the adverse effects of the social and economic changes brought about by accession to the EU, including unemployment and losses of income, which reinforce gender-based poverty in Moldova and even lead to spikes in gender-based violence.

## Conclusions

In this article we sought to advance research and address gaps on the contemporary EU enlargement process, which was catalysed by circumstances of 24 February 2022. The article explored the dynamics of this process by focusing on Bosnia's and Moldova's paths. With the rapid speed of developments and the potential for an expedited or fast-track enlargement occurring, the article sought to take stock of the readiness for EU membership of two states, which have both similar and different obstacles to confront as they move along their paths to the EU. Our analysis presented and discussed up-to-date nuanced empirical insights on both Moldova and Bosnia that so far had received limited scholarly attention. In this regard, our approach represents significant added value to the research terrain on the next EU enlargement.

Both countries received support from the EU (Moldova – in December 2023, Bosnia and Herzegovina – in March 2024) to start accession talks despite their significant shortcomings – failing to meet all the EU's prescribed steps (Moldova) and underperforming in priority areas (Bosnia and Herzegovina). The weightiest shortcomings in both states' performances reflect the core concerns of the chapters present in the so-called fundamentals' negotiating cluster. In the current politically charged context of enlargement, this article highlighted how there is a palpable preponderance from the EU's side to emphasise 'completion' above all else in its official reporting and progress assessments to ensure EU enlargement does not lose momentum and become "stuck", as was often previously the case.

We identified in this article four "sticking points", in which the two states have significant shortcomings: persistent political polarisation, ineffective anti-corruption strategies, weak institutions lacking legitimacy and/or strategic direction, as well as problems associated with ensuring fundamental rights. The article also outlined some of the possible consequences that could accrue if Moldova and Bosnia prove unable to overcome them over the next year and are allowed to sidestep some of the fundamental accession criteria as part of a fast-track enlargement. Accordingly, our findings strongly suggest that if left unchecked, the EU runs the risk of accepting states with serious systemic weaknesses and policies and norms out of kilter with or even in opposition to those of the EU. The recent examples of how the EU struggled to sanction Poland and Hungary, when they deviated away from EU norms on the rule of law provides strong disincentives to accept new states not yet firmly aligned with the EU in the most fundamental spheres.

Reflections on Moldova and Bosnia also underlines the imperative of recalibrating the Copenhagen criteria, which though over 30 years old and thus reminiscent of a different era in the EU's evolution still provide the overarching enlargement framework and reference points against which states' readiness for membership are ultimately judged. Findings presented in this article tend to uphold the essence of the existing criteria, but also signal the need to adjust the focus away from simply 'what' prospective members need to do towards clarifying 'how' states should go about meeting the criteria step-by-step. This is particularly salient for both Bosnia and Moldova, since they are officially expected to fully meet their steps and priorities yet have received little in the way of detailed feedback from the EU as to how to go about it.

Finally, the nature of the unfolding enlargement which is occurring in a context of unparalleled regional insecurity and global power shifts points to the need for flexibility to become a guiding principle in the context of accession negotiations and with regards to the concept of EU membership itself – to become resilient to sticky situations and to avoid becoming "stuck" and lodged in an impasse. This would enable states that are still a significant distance from formally meeting accession criteria, including Moldova and Bosnia, to gain elements of membership (in terms of both benefits and obligations) incrementally, rather than on a traditional full member/non-member basis. Such an approach would be both politically expedient and a strong signal of solidarity and willingness to adjust from the EU's side. A new flexibility also stands a better chance at bolstering resilience in the acceding states and reinforcing the EU's geopolitical importance in times of significant need.

Future research remains paramount to explore and examine possible strategies, which include a "multi-speed Europe" or a "staged accession" that would enable the EU to strike a balance between the need for expansion, on the one hand, and deepening integration on the other hand, to ensure that it can effectively respond to "sticking points" without becoming "stuck" when addressing varied political contexts of individual states (both existing EU Member States and accession states). In such debates and future research agendas, analysis should not only look at enlargement via an EU level-of-analysis, but also, as we have attempted to do, bring perspectives and insights from the candidate and accession states to centre stage.

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