BILATERAL DISPUTES AND EU ENLARGEMENT
A CONSENSUAL DIVORCE

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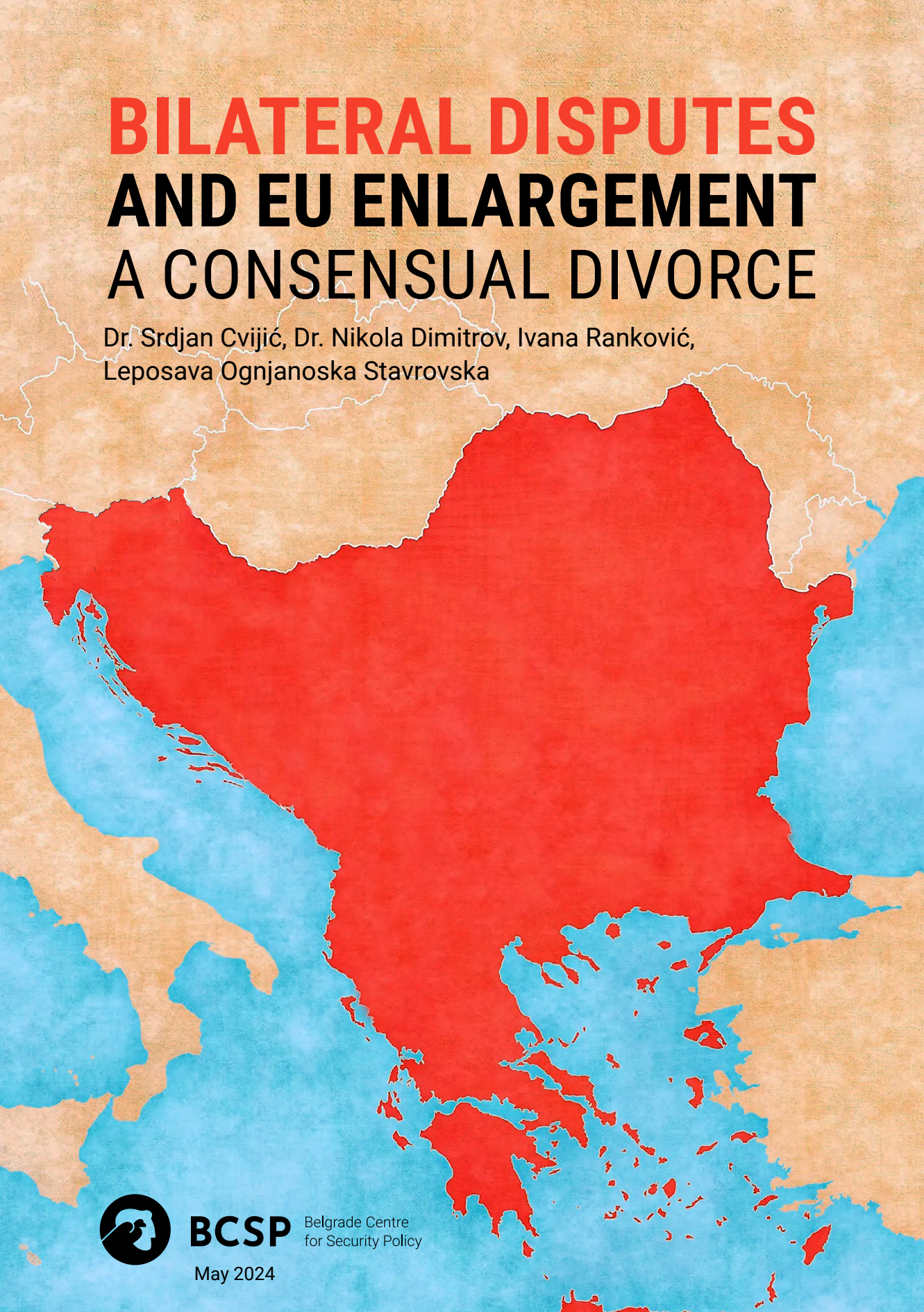

BCSP Belgrade Centre for Security Policy

May 2024

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Publisher:
Belgrade Centre for Security Policy
Đure Jakšića 6/5 Belgrade
www.bezbednost.org

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ISBN: 978-86-6237-233-8

DOI: https://doi.org/10.55042/XUBK6023

May 2024

Rockefeller Brothers Fund
Philanthropy for an Interdependent World

This report was made possible with support from the Rockefeller Brothers Fund (RBF). The opinions and views of the authors do not necessarily state or reflect those of the RBF.

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Introduction

Bilateral disputes between European Union member states and candidate countries are one of the key obstacles to EU enlargement. They have been plaguing the EU accession process ever since the breakup of Yugoslavia and the subsequent border dispute between EU member Slovenia and candidate country Croatia which then ensued. More recently we have the case of North Macedonia. It became a candidate country in 2005 but ever since, its accession negotiations have been bogged down by endless bilateral disputes.

While the case of North Macedonia and its decades long conflicts with Greece and Bulgaria are the most well-known of such cases, they are not the only ones.

In a seminal 2018 publication the Balkans in Europe Policy Advisory Group (BIEPAG) outlined the most prominent "open" or "latent" disputes between EU member states and candidate countries in the Western Balkans.[1] Ranging from border to territorial disputes, or ones concerning the status of national minorities, four out of five candidate countries in the region – Albania, Bosnia and Herzegovina, North Macedonia or Serbia, has a bilateral dispute with one or more EU member states.

If you look at new candidates Ukraine and Moldova and potential candidate Georgia however, the list of active or potential bilateral disputes is even longer.

Even when a candidate country meets the criteria to progress in EU accession talks, bilateral disputes can delay it for years or even decades as in the case of North Macedonia. In this way such disputes present a serious challenge to the credibility of the EU enlargement process. In the context of the war in Ukraine, as we have seen with regard to the policies of Viktor Orbán's Hungary towards Ukraine, invoking bilateral disputes can seriously challenge the geopolitical orientation and the security of the entire Union.[2]

On the legal side, since most of these issues fall outside the scope of the EU law and are not covered by the accession criteria, there is a need to think of an institutional mechanism to deal with bilateral disputes. Enlargement policy does not offer an appropriate platform for settlement of bilateral disputes, especially for those that fall outside the EU law. Hence, these issues should be addressed via the international legal dispute resolution toolbox and thus be subjects of separate processes. The EU's role however cannot be passive. It should invest efforts in these processes in order for them to be mutually reinforcing and so that the accession process has a mollifying rather than tension amplifying effect on the issue.

In its policy brief,[3] published at the end of 2023, the European Council on Foreign Relations (ECFR) proposed updating the Copenhagen criteria such that they should include a stipulation to resolve bilateral issues between member states and candidate countries through external dispute resolution mechanisms: Territorial disputes should be referred to arbitration or the International Court of Justice, while those on minority rights should be dealt with by the European Court of Human Rights and other appropriate dispute settlement mechanisms.

In this policy brief we suggest ways how to operationalise this proposal. First, we describe different types of vertical bilateral disputes (the ones that include asymmetrical relations) between EU members and Western Balkan candidate countries, then we outline international mechanisms to resolve them, and finally we propose an institutional architecture to remove bilateral disputes that fall outside of the scope of the Copenhagen criteria and the EU acquis from the purview of EU accession talks.

What we have today – Abundance of disputes, scarcity of solutions

Territorial disputes…

The prerequisite for good neighbourly relations between countries were introduced via Stabilisation and Association Agreements with candidate countries. Although strictly speaking they are not part of the Copenhagen criteria for EU accession,[4] bilateral disputes have become major obstacles for accession.

Most active territorial disputes between states stem from either the decolonisation in major part in Africa, the Americas and Asia or from the collapse of communism and specifically from the dissolution of the USSR and Yugoslavia. When it comes to territorial bilateral disputes, this policy brief concentrates on two examples relevant for the EU accession process. They are the border dispute between Slovenia and Croatia that was one of the main hurdles to overcome in Croatia's EU accession process and the border dispute between Croatia and Serbia.

Zagreb and Ljubljana agreed to decouple the issue of the border dispute from the EU accession negotiations and settle the dispute by binding arbitration upon Croatia's accession to the Union.

As the border between Slovenia and Croatia had not been properly demarcated prior to their independence in 1991 several stretches were disputed, both on land and at the sea, namely in the Gulf of Piran. Their first agreement on the border was signed in 2001. This, so-called Drnovšek–Račan agreement, named after the respective prime ministers of the time, was ratified by Slovenia but not by Croatia. When Slovenia joined the EU in 2004 it then used its newly acquired status and leverage as a member state to block Croatia's accession. The governments in Zagreb and Ljubljana agreed to decouple the issue of the border dispute from the EU accession negotiations and settle the dispute by binding arbitration upon Croatia's accession to the Union. This placed Croatia on an equal footing with Slovenia but when it joined the EU in 2013 the dispute remained unresolved.

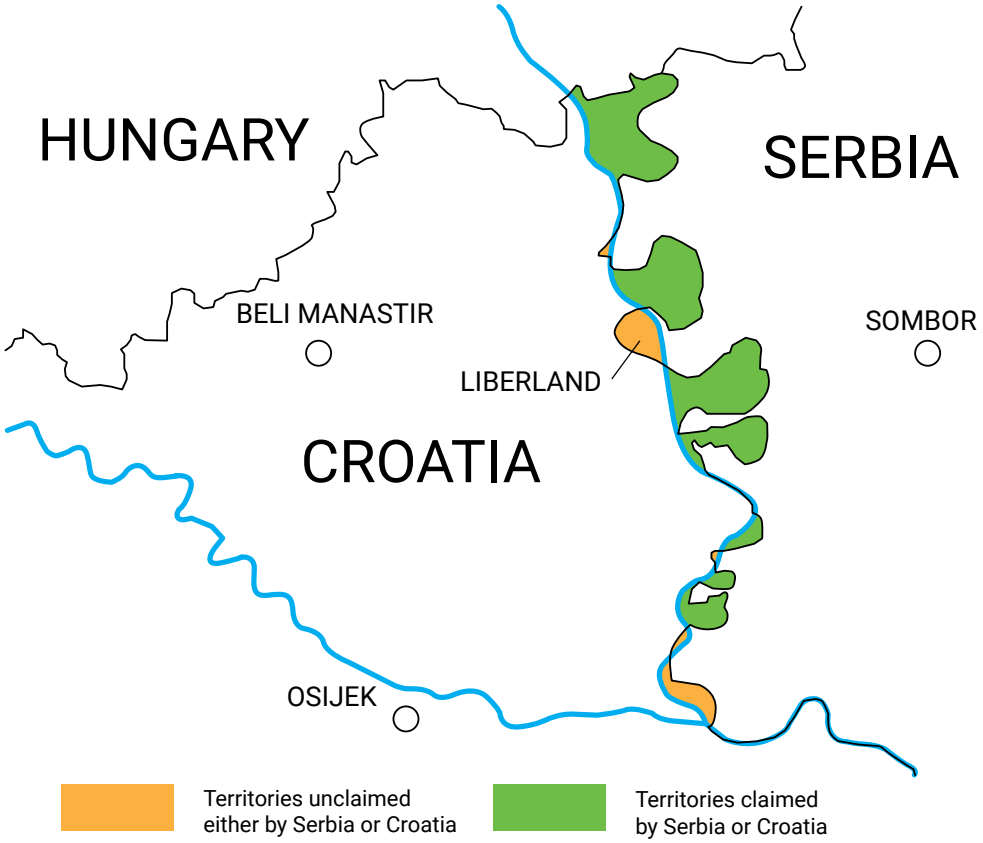
In June 2017, the Permanent Court of Arbitration in The Hague issued a binding ruling on the border, drawing it in the Gulf of Piran, with a corridor through Croatian territorial waters allowing Slovenian vessels and aircraft unrestricted access to international waters in the northern part of the Adriatic Sea. Slovenia accepted the ruling in December 2017 but Croatia rejected it and continues to do so. In fact, Croatia had withdrawn from the arbitration process in 2015, citing a breach of the arbitration rules (because transcripts of conversations had been leaked between a Slovene government representative and a Slovene representative in the arbitration process). The ongoing dispute does not however prevent the two governments from working together as members of the EU.

In 2011, two years before its own accession, the Croatian parliament passed a non-binding declaration "On promoting European values in South-eastern Europe" in which they pledged not to use their country's future EU veto power.

Unlike the border between Slovenia and Croatia, the undetermined border line on the river Danube between Serbia and Croatia has not surfaced within the process of Belgrade's EU accession process but it is more than likely that it eventually will. That is despite the fact that in 2011, two years before its own accession, the Croatian parliament passed a non-binding declaration "On promoting European values in South-eastern Europe" in which they pledged not to use their country's future EU veto power to strongarm candidate countries to resolve bilateral disputes in Croatia's favour. The declaration affirmed that:

> *It is the firm position of the Republic of Croatia that open issues between states, which are bilateral in character, such as, for example, border issues, must not hinder the accession of candidate countries to the European Union, from the beginning of the process until the entry into force of the Treaty of Accession.*[5]

The border dispute between Serbia and Croatia first arose in 1947 and remained unresolved when Yugoslavia collapsed in 1991 when a not very important stretch of border between the two republics suddenly became an international frontier. Serbia claims that the centreline of the river represents the border between the two countries. Croatia disagrees, claiming that it lies along the boundaries of the Austro-Hungarian state's geodetic survey of 1877-91, i.e., the cadastral municipality boundaries of the time which were then determined by the river. However, the course of the river was changed along several points of a 140-kilometre-long section by anti-meandering and hydro-technical engineering works which left some 140 square kilometres in dispute.



In 2001 Serbia and Croatia formed an Interstate Commission to determine the border and to prepare an agreement on the issue. In 2002 the two countries signed a protocol outlining the principles of border demarcation, yet the negotiations have been stalled ever since 2003.[6]

Following the examples of Albania and Greece that agreed to submit their own dispute over the Ionian maritime border to the International Court of Justice in 2020, just as Croatia and Montenegro had done in 2008 in order to settle their dispute on the Prevlaka peninsula, the governments in Zagreb and Belgrade could emulate these examples and submit their own dispute to similar such international arbitration.

….and the rest: Identity, language and history

The existing non-territorial disputes between the Western Balkan candidate countries and EU member states are also influenced by the dissolution of Yugoslavia in 1991, when the emergence of ethno-national states upon the remains of the former federation, gave rise to various unresolved issues related to ethnic minorities, history, and national/identity matters.[7] The most prominent disputes that will be discussed in this policy brief, concern Bulgaria's dispute with North Macedonia over the Macedonian language, identity and modern history, and Serbian-Romanian dispute regarding the national minority issue and the position of Romanian Orthodox Church in Serbia.

Bulgaria has been actively using its veto power in the European Council to block North Macedonia's progress towards EU membership over issues of identity and history.

Bulgaria's denial of Macedonian ethnic identity and language was generally overlooked during the decades of the name dispute between Greece and North Macedonia. However, once this was settled with the Prespa Agreement, Bulgaria and its issues emerged as the next major challenges impeding North Macedonia's progress towards EU accession. Despite the Friendship Treaty between the two countries and the constitution of a mixed commission on history in 2017 – a bilateral commission of historians designed to overcome disputes over shared historical aspects of the two countries – Bulgaria decided to condition North Macedonia's accession talks.[8] The government in Sofia insisted that North Macedonia formally acknowledged the Bulgarian roots of the Macedonian language and demanded that it altered its historical narrative in line with the "historical truth" i.e. the Bulgarian one.

In that sense, Bulgaria has been actively using its veto power in the European Council to block North Macedonia's progress towards EU membership over issues of identity and history. In 2019 the Bulgarian government adopted a set of conditions for North Macedonia to move towards EU membership talks. These include it renouncing any claim concerning the existence of a Macedonian minority in Bulgaria, urging the EU to refrain from using the term "Macedonian language" during the accession talks, and instead use the term "Official language of Republic of North Macedonia", and requests referring to contested historical events and figures, among many other demands constituting a formal hostile position on the Macedonian identity.[9]

In July 2022, North Macedonia's parliament seemingly[10] accepted the so-called French proposal aimed at unblocking its European path.[11] The proposal, spearheaded by the French and brokered by the EU, envisages amending the Macedonian Constitution so as to recognize a Bulgarian minority, but also incorporates other sticking points between Skopje and Sofia into the accession process. As a result of the deal, North Macedonia had its first Intergovernmental conference (IGC) with the EU on 19 July 2022, but

Between Serbia and Romania, there are two open questions. One is the status and treatment of the Romanian minority with regard to the Vlach issue while the other concerns the status of the Romanian Orthodox Church in Serbia.

will complete the opening phase of the accession talks with the second IGC when the constitutional amendments have been passed. Given the landslide victory of VMRO-DPMNE in the recent elections, a party adamantly opposed to the constitutional changes, the prospect of further progress is dubious.

In the evening hours on 18 July 2022, Bulgaria submitted a formal declaration in Brussels that "any reference to the official language of North Macedonia in … the EU … should in no way be interpreted as recognition by Bulgaria of the 'Macedonian language'".[12]The Bulgarian Prime Minister Petkov at the time said that the proposal is not lifting the Bulgarian veto, because the European path for North Macedonia will be paved with Bulgarian demands.[13] The government in Sofia in this way introduced historical and identity issues into the official EU negotiating framework with North Macedonia. Bulgaria's demands were an unpleasant surprise because they broke the taboo on involving historical disputes in enlargement negotiations, thus opening a potential Pandora's box for the future.[14]

Between Serbia and Romania, there are two open questions. One is the status and treatment of the Romanian minority with regard to the Vlach issue while the other concerns the status of the Romanian Orthodox Church in Serbia. The first question revolves around the answer as to who actually belongs to the Romanian national minority. Serbia acknowledges Vlachs as a separate group whereas Romania considers them Romanians, primarily due to linguistic similarities. Both Vlachs and Romanians in Serbia are predominantly located along the eastern border, with Romanians residing exclusively north of the Danube River. Romania's efforts to extend its influence over these people became particularly evident in 2012 when a consulate was established in Zaječar in eastern Serbia, in addition to the already existing one in Vršac in Banat hard on the Romanian border.[15]

Romania claims that Serbia falls short of meeting proper standards regarding the rights and freedoms of the Romanian minority. It insists on rights such as education in their native language, the use of the official language, and the freedom to practice their religion.[16] Additionally, Romanian requests for a guaranteed seat in parliament are frequently voiced and primarily based on reciprocity. This stems from the fact that the Serbian minority, along with all others in Romania, is ensured one seat in the Romanian parliament.[17] In 2002 the two countries signed a Bilateral Agreement on the Protection of Minorities, indirectly addressing this issue by stating that "members of national minorities have the right to, in accordance with national legislation, participate in decision-making related to issues that are significant for national minorities at the state, regional and local levels."[18]

The dispute regarding Romanian Orthodox Church (ROC) revolves around expansion of ROC jurisdiction from Banat to areas south of the Danube, where the Vlachs reside. Bucharest asserts that the ROC in Serbia has limited religious jurisdiction and advocates for performing religious services in Romanian in eastern Serbia as well. On the other hand, the Serbian Orthodox Church (SOC) believes that Romania's expansion of activities into the eastern parts of Serbia violates the territorial principle.[19] The status of the ROC in Serbia and the SOC in Romania is regulated by the 1934 Agreement between the two churches, which remains in force. According to this the regional jurisdiction of the ROC is in Deta in Romania, 36 kms north of its administrative center in Vršac. A dialogue between the SOC and the ROC, as a way to resolve their mutual relations, has been conducted at the level of a Joint Commission of the two churches, but no resolution has yet been found.

Romanian-Serbian disputes reached their peak in 2012 when the government in Bucharest tried to block granting Serbia candidate status for EU membership. Romania was the last member state of the EU to ratify Serbia's Stabilization and Association Agreement, which was interpreted as pressure on it to give ground over the Vlach issue. To address the dispute institutionally, the Intergovernmental Commission for National Minorities was established in the same year. Although concrete solutions were not immediately reached, the formation of this joint body has partially eased tensions, nevertheless they continue to strain relations between the two countries.[20]

Along with these two examples of non-territorial bilateral disputes that the governments have sought to resolve through specialized bodies or bilateral agreements, several other similar attempts at conflict resolution have been made. In the case of the dispute between Serbia and Croatia regarding the status of minorities in both countries, this has included the establishment of the Intergovernmental Mixed Committee for the Protection of Minorities. Furthermore, an important step forward was taken in 2016 with the signing of the Declaration on the Improvement of Relations and the Resolution of Open Issues between Serbia and Croatia. This partially addresses the challenges faced by the two minority communities, but their position has not been significantly improved since.

The complex relations between Greece and Albania, particularly concerning the Greek minority in Albania, have been addressed through a bilateral agreement as well, with both countries committing to sign a Document of Strategic Partnership in 2018. Regarding the long-standing issue of the maritime border between the two countries in the Ionian Sea, in 2009, Tirana and Athens agreed to delimitate the continental shelf in the waters between them, but the opposition took the matter to the Constitutional Court. They argued that Greece got more than 220 square kilometres of Albanian waters. The Albanian Constitutional Court agreed, and relations between the two countries soured.[21] In 2020, Albania and Greece agreed to refer a dispute to the International Court of Justice.[22] The issue remains unresolved. The disruptive potential of bilateral disputes is underscored with the case of the imprisoned ethnic Greek Albanian mayor-elect Fredi Beleri, who was put forward as a candidate in the forth coming European elections for the conservative New Democracy party.[23]

Seeking to avoid burdening the European integration process with bilateral disputes, potential solutions lie in external dispute resolution mechanisms.

A common feature observed in both territorial and non-territorial bilateral disputes is the conditionality imposed by the EU member states to facilitate the resolution of these conflicts in their favour. Threatening or actually vetoing the EU accession process of a candidate country until the dispute is resolved does not contribute to improved neighbourly relations or long-term regional stability. However, most of the relevant EU member states use this opportunity and view minority issues as part of Chapter 23 (Judiciary and Fundamental Rights), emphasizing that this type of dispute must be addressed within the EU accession framework. Bearing in mind the often-ineffective nature of bilateral attempts to resolve disputes and seeking to avoid burdening the European integration process with such issues, potential solutions lie in external dispute resolution mechanisms.

Alternatives to resolving disputes within EU accession process and resolving them bilaterally without a mediator should include the possibility of either party submitting the case to an international body, like the European Court of Human Rights, whose judgments are binding on the countries concerned, thereby enhancing the effectiveness of dispute resolution.

In disputes related to national minorities, the Council of Europe (COE) and the Organization for Security and Cooperation in Europe (OSCE) also play an important role and could be used as mechanisms for taking such issues out of the EU accession process, since all EU member states are members of both. Under the auspices of the COE, the Framework Convention for the Protection of National Minorities was adopted, representing the first legally binding multilateral instrument dedicated to protecting national minorities globally. Its implementation is monitored by the Advisory Committee, the only international committee exclusively dedicated to minority rights. Apart from monitoring, the Advisory Committee provides an opportunity to discuss recommendations and to identify the most efficient ways of implementing them.[24]

A political and legal framework for EU members to divorce bilateral disputes from the accession process

What we have today: The political context and legal framework for bilateral disputes and why it does not work

The history of the European integration has paved the way for a *sui generis* political and security concept based on a new legal order with a strong economic rationale. The EU itself was created for the purpose of overcoming the legacies of the past and addressing disputes through cooperation based on common interests and a shared vision for the future. However, this did not mean that all disputes were resolved before the original European Economic Community was founded. On the contrary, the main rationale was that the cooperation established would contribute to a change of conflict context and by removing or reducing the importance of antagonistic issues while simultaneously increasing the value of issues on which the countries involved could agree upon. The Elysée Treaty between France and West Germany from 1963, is a good example of one whereby common interests prevailed over national preferences, with integration advancing in addition to the gradual resolution of differences and by fostering reconciliation. By contrast (mis)using bilateral disputes in the accession process causes mistrust and stalemate in the European integration process and stands in contradiction to its core vision.

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Many bilateral disputes have effectively become European issues, although such actions contradict the clear mission of the enlargement policy.

Applying conditionality to the settlement of a bilateral dispute within the enlargement process tems from the circumstances of the accession of Cyprus in 2004. However, the EU did not strictly link the progress of central and eastern European candidate countries to the settlement of their bilateral disputes. In the case of the Western Balkans though, the EU insists on addressing important outstanding bilateral issues with definitive and binding solutions prior to accession, in order not to import disputes and instability into the Union.[25] It is a fact that the painful past has left deep scars in the Balkans and still casts a shadow even at people-to-people level. But it should also be

taken into consideration that in line with the principle of differentiation, some Balkan countries have already joined EU ahead of the others which have remained candidate or potential candidate countries. Today enlargement policy allows member states to act with impunity when they employ their membership status in order to achieve an advantageous position and thus preferential outcome to bilateral issues. In this way many bilateral disputes have effectively become European issues, although such actions contradict the clear mission of the enlargement policy.

The EU's position on bilateral issues consists of the facilitation of negotiations by involving EU officials and/or appointing special representatives. Along with adverse public opinion and divided attitudes inside the Union regarding further enlargement[26], unresolved bilateral disputes in the Balkans provide a cover for those in the EU who wish to see the future membership doors closed. This stance compromises the fulfilment of the Copenhagen criteria and an overall approach based on merit and strict conditionality. Blockades imposed by member states for reasons utterly unrelated to formal membership criteria inhibit the accession process and negatively impact the credibility of EU enlargement policy. Moreover, this situation has caused a dangerou s trend of *bilateralisation* of the process instead of Europeanisation as its final goal. The case of North Macedonia is the most drastic in terms of EU's credibility. Instead of not importing instability into the Union by setting the bilateral disputes as benchmarks for progress in the accession process, this approach has resulted in a risky precedent shifting the focus away from the real reforms.[27]

On 24 February 2022, with the beginning of Russia's full-scale invasion of Ukraine, the unthinkable happened. Europe now lives in a different reality. The war has brought Europeans to a historical inflection point and imposed new tasks and responsibilities on its leaders. Both EU institutions and the leaders of member states have become aware of the necessity to act with a real strategic sense of purpose and to define a new path with regard to EU enlargement.[28] Bilateral disputes, which at various times have weakened and delayed EU actions, remain the main stumbling blocks on that new path. Avoiding repeated blockades in conducting its enlargement agenda is also in tune with the 2020 Enlargement Methodology approach which stands for building more trust and enhanced predictability and credibility based on objective criteria and rigorous conditionality.[29] Moreover, it clearly states that parties must abstain from misusing outstanding issues in the EU accession process.

The EU's legal framework implicitly proposes employing international legal mechanisms for the peaceful resolution of disputes.

The ECFR proposal to refer bilateral issues to dispute resolutions mechanisms within international law is in line with Article 21 of the 1993 Treaty on European Union (TEU) which defines its external actions to be guided by the principles which have inspired its own creation, development and enlargement. These include respect for the principles of the United Nations Charter and international law. In addition, it states that the EU shall promote multilateral

solutions to common problems, in particular within the framework of the United Nations.[30] More specifically, common policies and actions should be defined and pursued in order to preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders.[31] Strict observance and the development of international law, including respect for the principles of the UN Charter, is mentioned also in Article 3(5) of the TEU dedicated to the Union's aims and goals. Hence the EU's legal framework implicitly proposes employing international legal mechanisms for the peaceful resolution of disputes. According to Article 49 of the TEU, membership conditions also include eligibility conditions agreed upon by the European Council.

UN principles proceed from the sovereign equality of all members and stand for the settling of disputes by peaceful means in such a manner that international peace, security and justice are preserved.[32] It follows that the current EU conditionality on bilateral disputes does not allow for the equality of the parties involved and thus does not serve justice. In that context, it should be noted that there is no clear definition of the term *bilateral dispute* within the EU's enlargement policy. Hence, any issue on which there are differences, that are often initiated unilaterally can turn into a bilateral dispute in the accession process. The current disputes cover different areas such as the recognition of country's statehood, border demarcation, recognition of ethnic minorities and protection of minority rights, as well as issues related to identity, language and history that clearly fall within the right to self-determination.

There is no clear definition of the term (bilateral) dispute within the EU Enlargement policy

Issues which fall under the scope of Union law should be referred to the EU dispute settlement mechanism, namely the Court of Justice of the EU, once both parties are member states and can act on an equal footing.

Any solution of how to deal with situations where EU member states raise bilateral disputes within the accession process should also be used as a test of whether countries are acting in good faith, including their willingness to let go of their position of power. As the case of Croatia and Slovenia shows, the settlement of disputes under pressure may not be sustainable in the long term. Internal mechanisms for complying with obligations arising from international law should also be strengthened within the Union. Additionally, issues which fall under the scope of Union law should be referred to the EU dispute settlement mechanism, namely the Court of Justice of the EU, once both parties are member states and can act on an equal footing. Article 273 of the TEU allows for the court to have jurisdiction in any dispute between member states which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties. Such an admissibility criterion can be framed as a credible accession condition with post-accession compliance.[33]

The EU's legal framework is in favours recourse to the international law toolbox with regard to bilateral disputes.

This overview of the current context leads to the conclusion that the EU's legal framework favours recourse to the international law toolbox with regard to bilateral disputes. Using international legal mechanisms means removing the possibility of transforming bilateral issues into "European issues" at the multilateral level of the accession negotiations. In a political context, it is the only way for the EU to bring the rule of law back on track within the enlargement process and focus on real reforms. It is of no matter that all the open disputes are of a mainly political nature - citizens of the region share the same major concerns over corruption, weak democracies, the lack of rule of law, brain drain, pollution and poverty, all of which can be dealt with within the accession process rather than being derailed with never-ending antagonisms. European integration process should serve as a framework for turning diverging positions into converging interests, by making countries European in their essence. This approach will provide grounds for durable peace and stability through prosperity and contributes to protecting the Union's values both on the inside and on the outside.

While the authors of this brief fully support moving from unanimity to qualified majority voting in the interim stages of the accession process, initially one could envisage a more modest way forward that may prove to be politically more feasible.

A threshold of a qualified majority distinguishing between legitimate and illegitimate concerns of EU member states

In line with the revised enlargement methodology endorsed by the Council in 2020, member states have already agreed that "all parties must abstain from misusing outstanding issues in the EU accession process." This commitment could be operationalized by introducing a threshold of a qualified majority distinguishing between legitimate concerns that should be dealt within the accession process as part of the accession criteria as opposed to illegitimate issues that fall outside its scope.

Given the consensus seeking nature of the EU decision-making process and the culture of solidarity between member states, any substantiated, reasonable bilateral dispute between a member state and a candidate country would suffice to build the required qualified majority for it to become part of the accession process. However, for bilateral disputes that are purely created or driven by domestic politics, and have nothing to do with the accession criteria or even contravene European values and principles, the renewed interest in a credible enlargement policy should prevail. In such instances,

the member state in question, failing to reach the qualified majority threshold, would not be able to misuse the accession process to the detriment of the whole Union and its credibility, and will have to seek the resolution of its dispute through external dispute resolution mechanisms on an equal footing with the candidate country.

Legally, there are two related questions which need elaboration here. First, what constitutes a bilateral dispute, and second, what is the legal way to introduce qualified majority voting (QMV) on them in the European Council. The former might seem self-explanatory, but a member state may well try to avoid the QMV threshold by portraying its bilateral dispute as an issue under the guise of the Copenhagen criteria. In that case, if there is no agreement in the Council whether the issue constitutes a bilateral dispute, it should task the European Commission to provide an answer. In situations where the Commission determines that the opposition of a single member state against the next step in the enlargement process does not concern enlargement criteria, the Council then decides on the next step by QMV on its recommendation – 55 percent of member states representing at least 65 percent of the EU population. In this way a bilateral dispute can be effectively removed from the accession process.

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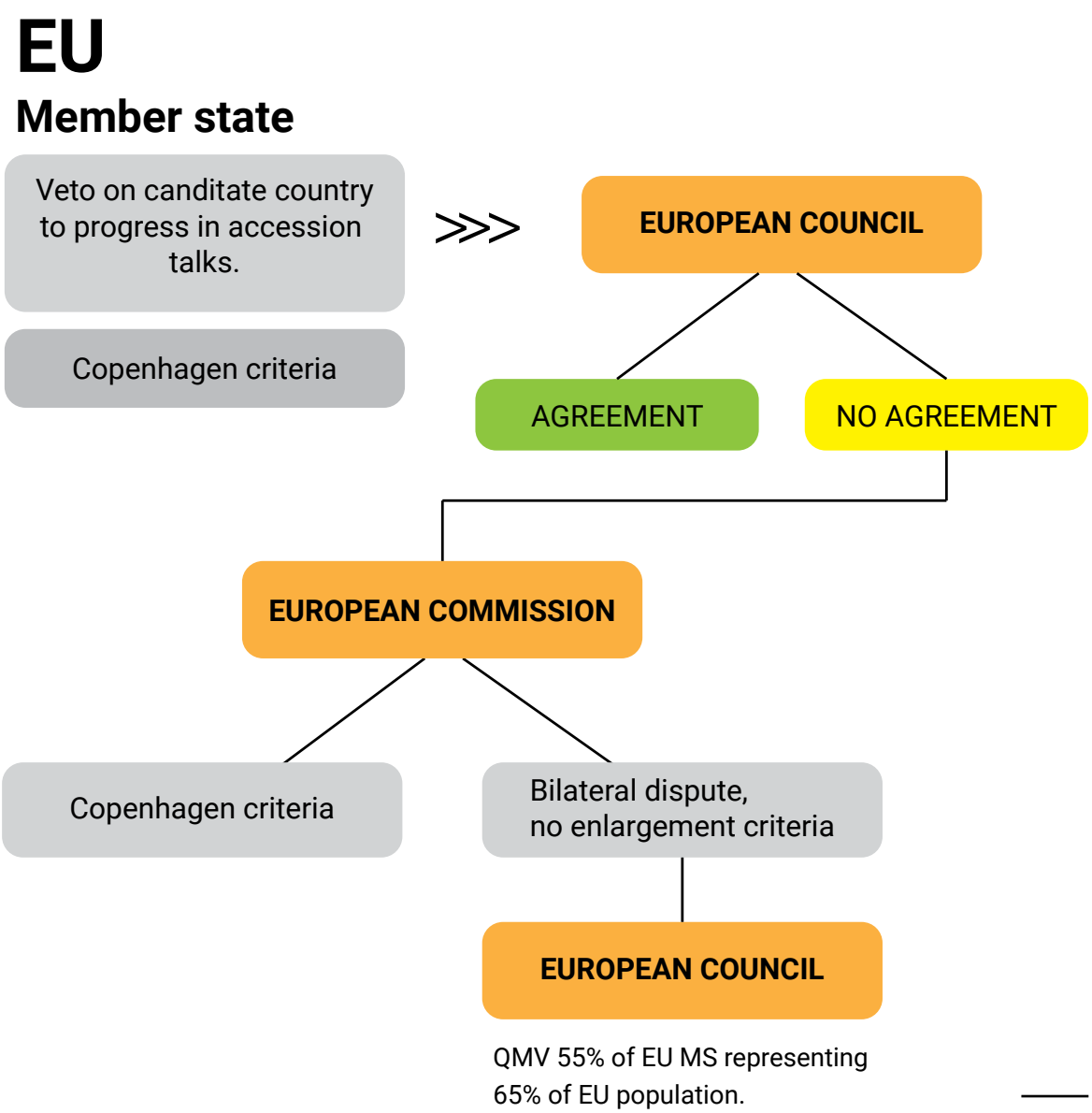
Introducing QMV on bilateral disputes in the accession process will require a consensus among the EU 27, by way of adopting Council conclusions to that effect.

Introducing QMV on bilateral disputes in the accession process will require a consensus among the EU 27, by way of adopting Councilconclusions to that effect. Once adopted, individual negotiating frameworks with candidate countries may be revised accordingly, following the examples of the negotiating frameworks with Serbia and Montenegro, which have been revised to reflect the new enlargement methodology adopted in February 2020. There are currently more than ten-member states supporting introducing QMV in the interim stages of the accession process, based on a proposal of Germany and Slovenia. With this arguably more modest approach of limiting QMV to bilateral disputes only, those member states with principled concerns about the integrity of the Copenhagen criteria will likely have less reasons to oppose it, bringing the number of the countries supporting QMV in the case of bilateral disputes close to or over 20.

Along with such internal reforms in the EU decision-making process[34], the Union would therefore finally have a comprehensive strategy for separating the settlement of illegitimate bilateral disputes from the accession process. This approach contributes to a clearer understanding of the definition of bilateral disputes and their role in the framework of the accession process and whether such disputes legitimately comprise part of the accession criteria.

This consensual divorce will finally be instrumental in strengthening the trust between the candidate countries and EU by regaining the control over the process and the possibility of making decisions without having to compromise European values. As it is said, when two sides decide on a divorce, it isn't a sign that they "don't understand" one another, but a sign that they have in fact begun to do just that.



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