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THE ACCESSION NEGOTIATIONS OF NORTH MACEDONIA TO THE EU: BETWEEN NEW METHODOLOGY AND OLD CHALLENGES

Summary

Seventeen years long struggle of North Macedonia to open its accession negotiations with EU, finally resulted in the Intergovernmental Conference held on July 19th, 2022. Differently from any other candidate country, to make a procedural progress in its way, however, the country must change its constitution, which is the obligation arising from the bilateral agreement with Bulgaria, based on the proposal of French president Macron. While waiting for the outcome of such a procedure, North Macedonia has started the screening process in order to get a clear position of European Commission on the current state of play of the domestic legislation, institutional and administrative capacities as well as implementation/ enforcement track record, all against the relevant EU acquis and applicable standards. On its accession path, North Macedonia is obliged to comply with the 2020 enhanced EU accession methodology which brings a set of novelties in comparison with the “old methodology” applied to the candidate countries that have passed through the initial accession steps a decade ago, but also accepted to adapt to the new rules. Analyzing all aspects of the new, ie. enhanced negotiation methodology, and especially the specific role of Cluster 1, the authors in this paper also consider the necessary preconditions to be met by North Macedonia to hold the demanding pass of reform processes in accordance with the new methodology.

Key words: European Union, Accession Negotiations, Enhanced Methodology, North Macedonia, Cluster 1 “Fundamentals”.

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1. NORTH MACEDONIA EU PATH: TWO DECADES OF STRUGGLE

Two decades long, and still ongoing Macedonian trip to European Union (hereinafter: EU) has started twenty years ago, when the country was – along with other Western Balkans partners – identified as a potential candidate for EU membership during the Thessaloniki European Council summit in 2003. Its Stabilization and Association Agreement (hereinafter: SAA), the first in the region, is in force since 2004. (SAA, 2004) The state applied for EU membership in March 2004 and the Council decided in December 2005 to grant the country candidate status. Even since October 2009, the Commission has continuously recommended to open accession negotiations with North Macedonia, but for many years was unable to start accession negotiations due to the opposition of Greece. Namely, Greece was requesting North Macedonia¹, to change its name, remove the Vergina Sun from its flag and gave up “Hellenisation” of its history. (Brzozovski, 2022) In parallel, due to the internal political and the rule of law crisis in 2015 and 2016, the recommendation to open negotiation process was made conditional on the continued implementation of the Pržino agreement and substantial progress in the implementation of the ‘Urgent Reform Priorities’. (Pržino Agreement, 2015)

A multi-annual blockade has been resolved under the Prespa agreement of 2018 (Prespa Agreement, 2018) when the country accepted to add "North" to its name. (Tidey, 2022) The Prespa Agreement, signed by then prime ministers Zoran Zaev (Macedonia) and Alexis Tsipras (Greece), stipulated not only the name change but also prohibited Macedonia from laying claim to the historical heritage of the ancient Macedonians (Vlada 2017; cf. Rohdewald 2018). In light of the progress achieved, the Commission repeated its unconditional recommendation to open accession negotiations in April 2018. In light of the significant progress achieved and the conditions set unanimously by the Council in June 2018 having been met, in May 2019 the Commission reiterated its recommendation to open accession negotiations with North Macedonia. (Commission, 2023)

However, this hasn't ended the struggle of North Macedonia since, after Prespa, France blocked the opening of accession negotiations with Skopje and Tirana until a new methodology for future enlargement was agreed at EU level. (Brzozovski, 2022) In March 2020, the members of the Council endorsed the General Affairs Council's decision to open accession negotiations with North Macedonia. (Council of the European Union, 2020) In July 2020 the draft negotiating framework was presented to the Member States. Anyway, in late 2020 Bulgaria took over the leading position in blocking the progress, insisting that ethnic Macedonian identity was based on identity-theft, which must end before North Macedonia can open its first negotiation chapter. (ESI, 2022) This Bulgarian initiative has

¹ At the time: Former Yugoslav Republic of Macedonia (FYRM)

been founded on the 2019 declaration of Bulgarian Council of Ministers.² Bulgaria requested North Macedonia to change its constitution to recognize a Bulgarian minority as nation-building peoples and wanted Skopje to admit its language and culture had Bulgarian roots in bilateral protocols attached to the formal EU "negotiation framework". In order to resolve this deadlock situation, France had developed a draft proposal, signed up North Macedonia and Bulgaria in July 2022. The proposal confirmed that Macedonian will be an official language in the EU and obliged North Macedonia to change its constitution³ to acknowledge Bulgarians among the nation-building peoples, protect minority rights, change textbooks with negative references to Bulgaria and introduce hate speech into the criminal code. Upon this signature, in July 2022, the Intergovernmental Conference (hereinafter: IGC) on accession negotiations was held with North Macedonia. How long waited and welcomed this moment could be the best illustrated by the statement of the President of the European Commission (hereinafter: EC, Commission) Ursula von der Leyen:

“What a historic moment. Today, Albania and North Macedonia are opening the accession negotiations to the European Union, and I am so glad to be here with you. This is your success. It is your success and your citizens’ success. You and your citizens, you and your people have been working so hard to get here. You have shown so much enduring commitment to our values. You have demonstrated resilience. You maintained faith in the accession process. You strengthened the rule of law. You fought against corruption. You have free media. You have vibrant civil societies. You have done countless reforms and you have modernized your economies. You have made all these changes not just because they were necessary on your path towards the European Union, but above all because they are good for your countries. And they are already delivering a better quality of life for your people. We, the European Commission, have supported you all the way. And we will continue to do so.” (Webalkans, 2022)

Nevertheless, this encouraging (and even too positive) assessment of the country’s situation against relevant EU acquis and standards is yet to be confirmed in the screening process that started in October 2022. More precisely, comprised of two stages (explanatory and bilateral screening) this process had been initiated and partially conducted in 2019 (explanatory stage), but stopped due to the earlier explained procedural obstacles. Considering this, EC decided to organize an update of explanatory screening for those chapters where a significant development in EU legislation has occurred since initial

² On 9 October 2019, ahead of a European Council meeting where the opening of accession negotiations with North Macedonia was on the agenda, the Bulgarian Council of Ministers adopted a so-called “framework position” regarding EU enlargement. The framework position opened with a telling sentence: “Bulgaria cannot allow the integration of the Republic of North Macedonia into the EU to be followed by European legitimation of a government-sponsored ideology on anti-Bulgarian foundations” (Council of Ministers of the Republic of Bulgaria 2019). A day later, the Bulgarian parliament passed a similar declaration (Narodno sŭbranie 2019). For more see: (Brunnbauer, 2022)

³ North Macedonia must ensure the two-third majority in its parliament to change its constitution.

explanatory screenings, but to do that for North Macedonia and Albania together. In order not to waste additional time⁴, the screening process is organized in a way allowing having in parallel explanatory and bilateral meetings for various negotiation chapters.

However, this exercise supposed to be a very first opportunity for North Macedonia administration to experience practical aspects of the new accession methodology in practice.

2. A NEW ACCESSION METHODOLOGY: WHAT DOES IT MEAN

Frequently mentioned but yet barely perceived in practice- this is how the new accession methodology can be briefly described. When the proposal to introduce this new approach had been brought to the public, the highlight of all the statements was that its very purpose is to re-establish a credible EU perspective for the Western Balkans and to make it very clear that for the Commission and for the EU as a whole, it is a top priority to have stability, peace and prosperity in the region. (Commission, 2020) In the statement of the Commissioner for Neighborhood and Enlargement, Olivér Várhelyi, the three points have been underlined under this goal, where of them was referring to the prompt approach to EU path of North Macedonia. Namely, the Commissioner commented:

“The European Union enlargement to the Western Balkans is a top priority for the Commission. We are working on three tracks: Firstly, today we propose concrete steps on how to enhance the accession process. While we are strengthening and improving the process, the goal remains accession and full EU membership. Secondly, and in parallel, the Commission stands firmly by its recommendations to open accession negotiations with North Macedonia and Albania and will soon provide an update on the progress made by these two countries. Thirdly, in preparation of the EU-Western Balkans Summit in Zagreb in May, the Commission will come forward with an economic and investment development plan for the region.”

Since such an approach has been introduced when some of the WBs countries have been already in the accession negotiation process, while others were waiting opening the negotiations, it is important to mention that the Council agreed on the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia (already in in the process), after both candidate countries expressed their acceptance of the new methodology. This consequently required accommodation within the existing negotiating frameworks with both countries during the next Intergovernmental Conferences. In parallel, for North Macedonia and Albania, this new approach/methodology was applicable from the very beginning of the process.

⁴ "The screening will enable Albania and North Macedonia to get familiar with the rights and obligations of our union, from treaties to legislation to international agreements, you name it," von der Leyen said, promising that "we will proceed very quickly with that." (Tidey, 2022)

However, if we focus on the main elements of this statement, it is obvious that there are several issues regarding the new methodology to be addressed: a more credible process, a stronger political steer/monitoring, dynamics determined by the cluster approach and predictability of the process.

2.1. A more credible process

Even if it may, at the first glance, look like of only declaratory nature, actually the situation is quite different. Namely, credibility here refers to the **stronger focus on fundamental reforms**, starting with the rule of law, the functioning of democratic institutions and public administration as well as the economy of the candidate countries. Therefore, the EC has given the predominate status to those, vital area of a state functioning, over the others. In practice, this means that unless a country meets the objective criteria, the Member States shall not agree to move forward to the next stage of the process, respecting the merits-based approach. In practice, this also has consequences articulated in the third principle- predictability and dynamism.

2.2. Predictability and Dynamism: The Cluster Approach and “Fundamentals first”

How EC sees this **dynamism**? Namely, the Commission proposed to group the negotiating chapters in six thematic clusters: fundamentals; internal market; competitiveness and inclusive growth; green agenda and sustainable connectivity; resources, agriculture and cohesion; external relations. Obviously, while Cluster 1 is reserved for the abovementioned “core issues” from the specter of “fundamental reforms” or “fundamentals” the other negotiation chapters are grouped in clusters mostly based on the common/similar or connected issues that those chapters address. This grouping has also practical consequences allowing for more strength cooperation and coordination in addressing those common issues that appear to be relevant for more than one negotiation chapter.

In addition to this, the cluster organization means that the negotiations on each cluster will be open as a whole – after fulfilling the opening benchmarks at the level of whole cluster, comparing with “the old” approach based on the fulfillment of opening benchmarks on an individual chapter basis. However, not only the progress of an each and every negotiation chapter has been preconditioned by the progress at the level of the whole cluster, but also by the progress made in Cluster 1 (Fundamentals). Therefore, this requires a stronger focus throughout the accession process on the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform, as well as on economic criteria. (Cekov, 2022)

More precisely, negotiations on the fundamentals are to be open first and closed last, since the progress in this chapter will determine the overall pace of negotiations. Finally,

once negotiations on Cluster 1 are open, the order of opening the other clusters shall not necessarily follow their enumeration, but it is rather based on the reform progress achieved.

However, this “**Fundamentals first**” approach should not be seen as unexpected innovation, since starting from 2012, the European Commission gradually introduced this concept for the countries of the Stabilization and Association Process, which included the rule of law, functional democratic institutions, economic management, and professional public administration, with the addition - developing and maintaining good neighbourly relations and resolution of mutual bilateral disputes. Through this idea, the European Commission aims to direct countries to implement reforms of the basic fundamental values on which the EU rests, which it is necessary to meet before joining the EU so that they are fully prepared to play their role when they become fully members of the Union (Tilev, 2020).

Such an approach has been further elaborated in the EU Enlargement Strategy and the Strategy for a credible enlargement perspective for and enhanced EU engagement with the Western Balkans, opened the door for Western Balkans countries, but introduce the pretty vague set of criteria for the evaluation of achievements made in order to strengthen the Rule of Law and to promote regional cooperation and stability. (Kolaković-Bojović & Tilovska-Kechegi, 2019)

The initial step in introducing “the Fundamentals first” approach could be found in establishing the transitional measures (Interim Benchmarks) in chapters 23 and 24 in Serbia and Montenegro, as a mechanism that will further contribute to the quality of reforms and their monitoring.⁵ At the same stage, the EU also introduced the rule that chapters 23 and 24 have to be open at the beginning of the negotiation process, but also closed at the end of it. (Kolaković-Bojović & Petković, 2020) Therefore, even before introducing the enhanced methodology in 2020, the European Union sets these transitional measures that need to be fulfilled prior to define the closing benchmarks, but also opened the door for the continuous monitoring of the rule of law reforms in chapters 23 and 24. With this step, the EU once again underlined the importance of these two chapters. Therefore, the concept of the new methodology which established Cluster 1, was highly logical and expected additional effort of EU to ensure more effective mechanisms to foster, implement and monitor reform processes associated these, vital parts of a state functioning. (Kolaković-Bojović, 2017)

Unlike the previous waves of enlargement (2004–2007), where the political criteria were considered fulfilled before the start of the accession negotiations, partially in the case of Croatia (New approach), more emphasized in the case of Montenegro and Serbia, in the

⁵ See more: Matić Bošković, Marina and Kolaković-Bojović, Milica (2022) *New Approach to the EU Enlargement Process - Whether COVID-19 Affected Chapter 23 Requirements?* International Scientific Conference “The recovery of the EU and strengthening the ability to respond to new challenges – legal and economic aspects“ in Osijek, 9-10 June 2022allenges - Legal and Economic Aspects, 6. pp. 330-350. ISSN 2459-9425

new methodology, the political criteria are now inserted in the Fundamentals cluster and in the Rule of Law section and they are part of the continuous political monitoring by the member states during the negotiations, from the very beginning to the closing of the negotiations. Therefore, the Rule of Law during the negotiations should not be seen only through the prism of the transposition of European law in the section of chapters 23 and 24, but much more broadly, especially in the section of effective implementation of the legislation.

Finally, in terms of the procedural steps to be followed, once all clusters have been closed, the Commission recommends a candidate country for membership and the country signs the Accession Treaty. The date for accession is predicted in the Treaty, and by signing it, the state becomes an 'acceding country'. The treaty needs to be ratified by all 27 member states and the European Parliament where the absolute majority is needed.

2.2.1. Increased importance and/or valuation of combating corruption

One of the specificities of this recognition is that fundamental reforms are needed, EC is reflected through the completely new position of combating corruption as a prerequisite for the progress in accession negotiations. Namely, according to the methodology, this aspect of reform process has been granted a special status of the horizontal issue, crossing all the negotiation chapters/clusters. How it happens and where are the legal grounds and practical reasons to do that.

The legal framework for combating corruption in the European Union is based on Article 83 of the Treaty on the Functioning of the European Union, which establishes the competence of the European Parliament and the Council of the EU to adopt directives to establish minimum rules for defining and sanctioning corruption. (Cekov, 2022) So far, a legislative activity of EU has remained underdeveloped.⁶

However, this does not prevent the EC from efficient monitoring of reform progress in the candidate countries. (Kolaković-Bojović, 2019) Contrary, according to the new methodology, the Commission decided to, in addition the existing mechanisms to follow

⁶ The standards, on the other hand, in terms of the fight against corruption within the European Union, are mainly based on documents of international organizations, because in this area of the fight against corruption, it has least developed its own standards. The documents on which the anti-corruption standards are based are the following: the UN Convention against corruption, the Criminal Law Convention against Corruption, and the Civil Law Convention against Corruption, adopted by the Council of Europe in 1999, the OECD Convention against Bribery of Senior Public Officials in International Business Transactions of 1997, Council of Europe Recommendations on Codes of conduct for public officials, the UN Convention on Combating Transborder Organized Crime in 2000 and others. Of the documents that have been adopted and adopted by the European Union, it is worth mentioning the decision of the Commission on establishing an EU mechanism for periodic reporting on corruption from June 6, 2011. (Cekov, 2022)

legislative, institutional and developments in terms of the track record achieved under negotiation chapters 23 and 24, introduce this issue to the agendas for bilateral screening of almost all the negotiation chapters.

The very purpose of such decision is to ensure comprehensive and horizontal screening of anti-corruptive mechanisms in various fields of the state functioning such as education, science, health care, public administration, etc. This approach allows the Commission a comprehensive insight into all measures implemented by the candidate country to suppress corruption.

2.2.2.A more predictable process

How could this dynamism result in **a more predictable process**? Namely, has promised to provide the candidate countries with greater clarity on what the EU expects of enlargement countries at the different stages of the process. To what extent this has been implemented in practice cannot be unequivocally confirmed, since there are a lot of procedural issues yet to be clarified.

One of important aspect of this principle is also to allow a state to benefit from achieving a tangible reform progress thorough the accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes, which can trigger additional efforts of the decision makers to achieve progress, but also to make the benefits of the EU accession process to the citizens.

However, the Commission assumed that a motivation and benefits cannot be the only way to make the progress more predictable, so it established, as the other side of the same coin, sanctioning any serious or prolonged stagnation or backsliding in reform implementation and meeting the requirements of accession process. What kind of sanctions are applicable here? It mostly depends on the challenges identified.

Therefore, negotiations could be put on hold in certain areas, but with no precisely determined duration of such break. Furthermore, in cases of a serious backsliding, there is a possibility to, suspended overall. This means also that already closed chapters could be re-opened, but also include the possibility to suspend/suspend/lose other benefits of closer integration. The repercussions in terms of the EU funding are also possible. (Balkanews, 2020)

2.3. A political engagement at the highest level

This aspect of the new methodology involves double perspective of the political level involvement: on the side of the candidate countries, but also in terms of the role of the Member States.

The European Commission has well recognized that a number of reform processes in western Balkans highly depends on the political commitment, regional cooperation and

good neighbour relationships. With this in mind, the Commission proposed to increase the opportunities for **high level political and policy dialogue**, through regular EU-Western Balkans summits and intensified ministerial contacts.

In addition to this, the Commission decided to involve the **Member States more systematically in monitoring** and reviewing the process. “All bodies under Stabilisation and Association Agreement will focus much more on the key political issues and reforms, while Inter-Governmental Conferences will provide stronger political steering for the negotiations.” (European Commission, 2020) In practice, the Member States have got the opportunity to actively engage in screening process through the direct interaction with the candidate countries’ delegations. This also means a more proactive role in monitoring the reform processes and a progress itself.

3. CONCLUSION

It is clear that the new methodology will require additional efforts from the candidate countries to achieve the necessary reform progress. The changed role of fundamental reforms, paired with the necessity to work simultaneously in different fields/chapters grouped in the same cluster and the fact that negotiations of several chapters can take place simultaneously, may even makes this journey looks impossible to finish with success. Finally, what needs to be beard in mind all the time is that the Copenhagen Criteria also include a fourth consideration, namely that the EU must have the capacity to absorb a new member state. (European Commission, 2023)With such EU accession perspective, the progress made so far, existing challenges and the weak capacities, what could be actual achievements of North Macedonia and whether these accomplishments could be driven by internal mechanisms, regardless EU accession processes? Namely, is it possible to keep the reform pace without visible progress in accession processes, especially taking into account delays of almost two decades so far, that resulted in obvious disappointment of professionals in public administration, but also of citizens in general? It seems that answers to these questions are strongly dependent from several factors:

- A clear focus of the EU on the real reform achievements compared strictly against EU acquis and relevant standards, isolated from bilateral political issues.
- Ensuring the state to benefit from achieving a tangible reform progress thorough the accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes, which can trigger additional efforts of the decision makers to achieve progress, but also to make the benefits of the EU accession process to the citizens.
- Implementation of the retention policies within public administration paired with the active engagement of academic/research community and NGO, to accumulate necessary expertise.

- A strong support of the EU to the regional initiatives aimed at exchange/transfer of knowledge among WBs candidate countries to help them to benefit from lessons learned in other countries, rather than to repeat/duplicate/multiply reform challenges, actions, and processes in the region.
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ПРИСТУПНИ ПРЕГОВОРИ СЕВЕРНЕ МАКЕДОНИЈЕ СА ЕУ: ИЗМЕЂУ НОВЕ МЕТОДОЛОГИЈЕ И СТАРИХ ИЗАЗОВА

Апстракт

Седамнаест година дуга борба Северне Македоније да отвори приступне преговоре са ЕУ, коначно је резултирала Међувладином конференцијом одржаном 19. јула 2022. За разлику од било које друге земље кандидата, да би направила процедурални напредак на свом путу, земља мора промени Устав, што је последица билатералног споразума са Бугарском, заснованог на предлогу француског председника Макрона. У ишчекивању исхода уставних амандмана, Северна Македонија је започела процес скрининга како би добила јасан став Европске комисије о тренутном стању домаћег законодавства, институционалним и административним капацитетима, као и праксама, све у супротности са релевантним правним тековинама ЕУ и важећим стандардима. На свом приступном путу, Северна Македонија је у обавези да примењује „унапређену методологију“ приступања ЕУ из 2020. године, која доноси низ новина у поређењу са „старом методологијом“ примењеном на земље кандидате које су прошле кроз почетне кораке приступања пре деценију, а у међувремену прихватиле да се прилагоде новим правилима преговора. Анализирајући све аспекте нове, тј. унапређене методологије преговора, а нарочито специфичну улогу Кластера 1, аутори у овом раду сагледавају и неопходне предуслове које је потребно испунити да би Северна Македонија одржала захтеван темпо реформи на којим инсистира нова методологија

Кључне речи: Европска унија, приступни преговори, унапређена методологија, Северна Македонија, Кластер 1.