

**Background Paper for the Regional Workshop of the Network
of EU Integration Offices in South East Europe, 23-25 April 2014,
Bečići, Montenegro**

Coordination Requirements and Institutional Set-up in the EU Accession Process and Negotiations

Imprint

Published by the

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Registered offices Bonn and Eschborn, Germany

Alexandra Hilbig
GIZ - Open Regional Funds for SEE -
Promotion of EU Integration

Zmaja od Bosne 7-7a
Importanne Centar IV/O3
T +387 33 957 500
F + 387 33 957 501
GIZ-BosnienHerzegowina@giz.de
www.giz.de/regional-funds-southeasteurope

As at

May, 2014

Printed by

TDP, Sarajevo

Authors

Milena Lazarević
Andrej Engelman
Malinka Ristevska-Jordanova
Jovana Marović



GIZ is responsible for the content of this publication.

On behalf of the
German Federal Ministry for Economic Cooperation and Development (BMZ)

Table of Contents

Foreword	5
I. Introduction	6
II. Requirements for Institutional set-up and Coordination in the Overall EU Integration Process.....	9
II.1 Specificity of the Western Balkans Enlargement	9
⇒ Negotiations have changed.	9
⇒ The context is specific.....	9
⇒ The content has evolved.....	10
⇒ The method has changed.....	10
II.2 Government Structures and Institutional Coordination in the Association Process.....	10
II.2.1 Functions related to EU Affairs in the accession countries	10
⇒ Ministry of Foreign Affairs as main coordinating body – advantages and disadvantages.....	12
⇒ Central (Centre of Government) Coordinating Body – advantages and disadvantages	13
⇒ Ministry for European Affairs as main coordinating body – advantages and disadvantages.....	14
II.2.2 From pre-accession to negotiations	15
II.3 Case Study 1 – ‘Croatia’s Institutional Setup for EU Accession Negotiations and Lessons Learnt’, by Gordana Vidovic Mesarek.....	17
II.4 Case Study 2 – ‘High Level Accession Dialogue as an Instrument for Pre-Accession’, by Ana Angelovska	22
III. Institutional Set-up and Coordination Requirements for Accession Negotiations	28
III. 1 Main principles in conceptualisation of the negotiating structures	28
The main responsibility is on the line ministries.....	29
III. 2 Main structures needed for running accession negotiations	31
III.2.1 The Negotiating Groups.....	31
III.2.2 The Core Negotiating Team.....	32
III.2.3 Collegium for EU Affairs	34
III.2.4 Mission to the EU in Brussels.....	34
III. 3 Additional recommendations.....	35
III. 4 Case Study 3 – ‘The Croatian Experience in the Accession Negotiations with the EU – Chapters 23 and 24’, by Kristijan Turkalj	36
III.5 Case Study 4 – ‘Serbia and EU Accession Negotiations: The New Coordination Structure’, by Srdjan Majstorovic	44
IV. Policy Making and Coordination and Link to EU Accession	50
V. Involvement of Other Stakeholders.....	53
V.1 Involvement of the Civil Society.....	53
V.1.1 Participation through standard models and channels of communication.....	54
V.1.2 Direct participation within the negotiation structure	54
V.1.3 Joint action and CSOs’ monitoring	56
V.1.4 Requirements of transparency.....	56
V.2 Parliamentary involvement in the EU accession process.....	57
V.3 Case Study 5 – ‘The Role of Civil Society in the Negotiating Process of Montenegro with the European Union’, by Ana Novaković.....	59
VI. Conclusion	63

VII. Authors' Biographies	64
Milena Lazarevic	64
Andrej Engelman	64
Malinka Ristevska-Jordanova	64
Jovana Marović.....	64
VIII. Contributor's Biographies.....	65
Gordana Vidovic Mesarek.....	65
Ana Angelovska.....	65
Kristian Turkalj	65
Srđan Majstorović.....	65
Ana Novakovic	66
IX. Bibliography.....	67

List of Abbreviations

CEE	Central and Eastern Europe
CNT	Core Negotiating Team
CSO	Civil society organisation
EC	European Commission
EU	European Union
IGC	Inter-governmental Conference
MFA	Ministry of Foreign Affairs
NGO	Non-governmental organisation
NPAA	National Programme for Adoption of the Acquis
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process

Foreword

This background paper has been distributed during the first regional workshop on “*Coordination requirements and institutional set-up in the EU accession process and EU accession negotiations*” in April 2014, as part of the activities of the regional network of EU integration offices in SEE supported by the German funded Open Regional Funds for SEE – Promotion of EU Integration.

This network aims at providing a platform for exchange between institutions that are strongly involved in the coordination and steering of EU accession, as well as EU accession negotiation processes of the countries in the region. The countries of SEE are given a possibility to learn from neighbouring countries and use their positive and educational experiences in order to draw conclusions for their own procedures at the national level. At the same time, it supports the further development of a cooperation culture in the region. The topic of coordination requirements is certainly of high importance and interest for all the countries of the region regardless of the differences in pace or current state of play in the accession process.

I hope this paper will find interested readers and serve as a reference to an engaged audience. Further I would like to thank the authors for their valuable contributions and their readiness in coming forth and sharing their views.

Sarajevo, 30th of May 2014

Alexandra Hilbig

ORF Manager

I. Introduction

The EU accession process imposes on the national administration of the acceding country a plethora of complex reform processes which require strong coordination among ministries and other relevant institutions. Designing new policies harmonised with EU policies, transposition of the EU body of law into national legal systems, conducting the political dialogue with the EU, programming and implementation of the EU pre-accession assistance, preparation and conducting accession negotiations are all distinct processes which need to be carried out by the administration and which require coordination of various institutions within the government as well as consultation with various external stakeholders. Additionally, horizontal reforms need to be implemented in order to create the overall capacity of the government to carry out the accession process and prepare the country to uphold the obligations stemming from EU membership. Therefore, the “development of new institutions, structures and procedures for the process of European integration takes place under conditions of institutional turbulence,” as the process of (re)constructing the overall state institutions at all levels needs to proceed in parallel.¹

The discussion on institutional coordination and administrative capacity for accession was vivid during the Fifth Enlargement, when “an enormous development in sophisticated EU coordination mechanisms which often included levels of coordination and political attention unseen in the ‘older’ member states” was witnessed.² Institutional coordination for accession in the Western Balkans has drawn some attention,³ but far from the one in the previous enlargement.

Institutional arrangements for EU accession are governed by the principle of institutional autonomy – each country can choose its institutional arrangements, depending on its political and administrative culture, as well as political preferences. However, an effective co-ordination system is a necessity, and, as practice in the Western Balkans shows, the models now applied by the Western Balkans countries are based on those explored during the CEE enlargement. In regards to the structures for coordination of the negotiations process, certain principles and procedures stipulated in the Negotiating Framework need to be respected.⁴

¹ Verheijen, Tony. “The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs.” in: Sigma Paper No. 23, OECD, 1998, p.17. Available at: <http://www.oecd-ilibrary.org/docserver/download/5kml6143zd8p.pdf?expires=1399622599&id=id&accname=guest&checksum=DB3C8DE563BE43C82F794D13D8450209>

² Dimitrova, Antoaneta, and Klaudijus Maniokas. “Linking Co-ordination of European Affairs and European Policy: New Member States in the Decision-Making Process of the EU”, Paper presented at the NISPAcee Annual Conference, Vilnius 2004. Available at: http://www.researchgate.net/publication/228953717_Linking_Co-ordination_of_European_Affairs_and_European_Policy_New_Member_States_in_the_Decision-Making_Process_of_the_EU. Dimitrova, Antoaneta, and Dimiter Toshkov. “The Dynamics of Domestic Co-ordination of EU Policy in the New and Candidate Member-States.” West European Politics Vol. 30, No. 5, 2007, pp. 961-986. Available at: <http://www.tandfonline.com/doi/full/10.1080/01402380701617381#preview>

³ Mayhew, Alan. “The Preparation of Countries in South East Europe for Integration into the European Union”, Sigma, OECD, 2005. Available at: <http://www.sigmaweb.org/publicationsdocuments/37211600.pdf>
Mayhew, Alan. “Enlargement of the European Union: an Analysis of the Negotiations for Countries of the Western Balkans.”, in: Sigma Paper No. 37, OECD, 2007. Available at: [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/SIGMA\(2007\)1&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/SIGMA(2007)1&docLanguage=En)

⁴ The negotiating framework establishes the guidelines and principles for the accession negotiations with each candidate country. The European Commission draws up a draft negotiating framework, the EU member states adopt it and the Council Presidency presents it at the start of the accession negotiations. See: European Commission: Enlargement, <http://ec.europa.eu/enlargement/policy/glossary/terms/negotiating-framework_en.htm>

The EU accession process is de-facto composed of two parallel processes:

- ⇒ **association process** (based on the Stabilisation and Association Agreement) the main objective of which is to provide a framework for the process of harmonisation of national legislation of the candidate country with the *acquis* as well as for its implementation;
- ⇒ **negotiation process** (based on intergovernmental conference) in which the candidate country has to reach an agreement with the EU Member States about the terms of its accession to the EU. The process is currently organised under 35 negotiating chapters.

The two processes are closely interlinked and with the EU accession negotiations advancing nearly merge into a single process. However, during the association process the candidate country is dealing with the complete *acquis*, its harmonisation and implementation within national legal order till the day of the actual membership in the EU. In the negotiation process - which ends with the completion of negotiations approximately two years before the actual membership in the EU- the candidate country and its structures are dealing predominantly “only” with specific problems in the transposition and implementation of the *acquis*. Additionally, the EU uses, inter alia, the institutional structures from the association process (predominantly the SAA committee and SAA sub-committees) for checking the fulfilment of the obligations and benchmarks from the negotiation process.

It was recognised early in the context of the CEE enlargement that “the quality of the institutions, structures and procedures created will influence the timetable for membership, taking into consideration the conditions set out in [the Commission’s] avis, and the conditions under which membership will be granted, i.e. the extent to which the accession treaty will reflect the real economic and political conditions in the country.”⁵

It is in light of these introductory remarks that this paper addresses the institutional and co-ordination requirements for the overall EU integration process – including both the association process and accession negotiations. Its purpose is to tackle the key conceptual aspects related to how governments organise the structures for conducting and coordinating their work in the process of pursuing EU membership. Chapter two starts with some remarks on the specificities of Western Balkan enlargement (compared mainly to the CEE enlargement), proceeding with the discussion of the requirements and models of organising the conduct and coordination of the association process. The third chapter will then focus on the specific requirements and models of organising the administration for EU accession negotiations, as the most demanding part of the overall accession process. The key word in these processes seems to be “coordination”, which is why the fourth chapter of this paper sheds light on the additional policy coordination challenges which lie in the background of coordination of the EU integration process itself. Finally, the fifth chapter addresses some important issues with regards to the involvement of two important “external” stakeholders in the EU association and accession negotiations process – the civil society and the national parliaments. The methodological approach in this paper relies upon the combination of archive research (based on the existing literature in the area) and personal expertise and experience of the authors, who have been involved in the different aspects of the accession process, primarily in Slovenia, Serbia, Macedonia and Montenegro (but also Bosnia and Herzegovina and Croatia). Some findings of field research conducted for earlier studies of the members of the Think for Europe Network

⁵ Verheijen, Tony. “The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs.” in: Sigma Paper No. 23, OECD, 1998, p.17.

of EU Policy Think Tanks and Research Centres in South Eastern Europe (TEN) – the European Policy Centre (CEP) based in Belgrade, the European Policy Institute (EPI) based in Skopje and Institute Alternative (IA) based in Podgorica – were also used as a basis for statements made in the paper.⁶

⁶For more information about the Think for Europe Network and its member organisations, please visit: <<http://ten.europeanpolicy.org/>>

II. Requirements for Institutional set-up and Coordination in the Overall EU Integration Process

II.1 Specificity of the Western Balkans Enlargement

Before commencing the discussion on EU accession coordination structures and institutional requirements, it is worth noting that the pre-accession/accession process has substantially changed after the CEE enlargement, which does have an impact on the institutional arrangements for EU integration. These changes concern several elements:

⇒ Negotiations have changed.

It has been said before, and it is even more valid today, that EU accession negotiations are not negotiations at all. They are rather seen as “entrance examinations”.⁷ This seems to apply to the current accessions even more than before. The new entrants in the negotiation process face more challenges than any before them. Even if equipped with all the knowledge of accession negotiations attained through desk research and exchange of experience with the new EU member states, the new negotiators need to adapt to the new way negotiations are done and to the new content of the negotiations, in a rather changed context.

⇒ The context is specific.

The Stabilisation and Association Process (SAP) brought specific issues to the forefront. Creation of new states, state building, good neighbourly relations and rule of law have not only been at the heart of the first phase of the SAP, but remain highly relevant deep into the accession process, long after launching membership negotiations. The stage between state building and EU accession, or more accurately, state building and EU accession in parallel, sheds new light on the enlargement process and gives specific political weight to the accession process. The impact of these essential features of the enlargement in the Western Balkans, or rather the countries of the former Yugoslavia and Albania (minus Slovenia), is sometimes overlooked.

The Enlargement Strategy of 2006 proclaimed the new principles of enlargement: consolidation of commitments, conditionality and communication (insert reference - http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/com_649_strategy_paper_en.pdf). Almost eight years since the publication of this Strategy, it can be stated that the new approach to conditionality was its centrepiece.

Perhaps the most essential feature of the Western Balkans enlargement is its dynamics – or rather the lack of it. At the first glance it might seem that this does not have impact on the institutional settings for EU accession, but on deeper inspection there appears to be a significant impact. The first impression might be that the length of the process gives the countries involved the convenience to experiment and change, according to political preferences. On the other hand, the length of the process does not change its substance, which implies deep reforms requiring full political commitment, minimum (or rather optimum) political consensus and strong administrative capacity. Thus, stable and strong institutional settings are a sine qua non for the accession process.

⁷ Nicolaidis, Phedon. “The Boundaries of the Negotiating Power of the Candidates for Membership of the European Union: Some Theoretical Considerations and Practical Implications.” EIPASCOPE : bulletin, Vol. 3, 1998, pp. 24-31.

⇒ The content has evolved.

In addition to the well-known postulate that the *acquis* is a “moving target”, the negotiations have substantially changed since political criteria entered the negotiations through the new chapter 23 Judiciary and Fundamental Rights.⁸

Chapter 23, being opened first and closed last, together with the other rule of law Chapter - Chapter 24 Justice Freedom and Security, keeps the rule of law at the centre of the accession process. This clearly has an impact on the institutional settings, as it brings to the forefront not only the core Governmental structures, but the judiciary and the law enforcement bodies.

Furthermore, in line with the Enlargement Strategy, the implementation of the *acquis* receives equal, if not more attention than transposition. Pure transposition does not suffice - implementation is carefully monitored.

⇒ The method has changed.

The context and the content implied a change in the method. The introduction of the benchmarking tool shifted the focus from the negotiation table to 'homework', i.e. implementation of benchmarks at home and providing evidence of such implementation. This approach further shifts the focus towards internal reforms, requiring from the institutions of the accession countries, above all, implementation and performance.

II.2 Government Structures and Institutional Coordination in the Association Process

All the countries from the region have had extensive preparations in their accession process and have drawn on the lessons learned, especially from the CEE enlargement. Due to the proximity and shared past, most countries of the region, especially those from former Yugoslavia, have followed advice and models from Slovenia, extensively benefitting from Slovenian expertise and sharing of experience as part of EU technical assistance. However, that does not mean that all the models applied by the pre-accession and accession countries of the Western Balkans copy the Slovenian accession institutional model.

II.2.1 Functions related to EU Affairs in the accession countries

Before reviewing the models for co-ordinating EU affairs and managing negotiations, the functions that these bodies need to perform in the pre-accession/accession period should briefly be recapitulated. Mainly, they can be summarised in the following:

- ⇒ Adoption of the *acquis*
- ⇒ Dialogue/negotiations
- ⇒ Programming and monitoring of EU assistance

The adoption of the *acquis* includes the programming of the adoption of the *acquis*, co-ordination of its implementation, monitoring and reporting. It is normally associated with the National Programme/Plan for Adoption of the *Acquis*/National Integration Programme (NPAA).

⁸ The purely political criteria, such as those addressed in Chapter 35 in the case of Serbia's negotiations, are not discussed here.

The launching of accession negotiations significantly changes the programming process. Screening puts the countries in accession negotiations in a much more favourable position than the others, as the EC is officially and fully engaged in the process. Countries that have not launched negotiations rely on the dialogue in the SAA structures and self-screening, which cannot compensate for the screening process.

Programming and monitoring of the implementation of EU assistance is embedded in the accession process, and it is almost a rule that the same institutions that are in charge of coordination of EU affairs in general are in charge of programming and monitoring EU aid.⁹ The differences mainly occur in the inter-ministerial consultation and coordination structures (working groups), which are in the case of EU assistance management, dictated more intensely by the EC's approach to programming (e.g. the sector-wide approach).

The dialogue with the EU institutions could be classified as a part of the function of the adoption of the *acquis*, but its role should rather be viewed as separate, as it is a key aspect of the accession process. Although dialogue occurs at different levels and institutions, the national Government structures remain the key institutions in charge of this dialogue, despite the growing role of national parliaments in the enlargement/accession process. For countries that have not launched accession negotiations, the structure of the SAP– the SA Committee, and its subcommittees, as well as the Parliamentary SA Committee – contains the main instruments for dialogue, while for accession countries the negotiating structures take over the primacy.

The specific inter-play between the “internal” and “external” functions in the accession process is one of the most subtle issues that determine the inter-institutional relations and balances related to EU affairs in pre-accession countries. The “internal” functions concern the “homework” that has to be done by the countries themselves, while the “external” functions refer to the dialogue with the EC and the Member States. To argue which of these aspects of the process is more important or prominent would be similar to answering the question of the chicken or the egg. It could be stated that in accession negotiations today, the internal function is more important, especially since the introduction of the benchmarking method, which has shifted the focus on to the homework. On the other hand, as the role of Member States in external policies of the EU is generally increasing, one might also argue that this is the prevailing aspect of the process. Whichever the position taken, these remain two sides of the same coin.

Basically, three models have been applied in the EU integration structures in the last two decades:

- a. Ministry of Foreign Affairs as the leading coordinating body
- b. Central (centre of government) coordinating structure
- c. Separate Ministry for EU Affairs.

Table 1 gives an overview of the structures for coordination of the EU integration process in the region.

⁹Although in the case of Serbia, until 2010 the institution in charge of coordinating the programming and implementation of EU pre-accession assistance was the Ministry of Finance, whereas the Serbian European Integration Office was in charge of coordinating the overall accession process.

Table 1: Overview of co-ordination structures in the countries of the Western Balkans

Country	Model		
	Separate Ministry	MFA	Central body
Albania	Ministry of European Affairs		
Bosnia and Herzegovina			European Integration Directorate
Kosovo	Ministry of European Affairs		
Macedonia			Secretariat for European Affairs
Montenegro		Ministry of Foreign Affairs and European Integration	
Serbia			European Integration Office

Some of the countries in the region have opted for one model and remained with it, others have made shifts. For example, Montenegro shifted from a coordinating role at central level to the central role of the Ministry of Foreign Affairs when the country intensified its EU integration process. Each of the models has certain advantages and disadvantages, which are discussed on the following pages. It is up to the national decision makers to weigh the different benefits and costs and find the best suited solutions for their national context.

⇒ Ministry of Foreign Affairs as main coordinating body – advantages and disadvantages

The key advantage of this model is the unification of both aspects of the accession process – the ‘internal’ and the ‘external’ functions in the one institution. The risk of doubling up in EU policy is avoided to the maximum extent and functions are concentrated. Consequently, the model has the potential to ensure “speaking with one voice” before the EU institutions and Member States. Furthermore, this model is rational – it does not require setting up new institutions, since the EU coordination function is integrated within the MFA. Taking into account that all countries concerned are relatively small and with limited resources, this certainly makes a good argument for such an arrangement. Looking into the political support, the model where the MFA has the leading role seems favourable, since it is assumed that the Minister of Foreign Affairs would, by rule, have a strong political position and close cooperation with the Prime Minister. Furthermore, this is the model that is most frequently applied by Member States themselves in the co-ordination of EU affairs, thus legitimating and reinforcing the efficacy of this model.

The disadvantages of this model are that the primary function of a foreign affairs ministry is the country’s representation abroad, and not internal reform, while the core of the accession process is concerns internal policy and internal reform. Therefore, this model by rule, favours the external aspect of the EU coordination process. The capacities of the MFA are primarily related to its diplomatic function and it usually does not have the scope to co-ordinate demanding internal reform processes. Consequently, for implementation and performance it depends to a high extent on the other ministries and the central coordinating role of the Government as a whole. In a situation when the accession process, and especially accession negotiations enter

deeper and deeper into implementation of reforms and with the pertaining focus on the rule of law, the MFA might not be the most capable body to carry out the coordinating role. In addition, the MFA is not the best positioned to involve stakeholders in the process and ensure their participation. Thus, it seems indispensable that this model is supplemented and supported by a strong coordinating function within the Government, closely co-operating with the Foreign Affairs Ministry.

Currently, from the countries in the region, Montenegro applies this model, following the Croatian example

⇒ Central (Centre of Government) Coordinating Body – advantages and disadvantages

This is the most frequently applied model by accession countries. While the model is clear in terms of the position of the coordinating function – at the central level of the Government – accession countries have used different variants: positioning the coordinating function within the Cabinet's office, or in some cases creating a specific body, such as a Secretariat, an internal Office or a Directorate. The latter is the model applied by the countries in the region, mainly following the Slovenian model. However, the main difference within this model is the position of the head of the coordinating body. In some countries it is the political level, in others – it is headed by a professional appointed by the Government. The heads of the Serbian Office for EU Integration and the Directorate of European Affairs of Bosnia and Herzegovina are appointed by the Government. However, while in Serbia the work of the Office is under the auspices of a minister (currently Minister for European Affairs, though in the past it used to be the Deputy Prime Minister), this is not the case in Bosnia and Herzegovina. The Head of the Secretariat for European Affairs in the Republic of Macedonia is a Deputy Prime Minister.

The main advantage of the model of a central coordinating body is that it enables the development of administrative capacity for EU affairs, while ensuring a strong position at the central level of Government. It is much better situated for coordination of policies, which is essential for coordination of EU affairs. The body enjoys specific relations with all ministries and in a way specialises its coordinating function, unifying all the functions related to the EU integration process: dialogue/negotiations, adoption of the *acquis* and EU assistance. Furthermore, it is well positioned above the ministries to be able to impose and monitor performance.

The position and strength of this model is directly linked to the political support it enjoys. Consequently, this model can only effectively carry out its function if it enjoys full support by the Government i.e. the Prime Minister. While this can be its primary strength, it is at the same time its main vulnerability. Its role can be easily relegated if the head of the institution does not enjoy political support or is not a politically strong figure. Another risk is the overlapping of coordinating functions with other central government bodies (above all the General Secretariat of the Government). Furthermore, potential rivalry with the MFA related to EU affairs and the ensuing potential dissonance in communication with the EC (as opposed to speaking “with one voice”) is a potential disadvantage

Finally, as a technical secretariat, the central coordinating body does not have policy making functions that the ministries enjoy, which can represent a limitation in circumstances when abundant EU driven policy decisions need to be taken. It can only carry out analytical and technical tasks as a basis for policy proposals by its political head (be it the Prime Minister, a Deputy-Prime Minister or an EU Integration Minister). The key to the effectiveness and speed with which they will be implemented depends exclusively on the strength of the relationship

between the head of the body and the political head. At the same time, this limitation in itself can be viewed as positive as it limits the possibility of the coordinating body to “take over” the policy making functions which need to be carried out and improved in the line ministries in the course of the EU accession process.

⇒ Ministry for European Affairs as main coordinating body – advantages and disadvantages

This option is the one most rarely used by accession countries. At the beginning of the accession process Croatia opted for a separate ministry, but later shifted the coordinating role to the Ministry of Foreign (and European) Affairs. In the region, Albania and Kosovo currently apply this model.

The main advantage of establishing a specific ministry to act as a coordinator in the EU accession process is the creation of a “pool of excellence” with a relative institutional autonomy. By default, it implies allocation of human and budgetary resources that empower the Minister for European Affairs and are expected to ensure adequate administrative support to the coordinating function. Unlike the MFA which inherits the structures and human resources focused mainly on the diplomatic function, a newly created Ministry for European Affairs can tailor the functions to the needs of the accession process and recruit adequate human resources.

The disadvantages of the model derive from the fact that the EU coordinating role is not a “classical” portfolio with the ‘normal’ functions of a ministry. Furthermore, the Ministry for European Affairs is one of the ministries at an equal footing with the others, so it might be difficult to impose the tasks deriving from the EU accession process on the other ministries. This model might be the most susceptible to political power – if the minister has a strong political position, the coordinating function would be viable and more effective; if not, it is at risk.

Table 2: Advantages and disadvantages of models for co-ordination of EU affairs in the Western Balkans

Model	Advantages	Disadvantages
Ministry of Foreign Affairs	<p>A political head (minister) with presumably guaranteed political power</p> <p>Speaking with one voice</p> <p>Rationalisation of resources</p>	<p>Predominance of the ‘external’ aspects of the process</p> <p>Challenges to the coordinating role for internal reform</p> <p>Dependence on the central Government</p>
Central coordinating body	<p>Strong central position</p> <p>“Pool of excellence”</p> <p>Specialisation in coordinating functions</p> <p>Unified EU-related functions</p> <p>Ministries forced to improve policy making capacities</p>	<p>Dependence on political strength and support</p> <p>Overlapping of the coordinating functions with General Secretariat of the Government</p> <p>Rivalry with Foreign Ministry</p> <p>Limited policy making function</p>
Ministry of European Affairs	<p>Political head (minister) exclusively dealing with EU affairs</p> <p>Institutional and functional autonomy</p> <p>Creating a “pool of excellence”</p>	<p>EU affairs not a classical portfolio of a ministry</p> <p>Equal footing with other ministries</p> <p>Dependence on political strength</p>

It is evident that each model has specific advantages and disadvantages. The awareness of the strong and weak sides of each model gives decision-makers an opportunity to alleviate the weaknesses and employ the potential of the strong sides of each model.

Regardless of the model applied, the essential requirements of the coordinating function of the Government related to EU affairs remain:

- ⇒ Firm political commitment
- ⇒ Efficient mechanisms for programming and monitoring of reform
- ⇒ Speaking “with one voice”

An efficient mechanism for programming and monitoring of reform includes both the political and the administrative level. Stable and professional administrative structures remain a key prerequisite for an efficient accession process. While it is of the utmost importance that the administrative structures in charge of EU accession enjoy political support, it is indispensable that they are free of undue political interference, as the accession process requires high level of professionalism and specialisation.

II.2.2 From pre-accession to negotiations

Experience from the last and the current enlargement shows that the launching of negotiations significantly changes the focus of the accession process. Negotiations tend to absorb all

the other aspects of the process and to dominate the EU agenda. Thus, the negotiating structures come to the forefront of the process.

The fact is that the existing structures that most of the countries have established before launching negotiations serve as a solid base for the negotiating structure. This primarily refers to the per chapter working groups of the NPAA, which remain active during negotiations and even after membership is achieved. Additionally, the dialogue with the EU institutions within the SAA structures is a good preparation for negotiations. However, the essential difference is that these structures support the Agreement which is about externalisation of a part of the acquis. Screening shifts the logic of the approximation process and sets the final goal – the whole acquis as the target. It is very difficult to keep the momentum of reform and a high level of enthusiasm within the administration if the status quo in the EU accession process prevails for a long time. The lack of progress in the accession process also poses a higher risk for politicisation of the administration and losing the resources that have already been created.

Other specific EU bodies that are usually created in the early phase of the process – councils, committees, etc.- which are mainly established to include different branches of Government and stakeholders, lose their significance when the accession process progresses. The reason for this is that the process is channelled to the bodies that are competent and responsible for a certain EU policy according to the national institutional setting. This does not mean that stakeholders should not be – or are not included – in the process, but rather that they should be involved in a structured manner in all the phases and aspects of the accession process. In addition, the involvement of stakeholders cannot be exclusively linked to the issues related to the accession process, but rather become an incremental part of policy-making. On the other hand, the requirements of the accession process, especially an effective regulatory impact assessment, might have a positive impact on the involvement of stakeholders in the policy-making process in general.

Other specific EU-related structures created within ministries (sometimes established within the international cooperation departments or as separate departments) should also briefly be discussed. They usually serve as contact points for EU related affairs. They are certainly an added value in the coordinating mechanism, serving as an EU coordinative task-force within the ministry, a link with the coordinating body and sometimes with specific roles for programming and monitoring EU assistance. However, it is again important to ensure the right balance. These units should not take over the 'regular' role of the ministerial units in charge of certain EU policies, as they are the ones which have the responsibility for a certain policy area, in which a relevant EU policy has to be incorporated. In addition, the risk of overlapping of the coordinating functions with the strategic planning and policy-coordination units in ministries (which are also created as a part of the public administration reform process as a requirement of EU accession) is imminent. Often, the EU accession requirements result in mushrooming of different administrative units, posing new risks for effectiveness of the coordination mechanisms, in a situation when financial and administrative resources are not exactly abundant. In these cases, common sense rather than blind copy-paste of many existing models might be more productive.

Lastly, the role of independent and regulatory bodies should be mentioned. The acquis requires a number of independent and regulatory bodies to be set up and to effectively function. This implies the introduction of a new culture of governance. Thus, not only legal prerequisites, but a functioning relationship of the branches of government with these bodies is essential. The involvement and specific role that independent and regulatory bodies have in the dialogue

with the EU institutions and in the national coordinating mechanism is essential in the accession process and in a way may serve as a catalyst for the sometimes strenuous relationship between the government and the independent bodies.

II.3 Case Study 1 – ‘Croatia’s Institutional Setup for EU Accession Negotiations and Lessons Learnt’, by Gordana Vidovic Mesarek

Introduction and Background

The intensification of the relations between Croatia and the European Union towards the end of 1999 and particularly from the beginning of 2000 led to the signing of the Stabilisation and Association Agreement (SAA) on 29 October 2001. Croatia was the second country to sign a Stabilisation and Association Agreement (SAA) with the EU and that agreement represented the first formal contractual step in institutionalising the relationship of Croatia with the EU. Even before that in 1998, the **Government Office for European Integration** was established as the first coordinative body for European integration. In the year 2000 the **Ministry for European Integration** was established.

Following Croatia’s application for membership in the European Union on 21 February 2003 in Athens, the Council of the EU asked the Commission to prepare an opinion on Croatia’s application bid. Based on a positive opinion by the European Commission, the European Council granted Croatia the status of candidate country for membership.

In December 2004, the European Council set the 17th of March 2005 as the starting date for negotiations, provided full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is achieved. In the absence of a confirmation of full cooperation, the starting date for opening negotiations was postponed. In April 2005 the **Negotiating Framework** was adopted so that negotiations could start when full cooperation with the ICTY was achieved. The following bodies were established: State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union, Coordinating Committee for the Accession of the Republic of Croatia to the European Union, Negotiating Team for the Accession of the Republic of Croatia to the European Union, Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*, Office of the Chief Negotiator and the Secretariat of the Negotiating Team. The Croatian Parliament established the National Committee competent for monitoring the negotiations for Croatia’s accession to the European Union. Parallel to this, in February 2005 the Ministry for European Integration and the Ministry of Foreign Affairs were merged into the **Ministry of Foreign Affairs and European Integration**.

After a positive report by the then ICTY Chief Prosecutor, the Council concluded that conditions for starting negotiations had been met and **negotiations were officially launched on 3 October 2005**.

Key features of the national system

The negotiating structure for the accession of the Republic of Croatia to the European Union was established by the Decision of the Government of the Republic of Croatia on the 7th of April 2005 (Official Gazette No 49/05). This Decision sets down the composition and competences of the bodies that form the structure for the negotiations and which are entitled to sign the Accession Treaty of the Republic of Croatia to the European Union. The Decision also

assigns the role of competent and co-competent bodies of individual negotiating chapters to state administrative bodies and other bodies or institutions.

The members of the bodies of the negotiating structure were appointed by the Decision on the Appointment of Members of the State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union, Members of the Negotiating Team for the Accession of the Republic of Croatia to the European Union, Heads of the Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*, Members of the Office of the Chief Negotiator, and Members of the Secretariat of the Negotiating Team (Official Gazette No 49/05 and 120/05).

The State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union conducted direct political talks and negotiations with the EU and was responsible for the success of the negotiations for all chapters. The State Delegation was responsible to the Government of the Republic of Croatia and acted pursuant to the negotiating guidelines which were adopted by the Government of the Republic of Croatia, as well as pursuant to the conclusions of the Coordinating Committee for the Accession of the Republic of Croatia to the European Union. The State Delegation was obliged to provide reports on the course of negotiations to the Government of the Republic of Croatia following each meeting of the bilateral Intergovernmental Conference between the Republic of Croatia and the EU Member States held at ministerial level. In addition, the State Delegation was obliged to provide special reports at the Government's request.

The Negotiating Team for the Accession of the Republic of Croatia to the European Union was responsible for negotiations at expert and technical levels with EU institutions and Member States on all negotiating chapters. It considered and adopted draft negotiating positions and submitted them to the Coordinating Committee on Accession of the Republic of Croatia to the European Union. The Negotiating Team also reported to the State Delegation and Government of the Republic of Croatia on the course of the negotiations. Members of the Negotiating Team were responsible for the coordination of particular clusters of negotiating chapters and provided expert support to the Chief Negotiator, participated in negotiations on the basis of instructions from the Chief Negotiator, coordinated the work of working groups for the preparation of negotiations on individual negotiating chapters, cooperated with EU coordinators in the state administration bodies, and were responsible for the drafting of the negotiating positions and related reports. It is important to stress that the members of the Negotiating Team were not only officials from the state administration but also experts outside the public administration, including the academia and the Croatian Chamber of Commerce.

The Working Groups for preparation of negotiations on the individual chapters of the *acquis communautaire* participated in the analytical review and assessment of the harmonization of the legislation of the Republic of Croatia with the *acquis communautaire* (screening) and in drawing up the draft proposals of negotiating positions, in dialogue with state administration bodies or other bodies designated as competent authorities for individual chapters of the *acquis communautaire* and the EU Coordinator of the relevant body. The Working Groups had heads who administered their work in agreement with the member of the Negotiating Team in charge of coordinating a specific negotiation chapter.

The Coordinating Committee on the Accession of the Republic of Croatia to the European Union was an interdepartmental working body of the Government of the Republic of Croatia that discussed all issues related to negotiations on the accession of the Republic of Croatia to the European Union. This body reviewed draft proposals of negotiating positions submitted by

the Negotiating Team before they were forwarded to the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union. It also reviewed proposals of negotiating positions before they were forwarded to the Government of the Republic of Croatia for adoption. The Coordinating Committee consisted of the Head of the State Delegation and the Minister of Foreign Affairs and European Integration as the Chairperson, the Vice Prime Ministers of the Government of the Republic of Croatia, all the ministers in the Government of the Republic of Croatia, as well as the Chief Negotiator as a member of the Coordinating Committee by virtue of office.

The Secretariat of the Negotiating Team assisted the Secretary of the Negotiating Team in his/her work and provided expert, technical and administrative assistance to the State Delegation, the Negotiating Team and the Working Groups for preparing negotiations on the individual chapters. The Secretariat coordinated the tasks and duties arising from the negotiations, prepared an analytical review and evaluation of the degree of harmonisation of legislation (screening) and made reports on the progress of legislative harmonisation, as well as on the progress of the negotiations. It also performed any other technical and administrative tasks related to the negotiations.

Ministry of Foreign Affairs and European Integration was the main coordinative state administration body for the European integration process. The Ministry was, in this respect, responsible for monitoring and coordinating the process of Croatia's accession negotiations with the EU; monitoring the fulfilment of the criteria for EU membership, coordinating the harmonization of the legal system of Croatia with the EU legal system; coordination of the preparation and monitoring the implementation of Croatia's National Program for EU Accession; coordination of the activities of government bodies for effective transposition and implementation of the *acquis*, and; coordination and monitoring of the implementation of the Stabilisation and Association Agreement. The Secretariat of the Negotiating Team was an organisational unit in the Ministry for Foreign Affairs and European Integration.

Line ministries were responsible for transposition of EU legal instruments in their competence and fulfilment of all other obligations deriving from the negotiation process. In every state administration body EU Coordinators at the level of officials were appointed. EU Coordinators in state administration bodies were responsible for the EU portfolio within this institution. Also EU directorates or departments were established which were focal point for communication with other department sectors and supporting the EU coordinator.

The competences of the **Croatian Parliament** in the process of Croatia's accession to the European Union included legal and political control over the integration process. Parliamentary scrutiny of the Government's activities is regulated by the Constitution of the Republic of Croatia and the Rules of Procedure of the Croatian Parliament, while the process of Croatia's accession to the European Union was regulated by other relevant documents such as: the Resolution on the Accession of the Republic of Croatia to the European Union (2002), the Croatian Parliamentary Parties' Joint Statement on the Beginning of Negotiations Between the Republic of Croatia and the European Union (2004), the Declaration on the Fundamental Principles of Negotiations on Full Membership of the Republic of Croatia in the European Union (2005), the Resolution on the Strategic Guidelines for Negotiations between the Republic of Croatia and the European Union (2005) and the Statement of the Croatian Parliament and the Government of the Republic of Croatia on Joint Actions in the Process of Negotiation for Membership of the European Union (2005). Every year the Sabor debates the Government's annual programme for EU accession, i.e. the programme for adoption and implementation of

the *acquis communautaire*, and adopts the plan on the harmonization of Croatian legislation with the *acquis*.

The Croatian Parliament participates in the process of Croatia's accession to the European Union through its working bodies. Monitoring the harmonization of the Croatian legal system with the *acquis* falls within the competence of the **European Integration Committee**. This standing Committee, established in 2000, is also in charge of monitoring the exercise of Croatia's rights and commitments deriving from international treaties pertaining to the Council of Europe and EU aid and cooperation programmes, as well as for cooperation and experience exchange with other bodies in the European integration processes.

Political control of accession negotiations used to be exercised by the **National Committee** that was in place from 2005 to 2011 as a special working body competent for monitoring the negotiations for Croatia's accession to the European Union. The National Committee consisted of representatives of all parliamentary political parties and its decisions were adopted by consensus. The Committee was also a forum for consultations and debate between parliamentary parties and the Government. Other functions of the Committee included providing relevant information on the EU and raising public awareness on European issues in Croatia.

Key advantages and disadvantages of the national system

One of the advantages of the Croatian Negotiation Framework was the wide negotiation approach. When establishing the negotiation structure, the principle that the EU project is not just a project of political elites, but the project of the entire society was applied. It was necessary to use the expertise and knowledge of professionals both within and outside the administration. Accordingly, the **Working Groups for preparation of negotiations on the individual chapters had a large number of members**: representatives of state administration bodies; independent expert institutions, professional organisations; academic community; representatives of the private sector (Croatian Chamber of Economy, Croatian Employers Association) and trade unions.

During the screening process (the analytical overview and evaluation of the degree of harmonisation of national legislation with the *acquis communautaire*) the principle of inclusion was applied and all members of the **Working Groups participated** in both screening phases. The reason for this was not only to participate later in the preparation of all necessary negotiation documents but also to get familiar with *acquis* requirements and preconditions for full implementation. The positive consequences of this approach certainly included transparency along the whole process and dissemination of information.

Another positive example of implementation of the national system is the establishment of the coordination system for monitoring the fulfilment of all obligations undertaken during the accession negotiations.

During the negotiation procedure, after agreement has been reached between the EU and the candidate country on the individual chapter of the negotiations, and once the set benchmarks have been met, the respective chapter is considered temporarily closed. It is important to stress that, in the period before concluding the Accession Treaty, if the candidate country does not meet the set benchmarks or obligations assumed under the respective chapter, negotiations for the chapter in question can be reopened. For this reason, it is necessary to have not only a negotiation structure responsible for the negotiations with EU institutions and adopt-

ing of negotiating positions but also a system that monitors the fulfilment of all obligations undertaken during the accession negotiations.

In this respect the Ministry of Foreign Affairs and European Integration was the main coordinative state administration body for the European integration process. As stated before, the Ministry was responsible for monitoring and coordinating the process of Croatia's accession negotiations with the EU; monitoring the fulfilment of the criteria for EU membership, coordinating the harmonization of the legal system of Croatia with the EU legal system; coordination of the preparation and monitoring the implementation of Croatia's National Program for EU Accession; coordination of the activities of government bodies for effective transposition and implementation of the *acquis*, and; coordination and monitoring of the implementation of the Stabilisation and Association Agreement.

Croatia's National Programme for EU Accession as a strategic document, including all reforms necessary for membership, was the central mechanism in the area of European integration from one year to another. It was an effective instrument in setting up priorities and the dynamics of the legal approximation process and fulfilment of all obligations deriving from the accession negotiations. Especially after opening of the negotiations, the National Programme for EU Accession comprised the screening results, obligations from the Progress Report and Accession Partnership, opening and closing benchmarks as well as all other negotiating results. Monitoring the implementation of the National Programme for EU Accession was the first item on the agenda of the Government permanent working bodies and Government session. This way the negotiation process had the support of the highest political level.

The benefit of this coordination mechanism is also that Croatia even as an EU member states prepares the Programme for transposition and implementation of the EU *acquis* and its implementation is also monitored at the Government permanent working bodies and Government session to prevent transposition deficit in transposing the *acquis* and initiating of infringement procedures.

Conclusions and Recommendations

The entire European integration process is a very demanding process combining political and legal aspects, which requires strategic planning and defining national interests and priorities. It is also a dynamic process which requires flexibility and often swift response to new challenges. Efficient coordination mechanisms have to be established that ensure cooperation with all interested partners (private sector, academic community, civil sector). A successful national coordination system requires organisational development and adaptation at all levels of central government.

In developing its national coordination system and the negotiation structure Croatia also considered good practices from countries of the 5th enlargement. However, an effective domestic coordination mechanism has to ensure optimal compliance with domestic objectives of the process. In this regard no unique model exists; good practices from other countries have to be considered but the national coordination system has to be based on the candidate country's own political system, administrative culture and institutional capacity.

II.4 Case Study 2 – ‘High Level Accession Dialogue as an Instrument for Pre-Accession’, by Ana Angelovska

Introduction

The Republic of Macedonia is in a specific situation compared to other countries of the Western Balkans (and especially in comparison to Montenegro and Serbia) having in mind that it has not started the accession negotiations despite 5 consecutive recommendations by the European Commission (EC). Therefore, for the moment the country is not in a position to further develop and upgrade its system according to the needs of the negotiations process and the formation of the negotiation structure,¹⁰ but rather to modify its system according to the specific development of relations between Macedonia and the EU.

The latest development of relations is the introduction of the High Level Accession Dialogue (HLAD), launched on 14 March 2012. As agreed by both parties the HLAD was not foreseen as a replacement for accession negotiations but it was intended to enhance the cooperation between the EC and the government on the reform agenda, under circumstances of recommended, but not yet opened, membership negotiations. Its aim was to support and inject new dynamism into the reform process and to boost the European perspective for the country. The HLAD focuses on five priority policy areas: freedom of expression, rule of law, public administration reform, electoral reform, and the economic criteria. The dialogue is co-chaired by the Macedonian Prime Minister and the EU Enlargement Commissioner. Until now, 4 sessions have been held, the last one on 9 April 2013. With the aim of meeting the objectives of HLAD, several Roadmaps have been developed and implemented so far. All the measures were specific, coupled with reasonable deadlines for implementation. Within the framework of the dialogue, the national authorities prepared themselves for establishing a more in-depth technical dialogue with the EC regarding chapter 23 – Judiciary and Fundamental Rights and chapter 24 – Justice, Freedom and Security. For that reason, a self-screening on the level of alignment of national legislation with EU legislation in these areas has been conducted.

For the coordination of the accession process under HLAD, no separate national system for coordination was established, but rather the existing one (established since 1997) was adapted.

Key features of the national system

Over the past years the Government has established fully operational institutional structures for the management, coordination and monitoring of the accession negotiation process.¹¹ When developing its institutional model of coordination, the Republic of Macedonia followed the examples of the countries having similar size and systems (mainly Slovenia, but also Estonia), where the coordination of the internal European integration processes has been done by a central governmental coordinative service, while the Ministry of foreign affairs was the central institution responsible for cooperation with EU institutions and member states. With the establishment of the Secretariat for European affairs within the Government, Macedonia chose the model of strengthened coordinative role, which is being used for coordination of the activities under HLAD as well. The key players and institutions in the accession negotiation process are:

¹⁰ National Platform for negotiations was adopted by the Government in 2007 and then modified following the first EC recommendation for opening of accession negotiations in 2009. The platform sets principles and merits under which the process will be conducted, as well as institutional set-up and the needed structures for negotiations.

¹¹ Regulated with the Law on Government and the Law on organization of state administrative bodies

At the political level:

- The Government of the Republic of Macedonia – chaired by the Prime Minister;
- Deputy Prime Minister – in charge of European Affairs, and head of the Secretariat for European Affairs (SEA), coordinates the overall accession negotiations, as a link between the administrative and political level;
- The Ministry of Foreign Affairs – coordinates the external dimension of the accession negotiations; The MFA is responsible for the political part of the accession negotiation process, and proper representation of country's position in the international dimension. The MFA supports foreign policy aspect of the accession negotiations, with regards to the political dialogue, regional cooperation, contractual arrangements with the EU and the member states and candidate countries.

At the inter-ministerial level:

- The Secretariat for European Affairs (SEA) – the central coordination body for horizontal coordination of the overall process, chaired by the Deputy Prime Minister in charge of European Affairs;
- The Working Committee for European Integration (WCEI) – at two levels: at the level of State Secretaries, and the expert level, represented by the heads of the inter-ministerial NPAA working groups;
- The NPAA working groups (35) and sub-groups, responsible for each chapter of the acquis – the NPAA working groups have the following responsibilities: plan the activities and determine priorities for aligning the legislation with the acquis; determine the line ministry responsible for aligning the legislation with the acquis; prepare their respective parts and harmonise them with the remaining parts of the NPAA; make cost and resource assessments for building up the capacities for implementing the legislation; submit reports to the Government regarding the implementation of the respective NPAA chapters; provide recommendations concerning draft laws and implementing legislation from their respective chapters with which the acquis is being transposed; ensure preparatory activities and active involvement in the screening process; prepare the negotiation positions of the country in the negotiation process; Conduct other activities which arise from the NPAA preparation and the preparation of the negotiation positions.¹²
- The EU departments in the line ministries.

Specific role in the process:

- The Legislation Secretariat (LS) – responsible for verification of the compliance check of draft legislation with the acquis and consistency with the legal order;
- General Secretariat of the Government (GS) – for efficient policy coordination, and monitoring of the government annual plan;

¹² The role and the responsibilities of the working group is regulated with the Decision for the establishment of the Working groups on NPAA and the preparations for accession negotiations , adopted in 2006 and then amended in 2009

- Parliamentary Bodies – dedicated to the oversight of the accession negotiation process, these bodies include the Committee for European Affairs (to deal with the harmonization of the legislation), the National Council for European Integration (comprised of different stakeholders, including civil society sector and chambers of commerce, and overseeing the accession negotiation process), as well as the Joint Parliamentary Committee (between the EU and Macedonia, established in the framework of the SAA process).

The coordination structures are **fully operational and have a good track record of functioning**. The **NPAA working groups** have regular meetings and act according to their duties. The main inter-ministerial coordination body, the **Working Committee for European Integration (WCEI)** have monthly meetings on regular basis, for monitoring of the implementation of NPAA, obligations under the Stabilisation and association agreements and other issues related to the EU. Since the establishment of the HLAD, the WCEI also monitors the level of fulfilment of HLAD priorities. In addition, EU issues are on the agenda of the weekly government sessions, as well as a thematic government session on a monthly basis. The Roadmap on HLAD priorities is discussed at every second session of the Government.

The process of coordination, monitoring the implementation of the priorities of HLAD and the activities proceeding from the operational roadmaps was conducted through two mechanisms established in March 2012: Strategic mechanism (political) and Operational (technical) mechanism. On the political level, **Ministerial Working Group** has been established, responsible for monitoring the implementation of the priorities laid down at the first HLAD meeting and of the activities laid down in the operational roadmap. It was chaired by the Deputy Prime Minister for European Integration, and the members are Ministers included in five HLAD priority areas¹³. The operational mechanism is the driving force of the implementation and support of the HLAD, were the **working groups for chapters 19- ‘Social policy and employment’, 23- ‘Judiciary and fundamental rights’, and 24- ‘Justice, freedom and security’, Political criteria and Economic criteria**. The SEA was charged with the planning, management, coordination and monitoring of High-level accession dialogue. The NPAA methodology and web portal was used for following the fulfilment of obligations.

Regular dialogue and consultation is being provided with different **stakeholders**. The Committee of the Assembly responsible for European affairs and the National council for European integration is informed about the level of fulfilment of EU integration processes on a quarterly basis and also is being consulted for the preparation of NPAA (among others, HLAD measures are also included). The consultation of the civil society sector for the preparation of NPAA is being implemented regularly for every cycle of revision. The legal framework foresees the possibility for including the different stakeholders in the work of the NPAA working groups.¹⁴ The principles of information-sharing, stakeholder consultation and participation were recently formally strengthened with the adoption of the ‘Rules of procedures’ for the working group on chapter 23, and is to be followed by other groups as well. With regard to HLAD, several consultations with relevant NGOs were done while planning the measures but also for presentation of the progress made. In addition, the Association of Journalists and the organization

¹³ Deputy prime minister in charge of implementation of Ohrid Framework agreement, Deputy prime minister in charge of economic affairs; Minister of foreign affairs; Minister of justice; Minister of interior; Minister of finance; Minister of Labor and Social Policy; Minister of information society and administration; General Secretary of the Government;

¹⁴ Decision on the formation of the working groups for preparation of the National Programme for adoption of the *acquis* and preparation for negotiation positions – adopted first in 2007 and then amended in 2009

responsible for the proper management of elections were involved during the implementation of HLAD measures related to freedom of expression in media and the electoral reform.

Key advantages and disadvantages of the national system from practice

The **advantages** of the implementation of the national system were the following:

The HLAD contributed towards intensification of the EU integration processes in the country and served as a good example on how accession negotiations would look like. Intensive political-level meetings were held on regular basis, as well as technical consultations on various topics continued throughout the whole period. Regular monitoring (through the mechanisms already explained above) by the Government was ensured for the priority areas under HLAD, thus imposing bigger pressure on responsible institutions. As a result, the aim for which the HLAD was introduced, has been achieved - progress has been made in the reform processes of the country and especially in the areas of efficiency of the justice system, legal framework on freedom of expression and public administration reform, track record on corruption and etc. It allowed all important issues that will certainly continue to be challenged during the accession negotiations to be addressed at this stage of the process. If decision for opening of accession negotiation is adopted, the Republic of Macedonia will be in a good starting position.

The pressure on the necessary reforms has been focused on a smaller number of institutions, which enabled easier and smoother coordination. The same prevented the dilution of the responsibilities of the institutions in a way that each institution knew precisely its obligations and was able to focus its efforts on meeting the set targets. The partnership relations with the responsible units in the EC dealing with enlargement and justice, freedom and security were strengthened and the discussions were more focused concentrating more on the challenges and concerns that need to be overcome.

Given that HLAD priorities address issues related to meeting the standards in the field of rule of law and human rights, it has contributed to a reconsolidation and more active engagement of the working groups responsible for chapters 23 and 24. The capacities of persons working in these areas were strengthened both in terms of understanding the process of European integration as well as regarding the knowledge on EU and best international standards in specific areas and the EC requests under the new approach in the accession negotiations. The quality of reporting documents increased, focusing much more on providing convincing track-record and having an inter-sectoral approach. The relevant NPAA working groups initiated self-assessment of the progress achieved and the level of alignment of the national legislation, identifying the main gaps and key challenges to be addressed in the next period. An appropriate network of experts and professionals has been created that will be particularly important for the future process of accession especially if we take into consideration that HLAD priorities will continue to be closely monitored under the rule of law chapters.

With regard to the **disadvantages** of the system it has to be pointed out that HLAD can't be considered as accession negotiations and therefore it can't have the same effect as the negotiations. The HLAD was concentrated only on a limited number of areas of rule of law and economic reforms, while leaving aside the rest of the EU acquis. As stated above, when starting the accession negotiations, the country will be most probably more advanced in chapters 23 and 24, but it is also important to maintain and to further ensure the good level of preparedness in the remaining 31 acquis chapters. The determination of the exact level of compliance, the future priorities in the different areas and the planning of activities would be possible only

if a detailed screening of legislation is made, which is not possible without the formal start of the negotiations.

There are differences as regards the intensity and quality of the activities of working groups. Some are assuming more tasks than currently regulated, and are ready to become a key contributor to integration – also on policy issues. Others function much less effectively. HLAD strengthened the existing coordination structures in the rule of law areas but it contributed to reduce the pressure on the institutional structures in the remaining *acquis* areas, thus posing risks for defocusing the national system of coordination. Without clear perspectives of negotiations it would be difficult to activate the whole machinery of the civil service and the different stakeholders, while at the same time, to keep their motivation to continue to work on a process that is becoming repetitive, without strict guidance and perspective of moving towards next, more qualitative stage.

Also, the two years of functioning of HLAD showed its inconsistency. The last meeting was held in the spring of 2013 and there is uncertainty of its continuation, namely, in which form and set-up it will continue and to which priorities it will be focused on in future. There is also a delay in regards to the feed-back received from the EC on common understanding on the methodology and the manner of further tackling the key issues of concern. This uncertainty affects the sustainability of the reforms achieved in chapters 23 and 24 but it can also contribute towards transferring the national resources to other priorities and adopting decisions affecting the EU integration. Without progress in the next phases, it would be more difficult to ensure the political support for resolving the issues of concern (inter-ethnic integration, high level corruption cases, anti-discrimination of LGBTI population and etc.). Therefore, it is important to move to the next more challenging stage of the enlargement processes. Failure to adopt a decision for opening of accession negotiations can jeopardise the whole process both for Macedonia and the EU. The negotiation process will bring an added value towards the adoption of its legislation and rules, political orientations, practices and obligations. This will ultimately bring the country's institutions, management capacity and administrative and judicial systems up to EU values and to EU legal, economic and social system standards.

Conclusions

The national system of coordination has proved to be **stable, functioning and adaptable**. The system is harmonised in all different stages of the process, i.e. planning, monitoring and reporting, therefore ensuring timely planning of necessary measures, but also an early warning system regarding the fulfilment of necessary requirements. The system is inclusive, ensuring the participation of all responsible institutions and different stakeholders. One of the main recommendations regarding the institutional set-up of European integration processes is to ensure its stability, and instead of the creation of parallel systems depending on the stage of accession, to use the existing ones and adapt them according to the different requirements. The model that has been developed in the Republic of Macedonia proved to be adaptable. The last example is the HLAD - there was no need for creation of a new system, but only to adapt the existing one. The **methodology and procedures used for HLAD** and regarding the work of the working groups on chapter 23 and 24 **should be implemented as well for all other *acquis* areas** and especially for those chapters where additional efforts are needed and for which the process of alignment is at an early stage.

On the other hand, since the organisation of EU integration has not been formally updated for a long period of time (due to the non-commencement of accession negotiations) and impor-

tant developments such as HLAD, economic and regional dialogue, and the self-assessment of the acquis chapters 23 and 24 have not been covered, perhaps it is an opportunity to think about **formally updating and further improve the system of EU coordination**. This particularly relates to:

- **Further strengthen the role of the Secretariat for European affairs**, in order to ensure that all EU integration aspects are properly checked and reported in all submissions to the government
- Formally **improve the scope of the working groups**, in order to guarantee that WGs are appropriately involved in decision-making related to EU affairs (setting working priorities; planning the governmental agenda regarding EU priorities; ensuring the consultative role of WGs for IPA planning).
- **Improve the link between European integration processes and the Instrument on pre-accession (IPA)** and shape its substance.
- Effective and practicable standards for the **consultation on policy areas with civil society** should be introduced (to replace current ambitious but not so functional regulations).
- More structured dialogue conducted on a regular basis with different EC services is needed. Wide consultation and feed-back on a systematic way needs to be ensured. The role of **Macedonia's permanent representation at the European Union** could be better regulated and strengthened with regard to receiving and providing regular information.

III. Institutional Set-up and Coordination Requirements for Accession Negotiations

III.1 Main principles in conceptualisation of the negotiating structures

As stated in the introduction, the **EU does not prescribe the internal organisation of coordination structures and procedures of the candidate country**. This is completely left to each candidate country, which has to respect only those few requests written in the Negotiating Framework. However, the candidate country has to respect all principles and procedures stipulated in the Negotiating Framework. This has resulted in organisation of negotiating structures which do not differ much between candidate countries.

It's noticeable that, particularly in the fifth enlargement, very close collaboration between the candidate countries existed. This implied the exchange of good practices in tackling the organisational aspects of the negotiating process. As a result, there were similarities between different negotiation coordination structures in candidate countries. However, there were also significant differences, partially as a result of different constitutional orders or administrative cultures, or just the size of the administration.

The pre-negotiations institutions and structures formed for the EU accession process offer a good basis for setting up the structures needed for the negotiations. Hence, when putting in place the institutional structure and procedures for the EU accession negotiations, the authorities should **use to the largest extent possible the existing institutions** and therefore create only those new institutions that are really necessary. Also, the decision-making procedures should be coordinated in the established ways to the largest extent possible. This rule applies both for the structures and mechanisms which are already established for 'domestic' procedures as well as for procedures within EU association process.

The EU accession negotiations are a process where professional issues are often closely intertwined with the political issues. Frequently, situations arise where the professional level has to elaborate positions or formulate dilemmas, but in order to bring the issue forward, a political decision is needed. Procedures and structures for efficient **verification of positions and dilemmas at political level** should be established. It is up to the politicians to decide about the pace of reforms needed to fulfil the criteria for the membership in the EU. In case this relationship between the professional and the political level has not been established in a flexible and interactive manner, the country may easily be confronted with a situation that its negotiations will not only be sub-optimal in terms of their quality, but will also produce unnecessary delays.

These procedures should also enable politicians to adopt decisions in a very short period of time, but on the basis of sound expert advice. Especially in the final phases of the negotiation process, at the final intergovernmental conference, this is of utmost importance.¹⁵

The EU accession negotiation process lasts for quite a long period, certainly longer than one election period. Therefore, it cannot be excluded that political changes may happen during the negotiations. In order to provide conditions for the negotiations to run as smoothly as

¹⁵ Example: At the final negotiating conference in Copenhagen in December 2002 a political agreement was reached on co-financing the initial costs of implementation of the Schengen acquis in new EU Member States through EU budget. Afterwards, during the drafting of the Accession Treaty, the agreement was opposed by the Legal service of the European Commission and several months were needed for finding proper legal form to transform the political agreement into the acquis.

possible, it is desirable (if not necessary) that the **basic institutional structure for negotiations, and especially the Core Negotiating Team (CNT), should be resistant to changes to the greatest possible extent.** In order to achieve this, a basic agreement on negotiating structures, especially the composition of the CNT, should be achieved between the ruling majority and the opposition.

In previous enlargements the resistance to political changes of main negotiating structures were definitely the case. Despite changes in ruling majorities, there were very few changes in CNTs. Even where they did happen, as a rule, these changes were not politically driven.

The process of the EU accession negotiations is highly complex, involving a large number of governmental and other institutions. In order to make the process as effective as possible, it is of paramount importance that there is a **clear division of responsibilities among various institutions involved in the process,** with clearly defined reporting lines. It is highly advisable to define all procedures and the role of each institution in the form of rules of procedure.

However, it should be emphasised that coordination structures (such as negotiating groups, CNT, etc.) are only supporting structures, enabling and organising inter-institutional domestic negotiations.

The main responsibility is on the line ministries.

As already pointed out, the EU accession negotiation process is a lengthy process. During this process individuals will step in and out. Therefore, the country should build systemic mechanisms for its 'institutional memory'. Otherwise, each personal change and especially changes at the political level or at very senior administrative level may cause significant delays in the negotiating process or even lead to sub-optimal results in the negotiations. **Sufficient institutional memory of all institutions involved in the process is needed** so as to enable the authorities to know at any time what commitments have been made or received throughout the negotiation process. The EU/EC has this memory well developed.¹⁶

The EU accession process and EU membership—to various degrees – influence the activity of practically every company in the country and the life of its citizens. It is for this reason that it is extremely important to involve all stakeholders in the preparation of the negotiating positions. **Testing of the proposed negotiating positions with various stakeholders, especially with the business community and civil society organisations (CSOs), is of highest importance.** An ill-designed agreement with the EU in a particular area of the acquis may have fatal consequences for the businesses that are subject to this segment of the acquis. It is therefore wise to include them systematically in the EU accession process and to shape together with them the negotiating positions, especially in determination of the transitional periods the country will request from the EU. Very often the companies have to provide the necessary data and arguments that enable the candidate country and its negotiating team to support the claims for the transitional periods. The issue of involvement of external stakeholders is dealt with more extensively in chapter V.

EU accession, as a highly complex process, requests very specific expertise in many areas. Very often administration lacks expertise in certain areas. This is especially the case in small administrations. **Systemic involvement of all available human resources of the country in the**

¹⁶ Example: Slovenia in 2010 as a MS, in the correspondence with the EC, made certain claims in one specific area. The response from the EC was: "Sorry, but in 1999 (as a candidate country) you claimed something different".

process is critical. The engagement (on a systemic basis) of all those who can contribute to the quality of the process is necessary. In this context, it is vital to have good working relations with non-governmental institutions, universities, chambers of commerce, and individuals.¹⁷ Individuals from these institutions can contribute to the process in various capacities, e.g. as members of the CNT or other accession-related institutions, providers of analytical backup, or consultants for individual areas. It is of utmost importance that these individuals – even though not government employees – are appointed to any of these institutions by the Government, given that cooperation with them is expected to be on a more long-term basis. The provision of expertise on a specific negotiating item by foreign consultants is not excluded, but it should be used on a very selective basis.

It is extremely important that the authorities **communicate with the EU** (Member States, European Commission and other institutions) in a highly coordinated manner, **according to the “one voice” principle**. It should be underlined that line ministers as well as their officials must in their communications with these institutions represent a position that has been agreed at the government level, even though this position may not be entirely in line with the ministry’s views on the subject concerned. In this respect, a kind of centralism is necessary for the consistency and credibility in the negotiations, given that in previous instances, a candidate country has had a different position on a particular issue from that of the official national position. Usually, this kind of discrepancy is identified very rapidly by the EU partners and leads to sub-optimal results and even deadlocks.¹⁸ Furthermore, such opposing views or statements undermine the credibility of the candidate country and its overall position towards the EU counterparts in the negotiations.

The process of decision making and reaching the agreement in the EU is quite lengthy. This applies also for the accession negotiations. A candidate country must persuade not only the EC but also the member states. It should not be forgotten that negotiations with a candidate country also implies negotiations among the member states. During the procedures in the Council, the member states have to conduct internal procedures of their own, for every negotiating chapter. In many of them these involve not only the Government but also the Parliament, before their representative can give the green light in the Council for opening or closure of a particular chapter. Hence, **for the issues that matter, a candidate country must be sure that everybody else knows well in advance exactly what outcome it expects**. Decision making process in the EU is also the reason **not to change the policy without very good and well-justified reasons**. Any change in the policy can delay the procedures in the Council for several months.

¹⁷ In Slovenia the NGOs were deeply involved in the preparation of the negotiation positions in the area of environment, because of their knowledge which sometimes exceeded the knowledge of the ministry in certain areas, although they were not part of the official Negotiating Group. In the area of agriculture, the individuals from the Academia were important members of the CNT and the Negotiating group for this chapter, etc.

¹⁸ During the negotiations for the next financial perspective in 2004 Slovenia was, according to its official position, part of the “Friends of Cohesion” group of Member States advocating for the bigger EU budget. However, during his visits to Berlin and London, capitals of two net contributors to the EU budget, the then Minister of Finance expressed his agreement with the position of net contributors, which advocated for the smaller EU budget. As a result, Slovenia was not invited to any meeting of either of these two groups, until things were not “settled at home.”

III.2 Main structures needed for running accession negotiations

III.2.1 The Negotiating Groups

The main coordination structure for running the EU accession negotiations are **Negotiating Groups** (sometimes also called 'Working Groups'), organised according to the negotiating chapters. The negotiating chapters are determined by the EU in the Negotiating Framework, a document of the EU, adopted by the Council at the beginning of the negotiation process, stipulating principles governing the negotiations, substance of negotiations and negotiating procedures. Currently the whole *acquis* is divided, for easier conduct of the negotiations, into 35 negotiating chapters.

The Negotiating Groups consist of officials from different ministries, thus *de facto* playing the role of the inter-ministerial coordination. Usually, each group is headed by the representative of the so-called leading ministry (or executive of some state institution, e.g. Statistics Office), i.e. the ministry in charge of the largest proportion of the *acquis* to be dealt with by this Negotiating Group.

With respect to the EU accession negotiations, Negotiating Groups are responsible for conducting the screening. Each group has the final responsibility for the preparation of negotiating positions and other platforms for negotiations within its negotiating chapter. Nevertheless, they have to obtain the consent of the Core Negotiating Team before submitting the document to the Governmental procedure. The member of the CNT responsible for a particular chapter participates in the work of the Negotiating Group.

There are and there have been **different approaches in the actual composition of the Negotiating Groups**. In some candidate countries the Negotiating Groups consist/consisted only of officials from different ministries, with very few exceptions. The practice in some candidate or former candidate countries is/were quite different. The members of the Negotiating Groups are/were also representatives of civil society, Academia or businesses, in some cases representing the major part of a Negotiating Group or even chairing the Negotiating Group. Such approach is/was welcomed by the involved external stakeholders. However, it seems that it was actually practised only in the very first phases of the negotiating process. Afterwards, the civil society was in a majority of cases excluded from the actual work of the Negotiating Groups. Apparently, sometimes it was even forbidden to share the documents with the members of the Negotiating Group from the civil society, although the composition of the group was not officially changed.

It is true that the accession to the EU affects the whole society, so the mentioned stakeholders should indeed be consulted and should participate in the creation of state positions. However, this needs to be done in an appropriate manner. The negotiation process is, in all of its phases (screening, presentation of positions, reasoning of demands, etc.) the process of preparation of an international treaty and as such is a task of the state administration.

Experience shows that the **work of the Negotiating Group largely depends on the performance of the Secretary of the Negotiating Group**. In some Negotiating Groups covering very big chapters with a lot of *acquis* (like environment and climate change or agriculture and rural development) probably the best solution is that these posts are occupied by the heads or members of EU coordination units within line ministries, who are by their very mandate more horizontally oriented. However, in other Negotiating Groups it is much more appropriate if experts from departments, covering the *acquis* in these chapters, are nominated on these posts.

Last but not least, experiences show that it is **advisable that Negotiating Groups are chaired by State Secretaries**. In this way, a close link between expertise and politics is maintained and the number of dilemmas, which have to be brought in front of the Government or other political bodies, is substantially reduced. The Heads of the Negotiating Groups are the only members of the overall coordination structure supporting EU accession negotiations for which it is normal and expected to be changed with the change of the political option in power.

III.2.2 The Core Negotiating Team

The central unit to steer and coordinate the EU accession negotiations and the main interlocutor with Brussels is the Negotiating Team, usually referred to as the Core Negotiating Team (CNT). The CNT is the body responsible for running the negotiations. It participates actively in all phases of the preparation of negotiating positions: screening of legislation, drafting of negotiating positions and other related papers, defending of the documents in the domestic procedures, testing of possible solutions to problems with the European Commission, submission of the documents to the relevant EU institutions and advocating them in discussions with the EU institutions and Member States. The CNT is expected to have a horizontal overview of the whole process, to propose tactics and test possible solutions in Brussels. **The concept of the Core Negotiating Team and its mandate depends on the political decision** to be taken in the country concerned. There are essentially two available options. One is to have the CNT composed mostly of technocrats. On the opposite side is a more political option of the CNT with its members being relatively strong political figures recruited largely at the state secretary level. Of course, there is also the third CNT option available, a kind of a middle ground option, where members would be recruited from both segments. Each of the three options has its advantages and disadvantages, such as professional capacity of the CNT to run the negotiations well or its (non)resistance to political changes. It is entirely up to the political leadership in the country to decide on these issues. The decision on the type of the CNT will also influence its mandate. The CNT may be designed in a way to have a very technical and therefore rather limited role or to have much stronger competencies in the process. The experience shows that probably the best solution is a **professionally strong CNT with a strong political backing**.

There are also **two options regarding the position of the CNT**. One is to have the CNT close to the Prime Minister. The 'negotiations' for accession to the EU are predominantly about how to transform the country according to the EU standards in the shortest time possible. In the course of the process, the problems relating to the establishment of the functioning administrative structures, water and air pollution, size of the cages for poultry, milk quota, etc. need to be resolved. As mentioned above, EU negotiations are predominantly 'internal/domestic' affairs. Therefore, it is only natural that the CNT is close to the Prime Minister. It can be established either as a special body within the Government, for reasons of technical and administrative support linked to the Office of the Secretary General of the Government or even better, in order to enable a close connection between the association and the negotiation processes, linked to the institution coordinating the overall accession process. The experience shows that close connections and even physical proximity between the CNT and the key institution coordinating the association process is highly desirable as it creates a lot of synergies.

The other option for positioning the CNT is to locate it **near or even within the Ministry of Foreign Affairs**. Usually an integral part of this option is also the creation of special offices/secretariats of the Head of the Negotiating Team both in the capital and in Brussels. It seems this option involves the creation of costly parallel structures and leads to some other sub-

optimal solutions. Two of them can be mentioned as cases in point. Firstly, these offices/secretariats are dismantled at the same time as the CNT (with the conclusion of the negotiations), i.e., approximately two years prior to the actual accession of the country to the EU. At the time when the acceding country¹⁹ is at the peak of its preparation for the accession to the EU, some fundamental coordination structures, which for the sole reason of existence took over some important tasks, are no longer there and the capability of coordination is substantially hampered in decisive moments. The second problem relates to the fact that these structures usually take over some of the tasks which should be performed by the Mission in Brussels, as a result of which the normal transformation of the Mission into the Permanent Representation is hampered.

Probably the most decisive argument in favour of the first option comes from the experience of the fifth (CEE) enlargement. In cases where the CNT was placed within the MFA, efforts were oriented rather toward the 'external' dimension of the EU accession process while the internal readiness of the administration and the country as a whole was not at the same level. As a result, those new Member States **where coordination structures were closer to the Prime Minister were better prepared for the challenges of membership** in the first years within the EU.

Nomination of a **Deputy Chief Negotiator**²⁰ (i.e. **Head of the Core Negotiating Team**) is extremely important. It is advisable that he/she is a person with a good professional track record and with strong personal integrity, and at the same time a person with strong political backing. This does not mean that he/she should be a politician, but that he/she has (international) political experience. He/she should be able not only to communicate with domestic politicians, but also with high officials in the EU institutions as well as ministers, state secretaries or members of the parliaments of the Member States. On the other hand he/she should be professionally competent enough to be able to communicate also with desk officers in the ministries of Member States. It goes without saying that he/she should be expert in EU affairs, but should have also very good knowledge and understanding of domestic systems and challenges.

When **structuring the CNT** it is highly advisable to follow two objectives: One is that its members come from key institutions; the other being that they cover the most important segments of the acquis. So the CNT should consist of top officials from the key ministries (finance, foreign affairs) and should also include experts for the most difficult chapters. Usually each of the members is responsible for more than one chapter. Thus, in addition to being responsible for one or two 'difficult' chapters (particularly those in which actual negotiations of transitional measures are expected), each member is also charged with a number of 'easy' chapters. The head of the CNT, especially in the instance that he/she does not have a background in economics, must be assisted by a person who would act as a kind of a 'chief economist' of the overall EU accession process. A good arrangement for one sector may not be the best result for the country as a whole if the deal in another sector is strongly sub-optimal. To exemplify, the overall amount of money a new Member State can receive from the EU budget is limited. If negotiators in one sector (for example agriculture) are very successful, that almost automatically

¹⁹ With the end of the negotiations and signing of the Accession Treaty the country has no longer the status of candidate country but has, till actual membership in the EU, status of acceding country.

²⁰ According to the established practice within the EU the 'Chief Negotiator' of the candidate country is a minister (as a rule, a Minister of Foreign Affairs). This further means that the term 'Deputy Chief Negotiator' is being used for the Head of the CNT. However, in everyday life of some candidate countries, the Head of the CNT is referred to as the 'Chief Negotiator', as he/she runs the negotiations at the operational level, and the minister as 'Head of the State Delegation'.

means the country will get (much) less money for cohesion policy. The question that remains is if this really is in the interest of the whole country.

One of the roles of the **CNT is to provide a 'second opinion'** to the proposals prepared by the Negotiating Groups/line ministries. In order to be able to fulfil this task, the CNT should not be composed of the State Secretaries which are chairing the Negotiating Groups. It is thus advisable that part of the team is composed of members who are not part of the administration.

The CNT needs a supporting structure. In addition to the expert support which is usually provided by the key institution coordinating the association process, the CNT needs a unit for the technical and purely administrative support as well as **a unit for legal support**. The role of the latter, which should have expertise in the national legal order and a profound understanding of the *acquis*, is not only to provide legal advice in the course of negotiations, but also to take part in the preparation of the Accession Treaty, especially regarding the inclusion of the so-called 'negotiated measures' (everything that signifies a derogation from the *acquis* in force at the time of accession, either temporary or permanent).

III.2.3 Collegium for EU Affairs

The experience from some countries shows that it is advisable to establish a smaller key political structure e.g. **Collegium of Prime Minister** for EU affairs, bringing together the Prime Minister, Minister for European Affairs (if there is one), other key ministers (e.g. finance, foreign affairs) and Head of the CNT. If needed, other ministers can be invited, depending on the subject of discussion. The Collegium should represent the highest political body within the Government dealing with the EU integration process. Very often, the decisions adopted at the Collegium are later formalised at the Government session. The added value of such a body is in its possibility to react quickly and in a more unofficial manner in addressing the dilemmas brought on the table by the CNT. As already mentioned, in some phases of the process the negotiators (or the administration) need fast responses about what is politically acceptable or possible in the negotiations. Because of the usually very broad structure of the Government and rigid rules of procedure, the actual efficiency and ability to quickly solve problems and dilemmas at the level of the whole Government can be questioned.

However, it goes without saying that official documents and positions, which are formally sent to the Brussels, must be adopted by the Government (the Council of Ministers).

III.2.4 Mission to the EU in Brussels

The **Mission to the EU in Brussels** is the main channel for communication with EU institutions and even EU Member States. As such, it has a very important role in the overall system of EU coordination. It also plays an important part in both the association and negotiation processes. In terms of content, the structure of the Mission should be a mirror image of the organisational structure of the Negotiating Team in the capital (on the basis of negotiation chapters) and completely different from other, bilateral embassies. Career diplomats from the MFA should represent only one part of the Mission staff, whereas the majority should consist of diplomats from other ministries, who should be experts for different areas of the *acquis*. It is appropriate to establish a clear organisational and hierarchical structure of the Mission as early as possible in the initial phase of negotiations, preferably before the actual start of the screening. It is important that the organisation of the work in the Mission is different from that in other (bilateral) diplomatic representations. Diplomats, experts for various areas and espe-

cially diplomats serving in the Secretariat for the EU association process (SAA) and negotiation process (the inter-governmental conferences – IGC) should be instructed directly by the Head of the CNT or the main EU coordination institution.

It is worth mentioning that official(s) who perform the duties of the Secretariat of the IGC should be placed in Brussels as part of the Mission. Namely, according to the Negotiation Framework, the Secretariat of the IGC is provided by a team consisting of officials from the General Secretariat of the Council and officials appointed by the delegation of the candidate country. There is no need to create a special office/secretariat of the Deputy Chief Negotiator for this task. However, this official (or officials) should be nominated with the consent of the Head of the CNT.

III.3 Additional recommendations

When designing the overall negotiating process, the authorities have to articulate the basic **overall philosophy to be followed throughout the negotiation process**. For example, at the early stage of the negotiations, it is necessary to identify the vital segments of negotiations and the objectives to be achieved. It is also important to decide on the general policy of the country regarding the transitional periods. Experiences and results differ largely among former candidates. Further, it should be reiterated that it is absolutely necessary to have one approach in the financial negotiations and not to run financial negotiations individually on a chapter by chapter basis. As already stated, a good arrangement for one sector may not be the best result for the country as a whole if the deal in another sector is strongly sub-optimal. A 'chief economist' should assist the Deputy Chief Negotiator if he/she is not familiar with the macro-economic issues.

When designing the overall accession process the role of **Minister for European Integration/Affairs**, as a minister without portfolio, should be considered. It is his/her job to oversee coordination of harmonisation with the *acquis* and to be instrumental for the resolution of "domestic" problems related to accession to the EU. It is also his/her responsibility to secure that the obligations and promises from association and negotiation processes are kept. In addition, he/she is to support the Head of the CNT in the relations to other ministers and the Government. Examples from some former candidate countries show that the Minister for European Affairs, though he/she might not be directly involved in an official capacity in the negotiation process (unless he/she is also formally the Chief Negotiator), had very significant influence on the preparedness of the country for the obligations arising from membership and in this way also very positively influenced the pace of negotiations.

During the negotiation procedure, once the established benchmarks have been met and after agreement has been reached between the EU and the candidate country on the individual chapter of the negotiations, the respective chapter is considered temporarily closed. It is important to stress that, in the period before concluding the accession negotiations, if the candidate country does not meet the obligations assumed under the respective chapter, the chapter in question can be reopened. For this reason it is necessary to have not only a negotiation structure responsible for the negotiations with EU but also a system that monitors the fulfilment of all obligations undertaken during the accession negotiations.

The same monitoring system also has to be in place after the conclusion of the negotiations and before actual accession to the EU. The EC regularly and closely monitors all commitments

undertaken by the now 'accessing country' in the accession negotiations. In fact, it should exist also in the time of the membership.

III.4 Case Study 3 – 'The Croatian Experience in the Accession Negotiations with the EU – Chapters 23 and 24', by Kristijan Turkalj

Introduction

The accession negotiations are very demanding and complex processes which include numerous factors having a decisive influence on their success. In addition, they are conducted in a dynamic and changeable political context having impact on the dynamics of the negotiations, too. On the one hand, this context relates to a broader international context under only limited influence of a candidate country. It encompasses public opinion on enlargement in the EU Member States, emerging of various crises within the EU that may be shifting the EU's attention from the accession negotiations, open bilateral issues between candidate country and the Member States, as well as good neighbourly relations between candidate country and the Member States as well as the other states. Finally, all developments in different international fora like the UN, the Council of Europe, and the OSCE do affect the context of the accession negotiations, too.

On the other hand, internal political developments in a candidate country also have an impact on the dynamics of the accession negotiations. At the internal level, dynamics depend on a series of factors, which by their nature can be influenced by a candidate country to a bigger extent than in the case of the international factors mentioned. At the internal level, dynamics of the accession negotiations are dependable on numerous factors – whether there is a political consensus, and capability to take sensitive and difficult political decisions or not; adequate administrative capacities and strong coordination mechanism; support of a broader community, and especially from independent bodies involved in the negotiation process such as judiciary or Ombudsman; as well as on election cycles. A non-governmental sector is, of course, of utmost importance, too. In the context defined as such, the accession process is regularly faced with challenges to be solved. Capability to take decisions and solve the challenges is exactly of decisive importance for success of the negotiation process.

It is useful to present to the countries of South East Europe some of the challenges Croatia faced in the negotiations on the two most demanding chapters – Chapter 23 and Chapter 24 – and the ways it has solved them. Some of the challenges related to a proper understanding of the political context in which the negotiations were conducted, and especially how to influence the international context relevant for Croatia's EU membership. Furthermore, Croatia was faced with a lack of administrative capacities for dealing and managing very demanding EU affairs, but also with a certain lack of managerial and organisational skill in civil service management, having influence on the dynamics of the accession negotiations, too. As regards the Chapters 23 and 24, specific difficulties turned up in relation to the independent institutions – to their genuine involvement and readiness to taking responsibility for necessary reforms. Finally, the NGO sector had important influence on negotiations, and making a dialogue with them was a challenge in itself.

Two chapters in the spotlight of the accession negotiations

In Croatia's EU accession negotiations two chapters were particularly in the spotlight – Chapter 23 'Judiciary and Fundamental Rights' and Chapter 24 'Justice, Freedom and Security', due to the exceptionally demanding nature of the issues they cover. There are a series of reasons that made the EU pay particular attention to precisely those chapters. Some of them are objective; the others come from certain subjective perception on the side of the EU Member States and the European Commission itself.

Probably the most important reason the EU started to be increasingly interested in the functioning of the judiciary, fight against corruption, protection of fundamental rights, but also for the issues encompassed by the Chapter 24 (borders, migrations etc.) came from its internal development. The European Union started to transform from an economic integration of the Member States to a political integration in an accelerating way. One of the key elements of the political integration was precisely the creation of the area of freedom, security and justice in the EU. Among the most important components of the area of freedom, security and justice are mutual recognition and enforcement of the court decisions taken in other Member States. Recognising other Member State's court decisions requires a trust in the judicial system it was taken in. That trust implies confidence that the courts, as well as other judicial bodies involved in decision making, are independent, impartial, professional and efficient. Country recognising and enforcing a decision wants to be sure it was taken by respecting all international standards and procedural rules aimed at protecting fundamental rights.

Corrupted society with a corrupted judiciary certainly cannot guarantee those values. Furthermore, border control, police cooperation and fight against various criminal activities aim at strengthening of the public security in the EU. Each Member State conduces to the EU-level public security, but only one is enough to bring it into the danger. These are some of the fundamental preconditions for developing the EU as the area of freedom, security and justice; fundamental preconditions for which the European Union still has not developed all the internal mechanisms ensuring them within the EU, but had mechanisms to ensuring their application on countries aspiring to the EU membership. From the above mentioned, it can be concluded that the EU, by the means of the accession negotiations, tries to prevent the entry of a country unprepared for the membership. Having a problematic judicial system may have a detrimental impact on the trust building among the Member States, and could therefore jeopardise the political project of the creation of an area of freedom, security and justice in the EU.

From that point of view, it is obvious that the EU pays a lot of attention to the viability of that political project, the importance of which prevails over the accession negotiations. This explains also the increased interest of the EU Member States for the functioning of Croatia's judiciary and home affairs. Repeating of the mistakes from the past enlargement round could jeopardise EU citizens' trust in the whole project of the political integration of the EU.

What are the main issues negotiated under the Chapters 23 and 24?

The Chapter 23 'Judiciary and Fundamental Rights' didn't exist as a separate chapter in the accession negotiations preceding Croatia's accession process. The issues encompassed by new Chapter 23 used to be negotiated before within a single Chapter 24, together with all other issues related to home affairs, thus reflecting the fact the EU did not pay same attention to those issues as later on in case of Croatia's negotiations. There were many circumstances causing this change of the EU attitude towards those issues, especially the accelerated devel-

opment of the *acquis* in those areas that made it impossible to negotiate them within a single chapter. Therefore, the EU decided to single out reform of judiciary, fight against corruption, fundamental rights and rights of EU citizens in a separate negotiating chapter.

Chapter 23 is divided into four main and interconnected areas that can be further divided into numerous sub-areas. Although at first sight it seems the scope of the negotiating chapter is clearly defined, the spectrum of issues it covers is actually exceptionally broad. Furthermore, the main issue in Chapter 23 are the clear standards that negotiating country needs to meet in order to fulfil the EU membership criteria. This becomes particularly difficult if you keep in mind that there are, unlike in the other negotiating chapters, almost no so called hard *acquis*, but only the best practices of the Member States whereby each Member State has its own best practice and its own experience and is frequently convinced that these are at the highest EU quality level. Against this background Croatia was faced with the challenge to find solutions and standards acceptable to all EU Member States. Although it was not always easy to meet such a challenge, accession negotiations led to the transformation of Croatian society in the long term which should leave a mark on the development of democracy, rule of law, respect for human rights, and better functioning of state in general.

As already mentioned, the Chapter 23 is structured in four thematic areas: reform of the judiciary, anti-corruption, fundamental rights and EU citizens' rights. Those areas set only framework encompassing very tangible content. Reform of the judiciary relates to the strengthening of independence, impartiality, professionalism, efficiency of judiciary, but also to the prosecution of war crimes. In the anti-corruption area, the focus is on prevention and fight against corruption, whereas fundamental rights relate to raising the level of the protection of human rights in Croatia, with particular focus on protection of national minority rights and return of refugees. Finally, EU citizens' rights encompass the right to vote and stand as a candidate in national and EU parliament elections, and the right to diplomatic and consular protection even in the countries where the EU does not have its own consular service.

Chapter 24 encompasses ten thematic areas: asylum, migration, visa policy, external borders and Schengen, judicial co-operation in criminal and civil matters, police cooperation and fight against organised crime, fight against terrorism, fight against drugs, customs cooperation and counterfeiting of the euro. Unlike the Chapter 23, this Chapter encompassed large *acquis* that Croatia was supposed to align with and to build administrative capacities for its implementation.

Stakeholder in the negotiation process

One of the main questions that the negotiating country needs to ask itself is who is the actual negotiator and who are the key stakeholders influencing the negotiation process. The simplest answer would be that the negotiations are conducted between a candidate country and the EU Member States. Nevertheless, the situation on the ground is much more complicated due to the involvement of numerous bodies and different stakeholders.

One should particularly stress what is meant by saying that a candidate country is the one who negotiates. Especially in the Chapters 23 and 24, success of negotiations to a large extent depends on activities of independent bodies like courts, state attorneys and ombudsman, who can be influenced by the executive authority only indirectly taking into account not to jeopardise their independence.

This is particularly challenging, keeping in mind that the Government is the one responsible for the accession negotiations and it takes over the commitments on behalf of the whole state. If the commitments are not met, the Government cannot justify itself to the EU by stating that the independent institutions didn't do what they were supposed to do, and the Government has no tools or powers to make them to do so. The EU does not want to hear such an excuse; it rather wants the country to find its own way how to implement the reforms and how to gain support of key stakeholders.

Experience gained in Croatia's accession negotiations can serve as an inspiration for solving this sensitive issue which is of the utmost importance for successful conduct of accession negotiations, as well as the implementation of internal reforms. Croatia included the independent institutions in the negotiation process by involving their representatives in the negotiating structure as well as in numerous working groups dealing with key negotiating issues. This was the way to inform them and to make them aware of the expectations the EU imposed on them. Moreover, in order to ensure support for long-term reforms in the judiciary all key issues were directly discussed and agreed upon with judicial power bodies. Significant energy was invested in building partnership relations as well as encouraging 'ownership' feelings towards the reform of the judiciary.

Furthermore, although as a rule the Ministry of Foreign Affairs and negotiating team are the ones with the main responsibility, they cannot be successful without involvement and engagement of all other institutions. Negotiations are mainly about taking over the commitments regarding alignment of legislation, institution building and strengthening of administrative capacities for proper implementation of the EU legislation. Moreover, the key factor for success of negotiations is the implementation of the commitments taken, and the implementation is mostly within the competence of various line ministries and state bodies, not of the Ministry of Foreign Affairs. For example, regarding Chapter 23, in Croatia there was a broad range of institutions and bodies involved in the implementation of the activities required for fulfilment of the EU membership criteria.

By the Government Decision, the Ministry of Justice was designated as the competent authority in charge of the Chapter 23. The Decision provided the Ministry with the authority to coordinate other co-competent authorities. Beside the Ministry of Justice, and its various services, negotiations in relation to the reform of the judiciary involved the Supreme Court, the State Attorney's Office, the State Judiciary Council, the State Attorney's Council, the Judicial Academy, as well as other courts such as the Administrative Court, the High Commercial Court and the High Misdemeanour Court. Furthermore, regular consultations were also held with the Associations of Croatian Judges, the Croatian Bar Association and the Croatian Notaries Chamber. In the area of fight against corruption there were also many other bodies involved – the Ministry of Administration (regarding the act on the conflict of interest, the act on the financing of political parties and the act on access to information); the Ministry of the Economy (public procurement), the Ministry of Health, the Ministry of Construction, the Ministry of Finance, the Ministry of the Interior (PNUSKOK), the State Attorney's Office (USKOK), courts and the State Election Commission. In addition, the Parliament established the Commission for the Fight against Corruption and the Commission for the Prevention of Conflict of Interest. In the area of fundamental rights some other institutions participated in negotiations – the Office for Human Rights, the Office for National Minorities, the Ombudsman, the Ombudsman for Gender Equality, and the Ombudsman for Children. And finally, the Ministry of Foreign Affairs and European Integration was the competent authority for EU citizens' right (consular protection, right to vote and to stand for office).

Negotiations in Chapter 24 also involved numerous institutions – the Ministry of the Interior as the competent authority, the Ministry of Finance (Customs Administration), the Ministry of Foreign Affairs and European Integration (visas), the Office for Combating Narcotic Drugs, the Office for Human Rights, and the Commission for Asylum. In line with the above mentioned it is of critical importance for all the institutions and bodies to participate in the negotiation process, in order to make them completely aware of the expectations expected on them.

On the other side of the negotiating table are not in fact the Member States, but the European Commission, technically conducting negotiations on behalf of the EU. The candidate country therefore does not negotiate bilaterally with every single Member State; their views are formulated through EU common positions, reports on assessment of benchmark fulfilment etc., and to a certain extent through progress reports, too. Views of the Member States are incorporated into the documents mentioned and become the EU views, so it takes a lot of skills to detect which Member States is behind a certain opinion/assessment of the EU, which creates an additional layer of complexity to the process. Namely, it is of important to detect the reasons why a certain issue has been raised in the negotiations, in order to find adequate solution therefor.

Once the EU common position is agreed upon and adopted, the European Commission (EC) is tasked to present it to the candidate country and to explain the expectations contained therein. In this role the EC has certain discretion, and in practise it tends to require the candidate country to fulfil the highest standards. Fulfilment of the highest standards enables the EC to propose positive assessment on the Member States, without risking criticism and opposition on its side.

The EU side of the negotiation process involves, beside the European Commission and the Council of the EU, the European Parliament, the European Council, the Committee of Regions (CoR), the European Economic and Social Committee (EESC), but indirectly also some agencies as the Eurojust, Europol, CEPOL etc. Beside the regular reports adopted by Plenum, the members of the European Parliament followed the progress of Croatia also through the work of the Joint Parliamentary Committee (JPC) composed of the Croatian and EU parliamentary members. The Conclusions of the JPC were, as a rule, the most positive documents regarding Croatia's accession to the EU. The same goes for both advisory committees (CoR and EESC), which discussed issues related to the Chapters 23 and 24 on a regular basis.

Formulating EU positions

The negotiation process in every chapter starts with screening. The result of the screening is the Screening Report which can be considered as a report describing the initial state of play – a base line by which future progress will be compared later on. Overall progress accomplished is being evaluated every year in annual progress reports usually published in November. It is important to deliberate the way how the EU formulates its assessment in screening reports, every progress report and all other documents in the negotiation process. This will shed light on all the factors influencing the negotiation process.

The EU developed a very comprehensive system of information gathering regarding the progress in a candidate country. On the one hand, the EU gets information regularly through political dialogue with a candidate country. Political dialogue is conducted through various co-operation formats. One of the formats is the institutional structure established by the Stabilisation and Association Agreement (SAA), composed of the Council, Committee and seven Subcommittees. One of the Subcommittees is the Subcommittee for Justice and Home Affairs

which covers issues contained in two negotiating chapters (Chapters 23 and 24). The other format of political dialogue is conducted through the negotiation process and with the established negotiating structure. Furthermore, the EU also gets information on the 'state of play' in the candidate country through the process of programming and implementation of projects financed by the EU funds (IPA). Finally, political dialogue happens within the framework of numerous bilateral high-level meetings.

In addition to the above mentioned, the EU regularly organises so called peer-based missions, sending experts from the Member States tasked to assess on their own and to report on the progress made. Those experts generally stay for 5 working days in a candidate country, talking to representatives of the state administration bodies, as well as to the NGOs and interest groups. Their reports are of particular importance to the EC, as they are considered an independent assessment of the progress in a particular sector on the basis of which the EC can more easily present and defend its proposals and recommendations before the Member States. Thus, it is opportune to pay appropriate attention to this type of mission, and to help experts get the best possible insight regarding progress in particular area.

The role and influence of international organisations on negotiations in the Chapters 23 and 24

In addition to the information gathered from official representatives of a candidate country, the EU uses also many other sources with a view to getting the most credible picture of the progress of reforms in country. All the reports of various international organisations – governmental and non-governmental – are closely followed by the EC. In the first place, this refers to the UN, Council of Europe (GRECO, GRETA, CEPEJ) and OSCE, but also to the World Bank, Amnesty International etc. These are exactly the reasons why countries aspiring to EU membership should not neglect the cooperation with and participation in the work of the international organisations. On the contrary, the efforts should be invested to further improve the quality of work and cooperation with those organisations and of the input being provided by them, with a view to ensuring the reports of that particular organisation adequately reflect the progress achieved.

Role and influence of NGOs in negotiations on Chapter 23 and 24

In preparation of its assessments and views regarding the progress in a country, the EU also takes into account the opinions of NGO's, as well as information made available by media. During the accession negotiations the NGO sector experienced complete affirmation and became a stakeholder having impact on the negotiations. Critical approach of NGOs to some reforms and processes served the EU as an indicator of a potential problem, which could present a serious risk to readiness and ability to assume obligations from the EU membership.

Impact and influence of the NGOs depended strongly on their capability to express their views in a clear and reasoned way. Nonetheless, those views were not simply taken up by the EC on its own; they were rather used as an important indicator that certain issue may need to be examined more thoroughly.

Those NGOs that were able to point out to the real problems in the society and to communicate them skilfully had an important influence on the negotiations process. In Croatia's case particularly distinguished were the NGOs dealing with the fight against corruption, monitoring of war crimes prosecution, protection of minorities and free legal aid. Moreover, through the accession negotiations with Croatia (especially on Chapter 23) the EU recognised the impor-

tance of inclusion of the NGO sector into the process of European integrations. Logic behind the approach was following – once the country accedes to the EU, not only social elites will accede but the society as a whole, so during the process a consensus should be sought and ensured. From the point of view of the competent bodies and the negotiating team, that new approach to the negotiations necessitates an intensive dialogue with the NGO sector, striving to achieve a genuine partnership relation.

Nevertheless, the NGO sector also needs to take care of keeping its own independence and not to jeopardise the corrective role it has towards the Government. In that regard the participation of the NGO sector directly in the negotiating structure could put them in a serious risk of losing their credibility. Once the NGO participates in the decision making process as a part of the formally established structures, it takes over a part of the responsibility for the decisions taken, and therefore weakens the credibility of its subsequent critics regarding those decisions.

It is not easy to define a correct model for a dialogue between the Government and NGOs. In any case it is recommendable for the Government to draft and adopt in the cooperation with the NGOs a code of good practice for civil participation in the decision making (legislative process), as well as related to the negotiations process too. The Code would oblige the state administration bodies and negotiations team to respect the minimum standards regarding consultations with public and NGOs.

Finally, we can conclude that the EU developed such a sophisticated system for assessing a real progress on the ground, that as a rule it gets an even more credible picture of the candidate country than the country itself. And that exactly gives an additional significance to the EU views and assessments, and stresses the need for their careful examination.

Institutional set-up and coordination

Described complexity of the negotiations requires exceptional coordination within the state to ensure that all activities contribute to the achievement of a defined objective of becoming an EU member. In order to be successful in this complex process, it is necessary to establish a clear institutional structure as well as horizontal and vertical coordination. In Croatia, it was carried out through the establishment of the negotiating team and designation of individual ministries as competent authorities for specific chapters. The negotiating structure had a clear vertical line of responsibility, where the core team was composed of the chief negotiator and 13 other negotiators, each in charge of a group of chapters. One of the negotiators was in charge of the Chapters 23 and 24. Negotiators were aided by heads of working groups, which were composed of representatives of relevant institutions and experts. It is important to note that expertise and skills were the only relevant factors in appointing responsible persons in negotiating structure, and that the whole negotiating structure was defined by consensus of all parliamentary parties. The latter is crucial for the successful conduct of the negotiations.

For coordination to be effective it was equally important to designate individual ministries as competent authorities for specific chapters. In the Chapter 23, the main responsibility was assigned to the Ministry of Justice, while responsibility for the Chapter 24 was entrusted to the Ministry of the Interior. In this way, the responsibility for the success of negotiations in each chapter was also transferred to individual ministers. For example, the Minister of Justice was responsible for the implementation of measures under the competence of other state bodies covered by the Chapter 23, and he had to use his political influence to encourage fellow minis-

ters and other officials to carry out their duties on time. Thus, team expertise received political support provided by individual ministers, which led to the necessary synergy.

For coordination to be successful it was necessary to establish an appropriate mechanism within each ministry. In practice, the ministries have chosen different models of internal coordination. Some ministries formed directorates for EU affairs, the other assigned EU-related tasks to lower organisational levels. The Ministry of Justice initially formed the EU Directorate, which proved to be insufficient because all other forms of international cooperation were carried out in other organisational units. Only when all the international affairs (those related to the programming of EU funds, negotiations with the EU, as well as those for bilateral and multilateral judicial cooperation) were placed within the competence of one directorate, a higher level of synergy in the negotiation process was achieved.

Finally, in terms of coordination of negotiating positions, coordination in the triangle of the Ministry of Justice, the Ministry of Foreign and European Affairs and the Mission to the EU in Brussels was of paramount importance. Croatia established a very flexible system of communication and coordination between these respective bodies in order not to lose time in lengthy and formal communications. Because of its dynamics, the negotiation process introduced daily intensive communication between Zagreb and Brussels due to frequent inquiries from the European Commission requesting urgent responses and positions on certain issues.

Conclusion

Croatian negotiations for membership in the European Union were the most challenging and difficult accession negotiations so far. But one should not make erroneous conclusions that such a challenging process was directed against Croatia. In fact, basic analysis of previous waves of enlargement shows that with each wave of enlargement criteria for membership became more and more rigorous. When Greece was entering the European Community, practically the only criterion was that it was a European country; however, with each new enlargement cycle new criteria were added. The European Union defined the Copenhagen criteria, and then added the Madrid criteria for countries that joined the European Union in 2004. Even large countries like the United Kingdom faced very strict requirements which had to be fulfilled for accession to the Community. Therefore, it could be pointed out that political context of each negotiation process was different, which, naturally, had an impact on those particular negotiations. So, for example, the political idea of reunification of Europe, which emerged after the fall of the Berlin Wall, was of considerable importance. This idea provided for the political context as well as the momentum powerful enough to pave the way for the rapid completion of the accession negotiations with ten countries of the fifth wave of enlargement of the European Union. In contrast, Croatia led negotiations with the EU during the enlargement fatigue, the failure of the Constitution of the European Union etc. Besides this, Croatia led individual negotiations, so it was a lot more complex political context than the context in which its predecessors had held their negotiations. Despite such a complex political context, Croatia managed to fulfil political criteria for membership by carrying out its reforms. What is even more important, the Croatian negotiating team and all political stakeholders managed to navigate the country in the direction of respect for human rights, rule of law and law-respecting society.

Along the way, Croatian authorities carried out significant reforms which also included amending the Constitution. The amendments to the Croatian Constitution, which were necessary for the completion of the negotiating process and, consequently, accession of Croatia to the EU, were related to: amendments to the Historical Foundations of the Constitution in the listing

of all autochthonous national minorities who elect their representatives to the Croatian Parliament, placing emphasis on the constitutional principle of independence of the judiciary by strengthening its constitutional position, autonomy and independence of the State Judiciary Council and State Attorney's Council, and in particular strengthening the expertise of judges and deputy state attorneys, introduction of compulsory special voting rights for minorities, introduction of exercising voting rights in the Republic of Croatia, the definition of the position of the ombudsman and raising of the right to access information to the constitutional level.

Finally, we may conclude that during accession negotiations Croatia introduced many positive changes to its legal system, but it also made some errors along the way. It can be stated with certainty that in the last 20 years not a single state has gone through such a comprehensive and thorough reform process of its own legal and institutional system as Croatia did. In addition, the EU while advancing through the accession process of Croatia also went through the process of defining the political criteria that would be applied to future candidates for EU membership. Therefore, regardless of whether those are high-quality solutions or mistakes, they can be very helpful for all those countries that have reached a firm decision to reform its legal system, judiciary, fight against corruption or protection of human rights.

III.5 Case Study 4 – ‘Serbia and EU Accession Negotiations: The New Coordination Structure’, by Srdjan Majstorovic

Introduction

Serbia has been incrementally developing its relations with the EU since the democratic changes in 2000. Together with the remaining five Western Balkan countries, Serbia was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in 2003. In 2004, the National Assembly of Republic of Serbia adopted a Resolution on Serbia's association to the EU. In the same year, the Serbian European Integration Office (SEIO) was founded as a service of the Government to be in charge of coordination of the state institutions with regards to the EU integration process. Since 2004, Serbia began aligning its national legislation with the EU acquis, which became a contractual obligation in 2008, when it signed the Stabilisation and Association Agreement (SAA) with the EU.

SAA created the basis for the overall improvement of political, economic and trade relations between Serbia and the EU, enabling a progressive alignment of Serbian legislation with the EU acquis and cooperation across different EU policies. It was against this background that Serbia started to prepare its structures for the EU accession process. In fact, the institutional framework established in the EU Stabilisation and Association Process (SAP) served as a foundation for further conception of the institutional setting for the EU accession negotiations as it is today. The SAP structures in Serbia were established already in 2007, despite the fact that SAA was signed in the following year. Its main feature includes the creation of 35 subgroups of expert groups, gathering civil servants from the ministries and governmental bodies in charge of policy areas subject to respective EU Negotiating Chapters.

The main role of such an institutional setup was to prepare the National Plan for Integration of the Republic of Serbia into the EU (NPI) for the period 2008-2012. This document set targets which were to be achieved within a four year period in terms of harmonisation of national and EU law. In order to be able to reach these targets, around 450 civil servants took part in the training activities. The subgroup expert group structures, established to create and implement the NPI, were equally engaged in the process of filling out the EC Questionnaire in 2010 and

2011. Based on the answers provided in the Questionnaire, Serbia obtained a positive opinion of the European Commission (EC) in regards to its application for candidate status submitted in late 2011, and was approved by the European Council in March 2012. The accession negotiations were formally opened at the Intergovernmental Conference held in January 2014, while the screening process was launched in autumn of 2013.

Furthermore, SAP envisaged the establishment of the SAA Council, the highest political body comprised of high-level political figures from the EC and the Council on the one side and Serbia on the other side, to monitor the implementation of the SAA; SAA Committee, a key expert body in charge of implementation of the SAA; and SAA Parliamentary Committee, consisting of the deputies of the Serbian National Assembly and the European Parliament. The SAA entered into force in September 2013.

It should be noted that the SAP and accession negotiations are two separate and parallel, but closely interlinked processes. While they differ in terms of legal basis and tasks – SAP is dealing with the entire harmonisation of the *acquis* up to the date of accession, whereas accession negotiations tackle specific issues of the *acquis* transposition and end with the completion of accession negotiations – they have major similarities in terms of institutional structures and setup.

In the process of creating the national system, SEIO carefully studied the comparative practice of the member states and then-acceding countries. Nevertheless, it mostly relied on the Slovenian experience, as its experts were part of a twinning project aimed at assisting the Serbian government in building national structures for the EU integration process.

Key features of the national system

In September 2013, the Serbian Government appointed the Head of the EU Accession Negotiation Team and adopted six documents establishing the EU accession negotiating structures and procedures, drafted and prepared by SEIO in the period May-September 2013. The six Government Acts include:

The Conclusion Accepting the Analysis of the Activities in the Process of the Negotiations on the Accession of the Republic of Serbia to the European Union;

The Decision on the Establishment of the Coordination Body for the Process of the Accession of the Republic of Serbia to the European Union;

Decision on Establishing the Negotiating Team for Accession of the Republic of Serbia to the European Union;

The Basis for Negotiations and Conclusion of the Treaty of Accession of the Republic of Serbia to the European Union, with the Proposal of the Conclusion;

The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Procedure of Preparing the Negotiating Positions in the Process of Negotiations on the Accession of the Republic of Serbia to the European Union;

The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Process of Implementation of Analytical Review and Assessment of Harmonisation of the Regulations of the Republic of Serbia with *Acquis Communautaire* of the European Union and their Implementation (Screening).

The newly created Coordination Body for EU Accession Process is the highest political body which steers the direction of the Government and discusses the most important questions with regards to Serbia's accession to the EU. The Coordination Body is comprised of the Prime Minister, who chairs the meetings, the Minister without portfolio in charge of EU integration; first Deputy Prime Minister; Deputy Prime Minister in charge of Labour, Employment and Social Policy; Deputy Prime Minister in charge of Internal and External Trade and Telecommunications; the Minister of Foreign Affairs; Ministers in charge of Economy and Finance; Minister in charge of Agriculture; Minister in charge of Environment; Director of SEIO; Chief Negotiator; Secretary General of the Government; and the Director of the Legislative Secretariat of the Republic.

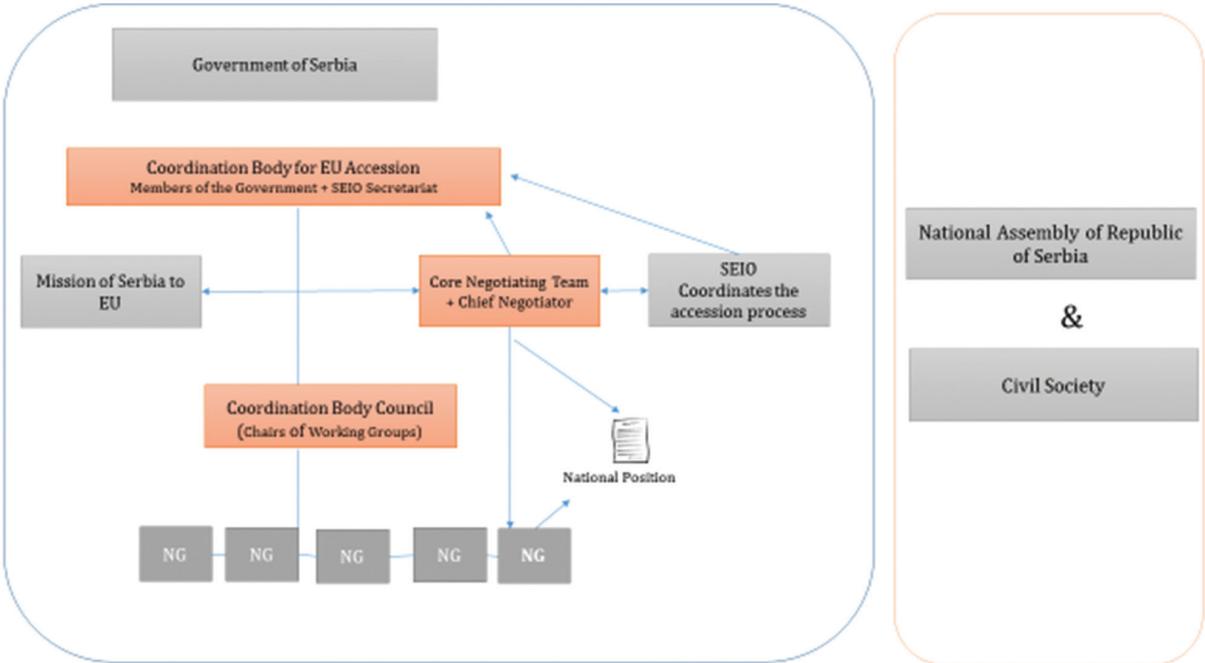
The Core Negotiating Team (CNT) will have the role to assure a unified voice of Serbia in the negotiations, i.e. to undertake the horizontal coordination of the national institutions involved in accession negotiations. The Team will have a permanent structure throughout the entire accession negotiation process and will be comprised of the Chief Negotiator, renowned experts in particular negotiating chapters (who are still to be appointed), State Secretary from the Ministry of Foreign Affairs, State Secretary from the Ministry of Finance and the Head of Serbia's Mission to the EU. Its role will also be to participate in the formulation of the Negotiating Positions of Serbia. It is headed by the Head of Negotiation Team and Deputy Chief Negotiator (Chief Negotiator being the member of the Government in charge of EU integration). At the time being, the members of CNT have not been formally appointed yet.

35 Negotiating Groups inherited the system of Working Groups (i.e. Subgroups of the Expert Group) which were established for the overall coordination of the EU integration process and preparation of the NPI from 2008 and the subsequent National Plan for the Acquis Adoption (NPAA) from 2013. Their structure has not altered with the accession negotiations: the 35 Negotiating Groups are composed of civil servants from the ministries whose purview is covered by a particular negotiating chapter. They are chaired by the State Secretary with the primary responsibility for the given subject area. The Negotiating Groups participate in the screening process; take part in the formulation of the National Position in the given negotiating chapter; monitor the implementation and the revision of the NPAA as well as the EU acquis in the respective area.

The role of the institutions which have had a substantial role in the EU integration process of Serbia to date will be additionally reinforced in the process of accession negotiations. SEIO will continue to be the focal institution with the greatest responsibilities in EU affairs, inter alia, in charge of coordination and preparation of the accession negotiations, inter-ministerial coordination in that matter, as well as for providing the assistance to the ministries in regards to harmonisation of the national legislation with the EU acquis. The Mission of Serbia to the EU in Brussels, as part of the Ministry of Foreign Affairs (MFA), is also expected to be reinforced in the future, as it represents the main channel of communication with the European Commission, the European Parliament and the Council of the EU. The MFA network of embassies in the European capitals is equally utilised for information gathering and representing Serbia's positions with regards to its accession process. The role and scope of the involvement of the National Assembly of Serbia in the accession negotiations is defined in the Assembly's Resolution about the its role and principles in the negotiations on accession of Republic of Serbia to the EU adopted in December 2013..

Throughout the ongoing EU association and accession processes, the Serbian government has repeatedly emphasised the need for greater transparency and inclusiveness. In that respect,

the external stakeholders – the civil society, associations and interest groups – are expected to actively take part in the accession process both as a credible interlocutor to the Government on specific policy issues and as a partner in the joint endeavour of joining the EU. The external stakeholders are not directly engaged as members of negotiating groups in the accession negotiations. Whereas the modus of cooperation has not been formalised yet, the representatives of civil society organisations have been given the opportunity to follow the explanatory screening meetings through a live-stream and so far have had three de-briefing meetings with the chief negotiator and heads of negotiating groups for Chapters 23 and 24, Chapter 32, Chapter 19 and Chapter 3 on the latest developments in these areas and possible forms of joint cooperation. Office for Cooperation with the Civil Society of the Republic of Serbia plays a prominent role in organising these activities and facilitating mutual communication.



Key advantages and disadvantages of the national system

The policy making system in Serbia is generally characterised by very strong ministries versus a weak centre of government as well as undeveloped coordination, consultation mechanisms and culture between the different ministries and government bodies. The creation of SEIO and establishing its role as a focal point for national coordination of EU affairs had a manifold contribution in the improvement of the Serbian policy making system. Firstly, in the process of preparation of NPI and NPAA, SEIO demonstrated the importance of sound coordination for successful policy and decision making. Secondly, in the implementation of the two documents, SEIO contributed to the improvement of reporting and monitoring skills of the ministries and government bodies. Thirdly, the knowledge and expertise on EU affairs within SEIO had a spill-over effect in terms of knowledge transfer to the civil servants involved in EU integration processes across the government. Finally, the goals and targets set in the NPI had a stimulating effect on the level and pace of alignment of national legislation to the EU acquis, as it created a pressure to meet the prescribed goals in its entirety. As a result, 88% of the NPI goals were attained.

At the same time, it can be argued that SEIO has mostly benefited from the establishment of the existing structures, as the system allowed and facilitated SEIO in its role of a coordinator

of the SAP and accession process, inter-ministerial coordination, manager of IPA funds, as well as for providing expert assistance to the ministries.

Despite the considerable positive effect SEIO has had on the functioning of the entire government, many challenges remain to be tackled in the ongoing accession process. They mainly relate to the need for a more coordinated performance of the Serbian authorities' vis-à-vis European counterparts while presenting the national positions on the topics where several policy areas overlap. Furthermore, they also concern reporting requirements, i.e. the need to demonstrate – with sound evidence – the track record and fulfilment of the tasks set by the EC in the screening reports and opening benchmarks that will follow. The existing structures as well as the experience SEIO acquired since 2007 serve as the main pillar for practicing these skills.

It is estimated that roughly 2000 civil servants will be engaged in the national coordination of EU affairs. High mobilisation of human resources represents both a strength and a weakness of the Serbian national coordination system as on the one side, it increases the level of proficiency and expertise of the civil servants for the EU related issues, but on the other side it can have a negative effect on the existing tasks and duties of the civil servants. Overburdening the civil servants with too many duties, accompanied by serious budgetary restraints concerning new employment policy, may as a consequence, result in a lack of motivation and superficial approach to their tasks.

Conclusions and Recommendations

Taking into account the specificities of the Serbian national system for coordination and best practices of the countries which have undergone the accession process, the following principles with regards to the functioning of the national system have been adopted:

1. To use the existing institutions and structures to the largest extent possible;
2. To establish procedures for efficient verification of positions articulated at administrative/professional level by the relevant persons at the political level;
3. To create structures and procedures that are resistant to political changes;
4. To design the overall philosophy of the negotiating process;
5. To establish a clear division of responsibilities among the various institutions involved in the negotiating process;
6. To create conditions that will guarantee sufficient institutional memory of all institutions involved in the negotiating process;
7. To test draft negotiating positions with various stakeholders, especially with the business community and NGOs;
8. To establish conditions favourable for a systemic involvement of all available human potentials of the country in the negotiating process; and
9. To communicate with the EU institutions according to the “one voice” principle.²¹

²¹ The EU Accession Process of the Republic of Serbia: Structures and Procedures for Successful EU Accession Negotiations, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, December 2013, p. 14.

The experience of the Serbian system of coordination of EU affairs demonstrates the necessity to have a strong and centralised coordination body in charge of steering the accession process. For a candidate country with insufficient knowledge on EU affairs and poor coordination practices, it is desirable to rely on a single institution capable of imposing itself as the authority on EU questions. SEIO has played a focal role in that respect and will continue to do so in the accession negotiations process. At the same time, the Serbian experience so far has showed that civil servants within the ministries who are dealing with different policy areas that are subject to Negotiating Chapters need to improve their knowledge and skills, as the quality of their participation in the negotiating groups can largely determine the outcome of negotiations on particular chapters. In other words, proper understanding of the EU law and EU integration process increases the chance of conducting the accession negotiations successfully.

The strength of the Serbian coordination of the EU affairs system is having anticipated the aforementioned steps in the EU integration process and their timely preparation. To exemplify, the NPI exercise was not a requirement set by the EU, but rather the initiative by SEIO and the Serbian Government themselves; NPI structures were used and built up for the subsequent requirements of the EU integration process, which allowed for solid preparedness of the Serbian institutions nowadays for the current tasks of the negotiation process. Analytical and organisational skills gained through the preparation of the NPI and NPAA as well as through monitoring of their implementation provided value to the smoother functioning of today's system. Furthermore, the Serbian government has been taking advantage of experiences from the neighbouring countries, with regards to familiarisation of the content and providing responses to EC Questionnaires, and in terms of creation of the national version of the acquis. Overall, it can be argued that the Serbian experience in preparation and implementation of NPI and NPAA represents a positive example and practice to be emulated by the countries which are preparing for the EU accession negotiations process.

IV. Policy Making and Coordination and Link to EU Accession

It has been mentioned above that “it is essential for a national government to speak with one voice in its dealings with the Commission and other partners in the accession process.”²² This is a necessity if the country is to be considered a credible partner in the process, who stands by the commitments made. The statements of all the state’s representatives who communicate with the European partners are taken as part of the official position of the government, which is why any diverging statements and positions can undermine the efforts to argue for the national interests in these dealings. It has been argued on numerous occasions that “the negotiations ‘at home’ and finding a consensus internally [are] equally demanding, if not more so, than the accession negotiations vis-à-vis the Commission.”²³ As a result of a great number and diversity of domestic interests involved, national coordination becomes a daunting task for the administration.

Therefore, “[i]ntragovernmental coordination is vitally important to ensure that national interests are well defined and effectively represented.”²⁴ High levels of coordination need to be ensured not only through the structures developed specifically for the EU accession process, but need to be well embedded into the overall national policy making processes if the country is to prepare itself well for membership. In fact, in the EU accession and membership context, more so than anywhere else, all policy decisions in the country need to be developed and made through adequate processes which ensure that they are based on evidence, well-coordinated among governmental stakeholders and consulted with external interested parties and the public. The primary reason for this need lies in the complexity of the EU decision making scene, characterised by a multitude of negotiated issues, actors and levels involved, all of which are commonly referred to as ‘multi-level governance’. Successful negotiating within the EU institutions – particularly the Council of the EU – requires advanced systems for national coordination of policies which ensure arriving at a single national negotiating position.²⁵

In the context of EU accession negotiations, not only do national positions and arguments need to be well-coordinated in order to ensure consistency and continuity in communication with the EU partners, but they also need to be based on evidence, in order for the candidate country to be able to effectively persuade the EU partners that the requests made are worth considering and accepting. Once again, there is a strong parallel to draw between the EU accession and EU membership contexts. Namely, successful negotiation in the various formations of the Council of Ministers, and thus influencing the shape of EU policies in a way which will be beneficial for the population or economy of a member state, requires that member state to support its National Position (‘Instruction’ for negotiations) with hard evidence, which in turn necessitates strong policy analysis as part of the overall national policy making system. Arguably, “the functionality of the national coordination system for EU accession negotiations of a candidate country is equally reflected in the content and substance of the National Position. Drawing on the obvious parallels with regards to pertinence of Instructions in the EU context on the one hand, and Negotiating Positions in the accession context on the other, for

²² Metcalfe, Les. “Meeting the Challenges of Accession.” in: SIGMA Paper No. 23, OECD, 1998, p. 50. Available at: <http://bit.ly/1qlj8rW>

²³ Lazarevic, Milena et al. Policy Making and EU Accession Negotiations Getting Results for Serbia. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, European Policy Centre, Belgrade, 2013, p. 105. Available at: <http://bit.ly/1nnOj3K>

²⁴ Metcalfe, Les. “Meeting the Challenges of Accession.” in: SIGMA Paper No. 23, OECD, 1998, p. 50.

²⁵ Lazarevic, Milena et al. Policy Making and EU Accession Negotiations Getting Results for Serbia. pp. 93-94.

a candidate country [...] it is essential to progressively develop and improve the policy analysis capacities of its national actors involved in EU accession negotiations from the earliest stages of accession negotiations.”²⁶

Civil servants from two CEE countries have confirmed that “the quality of evidence base outlined in the Negotiating Position can substantially determine the success of the candidate country in negotiating transitional provisions in its own favour. The performance of the national policy coordination system, including the EU accession negotiations coordination system, can be evaluated based on the manner in which the Negotiating Position is argued for and defended in front of the EU. The same can be said of the National Position in the Council negotiations, upon accession.”²⁷

By developing their policy making and policy coordination systems early on in the EU accession process, candidate countries prepare themselves to act as proactive member states in the Council of the EU from the early days of their membership, thus making maximum use of the rights and benefits involved in being an EU member state.²⁸ Therefore, in order for candidates to prepare well for both the challenges and opportunities of EU membership, the pre-accession period and especially accession negotiations, should be used to the greatest extent as an exercise in establishing sound policy making and coordination systems which will function well within the EU context.

The various levels of capacity to coordinate policies, developed by Metcalfe, are presented in the scheme below, in which the higher levels ensure stronger synergic action by various departments and a stronger role for institutions at the centre of government (government offices, EU integration offices, etc.).

CAPACITIES FOR POLICY COORDINATION²⁹

9. SETTING GOVERNMENT PRIORITIES

8. SETTING CENTRAL LIMITS

7. ARBITRATION OF CONFLICTS

6. CONCILIATION (MEDIATION)

5. SEARCH FOR AGREEMENT (CONSENSUS)

4. SPEAKING WITH ONE VOICE

3. CONSULTATION (FEEDBACK)

2. EXCHANGE OF INFORMATION (COMMUNICATION)

1. INDEPENDENT POLICY MAKING BY MINISTRIES

²⁶ Lazarevic, Milena et al. Policy Making and EU Accession Negotiations Getting Results for Serbia.

²⁷ Ibid, p. 118.

²⁸ Ibid, p. 118.

²⁹ Metcalfe, Les. “International Policy Coordination and Public Management Reform”, International Review of Administrative Sciences, Vol. 60, Sage, London, 1994, pp. 271-290, Available at: <http://ras.sagepub.com/content/60/2/271.full.pdf+html>

At the same time, policy coordination remains one of the important challenges candidate countries face in their administrative reforms. SIGMA assessments and EU progress reports have repeatedly addressed this issue.³⁰ The common problems relate to the overall capacity of the government to develop and coordinate policies in a sound and evidence based manner. Namely, “[the] strength of central institutions and their abilities to develop strategic capacities depend to a large extent on whether their workload allows them time to develop strategies and overall policy. One of the main problems [...] is the weakness of the policy coordination systems. This leads to many issues and interministerial conflicts being pushed up to central government bodies for their resolution. This in turn limits the time centres of government can devote to the development of policy and strategy.”³¹ In this kind of environment, even with the most effective EU accession coordination system, the final results will be limited, as the actual policies put forward by the ministries and coordinated in those EU related structures will be of poor quality, thus leading to sub-optimal results, as was argued in the previous chapter.

It was observed in the context of the previous enlargements that coordination structures for EU accession often remained “islands of excellence” and that the positive coordination practices and experiences were not spilled over into the overall national policy coordination system. Clearly, this limitation consequently means that even if a country performs well in accession negotiations, thanks to a strenuous effort of the actors responsible for coordinating accession and negotiations, after entering the EU and dismantling those structures, the remaining national coordination structures might not be able to ensure satisfactory performance of that country as a member.

Advice offered to Serbia in its EU accession process in terms of policy making and coordination by representatives of Polish administration include the following:³²

- ⇒ Create evidence-based policies. Making evidence-based cases while negotiating is crucial. This is of crucial importance for succeeding transitional periods and exemptions.
- ⇒ Build trust through being consistent. If Brussels trusts you from the beginning, they will be ready to give more.
- ⇒ Prepare your positions in a timely and thorough manner. Well-performed preparations are the key to success.
- ⇒ Build strong internal capacities for coordination of EU affairs.
- ⇒ Make good use of observer status [last phase before accession] for learning the decision-making process, the Council structures and for further establishing contacts.

³⁰ See, for example: European Commission, Serbia Progress Report 2013, p. 7. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf; SIGMA, Assessment Serbia, 2012, p.3. Available at: http://www.sigmaweb.org/publications/Serbia_Assess_2012.pdf; SIGMA, Assessment Montenegro, 2012, p.33. Available at: http://www.sigmaweb.org/publications/Montenegro_Assess_2012.pdf; Bosnia And Herzegovina 2012 Progress Report, European commission SWD(2012) 335 final Brussels 2012. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf; SIGMA Assessment The Former Yugoslav Republic Of Macedonia, March 2012, available at: http://www.sigmaweb.org/publications/fYRoM_Assess_2012.pdf; Albania 2012 Progress Report European Commission SWD(2012) 334 final , Brussels, 2012 , p.9, Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf;

³¹ Verheijen, Tony. “The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs.” in: Sigma Paper No. 23, OECD, 1998, p. 21.

³² Lazarevic, Milena et al. Policy Making and EU Accession Negotiations Getting Results for Serbia. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, European Policy Centre, Belgrade, 2013, p. 123.

V. Involvement of Other Stakeholders

V.1 Involvement of the Civil Society

The EU encourages transparency and stakeholder participation at the supranational level.³³ It applies the same approach towards the candidate countries, regularly highlighting the importance of cooperation between civil society and state authorities in the progress reports.³⁴ As a result of the EC's conditionality, governments are declaring their commitment to the principle of including civil society in policy making. This commitment needs to result in the improvement of the legislative framework and practice for the participation of civil society in this process: enabling transparent selection and participation of CSO representatives in the working groups for drafting legislative proposals, setting up clear guidelines for conducting public debates, and implementing high standards in the area of free access to information.

Civil society participation in the EU negotiation process is neither obligatory nor formally regulated. However, in order for a country to adequately respond to the challenges stemming from the crucial phase of the accession process, it should involve all qualified levels of society in defining and monitoring of public policies. Also, due to a lack of administrative capacity of the public administration and the fact that civil society has developed to a certain extent expertise in various areas of the *acquis*, active contribution of CSOs could be of particular importance. The lack of administrative capacity is the most noticeable in small administrations, which is a problem that cannot be solved overnight. Also, public administration in these countries is extremely limited in regards to qualified staff for public policy research. Therefore, engagement of experts from universities, trade unions, and NGO sector can be a way to fill this 'gap' in the short-term.

The negotiation process should be transparent and open. By engagement of non-state actors in the process, the Government builds public trust in the work of political institutions and state administration thus providing understanding and support to the reforms from the citizens.³⁵ Comparative experiences illustrate that active civil society participation in the negotiation process could have positive effect to the dynamics of the negotiations.

Based on specific traits from the countries that joined the EU in 2004, 2007 and 2013, as well as those who are currently negotiating, three models of civil society participation at this stage of the integration process can be identified:

- i. Civil society participation through the "standard models and channels of communication" with public administration;

³³ European Commission presented the Green Paper - European Transparency Initiative-ETI in 2006 which emphasised the importance of partnerships with stakeholders through consultation and participation. Cooperation between the European Commission and registered civil society organisations is determined by the Code, which was adopted by the EC, following the conclusions of the public consultation held between December 2007-February 2008

³⁴ Moreover, by recognising the lack of constructive dialogue between civil society and the Government, the EU has included the improvement of cooperation as one of the seven preconditions for Montenegro in order to start negotiations. See: Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 9. 11. 2010. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf

³⁵ Škrabalo, Marina. "Transparency in retrospect: preliminary lessons from Croatia's EU accession process", Discussion paper, Greens/EFA in the European Parliament, November 2012. Available at: <http://www.franziska-brantner.eu/wp-content/uploads/2012/11/Transparency-in-retrospect.pdf>

- ii. Direct participation of civil society representatives within the negotiation structure (in the negotiating/working groups);
- iii. Joint action and CSOs monitoring of the negotiations within the individual chapters.

V.1.1 Participation through standard models and channels of communication

CSOs can provide valuable contributions to developing strategic documents and legislation, as well as to the impartial evaluation of the implementation of these plans, the process of negotiations and progress achieved. However, a prerequisite for participation of non-state stakeholders in working groups for drafting laws and other regulations is a clearly defined legal framework for their involvement, as well as developed mechanisms for regular dialogue between the Government/Parliament and CSOs.

CSOs can contribute to the negotiations process on three levels:

- a) Participation in working groups for public policy making (harmonisation with the acquis);
- b) As members of the bodies which oversee the implementation process (action plans, strategies or individual negotiating chapters);
- c) By raising public awareness about the need for improvement of specific reforms.

Depending on the profile of CSOs, various organisations dealing with different issues/areas have an important role during the previous negotiations. In Hungary, for example, the most active non-governmental organisations during the negotiations were those dealing with environment protection.

V.1.2 Direct participation within the negotiation structure

Considering the negotiating structure and composition of individual bodies within it, the direct participation of civil society is possible only within the framework of the working groups. Towards the establishment of preconditions for direct involvement of civil society representatives in negotiating working groups, decision on establishing the negotiating structure do not have to directly foresee it, but have to leave the possibility for the participation of non-state actors.

Civil society representatives should be selected in the working groups on the ground of a public call, and based on the conditions prescribed by decree or other legislation that regulates the manner and procedure for cooperation between the state administration and civil society organisations. Public call for participation in negotiating working groups may include the regulation by which the selection of members is based on dual criteria - the qualifications of the candidates and the organisation. Selected CSO representatives are appointed as fully fledged members of the working groups by Government's decision, alongside other members from the public administration. In accordance with the decision, CSO representatives participate in all the working group's tasks and activities during the negotiation process.

Through the involvement of civil society directly in the negotiating structure, the Government sends a message that the process of European integration is one that concerns the whole society and that it will be open, transparent, with a constant dialogue between all interested parties. Also, this approach allows a critical and impartial input from CSO representatives for

improving the internal coordination in the working groups, reporting, defining measures, and other activities of importance for the progress.

The Government's decision to include the non-governmental sector in the negotiating working groups in Montenegro had almost no foothold in comparative practice. Despite the fact that the decision on establishing a structure for negotiating the accession of Montenegro to the European Union does not foresee a specific article with regard to the direct engagement of civil society representatives,³⁶ CSOs representatives in Montenegro are included in each of the 33 negotiating working groups that have been so far established. Therefore, out of a total of 1257 persons engaged in the negotiation working groups, 381 are representatives of civil society (including representatives of NGOs, university, business and trade associations, etc.).³⁷

The work of civil society representatives in the working groups can be burdened with number of issues. First – and this could be described as the greatest disadvantage of this model – the extent to which organisations participating in the working groups lose their 'corrective' role in the process, or the way in which their participation in the negotiation structure is perceived by the rest of the non-governmental sector, public authorities and citizens. Direct participation in the negotiation process is positive for CSOs in terms of access to information. However, participation in the working groups would be particularly limiting if the CSOs are not able to speak publicly about the work of the working groups, or at least about their own proposals, suggestions and recommendations.

Direct participation of CSOs in the structure can be useful for both sides only if the freedom of communicating the working group's results is guaranteed. This recommendation is especially important when one considers the attempt to restrict freedom of speech of CSO representatives with the Rules of Procedure of the working groups in Montenegro.³⁸ However, so far direct participation of CSO representatives in the negotiating working groups has been useful for the process especially **because the** CSOs themselves have fought for the right to communicate their views about the particular *acquis* chapters and the work of competent working groups, but also because of the initiatives on publishing of important documents for the processes which were successful.

Another important issue in order to provide an equal footing for CSO representatives in the working groups is related to the financing of their work. This refers not only to the salaries or monthly fees, but also securing funding for their participation in the meetings of importance for the process that are held outside the country. Therefore, the decision on the negotiating structure should prescribe the obligation to allocate a portion of the state budget to finance the participation of non-state actors (it should be the budget of the state's institution in charge of cooperation with civil society). Financing in this case does not involve the payment of monthly salaries or fees for work in the working groups, but funding is only needed in order to ensure equal participation of CSO representatives at meetings of relevance to the negotiations process (for example, the attendance of meetings in Brussels).

³⁶ Available at: http://www.mip.gov.me/en/images/stories/download/Predlog_Odluke_o_uspostavljanju_strukture_1.pdf

³⁷ Presentation of the Ambassador Aleksandar Andrija Pejovic, Chief Negotiator, at the round table "Effects of Croatia's accession to the EU", in Podgorica, on 13 May 2013. Available at: <http://bit.ly/1xLbKQ>

³⁸ Specifically, the Working Group's Rules of Procedure prescribe that only the Chief negotiator, the Negotiator for the particular chapter and Head of the working group may present views on the progress within the process to the public.

Finally, representatives of the civil society should be enabled to access mechanisms and tools established by the Government for monitoring and reporting processes (such as state portals that can be accessed only through the domain of civil servants). This includes the right of the CSO members of the working groups to access all the documentations, on an equal footing with group members from the public administration.

V.1.3 Joint action and CSOs' monitoring

With regard to the fields of the 35 negotiating chapters, most of the space for joint CSO activities is within Chapters 23 (Judiciary and Fundamental Rights), and 24 (Justice, Security and Freedom), especially having in mind that a majority of CSOs are specialised in these areas of the acquis.

This type of CSO networking so far has been established in Croatia, Montenegro and Serbia. In these countries, groups of influential NGOs teamed up in a joint effort to assess the course of negotiations in the areas of judiciary, the fight against corruption, human rights, justice, freedom and security (Chapters 23 and 24.).

The main activity of these coalitions is to prepare semi-annual and annual 'shadow reports' prior to publishing the EC's progress report. By a joint engagement and distribution of the report to the EC, the CSOs in Croatia had a significant influence in the prevention of issues for improving the rule of law being neglected.

The coalition in Montenegro has so far published three reports. In these reports, the CSOs usually offer their own view on the actual progress achieved in the negotiations, with the aim of presenting the 'objective' side that the Government may conceal or present in a more positive light.

Joint action of CSOs in the negotiation process is useful and important for several reasons. Such approach provides more systematic, comprehensive and quality monitoring of negotiations focusing on areas that have been in the background during the process, and received less attention from state institutions. Bearing in mind the importance of external, impartial and expert monitoring assessment, joint CSOs' monitoring makes an excellent field for influence and improvement of reforms. Furthermore, monitoring by several organisations with expertise in different areas of the acquis provides comprehensive monitoring of all activities envisaged by the action plans based on previous research of each organisation individually.

CSO's networking within the scope of negotiations may be difficult because of the need of adequate coordination, but also because of the lack of financial resources for the implementation of joint activities and advocacy. In this sense, regulation of important issues, such as the accession of new members, public appearances on behalf of the coalition and fundraising is required.

V.1.4 Requirements of transparency

Regardless of the model of civil society involvement during the negotiation process, a minimum of transparency standards should be met:

- ⇒ Developed legislative and institutional framework for cooperation between state authorities and civil society, as well as for the active participation of civil society in public policy making and free access to information;

- ⇒ Relevant documents within the negotiation process should be public, in order to allow interested parties to submit suggestions, comments and recommendations and to monitor the process;³⁹
- ⇒ Intensive communication and consultations between all stakeholders. Interested parties should be regularly informed about the activities and dynamics of the process.

V.2 Parliamentary involvement in the EU accession process

Negotiations with the EU are the exclusive competency of the executive (Government), while the Parliament's role within this process is primarily reflected in the political oversight over the accession process. Even though the Parliament's task of overseeing the Government is defined by the Constitution, relations between the Government and the Parliament during negotiations can be more precisely defined by a separate act (resolution, declaration, etc.). The aim of this act would be primarily to define the role of the Parliament, its designated Committee and working bodies in this process.

Parliamentary oversight in the negotiations process can be further strengthened through frequent use of control mechanisms, especially through public hearings in the committee responsible for European affairs, but also in other committees. Also, of particular importance is initiating MP's questions addressed to the Prime Minister and responsible members of the executive.

Another important function of the parliaments during the negotiations is forging the consensus on the process of European integrations (both between the political parties and among all segments of the society), fostering consultations between the executive and the legislature as well as involving a broad spectrum of social interest groups in the policy debate. These can be carried out through special models for cooperation established for the purpose of negotiations, such as thematic forums/ public debates organised prior to considering negotiating positions or important issues in the process.

The Parliament may, in accordance with the Rules of Procedure, and if necessary, for a certain period, engage experts in different areas of the *acquis*, representatives of state bodies and NGOs, with the exception of the right to vote (consultative hearing). Moreover, CSOs' research work can contribute to the improvement of the legislative proposals and activities of the Parliament in general.

As for the competent committee in the Parliament for the European integration process, this body should be responsible for:⁴⁰

- a) Monitoring and issuing opinions on Government's activities in the framework of the EU accession process;
- b) Coordinating activities of other parliamentary working bodies in relation to specific issues of interest for European integrations;

³⁹ Screening reports, action plans by individual chapters, reports from the public debates, etc.

⁴⁰ See: Marović, Jovana, and Marko Sošić. Parliament of Montenegro and the process of European integration Just watching or taking part?, Institute Alternative, Podgorica, December 2011. Available at: <http://media.institut-alternativa.org/2012/10/institute-alternative-parliament-of-montenegro-and-the-process-of-european-integration.pdf>

- c) Issuing opinions on the compatibility of legislation with the acquis and suggests measures for improvement of the harmonisation process;⁴¹
- d) Developing cooperation with the citizens, interest groups, CSOs active in the field of European integration and civil society in general;
- e) Examining the use of EU funds and the work of national structures for their implementation.

In all the countries that have so far negotiated EU membership, parliaments have only considered the negotiating positions and only the Slovenian Parliament had the right to veto. In Montenegro, the Government has a period of 8 days to comment on the negative opinion of the Committee for European Integration on the negotiating position.

The Parliament of Montenegro was included in the process of adopting the negotiating positions and action plans for Chapters 23 and 24. At the session of the parliamentary Committee for EU Integration which was closed to the public, the country's negotiating position for Chapter 24 was endorsed unanimously. The negotiating position for Chapter 23 was reviewed as well and the opposition MPs had a proposal for amendment which was accepted by the government representatives, leading to the unanimous endorsement.

The least involved Parliament in an accession process so far appears to have been that of Malta, which let the Government conduct all activities in the course of the negotiations and only ratified the accession agreement at the end. At the other end of the spectrum, the Parliament of Slovenia was extensively involved in the process, adopting drafts of each negotiating position. Another example of strong involvement was the Hungarian Parliament which set up a special team of expert consultants to provide the Government with suggestions on the development of negotiations.⁴²

Recommendations:

- ⇒ Cooperation between the Government and the Parliament, and the role of the Parliament and its working bodies, during negotiations with the EU should be defined by a separate formal act. One of the main issues to be clarified by such a document is the manner and frequency of reporting to the Parliament by the Government and its negotiating team.
- ⇒ It is important to define the competencies of a single parliamentary working body, which will coordinate the monitoring of negotiations and discuss negotiating positions, in gathering representatives of the civil society through various forms of consultations, and expert discussions.
- ⇒ Regardless of the established model in the Parliament for the monitoring of compliance of draft laws with the acquis (centralised or decentralised), negotiating positions should be discussed both at sessions of the Committee for European Integration and the competent (parent) committee. In some cases, for reasons of time and cost ef-

⁴¹ Montenegro, however, has a decentralised model of monitoring the process of harmonisation of national legislation with the acquis in the Parliament.

⁴² Marović, Jovana, and Marko Sošić. Parliament of Montenegro and the process of European integration Just watching or taking part?, Institute Alternative, Podgorica, December 2011. p. 9.

ficiency, joint sessions of the parent and European Integration committees are organised.

- ⇒ Parliamentary analytical capacities should be strengthened in order to better assess quality of legislation, e.g. by establishing or strengthening the Parliamentary Research Units.
- ⇒ Legal basis should be established in order to increase the presence and active participation of civil society representatives at sessions of committees, as well as for consideration of their initiatives.

V.3 Case Study 5 – ‘The Role of Civil Society in the Negotiating Process of Montenegro with the European Union’, by Ana Novaković

Background

The European Commission recommended opening accession negotiations with Montenegro in October 2011. According to the positive decision by the European Council, accession negotiations with Montenegro were opened in June 2012.

On 12 October 2011 in its Progress Report on Montenegro for the year 2011, the European Commission recommended the opening of negotiations between Montenegro and the EU. The European Council on 9 December 2011 adopted conclusions which authorized the Commission to prepare a negotiating framework with Montenegro, considering the so-called ‘7 priorities’. The Government of Montenegro appointed a Chief Negotiator for negotiations with the European Union on 29 December 2011. The Government adopted a decision establishing a structure for the negotiations on the accession of Montenegro to the European Union on 2 February 2012. EU Council of Ministers decided that negotiations with Montenegro should begin on 29 June 2012.

Institutional Setup

The main foundation of the negotiating structure is the Decision on establishing the structure for the negotiations on the accession of Montenegro in the European Union.

The structure consists of:

1. Collegium for negotiations on the accession of Montenegro to the European Union (hereinafter the Collegium of negotiations);
2. State delegation for negotiations on the accession of Montenegro to the European Community;
3. Negotiating Group to conduct negotiations on the accession of Montenegro to the European Community;
4. Working Groups for the preparation of negotiations on Montenegro’s accession to the European Union on individual chapters - the *acquis communautaire* of the European Union
5. Office of the Chief Negotiator for the conduct of the negotiations on the accession of Montenegro to the European Union

6. The Secretariat of the Negotiating Group.

Civil society is not recognized within the formal institutional set up for negotiations. However, after permanent requirements of Montenegrin civil society organizations (hereinafter CSOs) to be involved in the structures, the Montenegrin Government decided to include CSOs in the Working Groups, which means in the structures that participate in analytical screening of domestic legislation and its harmonization with the *acquis communautaire* of the European Union as well as preparation of the action plans for each chapter and negotiating positions. CSOs were interested in becoming part of the process in order to contribute to the quality of the work of the structures and increase the transparency of the process, making it more understandable and closer to citizens.

Civil society in negotiating structures

Concerning the role of the civic society, there are currently 49 representatives of NGO's in 33 Working Groups. According to the newly adopted Government Communication strategy that deals with the EU integration process, representatives of the civil society (NGO's, media, unions etc.) must make 30% of the negotiation structure in the Working Groups. Knowing that Montenegro represents the only state that has formally involved CSOs in the negotiating structures and that there have not been any previous examples of this practice, both the Government and the CSOs have had to develop this model protecting both parties and their interests. The Government decided to involve CSO representatives that have a proven track record in the topic covered by the relevant chapter. For that purpose, the Government developed a special form that should have been filled by interested CSOs, concerning personal experience of the representatives in the relevant topic, as well as the experience of the organization he/she represents. In that respect, it is important to stress that CSO representatives in the Working Groups represent themselves and their organizations, and not civil society in general.

CSOs' direct involvement in the Working Groups has certain advantages. Namely, being directly involved in their work, CSOs can influence, to a certain level, the quality of the documents that a Working Group prepares: screening lists, action plans, negotiating positions. This position allows them to be part of the initial phase of shaping these documents, unlike the practice where CSOs may comment on already prepared acts. While contributing to the quality of the documents, CSOs create wider legitimacy for their requirements towards a higher level of transparency of the documents.

From the Government point of view, benefits from engaging CSOs in formal structures include an increased quality of the documents and wider legitimacy of the process.

Civil society in independent monitoring of the negotiating process

Apart from being involved in formal government structures for negotiations, Montenegrin CSOs did not in any aspect give up of the crucial civil society role – monitoring and controlling the process. Moreover, a part of Montenegrin CSOs have been preparing themselves very actively in the past years for monitoring the negotiating process once it starts. One of the major CSO groups active in this field is certainly the Coalition of NGOs for Monitoring the Accession Negotiations with the European Union under Chapter 23 - Judiciary and Fundamental Rights. This coalition was established in July 2012 with the long term goal to contribute to a significant improvement in the protection of human rights of the citizens of Montenegro. It comprises 16 organizations with extensive experience in the area of judicial reform, fight

against corruption, protection and promotion of human rights and civil society development. Members of the Coalition are: Association of Youth with Disabilities of Montenegro, the Anima - Centre for Women's and Peace Studies, Centre for Antidiscrimination, EQUISTA, Centre for Democracy and Human Rights (CEDEM), Monitoring Centre (CEMI), Centre for Development of NGOs (CRNVO), Centre for Women's Rights, European Movement in Montenegro, Human Rights Action, Institute Alternative, Institute for Social Inclusion, Juventas, LGBT Forum Progress, SOS Hotline for Women and Children Victims of Violence Nikšić, Women's Safe House.

The Coalition focuses on the building of capacities of its members and in this area the main activities of the Coalition have been training courses concerning:

- The content and structure of the negotiations, the negotiating teams and the public's right to receive information
- Table of Contents of Chapter 23 – Judiciary and Fundamental Rights, Chapter 10 – Information Society and Media, and Chapter 19 – Social Policy and Employment and the process of defining benchmarks
- The role of NGOs in monitoring the negotiations: the methodology of monitoring and reporting, policy initiatives and advocacy process recommendations
- Mapping policy actors and communication strategies of organizations that monitor negotiations
- Development of an action plan for monitoring the negotiations and communications with the public and policy actors (planning further activities).

Activities of the Coalition

In June 2012, the Coalition presented its activities and highlighted the principles of the negotiation process. In December 2012 the Coalition sent over 200 demands to the Government concerning Chapter 23. The demands were divided in four areas: reform of the judiciary, protection of human rights, combating corruption and, sustainability and development of civil society.

Since its forming the Coalition produced 2 shadow reports. The first semi-annual situation report on the state in the area of judiciary and fundamental rights in Montenegro from the period 10 October 2012 to 10 April 2013 was published and distributed to more than 400 relevant stakeholders both at national and EU level. Annual report on the state in the area of judiciary and fundamental rights in Montenegro for the period 10 October 2012 to 10 October 2013 was also created, in order to provide updated information on the state in the area of judiciary and fundamental rights and it was intended to serve as a source of information for the purposes of the European Commission's assessments in the Progress Report for Montenegro for 2013 and it was also used in the preparation of the report of the parliamentary committee of the European Parliament on the topic of progress of Montenegro in the EU integration.

In January 2014 the Coalition published Comments to the first governments' report on implementation of the action plan for the chapter 23 'judiciary and fundamental rights' which stated that there was continuity in the implementation of the action plan, but that the measures were not sufficiently consistent and harmonized with other strategic documents and action plans. It also stated that, in some segments, there was a lack of measurable data related to specific cases on the basis of which it would be possible to appreciate the impact of mea-

tures, especially when it comes to court statistics, records related to antidiscrimination or data related to the exercise of minority rights.

Coalition towards CSO participation in Working Groups

Although procedures for the election of NGO representatives in the negotiating working bodies are transparent, ensure the legitimacy and quality of representatives and in general constitute good practice, the main obstacle for transparent and good cooperation with the civil society representatives that are members of the Working Groups and CSOs in general are the Rules of Procedure that prevent the involved persons and organizations to inform the public about the work of the Working Groups. The latest report of the Coalition of NGOs for Monitoring the Accession Negotiations with the European Union under Chapter 23 - Judiciary and Fundamental Rights in their Situation Report in the area of Judicial Reform and Human Rights (Chapter 23) in Montenegro in the period 10 October 2012 to 10 April 2013 states “that the rules of procedures concerning Working Groups restrict NGOs to inform the public about the work of the Working Group.”

More specifically, Art. 13 of the Rules of Working Procedures for the Working Groups states: “The public can be informed about the work of the Working Group by the chief negotiator, Secretary of the Negotiating Group, a member of the Negotiating Group and head of the Working Group.”

These Rules of procedure, the Coalition states, diminish the transparency of the process and partly restrict the work of individual NGOs which in their day-to-day work cover the areas comprised by the negotiating chapters. Denial of the right of NGO representatives to publicly make statements about the work of the Working Group or inform citizens about the dynamics of its operations negatively affects the essence of the process that needs to be as consultative as possible and well-communicated to the public.

VI. Conclusion

This paper has presented some key conceptual issues and has offered experience-based recommendations with regards to the set-up of EU accession and EU membership negotiation structures. It has argued ***in favour of setting up negotiation coordination structures based on those already established for the coordination of the overall EU accession (stabilisation and association) process.***

It has also addressed the aspect of policy making and coordination as a necessary input into those structures needed to ***ensure that a candidate country presents strong and evidenced arguments in Brussels and presents them in a consistent manner,*** avoiding a cacophony of diverging messages and positions. Finally, it has delved into the reasons for and possible ways to involve the civil society and the national parliament into the EU accession (and particularly accession negotiations) process, offering an overview of advantages and disadvantages of the different models.

It should be reiterated that for candidate countries to prepare themselves well for the challenges of membership, ***the accession process should not be approached as a finite exercise ending with the moment of accession.*** As put forward by SIGMA paper no. 23 back in 1998 when the CEE countries were preparing for starting their negotiations:

[It] is very important to recognise that creating a project management team is not all that needs to be done. At the same time as preparations are being made to negotiate accession, preparations for managing membership should begin. [...] The main focus of negotiations is not on willingness to join, but on ability to meet the heavy demands of membership. [...] Once membership has been accomplished, it is assumed that life becomes easier. The opposite is the case. Securing membership, in other words, is not the end of the story. It is only the beginning of a new phase—an important event in a continuing process. Being a Member is, in some ways, more difficult and demanding than negotiating membership. A sound strategy for building capacities to cope with membership must take account of the permanent demands that membership brings and the temporary problems of the transition to membership. Concentrating solely on securing membership runs the risk of underestimating both and weakening rather than strengthening capacities in the long run.⁴³

Therefore, it can strongly be argued that ***the present experiences with regards to coordinating the EU accession process should be used to the maximum extent possible as an exercise for future coordination and negotiations within the EU membership context.*** While this approach may be more exigent, the challenges presented are a result of a “shift from bilateral negotiations with the EU, to multilateral negotiations in the EU.”⁴⁴

⁴³ Metcalfe, Les. “Meeting the Challenges of Accession.” in: SIGMA Paper No. 23, OECD, 1998, p. 57.

⁴⁴ Ibid.

VII. Authors' Biographies

Milena Lazarevic

Milena Lazarevic is Senior Programme Manager and Senior Researcher at the European Policy Centre (CEP), primarily responsible for the Good Governance Programme Area. She also works as a consultant in the fields of public administration reform, policy making and regional development. In the past, she worked as adviser for public administration reform and administrative capacities for EU accession in the EU Integration Office of the Serbian Government (SEIO) and in the Serbian Ministry of Public Administration. As a Soros scholar, Milena obtained her BA degree in European Studies and International Relations at the American University in Bulgaria (AUBG), after which she successfully completed an advanced MA programme in European studies at the College of Europe, on a King Baudouin Foundation scholarship. She later also graduated from the Diplomatic Academy of the Ministry of Foreign Affairs of Serbia and obtained an MA in European Administrative Law at the Law Faculty of the Belgrade University.

Andrej Engelman

Andrej Engelman is the Deputy Director of the Slovenian Government Office for Development and European Cohesion Policy. In the past, he performed the duties of State Secretary (Deputy Minister) for European affairs in the Slovenian Government Office for European Affairs, as well as Head of Budget Sector and State Secretary in the Ministry of Finance. He has also worked as expert on several technical assistance projects in the Western Balkan region. He holds a degree in economics from the University of Ljubljana.

Malinka Ristevska-Jordanova

Dr. Malinka Ristevska Jordanova is the Director of the think-tank European Policy Institute, Skopje. She has lengthy experience as an expert of EU Integration within the Macedonian institutions, the Parliament and the Government, as well as in a regional context. She chaired the Stabilisation and Association Committee between the EU and the Republic of Macedonia and the Subcommittee on Justice and Home Affairs.

Her PhD at the Law Faculty of the University Ss. Cyril and Methodius – Skopje is on approximation with EU law.

Jovana Marović

Jovana Marović has been working at the 'Institute Alternative', a Podgorica-based think tank, as a research coordinator from 2010. She also worked as a counsellor for European Integration at the Ministry of Foreign Affairs and the Municipality of Budva from 2004-2009. Jovana has successfully completed several specialized diplomatic programs, including the Diplomatic Academy. Since March 2012 she is a member of the working group for Chapter 23 – Judiciary and Fundamental Rights, in preparation for the accession of Montenegro to the EU.

Her PhD at the Faculty of Political Sciences University of Belgrade is on structural democracy problems in the EU political system.

VIII. Contributor's Biographies

Gordana Vidovic Mesarek

Gordana holds a Bachelors of Law from the University of Zagreb. She has worked as the Head of the Department for Coordination and Monitoring of Adaptation to EU System (2005-2008), as well as being a Member of the Secretariat of the Negotiating Team for the Accession of the Republic of Croatia to the European Union (2005-2013). She is also a Lecturer for civil servants on the topic "EU law, Croatia's EU Accession Negotiations".

Currently, she is Head of Division for Coordination of Acquis Transposition and Notification in the Croatian Ministry of Foreign and European Affairs.

Ana Angelovska

Ana undertook her studies at the University Paris I, Sorbonne , France studying an LLM in International Public Law and Law of International organizations. After this, she worked as the Head of Unit for Justice, freedom and security in the Secretariat for EU affairs. In this role she was responsible for coordination, facilitation and monitoring of the process of fulfillment of Copenhagen political criteria and implementation of European and best international standards in the areas of justice, freedom and security.

Her present role is in the Secretariat of European Affairs as Head of Sector for Integration.

Kristian Turkalj

Kristian graduated from the Faculty of Law in Zagreb in 1995. In July 2001 he commenced working at the Mission of the Republic of Croatia to the European Union, and since then he has been dealing with issues concerning the European Union and Croatian accession to the EU. In 2005 he was appointed as the Head of the Working Group for negotiation of Chapter 24 'Justice, freedom and security', and in 2008, he was transferred to the Ministry of Justice and to work as a Member of the Negotiation team responsible for chapters 23 'Judiciary and fundamental rights' and 24 'Justice, freedom and security'.

In 2011 he obtained his PhD degree on the topic 'Legal and institutional framework of the European Union for the suppression of terrorism' at the Law Faculty in Zagreb.

Srđan Majstorović

Srđan holds a BA in International Relations from the Universty of Belgrade, as well as an MA in European Integration Studies and Regionalism from the Karl Franzens University, Graz. From 2001 to 2003 he worked as an advisor in the Federal Ministry for International Economic Relations in the Federal Republic of Yugoslavia for the Department for Cooperation in EU and Regional Initiatives in SEE. Subsequent to this, from 2003 to 2005 he was head of the Department for Communications Activities and Relations with the EU Institutions within the Ministry for International Economic Relations of the Republic of Serbia.

Since September 2005 Srđan has been Deputy Director of the European Integration Office of the Government of the Republic of Serbia.

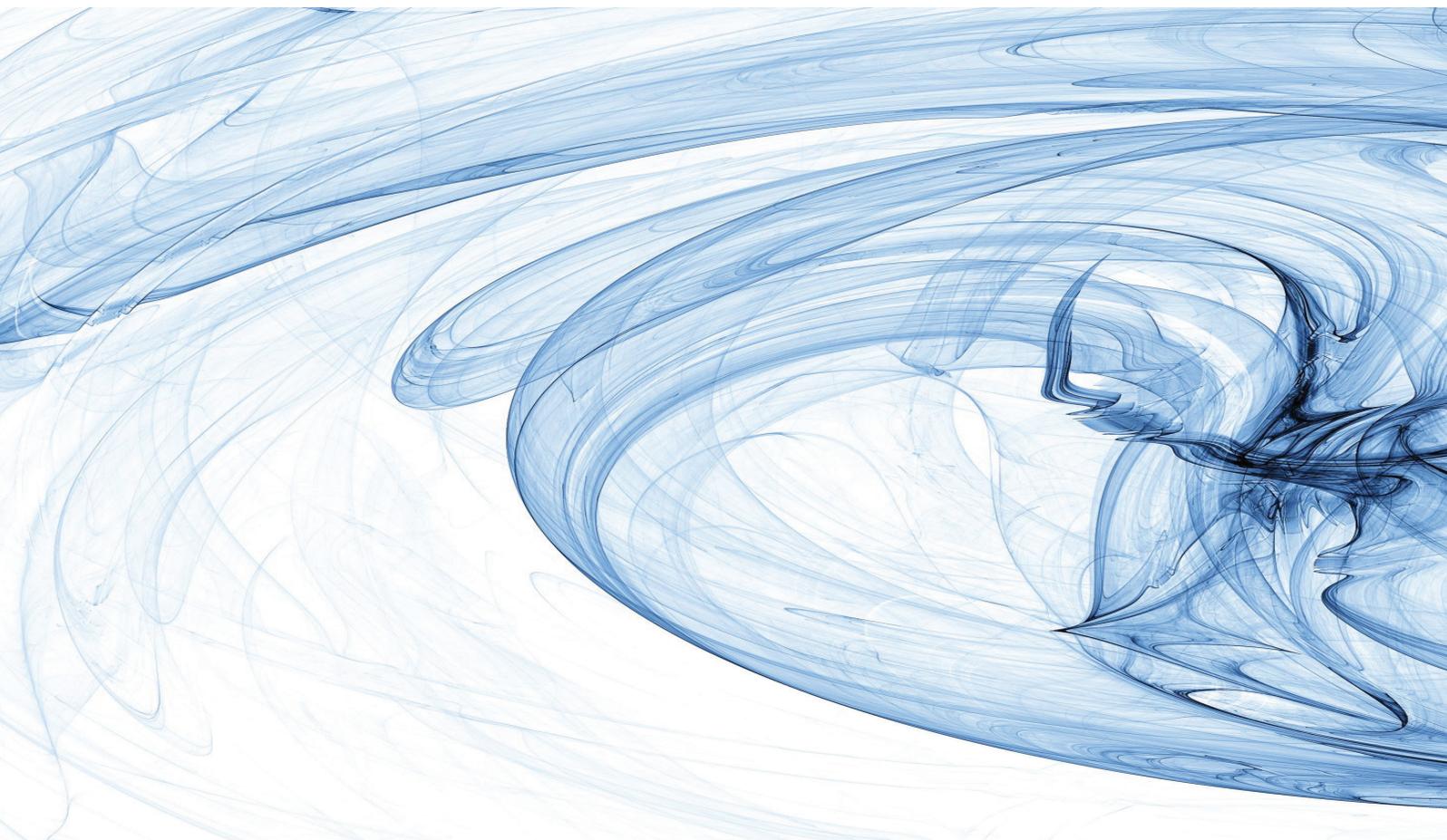
Ana Novakovic

Ana obtained a specialist's degree from the Faculty of Podgorica of the University of Montenegro. From 2007 to 2008 she was a project assistant in the Centar za razvoj nevladinih organizacija (CRNVO). Within this role she has worked on citizen participation, cooperation between Civil Society Organisations and Parliament, Government, Corruption on the local level and Accountability and Transparency on local self-government.

Her current position is Executive Director of the Centre for Development of Non-Governmental Organisations.

IX. Bibliography

- Bobić, Maja, and Relja Božić. *Civil Society in the Process of European Integration – from Constructive dialogue to Successful Negotiations*, European Movement in Serbia, October 2012.
- Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006 – 2007 Including annexed special report on the EU’s capacity to integrate new members* Brussels, 8.11.2006, COM(2006) 649.
- Commission Opinion on Montenegro’s application for membership of the European Union, Brussels, 9. 11. 2010, COM(2010) 670.
- Dimitrova, Antoaneta, and Dimiter Toshkov. “The Dynamics of Domestic Co-ordination of EU Policy in the New and Candidate Member-States.” *West European Politics* Vol. 30, No. 5, 2007.
- Dimitrova, Antoaneta, and Klaudijus Maniokas. “Linking Co-ordination of European Affairs and European Policy: New Member States in the Decision-Making Process of the EU”, Paper presented at the NISPAcee Annual Conference, Vilnius 2004.
- Đokić, Irena, and Marijana Sumpor. *The role of Croatian civil society organisations in the European Union Accession Process*, TACSO, Zagreb, June 2013.
- Lazarevic, Milena et al. *Policy Making and EU Accession Negotiations Getting Results for Serbia*. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, European Policy Centre, Belgrade, 2013.
- Marović, Jovana. *Civil Society Involvement in accession negotiations – To much to ask?*, Institute for Democracy and Mediation, Tirana, February 2013.
- Marović, Jovana, and Marko Sošić. *Parliament of Montenegro and the process of European integration Just watching or taking part?*, Institute Alternative, Podgorica, December 2011.
- Mayhew, Alan. “The Preparation of Countries in South East Europe for Integration into the European Union”, *Sigma*, OECD, 2005.
- Mayhew, Alan. “Enlargement of the European Union: an Analysis of the Negotiations for Countries of the Western Balkans.”, in: *Sigma Paper No. 37*, OECD, 2007.
- Metcalfe, Les. “International Policy Coordination and Public Management Reform”, *International Review of Administrative Sciences*, Vol. 60, Sage, London, 1994.
- Metcalfe, Les. “Meeting the Challenges of Accession.” in: *SIGMA Paper No. 23*, OECD, 1998.
- Montenegro and negotiations in the Chapter 23 – Judiciary and fundamental rights, Institute Alternative, Podgorica, June 2012.
- Nicolaidis, Phedon. “The Boundaries of the Negotiating Power of the Candidates for Membership of the European Union: Some Theoretical Considerations and Practical Implications.” *EIPASCOPE : bulletin*, Vol. 3, 1998.
- Škrabalo, Marina. “Transparency in retrospect: preliminary lessons from Croatia’s EU accession process”, Discussion paper, Greens/EFA in the European Parliament, November 2012.
- Verheijen, Tony. “The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs.” in: *Sigma Paper No. 23*, OECD, 1998.



Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH
Open Regional Funds for South East Europe
Zmaja od Bosne 7-7a
71000 Sarajevo
Bosnia and Hercegovina
T +387 33 957 500
F + 387 33 957 501
GIZ-BosnienHerzegowina@giz.de
www.giz.de/regional-funds-southeasteurope

ORF Management
Promotion of EU Integration
Alexandra Hilbig
T +387 33 957 500
F + 387 33 957 501
E alexandra.hilbig@giz.de