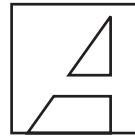




## **EMBEDDING RULE OF LAW IN THE ENLARGEMENT PROCESS**



**A CASE FOR EU POLITICAL CONDITIONALITY IN  
THE ACCESSION OF THE WESTERN BALKAN COUNTRIES**



Konrad  
Adenauer  
Stiftung

## **EMBEDDING RULE OF LAW IN THE ENLARGEMENT PROCESS:**

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THE ACCESSION OF THE WESTERN BALKAN COUNTRIES

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## **ABSTRACT**

There have been significant alterations in the EU enlargement policy when it comes to the western Balkan countries – mainly related to the scope of the criteria and approaches towards application of the conditionality policy. The paper aims to illuminate EU political conditionality's application in the accession processes of the western Balkan countries, concentrating on the conditionality instrument of benchmarking and monitoring. It examines whether the EU political conditionality is the driver enabling the western Balkan countries to advance in the accession process, and looks for patterns of consistency in the application of political criteria and related conditionality in the judiciary and fundamental rights policies. The methodology utilizes a comparative case study approach, identifying innovations and principles governing the negotiation process of Croatia and Montenegro, the application of political conditionality related to the judiciary and fundamental rights policies, and actions taken by these countries in order to meet the political criteria. In addition, it makes an analogy to the case of Macedonia, which has not yet started accession negotiations, drawing parallels and examining the comparable instruments and approaches which in major part concern the rule of law area.

## INTRODUCTION

The overall successful application of the European Union (EU) conditionality policy in the case of the fifth wave of enlargement has paved the way for introduction of this incentive-based policy in the successive enlargement processes with the western Balkan countries. Notwithstanding the marginal deterioration of the effectiveness of this policy related to the progress made in the area of justice and home affairs in Bulgaria and Romania, and the subsequent establishment of the post-accession Cooperation and Verification Mechanisms for monitoring these policy areas; the Commission is credited as being on the right track of reclaiming the throne of success by exerting credible political leverage and showcasing the EU transformative power on the western Balkan accession countries. The substantive progress made by Croatia in meeting the EU membership criteria, in addition to the advances in the Montenegrin accession process, are cases in point.

This outlook is tested in the paper by scrutinizing whether EU political conditionality is the driver enabling the countries to advance in the accession process. If so, what are the specifics of the political criteria related to rule of law that the Commission is utilizing to build-up pressure on accession countries? What are the existing patterns of political conditionality for enforcement of political criteria? Subsequently, how accession countries respond(ed) to such a pressure and which rule of law reforms and reform related activities were and are undertaken to meet these political criteria? Finally, can one detect consistency in the approach taken, what are the lessons learnt and could other accession countries effectuate these lessons and take appropriate, pattern-related actions?

Reflecting upon the 2012 EU Enlargement Strategy and its centrality over the policies from the rule of law spectrum, the paper looks into one specific aspect of EU political criteria and related political conditionality, i.e., those rule of law policies associated with the chapter 23 covering the judiciary and fundamental rights policies. It concentrates on the conditionality instrument of benchmarking and monitoring, as defined by Grabbe<sup>2</sup> from the Eastern enlargement, adjusted to the western Balkan setting. The paper aims to illuminate EU political conditionality's application in the accession processes of the western Balkan countries. Additionally, it seeks to identify reform-oriented patterns of action by the accession countries addressing the political criteria laid down by the European Commission, which could assist in improving future responses of other accession countries.

The paper applies a comparative case study approach, providing substantial and in-depth insights into the country-specific political criteria and conditionality applied; and at the same time, providing fruitful ground for cross country/case analysis in order to obtain sufficient evidence for conclusions to be generated. The selection of case studies and policy areas was made to reflect the application of the EU political criteria and related political conditionality in more advanced stages of the accession process – namely the negotiation phase. This perspective studies the cases of the two most advanced western Balkan countries in the enlargement process, namely Croatia<sup>3</sup> and Montenegro. In addition, it makes an analogy to the case of Macedonia. Relying on data deriving from a number of sources, the paper scrutinizes official EU documents and reports such as country-specific Progress reports, screening and monitoring reports for the selected chapter, benchmarks, the accession treaty as well as national, accession countries documents like action plans, national strategies, and programs. A limitation related to this paper is that it offers restricted possibilities for generalization. The

2 Grabbe, Heather. "Europeanization goes East: power and uncertainty in the EU accession process." *The politics of Europeanization* 27 (2003): 303–329.

3 The research was conducted in a period when Croatia's Accession Treaty was pending ratification by EU Member States.

research findings were generated based on a single conditionality instrument, benchmarking and monitoring, and on a single rule of law chapter dealing with judiciary and fundamental rights policies. In addition, possibility for generalization of the conclusions is restricted due to the research design which concentrates only on two case studies on countries in the advanced stage of accession to the EU.

This document is structured in six parts. After this introduction, the second part highlights the main characteristics of EU political conditionality and outlines the modalities through which it is introduced in the enlargement process of the western Balkan countries. This is followed, in the third and fourth part of this paper, by two case studies scrutinizing the innovations and principles governing the negotiation process for Croatia and Montenegro, the application of political conditionality related to the judiciary and fundamental rights policies, and actions taken by these countries in order to meet the political criteria. Another case study looks at Macedonia, which has not yet started accession negotiations, drawing parallels and examining the comparable instruments and approaches which in major part concern the rule of law area and more specifically policies related to chapter 23. On the basis of these case studies, the final part draws conclusions on development patterns of utilized political conditionality in the accession process and more specifically the negotiation process, which could be an analysis of great importance for the remaining western Balkan accession countries. Furthermore, a conclusion will be made on the existence of consistency in the application of the political criteria and the related conditionality in the judiciary and fundamental rights policies and would reveal opening and interim benchmarks which could be introduced for Macedonia. Finally, an appendix gives a side-by-side examination of the political criteria related to judiciary and fundamental rights in regards to the current state of affairs in the accession process of Croatia, Montenegro and Macedonia.

## **EU POLITICAL CONDITIONALITY IN THE WESTERN BALKAN**

This paper employs the understanding of the conditionality policy as a bargaining strategy of reinforcement by reward whereas the EU provides incentives to accession countries to comply with its criteria;<sup>4</sup>it operates with the term political conditionality as it correlates with the EU reinforcement strategy where from all the Copenhagen criteria the emphasis is placed on the political ones.<sup>5</sup>

With the introduction of the Copenhagen criteria<sup>6</sup> for EU membership in 1993,<sup>7</sup> the policy of conditionality has moved to the centre of the EU enlargement process. The criteria and the related conditionality policy have helped the Central and Eastern European countries (CEECs) to democratize their societies and to open their economies based on market principles, which finally led towards gaining EU membership in 2004. Their accession process was acknowledged as a great success and it presented a clear case of the transformative power of the EU by means of exploiting the conditionality policy to its full potential.

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4 Schimmelfennig, Frank, and Ulrich Sedelmeier. "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe." *Journal of European public policy* 11.4 (2004): 661-679.

5 Schimmelfennig, Frank, Stefan Engert, and Heiko Knobel. *International socialization in Europe: European organizations, political conditionality and democratic change*. Vol. 320. Basingstoke: Palgrave Macmillan, 2006.

6 1) Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; 2) Membership requires the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; 3) Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union; 4) The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.

7 Conclusions of the presidency, Copenhagen European council. For more information, see [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/72921.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf)

However, the cases with the laggard countries of the last wave of enlargement, namely Bulgaria and Romania, have raised doubts concerning the application of the conditionality policy and disappointment among EU Member States. As a direct consequence, calls for even stricter conditionality and enlargement criteria have emerged making the accession process with the remaining western Balkan countries even more cumbersome. Although the EU enlargement policy towards the western Balkan countries, in general, follows the roadmap applied in the accession of the CEECs, there have been significant alterations – mainly related to the scope of the criteria and approaches towards application of conditionality. This is mainly due to the evolving policy of conditionality which went beyond the original Copenhagen criteria in content, priority, and procedures<sup>8</sup> on the basis of lessons learned from previous enlargement waves. The evolving criteria arise from the stabilization and association agreements, various peace agreements<sup>9</sup>, and considerations of additional political issues such as the cooperation with the International Criminal Tribunal for Former Yugoslavia. The dynamics of the enlargement process with the western Balkan countries is far more challenging from EU conditionality policy standpoint. The membership perspective of western Balkan countries is more distant and less credible when compared with the accession of CEECs<sup>10</sup>. Their political situation is considerably more complex, whilst some Member States demonstrate reluctance towards enlargement following the premature accession of Bulgaria and Romania in the Union. Altogether, the enlargement process concerning western Balkan countries would put the conditionality policy to the test, i.e., would provide an experiential learning opportunity for the EU.

## THE CASE OF CROATIA

The negotiations with Croatia were opened on October 3, 2005, and the first explanatory screening took place at the end of the same month.<sup>11</sup> The chapter related to judiciary and fundamental rights policies was among the last ones to go through the screening procedure.<sup>12</sup> Some of the reasons for this are related to its introduction and formation as a separate chapter – extracted from the former chapter Justice and Home Affairs – and the time needed for the Commission to determine the objectives and containing targets, to specify the political criteria related to the chapter and to establish indicators for measuring progress.

### INNOVATIONS AND PRINCIPLES GOVERNING THE NEGOTIATION PROCESS

Negotiations with Croatia were open once the country met the political criteria as well as the Stabilization and Association Process conditionalities established by the Council. The membership bid has become even more difficult than before while the rules of the game more stringent in sense of the volume of the *acquis* that each country had to transpose and implement. The approximately 90.000 pages<sup>13</sup> of the *acquis* that Bulgaria and Romania had to implement have almost doubled and in the case of Croatia reached 170.000 pages.<sup>14</sup> In order to address the deficiencies identified in previous enlargement waves and to assess

8 Pridham, Geoffrey. "Change and continuity in the European Union's political conditionality: aims, approach, and priorities." *Democratisation* 14.3 (2007): 446-471.

9 UN resolution 1244, Dayton, Ohrid, Kumanovo and Belgrade agreements.

10 Epstein, Rachel A., and Ulrich Sedelmeier. "Beyond conditionality: international institutions in post communist Europe after enlargement." *Journal of European public policy* 15.6 (2008): 795-805.

11 For the Chapter 25 Science and research the explanatory screening took place on October 20, 2005.

12 For the Chapter 23 Justice and fundamental rights the explanatory screening took place September 7–8, 2006, and the bilateral screening October 17–18, 2006. The screening procedure ended on the October 18, 2006.

13 Communication from the Commission COM (2005) 534 Comprehensive monitoring report on the state of preparedness for EU membership of Bulgaria and Romania

14 Bolstering the rule of law in the EU enlargement process towards the western Balkan, Clingendael Policy Brief no. 22, July 2013



in closer detail the preparedness of Croatia for opening negotiations in specific policy areas, the Commission decided to breakdown the *acquis* into 35 chapters, whereas negotiations with earlier applicants entailed 31 chapters. This innovation was envisaged and outlined in the 2005 negotiating framework for Croatia<sup>15</sup> (and Turkey).

Related to the political criteria, a number of distinguished features in the case of Croatia could be underlined. *The former Justice and Home Affairs chapter was divided in two chapters* with the purpose of more detailed analysis and alignment in this policy area. The negotiation framework introduced chapter 23 – Judiciary and Fundamental Rights covering the policies which mainly refer to the establishment of an independent and efficient judiciary, an effective fight against corruption, as well as respect for fundamental rights and freedoms, as guaranteed by the *acquis* and by the Charter of Fundamental Rights of the EU. In this context, the renewed consensus on enlargement,<sup>16</sup> as endorsed by the 2006 European Council, pledges to further improve the quality of the accession process with concrete measures by focusing on rule of law issues such as judicial reform, administrative capacity, fight against corruption and organized crime which need to be addressed early on in the accession process. It also commits to a more systematic use of benchmarks, providing concrete criteria for opening and closing negotiations on individual chapters of the negotiations.<sup>17</sup> *The introduction of the benchmarking system* was another novelty in the Croatian accession process, although they did not exist in the initial phases of the negotiations. The benchmarking system defines measurable outcomes for closing benchmarks for each of the chapters, and in some cases opening benchmarks. Once closing benchmarks are met, a specific chapter can be provisionally closed. The establishment of this system made the negotiation process more personalized and gave the Commission the opportunity to develop tailor-made, country specific targets which will provide sufficient guidance to the accession country concerning the challenges which have to be addressed. The third feature that distinguishes the accession process of Croatia, when compared with the one with the CEECs, is *the pre-accession monitoring process*, i.e., a new monitoring mechanism for EU accession countries applicable in the period between the completion of the negotiations and accession. While urging Croatia to continue with its reform efforts with the same vigour as in the negotiation phase, in particular as regards to the chapter judiciary and fundamental rights, the June 2011 conclusions of the European Council paved the way for Croatia's membership bid to move forward by establishing this new monitoring mechanism up to the accession; superimposing the existing doubts among some Member States about the preparedness of Croatia and providing additional necessary assurance to Croatia and current Member States.<sup>18</sup> The aim of such monitoring is to demonstrate that reforms are being implemented, and provide guarantees for their continuation also after the closure of negotiation chapters. At the same time it is useful for the ratification procedure of the Accession Treaty so that Member States could see the seriousness of the reforms, their quality and the irreversibility of the whole process.

Article 36 of the Croatian Accession Treaty requires the Commission to closely monitor all commitments undertaken by Croatia in the accession negotiations, focusing, in particular, on three chapters: Competition policy, Judiciary and Fundamental Rights, and Justice, Freedom and Security. The Treaty notes that the Commission monitoring shall focus in particular on commitments undertaken by Croatia in the area of the judiciary and fundamental rights (Annex VII), including

<sup>15</sup> See [http://ec.europa.eu/enlargement/pdf/croatia/st20004\\_05\\_hr\\_framedoc\\_en.pdf](http://ec.europa.eu/enlargement/pdf/croatia/st20004_05_hr_framedoc_en.pdf)

<sup>16</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/92202.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/92202.pdf)

<sup>17</sup> [http://europa.eu/rapid/press-release\\_IP-06-1523\\_en.htm#fn2](http://europa.eu/rapid/press-release_IP-06-1523_en.htm#fn2)

<sup>18</sup> See [http://ec.europa.eu/commission\\_2010-2014/president/news/speeches-statements/pdf/20110624\\_1\\_en.pdf](http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/20110624_1_en.pdf)

the continued development of track records on judicial reform and efficiency, impartial handling of war crimes cases, and the fight against corruption.

As an integral part of its regular monitoring according to the Accession Treaty, the Commission had been issuing six-monthly assessments, on the implementation of Croatia's commitments in these areas. The Commission adopted three reports during the pre-accession period: a Monitoring Report on Croatia's accession preparations in April 2012, a Comprehensive Monitoring Report in October 2012 and finally in March 2013 the last Comprehensive Monitoring Report. Furthermore, the dynamics of the ratification of the Accession Treaty in the Member States was largely depending on these Reports. Some Member States<sup>19</sup> waited for a positive final Report in order to ratify the Accession Treaty.

## APPLICATION OF POLITICAL CONDITIONALITY RELATED TO JUDICIARY AND FUNDAMENTAL RIGHTS

In June 2007, the Commission presented to the Member States the Screening report for chapter 23 stating the specific gaps which need to be addressed in relation to the judiciary, anti-corruption and fundamental rights. Member States have agreed on the text of opening benchmarks in December 2007 after which the Portuguese Presidency officially informed Croatia about the final wording of the benchmarks that had to be fulfilled in order to open the negotiations for the Chapter 23. All three benchmarks included the preparation of detailed action plans with concrete measures, competent authorities and deadlines.

**OPENING BENCHMARK 1:** Croatia provides the Commission with a revised Action Plan for the Reform of the Judiciary including timeframes, bodies responsible and budget necessary for its implementation with specific emphasis on (a) the appointment and the management of the careers of judges and state attorneys; (b) measures to improve the efficiency of the judiciary including the rationalisation of the court network; (c) the introduction of a comprehensive system of legal aid; (d) the integrity of proceedings as regards war crimes, both in terms of domestic cases and proceedings transferred from ICTY.

In order to fulfil this benchmark the Croatian Government adopted the Action Plan for the Judicial Reform Strategy on June 25, 2008 with specific emphasis on the requested information. The Action Plan specified measures, deadlines, and bodies responsible for implementation in order to track the implementation more precisely.

**OPENING BENCHMARK 2:** Croatia provides the Commission with a revised National Anti-corruption Programme and related Action Plans including timeframes, bodies responsible and budget necessary for its implementation with specific emphasis on (a) the establishment of an effective institutional mechanism of coordination for the implementation and monitoring of anti-corruption efforts; (b) the effectiveness of legislation on financing of political parties and election campaigns in addressing corruption; (c) measures to prevent conflict of interest.

The Strategy for the Suppression of Corruption was adopted in the Croatian Parliament on the June 19, 2008 and only one week after that on June 25, 2008 the

19 Germany, United Kingdom, Netherlands, France, Denmark, Belgium, Finland, Slovenia ratified the Accession Treaty after the last Comprehensive Monitoring Report in March 2013 was adopted. Germany was the last Member state that deposited the instruments of ratification of the Croatian Accession Treaty on June 21, 2013.

Croatian Government adopted the Action Plan for the Strategy. This Strategy was developed on a review of the National Anti-Corruption Programme 2006–2008. Based on the experience gained in implementing the Programme, the Strategy and Action Plan aimed to improve all forms of anti-corruption, with clearly defined measures, deadlines, responsible institutions and necessary funds.

**OPENING BENCHMARK 3:** Croatia provides the Commission with two separate plans including timeframes, bodies responsible and budget necessary for their implementation for (a) the full implementation of the Constitutional Act on the Rights of National Minorities, and (b) the accelerated implementation of the Housing Care Programme within and outside the Areas of Special State Concern for those refugees who are former tenancy rights holders wishing to return; Croatia decides on measures to resolve the issue of convalidation.

Regarding the fulfilment of the third benchmark, in June 2008, the Government of Croatia adopted an Action plan for the implementation of the Constitutional Act on the Rights of National Minorities and Action plan for the accelerated implementation of the Housing Care Programme. Also, an Information about the continuous progress in solving issues regarding convalidation of years of employment service was prepared by the relevant state administration bodies and sent to the European Commission.

In June 2008, only six months after the receipt of the three opening benchmarks, Croatia officially submitted to the Commission the documents on their fulfilment, which enabled the process of verification to be initiated. However, it took the Commission nearly two years to give a positive assessment on the fulfilment of the opening benchmarks. Subsequently, in February 2010, the Spanish Presidency invited Croatia to submit its Negotiation position. The position was handed to the Spanish presidency on February 19, 2010 only one day after receipt of the positive assessment on the fulfilment of the opening benchmarks.

In its Negotiation position, Croatia has not requested permanent exemptions or transitional periods for the implementation of the *acquis* in this chapter. The Croatian Negotiation framework stated that the European Union may agree to requests from Croatia for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. Furthermore, for areas where considerable adaptations are necessary, requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an on-going, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. Although not explicitly stated in the Negotiation framework, transitional periods for this chapter would not be approved, even if they have been requested.

In May 2010, the EU adopted the Common position of the European Union for Chapter 23. Based on Commission proposal, the Council adopted ten closing benchmarks divided into twenty-one sub-benchmarks. Some of the benchmarks required updating of existing but also adoption of new plans/strategies in specific areas that could be adopted in a relatively short period of time. However, strengthening of administrative capacity for the implementation of these plans or earlier adopted laws was required, and six benchmarks required track record – demanding a longer period to be established and improved. Further aggravating circumstance was that in all of these areas it was very difficult to define satisfactory implementation results.

Negotiations for this chapter were opened at the Intergovernmental Conference on Accession of the Republic of Croatia to the EU held at ministerial level on June 30, 2010, following the meeting of all opening benchmarks by the Republic of Croatia. Thus, the overall negotiation period for this chapter was relatively limited. Considering that Chapter 23 as well as the entire accession negotiations were closed on June 30, 2011 Croatia had only one year to meet all ten closing benchmarks.

Nevertheless, since the opening of the negotiations, Croatia has implemented significant reforms in all relevant areas of the judicial system, fight against corruption and human rights in line with the highest European standards. In fulfilling the closing benchmarks in chapter 23, Croatia, among other things, amended its Constitution, adopted a series of laws and regulations, strategies and action plans and monitored their implementation in practice in order to ensure an adequate track record. It strengthened administratively a range of institutions in the areas of the judicial system, fight against corruption and human right by employing new people, ensuring adequate infrastructure, providing computerization and training of competent staff. New databases were established and detailed statistics kept specifically for benchmarks that required track record. Consequently, considerable budgetary resources were invested in this area. Each progress in the Chapter was thoroughly monitored and regularly reported to the European Commission, and regular technical consultations were held to discuss every request from the benchmarks.

Pursuant to the above, it is evident that for closing chapter 23 a large number of different measures were implemented, and not all of them can be specified in this paper. Thus the following section provides an overview of the most important activities undertaken to meet the ten benchmarks for closing this chapter.

**CLOSING BENCHMARK 1:** Croatia updates its Judicial Reform Strategy and Action Plan and ensures effective implementation.

**SUB-BENCHMARK:** Croatia puts in place sufficient institutional capacity for the management of judicial reforms, including post-legislative scrutiny.

In December 2010, the Croatian Parliament has adopted a new Judicial Reform Strategy for the period 2011–2015. This Strategy clearly projects the further direction of the reform, and strengthens the institutional framework and expert capacities for the successful implementation of the set goals.

On May 20, 2010 the Government of the Republic of Croatia adopted a revised Judicial Reform Action Plan. The Plan was adopted within the strategic framework of the Judicial Reform Strategy from January 2006, with the aim of further accelerating the Judicial Reform process, and was based on an analysis of the implementation of the 2008 Action Plan measures. Measures, deadlines, and bodies responsible for implementation were specified to track the implementation more precisely, with the priority of being finished prior to EU accession.

The Council for Monitoring the Implementation of the Judicial Reform Strategy was constituted as a central body for post-legislative supervision mechanism. The Council is composed of heads of all key actors in the justice system, with the objective to ensure the broadest possible support for the implementation of the reform measures. As a central body that steers and monitors the course of the

reform, and conducts an impact assessment of the implemented measures, the Council guarantees the continuity and stability of the process, regardless of the changeable political situation. For the same purpose, the Ministry of Justice has strengthened institutional capacities for the implementation of the reform. A very important point for Judicial Reform was the establishment of the Department for the Implementation of the Judicial Reform Strategy within the Directorate for the EU and International Cooperation.

A major step toward establishing a legislative scrutiny mechanism was made in February 2011 when the Minister of Justice adopted the Decision on the establishment of the mechanism for regulatory impact assessment. The Council has the crucial role under the Decision, as all relevant impact assessment reports have to be presented to it.

CLOSING BENCHMARK 2: Croatia strengthens the independence, accountability, impartiality and professionalism of the judiciary.

SUB-BENCHMARK: Croatia establishes a track record of recruiting and appointing judges, state prosecutors and Court Presidents based on the application of uniform, transparent, objective and nationally applicable criteria embedded in the law, including that the State School for Judges and Prosecutors begins effective operation.

In this area of reforms, Croatia has strengthened the system of standardised, transparent and objective criteria applicable at national level for recruitment to the profession and for the appointment of judges, state attorneys and their deputies, and court presidents. Objective and transparent criteria have been also introduced for advancing within the judicial profession.

The establishment of the State School for Judicial Officials as part of the Judicial Academy, to which enrolments are conducted by the Councils on the basis of tests taken by the candidates, has laid the basic path for entry into the profession. State School became fully operational at the beginning of 2011. Starting from January 2013, a new system of appointments of judges to first instance courts was fully put in place. It requires all candidates to have completed the State School for Judicial Officials.

Therefore, the foundations have been laid for the full independence of the judiciary, separated from the sphere of political influences. At the same time, the transparency and credibility of the entire system has been improving, as have the expertise, impartiality and accountability of judicial officials, which are key elements of their independence.

For years Croatia has been devoting special attention to the professionalization and professional development of judicial officials. The Judicial Academy has gradually developed from the Centre for the Training of Judges established in 2003. It became an independent institution, capable of responding to all the needs of the judiciary in 2010, when it was separated from the Ministry of Justice. It continues its activities in professional training programmes including increased training on EU law with support by all main stakeholders in the judiciary. Croatia participates in the Criminal Justice programme and in training activities organised by the European Judicial Training Network.

SUB-BENCHMARK: Croatia reforms and strengthens the State Judicial Council and State Prosecutorial Council (including through the election by peers of professional members) so that these bodies perform professionally, impartially and without political or other interference their key functions, in particular in the appointment, career management and disciplining of judges and prosecutors.

To further strengthen the independence of the judiciary, Constitutional Amendments were adopted in June 2010. A series of laws (the Act on Amendments to the Act on State Attorney's Office and the Act on Amendments to the Courts Act and State Judiciary Council Act) were also adopted, implementing the amendments. The amendments additionally strengthened the independence of the judiciary, shielding it from direct influence of the executive and legislative power. Members of the State Judiciary Council and the State Attorney Council are elected by judges and state attorneys from within their own ranks. The authorities of these bodies have been widened and strengthened, so that they are now entirely autonomous in conducting all the procedures related to the appointment, dismissal, career advancement and disciplinary procedures against judicial officials, but also court presidents and heads of state attorney offices. For this reason, the technical and administrative capacities of these Councils have been significantly boosted.

The Republic of Croatia has also established a transparent and efficient system to ensure the professional responsibility of judicial officials. The Code of Ethics for Judges was established in Croatia in 2006 which presents a set of ethical principles essential for the successful performance of their judicial duties. Suspected violations of the Code, depending on the nature of the violation, can lead either to proceedings before a Council of Judges on account of the violation of the Code of Ethics for Judges or to disciplinary proceedings before the State Judiciary Council. Every citizen has the right to file a complaint about a suspected violation of the Code by a judge. A similar Code of Ethics for state attorneys and deputy state attorneys was adopted in 2008.

CLOSING BENCHMARK 3: Croatia improves the efficiency of the judiciary.

SUB-BENCHMARK: Croatia substantially reduces the case backlog before the courts, particularly as regards old civil and criminal cases and enforcement decisions, and implements adequate legal and organisational measures to prevent undue delay in court cases, including the introduction of new methods of enforcement to ensure court decisions are enforceable within a reasonable time period, improved use of alternative dispute resolution (ADR), including the simplification of ADR mechanisms, and a track record of implementation of the new Criminal Procedure and Civil Procedure Codes.

In the area of efficiency of the justice system, the key measures have been focused, among others, on the following activities: reducing the backlog of cases with special emphasis on old cases; reducing the duration of proceedings; introducing a more efficient organisation of the justice system (rationalisation of the network of courts); standardisation of case law; investing in infrastructure and IT equipment; strengthening judicial inspection; improving relations with the media and the public; and expanding alternative dispute resolution.

Significant progress has been achieved, primarily evident in the reduction of the backlog of cases, especially in terms of old civil and criminal cases, as well as enforcement cases. This allows for a greater efficiency of courts, whose objective is to complete all proceedings in a reasonable time and prevent unjustified delays.

Croatia was paying special attention to resolving the problem of overburdened courts and unresolved cases. As a result of a comprehensive set of measures introduced in the period from 2004 to 2011, the number of unresolved cases in the Croatian court system declined by more than 50 per cent (from 1,640,182 cases in 2004 to 781,323 at the end of the first quarter of 2011).

Within the spectrum of unresolved cases, Croatia stipulated that cases which are more than three years old would be given priority in efforts to reduce the number of unresolved cases. The most burdened courts were identified, and in May 2010 the Government adopted an Action Plan that focused on resolving old cases in the Municipal Civil Court in Zagreb, the Municipal Court in Split, and commercial courts.

Legislative framework is put in place to further increase the efficiency of enforcement system. The Act on Conducting Enforcement on Financial Assets entered into force on January 1, 2011, with the exception of some provisions which entered into force on January 1, 2012. The Public Bailiffs Act which was adopted in November 2010 fully entered into force on January 1, 2012, when all the preconditions for the operation of the public bailiff's service have been created. These include the adoption of items of secondary legislation, conducting of public bailiff exams, appointment of public bailiffs, and finally establishing the relevant Chamber.

In January 2011 the Mediation Act was adopted with the goal of further enhancement and promotion of mediation as an alternative dispute resolution, aligning it with the Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters, and with the objective of ensuring the equal access to mediation for the citizens of EU Member States as for the Croatian citizens.

**SUB-BENCHMARK:** Croatia makes progress with the physical infrastructure and computerisation of courts, the accelerated introduction of case management systems, in particular the Integrated Case Management System (ICMS), the establishment of a unified statistical system for the monitoring of all types of cases handled before all courts and at prosecution services, and introduces random case allocation in all courts.

Substantive progress has also been made in providing physical infrastructure and computerisation of courts. Progress has been achieved with the introduction of an integrated case management/allocation system (ICMS), the establishment of a single statistical system for monitoring all types of cases at courts and state attorney offices, and the introduction of a random case allocation system in all courts.

By the end of 2010, ICMS was introduced in all county and commercial courts, Supreme Court and the High Commercial Court. The ICMS system was also introduced in 33 municipal courts.

SUB-BENCHMARK: Croatia continues to implement the rationalisation of municipal and misdemeanour courts, ensuring efficient operation of the merged courts, and sets out clearly the long term logistical and financial means for completing the court rationalisation process; Croatia adopts a clearly defined plan for rationalisation of county and commercial courts.

The rationalisation of the number of courts and state attorneys' offices resulted in a more balanced caseload and possibility to specialise for judges, as well as better organisation and flexibility of the work of courts, faster resolution of the backlog and financial savings.

Under a legislative framework that has been adopted, the functional rationalisation of the court network in Croatia has diminished the network by approximately 40 per cent by the end of 2010. The functional rationalisation of the court network was followed by a physical merger of the courts according to a determined dynamic which is expected to be completed by the end of 2019. The state attorneys' network was functionally reduced by 24 per cent.

These improvements were guided by a plan for short, medium, and long-term investments in judiciary infrastructure that has been adopted by the Ministry of Justice and covers the period 2011–2019.

CLOSING BENCHMARK 4: Croatia improves the handling of domestic war crimes cases.

SUB-BENCHMARK: Croatia establishes a track record of impartial handling of war crimes cases by the law enforcement bodies and courts and takes effective action to address issues of impunity, in particular by ensuring the proper investigation and prosecution of as yet un-investigated and un-prosecuted crimes, including adoption and implementation of a clear strategy which addresses, inter alia, regional discrepancies within Croatia, as well as continued engagement at the bilateral and regional level.

Croatia has set up a record of results in implementing impartial procedures of competent authorities and courts in domestic war crime trials, and has addressed the issue of impunity, especially through ensuring investigation and prosecution in crimes that have not yet been investigated and prosecuted. The War Crimes Database of the State Attorney's Office is the core resource for analysing the Republic of Croatia's established track record in investigating and prosecuting domestic war crimes cases. Further analysis of activities in relation to these war crimes shows that Croatia has succeeded in ensuring that all war crimes proceedings have been conducted in an impartial manner by independent judicial bodies.

A comprehensive and clear strategy has been adopted by the Minister of Justice in February 2010 which addresses, in addition to the above-mentioned issues, the issue of regional inequality in prosecuting war crimes within Croatia, as well as a continuation of the engagement of Croatia at bilateral and regional levels. The Croatian Government, with its Conclusion adopted on April 8, 2011, endorsed this Strategy, accepted the Report on its implementation, outlined further steps



to be taken, and entrusted all the relevant authorities with further tasks for its implementation. Through the Conclusion, the Government reiterated its firm commitment in this field.

**SUB-BENCHMARK:** Croatia implements its action plan for the review of in absentia cases and the new provisions of the Criminal Procedure Code on renewal of proceedings and deploying other legal remedies such as protection of legality, ensuring renewal of proceedings requests and renewed trials are properly and impartially handled by all relevant judicial authorities.

To establish clear and objective criteria, standards for the prosecution of war crimes cases were prescribed in 2008 by the State Attorney's Office. These standards were accompanied by an Instruction for the assessment of the validity for criminal cases that had already been initiated and for the assessment of the validity of instituting such future cases. This was followed by the complete re-examination of all war crimes cases according to uniform standards both in pre-trial and trial phases, resulting in the consolidation and focusing of activities of the State Attorney's Office. Furthermore, Croatia implemented the Action plan for the review of in absentia cases, which was introduced after omissions in previous war crimes trials were discovered.

The 2009 Amendments to the Criminal Procedure Act allowed for the renewal of criminal proceedings, including cases in which the accused is absent. Following these Amendments, combined with the Instruction regarding case assessments, by the end of 2010 requests to renew proceedings were filed by the State Attorney's Office for 94 persons in their absence from a total of 464 persons convicted in absentia. Of these, the cases against 34 persons were returned to the investigative stage and those against 44 were returned to the trial stage. Courts decisions on the remaining 16 persons are pending.

These actions have culminated in a significant reduction of final in absentia judgments. Although the revision of in absentia cases is considered to be completed, the State Attorney's Office will continue to file requests for renewal if the grounds to do so arise.

**CLOSING BENCHMARK 5:** Croatia establishes a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement.

Croatia has set up an efficient system of detecting, prosecuting and punishing the perpetrators of crimes of corruption through what is known as the "USKOK Vertical" – specialised court divisions, state attorney offices and law enforcement bodies for the suppression of corruption (USKOK – Office for Fighting Corruption and Organized Crime). The establishment of the "USKOK Vertical" was accompanied by amendments to the Criminal Procedure Act in 2009, which led to acceleration of court proceedings. These amendments contributed to more efficient and effective investigations, criminal prosecution and passing court judgments in cases of organised crime and corruption, including cases of high-level corruption.

Repressive bodies have been provided with adequate anti-corruption instruments through criminal procedure reform and modernisation of the system of confiscating

proceeds of crime from perpetrators of corruption offences. Such institutional and normative changes have had a strong positive effect on the performance of anti-corruption bodies, and on the efficiency of the entire system. A high percentage of convictions within the total number of all judgments was also reached. Beside quantitative indicators of the work of repressive bodies, Croatia has been consistently fighting corruption at all, and especially at the highest levels<sup>20</sup>.

**SUB-BENCHMARK:** Croatia further reinforces the operational capacity of USKOK, including by extending its remit to tax fraud linked to organised crime and corruption offences, improving financial expertise and ensuring sufficient training and resources in view of its new role in the accusatorial system introduced in July 2009.

On October 1, 2010, the Amendments to the USKOK Act extended the competence of USKOK to include tax fraud related to corruption and organised crime. Control over dismissals of criminal reports has been further improved.

Since June 1, 2010, USKOK's human resources have been further strengthened with the recruitment of additional personnel. To improve USKOK's capacities to investigate financial crimes, the Annex to the Agreement between USKOK and the Tax Administration was concluded on September 10, 2010. According to the Annex, 6 state attorney advisers began their six-month training in the Tax Administration in November 2010. At the same time, experts from Tax Administration began working part time on USKOK financial investigation teams. In collaboration with EU experts, training in the area of financial investigations was developed and carried out.

**SUB-BENCHMARK:** Croatia takes measures to improve police effectiveness and independence, including through depoliticisation and improved professionalism, strengthening specialised expertise, especially for financial crimes, and improved cooperation with other agencies, the financial sector and international partners; Croatia applies effectively and consistently the confiscation provisions of article 82 of the Criminal Code and establishes clear responsibilities and rules for the proper management of property confiscated in criminal proceedings.

The PNUKOK (Police Office for Fighting Corruption and Organized Crime) has been established within the Police Directorate and comprises a strategic headquarters in Zagreb and regional departments in Zagreb, Split, Rijeka, and Osijek. Croatia has been continuously strengthening PNUKOK and has taken concrete actions to improve its operative capacities. By March 2011, all systematized posts in the PNUKOK were filled, bringing the total to 452 staff members.

To strengthen the efficiency and professionalism of the police and to depoliticize the profession, Croatia adopted the Police Act on March 11, 2011, with provisions to ensure promotion based on clear and objective criteria, as well as transparent system of rewards, evaluation, transfer, education, and training in the police service. In addition, prohibitions for police officers against joining a political party or engaging in political activity within the Ministry of the Interior have been

<sup>20</sup> The former Minister of the Interior was sentenced to 4 years of imprisonment for abuse in performing governmental duties in a public procurement procedure; the former Deputy Prime Minister was convicted for abuse of office and official authority; the former Prime Minister of the Republic of Croatia was sentenced to 4 years of imprisonment (first-sentence conviction) and a number of cases are pending against him.

introduced. Regarding the appointment of top officers within the police force, the Police Act stipulates that the position of the Chief Police Director shall be filled through public vacancy announcements, and the positions of other top police officer positions shall be filled by internal vacancy announcements.

The Chief Police Director and other top police officers are appointed for a period of five years. These officers may be dismissed before the expiration of their terms at their own request or on the basis of: permanent disability that prohibits them from performing their duties, serious breach of official duty established with an executive decision of the Disciplinary Tribunal, or the termination of service in the cases stipulated by law.

Croatia has developed an effective system of cooperation among state bodies and agencies involved in the fight against corruption. Inter-agency cooperation is based on agreements between competent agencies and has four main components: exchange of information, sharing of expert knowledge, cooperation in concrete cases and regular coordinating meetings.

Furthermore anti-corruption bodies have continuously undertaken measures with the aim of confiscating the proceeds of crime from the perpetrators of corruption crimes and organised crime. Thus a significant amount of money was confiscated in crimes of corruption and organised crime. The confiscated assets, on the day when the judgement becomes final, become assets of the Republic of Croatia, managed by the State Property Management Agency.

SUB-BENCHMARK: Croatia increases the capacity of the courts to handle cases adequately, including in terms of human resources and logistics.

Croatia has further increased personnel of the County Courts in Split, Osijek, and Rijeka, while the Zagreb County Court has been strengthened with technical equipment. Since January 1, 2011, after capacities had been strengthened, 64 judges have been assigned to USKOK cases within their court departments at the County Court in Zagreb, Split, Osijek and Rijeka. These resources vastly improved the courts' ability to handle cases adequately.

CLOSING BENCHMARK 6: Croatia establishes a track record of strengthened prevention measures in the fight against corruption and conflict of interest.

SUB-BENCHMARK: Croatia increases transparency and integrity in public administration and state owned companies, including by improving legislation on the access to information and its implementation, by adopting, amending and implementing legislation necessary for full application of the General Administrative Procedures Act, by implementing anti-corruption action plans in state owned companies and by continuous training of staff.

Croatia has considerably improved the legislative framework through the Amendments to the Constitution of June 16, 2010. These Amendments guarantee access to information as a Constitutional right. In addition, the Republic of Croatia adopted the Act on Amendments to the Act on the Right of Access to Information on December 15, 2010.

Transparency in the process of drafting regulations is ensured through the implementation of the Code for Consultations with the Interested Public in the Procedures for the Enactment of Laws, Regulations and Acts of November 29, 2009, which is in line with the Guidelines for the Application of the Code. By the end of 2010, 24 coordinators for consultation had been appointed at Government offices and central bodies of state administration (ministries, central state offices, and state administrative organizations).

The General Administrative Procedure Act (GAPA), in force since January 2010, regulates the procedure of state administrative bodies and other public authorities when ruling on administrative matters. Except in extraordinary circumstances, Ministries are obliged by the Government Conclusion of October 6, 2010 to align provisions of relevant special laws with GAPA with the aim of simplifying administrative procedures and increasing transparency.

The anti-corruption programme for companies in majority state ownership for the period 2010–2012, adopted on November 25, 2009, defines three goals for the suppression of corruption in companies through specific measures and deadlines for achieving the goals. The programme places special emphasis on integrity and ethics, the strengthening of transparency and a system for reporting irregularities, and internal financial control.

**SUB-BENCHMARK:** Croatia amends its current legislation on political party financing, inter alia, to extend its scope to election campaigns and to improve transparency and independent oversight.

The new Act on Financing Political Activities adopted in February 2011 established a single legal framework for all types of election campaigns and introduced a transparent system of supervision for the financing of political parties. The highest amounts of donations have been defined in conformity with EU standards, and all political parties and independent candidates are obliged to open a special account for financing their election campaign. In the reformed system of supervision, the State Electoral Commission is in charge of supervising the financing of the election campaign, while the State Audit Office conducts an audit of the annual financial operation of political parties. The system of sanctions has also been boosted, stipulating fines for political parties and persons in charge within a political party.

**SUB-BENCHMARK:** Croatia ensures there are effective legislation and systems in place to protect against and sanction conflicts of interest at all levels of state/public administration, and to monitor and verify assets declarations of public officials and judges, including dissuasive sanctions for non-compliance. Croatia ensures that effective systems are in place to enable and support those reporting corruption and maladministration in public institutions.

An Act on the Prevention of Conflict of Interest was passed in March 2011, introducing an efficient mechanism for verifying the declarations of assets of officials, strengthening the system of security measures, introducing professionalism and depolitization of the Commission for Conflict of Interest<sup>21</sup>, while improving the system of sanctions.

Croatia put in place a legal and institutional framework that supports reporting on corrupt behaviour in public administration. The Labour Act and the Act on Civil

21 The members of the Conflict of Interest Commission took office in February 2013.

Servants contain detailed provisions for the protection of employees and civil servants who, in good faith, report corrupt behaviour within their organization. The Code of Ethics for Public Officials was adopted on March 25, 2011. The Code prescribes rules of conduct and ethical principles that public officials are obliged to follow during their terms of office. The institutional framework comprises the Department for Ethics within the Ministry of Administration, ethics commissioners in all state and judicial bodies, and the Ethics Commission as a second-instance body. Citizens may submit complaints directly to the ethics commissioners.

**CLOSING BENCHMARK 7:** Croatia strengthens the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM).

Croatia has enhanced the protection of minorities, among other things, by effective implementation of the Constitutional Act on the Rights of National Minorities. In addition, a new development that has contributed to greater tolerance among citizens was the adoption of amendments to the Constitution, which specified in the Preamble all 22 national minorities in Croatia, thus providing them equal status.

Also, the last amendments to the Constitutional Act on the Rights of National Minorities provide that a minimum of three seats in the Croatian Parliament are reserved for representatives of national minorities which account for more than 1.5 per cent of the total population. National minorities which account for less than 1.5 per cent of the total population, in addition to their right to exercise universal suffrage, are also entitled to elect five deputies belonging to such minorities. This has ensured a policy of representation of members of national minorities in the Parliament, while through special legislation it is ensured at the local level.

**SUB-BENCHMARK:** Croatia takes steps to ensure a tangible improvement in the level of employment of national minorities in state administration bodies and bodies of local and regional self-government, in the police and in the judiciary, and establishes an effective system of statistical monitoring, including through the adoption, implementation and monitoring of employment plans in all relevant bodies.

Croatia has been implementing on-going measures aimed at improving the level of employment of members of national minorities as civil servants and employees in state administration bodies, as well as in expert services and offices of the Government. These measures are primarily intended to promote and raise the awareness about employment of national minorities, both among minority members themselves and within the administrative and judicial bodies, thus creating a basis for quantitative changes in this area.

Under the Action plan for the Implementation of Constitutional Act on the Rights of National Minorities for the period 2011 to 2013, adopted in April 2011, special attention is given to better representation of national minorities in governmental and judicial bodies. The Action plan, has established concrete goals with a timeframe and budget for their realisation. In line with the Action plan, the Ministry of Public Administration has prepared the Plan of Recruitment of National Minority Members in the Civil Service for the period 2011–2014 in order to achieve a 5.5 per cent share of national minorities in the overall staff of state administration bodies.

The Ministry of Public Administration maintains statistical data on employment of minorities in public administration bodies and executive bodies of local and regional self-governments. The Ministry of Interior is monitoring statistical data related to the representation of national minorities in police services. The Ministry of Justice systematically monitors the participation of minority members in the judicial sector. In December 2010 it conducted an analysis of the representation of members of national minorities in judicial bodies, which served as a basis for formulating concrete measures to stimulate the employment of minorities.

**SUB-BENCHMARK:** Croatia carries out a comprehensive study into the under-representation of minorities in the wider public sector not covered by the CARNM and adopts a plan to tackle the shortcomings identified.

With the aim to determine the level of participation of minorities in the wider public sector, "The Study on the Representation of Members of National Minorities in the Wider Public Sector" was conducted in February 2011. The study<sup>22</sup> encompassing five selected counties, which according to the 2001 Census are home to about one quarter of the total population (23.89 per cent), including almost a half of the national minorities (48.90 per cent of a total of 331,383 national minority members). The study has concluded that there is no underrepresentation of national minorities in the wider public sector.

**SUB-BENCHMARK:** Croatia undertakes measures aimed at reconciliation and increased tolerance among citizens, including through education and reviewing the role of schooling, through the media, and by an adequate response at the political and law enforcement level to racist or xenophobic incidents.

In the area of education, the legal prerequisites for improving tolerance and inclusion have been strengthened, and various measures are being implemented, especially those targeted at integrating Roma children. Croatia's educational curriculum is undergoing a continuous change process that includes increased emphasis on civic education, a key element for teaching tolerance and cultural understanding to the youth. The Law on Primary and Secondary School Textbooks adopted in February 2010 sets clear procedures for the choice, approval, and withdrawal of textbooks. These procedures guarantee respect for fundamental rights and non-discrimination in the content of textbooks, as well as monitoring the obligation for positive portrayal of national minorities in textbooks. The Law also sets the procedure for withdrawal of textbooks when the content is not compatible with constitutional provisions, democratic principles, and the precepts of human rights and fundamental freedoms, in particular those of minority rights enshrined in the Constitution and Constitutional Act on the Rights of National Minorities.

The Electronic Media Act adopted on December 11, 2009 provides for the promotion of programmes that are particularly important for national minorities by providing financial support through the Fund for Promotion of Pluralism and Diversity of Electronic Media. The Croatian Radio-Television (HRT) Act specifies that in its programme development HRT must contribute to the respect and promotion of fundamental human rights and freedoms, tolerance, understanding and respect for diversity, democratic values, and civil society. In meeting its programme obligations, HRT is obliged to produce and air programmes to inform members of national minorities and to provide information and education on democracy, civil society, and the culture of public dialogue, as well as to contribute to the suppression of discrimination.

22 Conducted by the Institute of Social Sciences Ivo Pilar.

The President and Prime Minister of Croatia both take leading roles in promoting tolerance and reconciliation within Croatia and beyond its borders. They exercised strong leadership and invested considerable personal efforts in strengthening bilateral relations with Croatia's neighbours and building regional stability and cooperation. The Croatian Government established with its Serbian counterpart an informal working group for resolving outstanding issues, such as missing persons, refugees, minority rights and border issues.

**CLOSING BENCHMARK 8:** Croatia settles outstanding refugee return issues.

**SUB-BENCHMARK:** Croatia fully implements its Action Plan on the Housing Care Programme for refugees and former tenancy rights holders wishing to return to Croatia, including meeting the targets for 2008 and 2009 for the provision of accommodation both within and outside the areas of special state concern; Croatia makes substantial progress in providing accommodation to all other successful applicants for Housing Care on the basis of a fully costed plan.

**SUB-BENCHMARK:** Croatia strengthens the handling of appeals for rejected housing reconstruction applications, eliminates the backlog of existing appeals and makes significant progress with the reconstruction of the remaining properties.

Since the beginning of the programme that allows for the return of refugees and displaced persons, Croatia has enabled the return for more than 348,000 persons. The state budget has allocated 5.3 billion euros for this programme in the period 2007–2011, about 5 per cent of which is funded by international donations.

Regarding the return of refugees, Croatia made significant efforts, particularly through the implementation of the Action Plan for the accelerated implementation of the Housing Care Programme within and outside the Areas of Special State Concern for Refugees – Former Tenancy Right Holders (FTRH) who wish to return to Croatia. The objectives of the Housing Care Programme within and outside Areas of Special State Concern for 2007, 2008 and 2009 have been fully met. Progress has also been made in resolving applications for housing care in respect of all other successful applicants. Moreover, backlogs in resolving existing complaints on rejected requests for housing reconstruction are almost completely eliminated.

**SUB-BENCHMARK:** Croatia strengthens the handling of appeals for rejected housing reconstruction applications, eliminates the backlog of existing appeals and makes significant progress with the reconstruction of the remaining properties.

All the remaining applications for housing provision are being resolved in an accelerated procedure, and the number of outstanding cases has been reduced. Regarding construction and reconstruction of flats and houses, the Croatia provided housing care to about 200 beneficiaries by the end of the year 2011.

CLOSING BENCHMARK 9: Croatia improves the protection of human rights.

SUB-BENCHMARK: Croatia improves access to justice, including by taking the necessary steps to ensure that, by accession, the Administrative Court is made a court of full jurisdiction in the meaning of Article 6 ECHR and Article 47 of the Charter of fundamental rights, both in law and practice; and by ensuring improved implementation of the Law on legal aid.

Administrative adjudication has been modernised and reformed by the introduction of two-instance administrative adjudication in conformity with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by adopting the Law on Administrative adjudication in February 2010. This reform resulted in easier access to administrative courts for citizens, greater legal security and a better protection of their rights.

With a view to enabling access to the justice system to everyone, a free legal aid system was introduced by adopting the relevant law in February 2009. Croatian citizens are entitled to free legal aid both in civil and in criminal proceedings. However, what represents a step forward in relation to the majority of European states is that Croatian citizens are also entitled to free legal aid when appearing before administrative bodies.

SUB-BENCHMARK: Croatia establishes a track record of implementation of the Anti-Discrimination Law and the Law on Hate Crimes, ensuring that law enforcement authorities deal effectively with cases and that the Office of the Ombudsman is strengthened.

Croatia has been undertaking on-going efforts aimed at improving the legal framework in the area of preventing and suppressing discrimination, and at enabling effective implementation of existing legal provisions. A number of measures have been undertaken in the past period with the aim of promoting the implementation of these regulations, in order to ensure their more effective implementation by competent bodies and to raise the awareness of the population at large about possibilities of invoking these provisions.

In July 2008 Parliament passed the Anti-Discrimination Act, which entered into force in January 2009. This Act proclaimed the Ombudsman's Office as the central body responsible for coordinating efforts aimed at eliminating discrimination. In December 2009, the Government passed a decision by which the Office for Human Rights became central body responsible for monitoring the implementation of the anti-discrimination Action plan. With the aim of strengthening the capacity for adequate reaction by state bodies and state administration bodies to recommendations made by the Ombudsman, the Government entrusted the coordination and monitoring of such activities to the Government Office for Human Rights.

Croatia demonstrated a solid track record of results in the implementation of the Anti-discrimination Act and in the implementation of the legal provisions on hate crimes. In accordance with the Protocol on Procedures in hate crime cases, which the Government adopted in March 2011, the Office for Human Rights is defined as the central body for the collection and publication of data on hate crimes, and for



cooperation with civil society organisations and international organisations. As the central body responsible for coordinating efforts to eliminate discrimination, the Ombudsman's Office is responsible for collecting complaints on discrimination and discriminatory practices and analysing this statistical data. The statistical data can be collated based on the basis for the discrimination, the type of discriminatory act, and the state body that received the complaints, as well as the group and type of alleged perpetrators and victims. The Office is authorized to report alleged offences to the State Attorney's Office.

With the Amendments of the Croatian Constitution from June 2010, the Ombudsman's scope of authority was expanded and was given immunity identical to that of members of the Croatian Parliament. The role of the Office of the Ombudsman as an independent and autonomous body was accentuated. According to the Anti-discrimination Act, the Ombudsman's Office is the main body responsible for suppression of discrimination. Therefore a special priority was given to strengthening of Ombudsman's Office with the aim of resolving those tasks more efficiently.

**CLOSING BENCHMARK 10:** Cooperation with the International Criminal Tribunal for the former Yugoslavia.

**SUB-BENCHMARK:** Full cooperation with the ICTY remains a requirement for Croatia's progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.

Croatia continued full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the period October 2010 to May 2011 by fulfilling regular requests for assistance from the ICTY Prosecutor. All requests for assistance have been fulfilled.

## **THE CASE OF MONTENEGRO**

Montenegro commenced its accession negotiation with the EU on June 29, 2012, although the screening process began before opening the negotiations for the Judiciary and Fundamental Rights chapter. In contrast to the Croatian case where the screening process for chapter 23 was among the last to be conducted the screening for this specific chapter in the case of Montenegro was conducted first.<sup>23</sup> This was due to the particular interest of the Commission for the policies covered in this chapter in addition to the centrality placed on the rule of law issues in the latest EU Enlargement Strategy, as well as the previous experience with Croatia.

### **APPLICATION OF POLITICAL CONDITIONALITY IN THE PRE-NEGOTIATION PERIOD**

In addition to outlining the current state of affairs regarding the readiness of the accession countries to enter the Union, the 2010 Enlargement Package has brought forth the Commission proposal to grant candidate status to Montenegro and recommendation to open accession negotiation. This is conditioned upon the country sufficiently achieving the necessary degree of compliance with the Copenhagen criteria, in particular the political criteria which require the stability

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<sup>23</sup> Explanatory meeting was held on March 26 and 27, 2012

of institutions guaranteeing notably the rule of law.<sup>24</sup> Based on the analysis of fulfilment of membership criteria outlined in the Analytical report accompanying the Opinion on Montenegro's application for membership,<sup>25</sup> the Commission defined seven key priorities, which have to be met in order to recommend start of negotiation:

KEY PRIORITY 1: Improve the legislative framework for elections in line with the recommendations of the OSCE-ODIHR and the Venice Commission; strengthen the Parliament's legislative and oversight role.

KEY PRIORITY 2: Complete essential steps in public administration reform including amendments to the law on general administrative procedure and the law on civil servants and state employees and the strengthening of the Human Resources Management Authority and the State Audit Institution, with a view to enhancing professionalism and de-politicisation of public administration and to strengthening a transparent, merit-based approach to appointments and promotions.

KEY PRIORITY 3: Strengthen rule of law, in particular through de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of state prosecutors as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors.

KEY PRIORITY 4: Improve the anti-corruption legal framework and implement the government's anticorruption strategy and action plan; establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels.

KEY PRIORITY 5: Strengthen the fight against organised crime based on threat assessment and proactive investigations, increased cooperation with regional and EU partners, efficient processing of criminal intelligence and enhanced law enforcement capacities and coordination. Develop a solid track-record in this area.

KEY PRIORITY 6: Enhance media freedom notably by aligning with the case-law of the European Court for Human Rights on defamation and strengthen cooperation with civil society.

KEY PRIORITY 7: Implement the legal and policy framework on anti-discrimination in line with European and international standards; guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp.

Following the release of the Commission's opinion, the Montenegrin government prepared five action plans with which they would tackle the outlined priorities whereas the Parliament of Montenegro developed a separate action plan in order to strengthen the Parliament's legislative and oversight role. On February 17, 2011, the Government of Montenegro adopted the Action plan for monitoring implementation of the recommendations given in the Commission's opinion, which included 60 priorities and 150 activities and numerous sub-activities.<sup>26</sup> The

<sup>24</sup> Commission Opinion on Montenegro's application for membership of the European Union COM(2010) 670 final.

<sup>25</sup> Please see: Commission Opinion on Montenegro's application for membership of the European Union, SEC(2010) 1334 final.

<sup>26</sup> Information concerning the realization of key priorities from the Action Plan for monitoring the recommendations from European Commission opinion; See [http://www.mvpei.gov.me/rubrike/GD-za-evropske-poslove/Vazni-dokumenti/Akcioni\\_plan\\_pracenja\\_sprovođenja\\_preporuka\\_iz\\_Mis/](http://www.mvpei.gov.me/rubrike/GD-za-evropske-poslove/Vazni-dokumenti/Akcioni_plan_pracenja_sprovođenja_preporuka_iz_Mis/)

Commission 2011 Progress report on Montenegro focused on the implementation of these key priorities.

Although the report noted the consistent and systematic implementation of the Action plan, in addition to the achieved overall satisfactory results in implementing the key priorities, a number of issues related to the area of rule of law remained to be addressed, especially those concerning fight against corruption and organised crime. Thus, the December 2011 Council conclusions postponed the official start of the negotiations for June 2012, subject on a positive Commission report, providing Montenegro time to address some of these challenges.<sup>27</sup> The Council also invited the Commission to put forward a negotiation framework proposal with Montenegro incorporating the new negotiation approach in regards to the chapters on Judiciary and Fundamental Rights, and Justice, Freedom and Security, and to initiate the process of analytical examination of the *acquis* with Montenegro on these chapters.<sup>28</sup> With the December 2011 European Council conclusions, the Commission was invited to present a Report to the Council covering the seven key priority areas identified in the 2010 Commission Opinion on Montenegro, while assessing the developments since the 2011 Progress Report.

In the spring report from May 2012, the Commission maintained the view that Montenegro has achieved the necessary degree of compliance with the membership criteria, and in particular the Copenhagen political criteria, to start accession negotiations and subsequently reiterated its recommendation that accession negotiations be opened with Montenegro.<sup>29</sup> Additionally, the Report emphasized that during the accession negotiations' process, the Commission will continue to put particular focus on the area of rule of law and fundamental rights, especially in the fight against corruption and organised crime, so as to ensure a solid track record.<sup>30</sup>

## INNOVATIONS AND PRINCIPLES GOVERNING THE NEGOTIATION PROCESS

The EU approach towards enlargement is continually evolving and is advancing with each enlargement. This fact is substantiated by the innovation introduced in the Montenegrin Negotiation framework. According to the 2012 Enlargement Strategy strengthening the rule of law and democratic governance is central to the enlargement process.<sup>31</sup> This principle is effectuated by structuring the negotiations' process in such a way that the rule of law chapters, Judiciary and Fundamental Rights and Justice, Freedom and Security are *opened in the early stages of the negotiations and are among the last to be closed*. This new approach is reflected for the first time in the Montenegrin negotiation framework, thus laying the foundations for future negotiations. It would allow Montenegro maximum time to establish the necessary legislation, institutions and solid track record of implementation, while providing the Commission with sufficient time to assess Montenegro's preparedness and ability to take on the obligations of membership. The second fundamental improvement in the accession negotiations with Montenegro was the *modification of the suspension clause*. In sense of maintaining its original connotation, the modification aims at ensuring an overall balance in the progress of the negotiations across the chapters, referring to the rule of law area. If insufficient progress under the rule of law chapters relative

27 Council Conclusions December 9, 2011; See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/126714.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/126714.pdf)

28 Ibid.

29 Please see Report from the Commission to the European Parliament and the Council on Montenegro's progress in the implementation of reforms, COM(2012) 222 final.

30 Ibid.

31 See [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/strategy\\_paper\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf)

to progress in the overall negotiations is noted, and after exhausting all other available measures, the Commission will, on its own initiative or on the request of one third of the Member States, propose to withhold its recommendations to open and/or close other negotiating chapters and adapt the associated preparatory work until this imbalance or disequilibrium is appropriately addressed.<sup>32</sup> The third advancement of the negotiation process is related to the benchmarking system. This innovation was necessary due to the introduction of the new approach to the accession negotiations. In order to track the reform implementation record and taking in consideration the long-term nature of reforms in the rule of law area, the Commission sets *interim benchmarks for the chapters Judiciary and Fundamental Rights and Justice, Freedom and Security*. The adoption of action plan(s) for these chapters by the Montenegrin authorities addressing the issues and tasks outlined in the related screening report, and upon Council approval, would constitute the opening benchmarks. According to the Montenegrin negotiation framework, the interim benchmarks will specifically target the adoption of legislation, and the establishment and strengthening of administrative structures and an intermediate track record; this will be closely linked to actions and milestones in the implementation of the action plan(s). If any problems occur which are related to the negotiation process of these chapters, the Commission may propose updated benchmarks throughout the process, including new and amended action plan(s), or other corrective measures.

Another particularity of Montenegro's case is the timing of conducting the analytical screening of national legislation and assessment of the extent of alignment with the EU *acquis*. In the previous wave of enlargement, the opening stage of accession negotiations was followed by the screening process. However, in the case of Montenegro, the screening process began before the opening of the negotiations for the rule of law chapter (Judiciary and Fundamental Rights and Justice, Freedom and Security).

## APPLICATION OF POLITICAL CONDITIONALITY RELATED TO JUDICIARY AND FUNDAMENTAL RIGHTS

The explanatory screening meetings between Montenegro and the Commission regarding Judiciary and Fundamental Rights chapter were conducted on March 26 and 27, 2012. During the explanatory meetings the Commission presented the *acquis* in this area. So as to gain insights of the screening process, the explanatory meetings were also attended by representatives of two other accession countries from the western Balkan, namely Macedonia and Serbia.<sup>33</sup> Following the explanatory meetings, the Montenegrin authorities drafted and presented the current level of alignment of their legal system with the EU *acquis* on the bilateral screening meeting with the Commission which took place on May 30 and 31, 2012. Based on the assessment of the level of achieved alignment as well as the discussion at the bilateral screening meetings, the Commission determined the areas where additional alignment with the EU *acquis* is required. Subsequently, the screening report for this chapter was delivered to the Montenegrin authorities on December 25, 2012. It contained a total of 46 recommendations and 8 sub-recommendations, which need to be addressed. Out of those, 16 recommendations and 3 sub-recommendations refer to the judiciary, 18 recommendations and 5 sub-recommendations to anti-corruption and finally 12 recommendation to policies related to fundamental rights. The recommendations are presented in the box below.

<sup>32</sup> General EU Position, Ministerial meeting opening the Intergovernmental Conference on the Accession of Montenegro to the European Union. See [http://ec.europa.eu/enlargement/pdf/st20002\\_05\\_mn\\_framedoc\\_en.pdf](http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf)

<sup>33</sup> <http://www.gov.me/en/News/112839/Montenegro-and-EU-Commission-discuss-law-harmonisation-in-judiciary-and-fundamental-rights.html>

## **Judiciary**

### Independence:

- Montenegro should amend its Constitution in line with the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, inter alia, the following points:
  - The Judicial Council and the Prosecutorial Council should be composed by at least 50% of members stemming from the judiciary. These members should be selected by their peers, representing different levels of jurisdiction, without involvement of the Parliament (unless solely declaratory).
  - Prosecutors should not be appointed by the Parliament.
  - Reasons for dismissal of judges and prosecutors should be included in the Constitution.
- The recruitment process needs to be transparent and merit based. A single, nationwide recruitment system should be introduced, which could be based on anonymous tests for all candidates and obligatory training before being appointed judge/deputy prosecutor. The Judicial Training Centre could be involved in the testing process.
- A fair and transparent system of promotion of judges and prosecutors needs to be established together with a periodical professional assessment of judges and prosecutors' performance.
- Ensure internal independence of judges and review the system of orders within the prosecution system.
- Sufficient administrative capacities and financial means need to be ensured to the Judicial and the Prosecutorial Councils to effectively perform their tasks.

### Impartiality:

- Improve the system of random allocation of cases, possibly also through streamlining the court network.
- Review application of disqualification procedures and amend where necessary.
- Amend "conflict of interest" rules, ensuring that there is an effective monitoring of asset declarations and cross-checking with other relevant information.
- Ensure effective monitoring of compliance with the code of ethics.

### Accountability:

- Review rules on disciplinary and dismissal procedures and their implementation and amend where necessary.
- Review the system of functional immunity for judges and prosecutors. Procedures for removing functional immunity need to be strengthened to ensure full accountability of judges and prosecutors under criminal law.

### Professionalism/Competence/Efficiency:

- Ensure reliable and consistent judicial statistics and introduce a system to monitor the length of trials.
- Review and rationalise the court network and ensure sufficient funding for the efficient functioning of the entire court system. Further reduce the existing backlog, especially as regards civil cases.
- Strengthen the enforcement of judgements in civil cases.
- Ensure effective functioning of the Judicial Training Centre.
- Take incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors.

## **Anti-Corruption Policy**

### Preventive action against corruption:

- Strengthen and possibly review the institutional framework for the fight against corruption. In particular, DACI's competences need to be upgraded and its capacities reinforced.
- Improve the system of asset declarations, strengthening in particular the supervisory competencies and the professional capacity of the Commission for prevention of conflict of interest to ensure effective and substantial checks on assets, and introduce measures preventing conflicts of interest going beyond holding double public offices (such as public decision makers holding stakes in private companies etc.).
- Review the rules of procedure of the public administration, including appointment and internal control, to fully integrate prevention of corruption and conflicts of interest aspects.
- Improve the system of political party funding, ensuring reliable reporting as well as effective supervision and sanctioning powers by an independent authority. Strengthen the capacities of the monitoring bodies (the State Audit Institution (SAI) and the State Election Commission) and ensure a clear division of tasks and cooperation framework. Accounting obligations for political parties should be increased and all in-kind donations should be reported. The recommendations of GRECO should be followed-up.
- Ensure effective implementation of free access to information rules, inter alia, with regard to sensitive information with economic value. The provisions of the Law on prevailing public interest need to be clarified. Appropriate interaction between the Law on Free Access to Information and the Laws on Protection of Personal Data and on Data Secrecy should be ensured.
- The control system for public procurement is to be strengthened as well as the supervision of implementation of awarded contracts. Anti-corruption measures at local government level need to be stepped up.
- Develop specific measures to tackle corruption in particularly vulnerable areas, such as those identified in the findings of the risk assessment of July 2011. For these areas, separate Action Plans could be envisaged. Ensure that risks assessments are being used systematically.
- Strengthen the Parliament's role in fighting corruption by stepping up supervision of the executive. The Parliament should also pay specific attention to anti-corruption issues when revising and improving the legal framework. Ensure a thorough integrity system within the Parliament.
- Ensure that NGOs are involved in the anticorruption agenda.

### Repressive action against corruption:

- Ensure independent, effective specialised investigation/prosecution bodies, in particular through:
  - Constitutional and legal amendments strengthening the independence of the judiciary (see above) and to protect all investigative bodies from (potential) political pressure.
  - Provision of adequate resources (financial resources, staffing, etc.) to all investigation and judicial authorities involved in the fight against corruption, making corruption cases priority matters. A review of the definition of "high level corruption" in view of the SSPO's area of competence would be recommendable.
  - Ensure that prosecutors have real-time access to relevant databases

and sufficient capacity to effectively implement the Criminal Procedure Code.

- Review the competences of the Special Investigative Team and ensure its access to relevant databases.
- Ensure sufficient training, well qualified staff and international exchange of expertise to allow for modern investigative techniques to be applied efficiently and on a regular basis. Similar training must be ensured for judicial authorities.
- Amend the Criminal Procedure Code where needed and ensure its effective implementation.
- Improve the use of financial investigations, possibly through establishing a team of highly qualified investigators for this purpose.
- Improve the cooperation and information exchange between authorities involved in the fight against corruption, including also tax and other only indirectly linked authorities.
- Improve the collection of unified statistics on corruption, distinguishing clearly between different types of criminal activities and allowing for a detailed assessment of length of the cases, outcome etc.
- The procedures for seizure, confiscation and management of proceeds of crime need to be further regulated and the professional capacity of the relevant State Agency strengthened.
- Take the necessary steps to make the system of whistle-blower protection more effective in practice.
- Review the system of immunities and ensure that effective procedures for lifting of immunities are in place.
- Review the procedure for closure of criminal cases and consider possibilities for appeals or complaints.

### **Fundamental Rights**

- Introduce an effective legal remedy in line with Article 13 ECHR to redress violations of human rights under the convention.
- Fully implement the recommendations provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Improve prison conditions; measures to reduce the prison population, in particular alternative sanctions and conditioned sentencing could be further explored.
- Ensure protection of journalists against threats and violence, in particular through effective investigations and deterrent sanction of past attacks. Review and amend the legislative and institutional framework for the protection of media freedom.
- Ensure the independence of the audio-visual regulator and of the public broadcaster.
- Take concrete steps to ensure practical implementation of non-discrimination and gender equality, including through strengthening of the monitoring bodies and more effective reactions of the law enforcement bodies to possible violations, as well as through better awareness raising and support measures, especially on employment and public representation of women.
- Particular focus should be put on ending discrimination of the LGBT community.
- Take steps to ensure full transparency of trade unions' representativeness and the right to establish new unions, in line with the relevant national

regulations.

- Improve the protection and enforcement of rights of the children and of persons with disabilities, including by strengthening the relevant councils, and continue deinstitutionalization where possible.
- Ensure the effective functioning of the free legal aid system, also through the allocation of sufficient financial means.
- Take concrete measure to prevent discrimination of minorities. Ensure their continuous registration, as well as their equal access to economic and social rights and their adequate representation in public authorities. Particular focus should be given to improve the living conditions of the poorest part of the RAE population and of the displaced persons.
- Ensure adequate prosecution of hate crime.
- Ensure the alignment with the *acquis* in the area of protection of personal data and allow for assessment through the preparation of the relevant transposition tables; ensure sufficient financial and human resources to the Data Protection Agency.

The Cypriot presidency informed Montenegro that it should adopt one or more detailed action plan(s), which would comprise the related timetables and resource implications, set out clear objectives, quantifiable indicators as appropriate and the necessary institutional set-up...<sup>34</sup> in the areas of Judiciary, Anticorruption and Fundamental Rights. Furthermore, the Presidency asked for particular attention to be paid to constitutional amendments while ensuring independence and accountability of the judiciary, and the fight against organized crime in all its forms and aspects. The Presidency emphasised that, in case of problems in the course of negotiations under this chapter, the Commission may propose that Montenegro submits new or amended action plan(s).<sup>35</sup>

According to the new approach to accession negotiation promoted in the Enlargement Strategy, the Negotiation Framework and the conducted screening for chapter 23, the adoption of the action plan(s) is considered to be the only benchmark for opening negotiations regarding this specific chapter. The Montenegrin authorities adopted, and submitted to the Commission for further consideration, the draft action plan on Judiciary and Fundamental Rights chapter on June 27, 2013.<sup>36</sup> However, the final version of the action plan was adopted by the Government of Montenegro on October 10, 2013, thereby, meeting the requirements for commencing negotiation on this chapter.<sup>37</sup>

In regards to the *structure of the action plan*, the 265 pages blueprint clearly follows the outline used in the Screening report as well as the Commission's framework guidelines related to the structure and contents. The measures are designed in a way that they concretely tackle each of the recommendations and sub-recommendations noted in the Screening report, and at the same time are harmonized with the existing national strategic documents. In order to reflect the reform implementation, each of the measures has to match one of the three groups: normative harmonization, strengthening institutional and administrative framework, and administrative capacity building accompanied with citizens awareness raising campaigns. With a view of comprehensive monitoring, the deadlines are divided between short-term priorities (2013–2014) defined on a monthly basis, mid-term priorities (2015–2016) defined on a quarterly basis,

<sup>34</sup> Letter of the Permanent representative of the Republic of Cyprus to the EU, December 20, 2012.

<sup>35</sup> *Ibid.*

<sup>36</sup> <http://www.gov.me/en/news/129083/Government-adopts-action-plans-on-chapters-23-and-24.html>

<sup>37</sup> <http://www.gov.me/en/News/131812/Government-of-Montenegro-adopts-action-plans-for-EU-negotiating-Chapters-23-and-24-eGovernment-2016.html>



and long-term priorities (2017–2019) defined on a semi-annual basis. Funds are foreseen mostly from the Budget of Montenegro, TAIEX expert support, donations of Member States, international organizations and financing through IPA II programming 2014–2020. Each separate measure has its result and indicator. The result indicator follows the realization of certain activities to the level of compatibility, whereas the impact indicator evaluates the level of application of a new standard with regard to the citizens and stakeholder groups. The realization of the Action plan would be monitored by the negotiating structure, which will report on a quarterly and semi-annual basis to the Commission on the realization of the Action plan. According to the Action plan, every two years the measures and activities would be reviewed and, if there is a need, they will be modified in order to reflect new circumstances and to provide details for implementation of mid-term measures (2015–2016) and long-term measures to the extent possible (2017 and forth).<sup>38</sup>

Additionally, the Action plan is divided to cover the three sub-areas of judiciary, anti-corruption and fundamental rights. In regards to the judiciary, the proposed measures and activities have been defined in order to strengthen independence, impartiality, accountability, professionalism, expertise and increase the efficiency. The main task in this area is the adoption of constitutional amendments and rationalization of the judicial network. Related to the area of anti-corruption, the measures for prevention and repression of corruption focused on: establishment of the Anti-Corruption Agency; amendments to the Law on Prevention of Conflict of Interest; formation of a special prosecution office for fight against organized crime, corruption, terrorism and war crimes; analysis of organizational structures of the competent bodies for fight against organized crime and corruption. In the sub-area of fundamental rights, emphasis is placed, among others, on the prevention of torture, freedom of expression, antidiscrimination, children's rights, protection of persons with disabilities, improvement of the free legal aid system, protection of minorities (focus on the Roma and Egyptians), care for displaced and internally displaced persons and data protection.<sup>39</sup>

On the basis of the submitted Action plan regarding the Judiciary and Fundamental Rights chapter, the Council had invited Montenegro to submit its negotiating position. The Government of Montenegro adopted the negotiating position<sup>40</sup> and submitted it to the Lithuanian Presidency on October 8, 2013. Following the submission of the negotiation position, the Commission will submit the Draft European Union Common Position to the Council for adoption and will convene an intergovernmental conference. The conference will determine the interim benchmarks, which are expected to relate to mid-term activities, i.e., until the end of 2015.

## **THE CASE OF MACEDONIA**

The Republic of Macedonia presented its application for EU membership on March 22, 2004. Following the application, in May 2004, the Council of Ministers requested the Commission to submit its Opinion. The Commission's positive assessment came in 2005<sup>41</sup> and was followed by the Council's conclusion<sup>42</sup> to grant Macedonia the candidacy based on the significant progress made towards the political criteria set out by the Copenhagen European Council in 1993.

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38 Action plan for Chapter 23 – Judiciary and Fundamental Rights

39 Ibid.

40 <http://www.gov.me/en/News/131755/Montenegro-s-Government-adopts.html>

41 Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, COM (2005) 562 final.

42 Presidency Conclusions – Brussels, 15/16 December 2005; See [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/87642.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf)

## APPLICATION OF POLITICAL CONDITIONALITY IN THE PRE-NEGOTIATION PERIOD

The conditionality policy applied in the negotiation processes with more advanced western Balkan countries, especially related to the political criteria, is mapping the path at the lower stages of integration. The emphasis on rule of law policies and the structure used in the negotiations with Croatia, and Montenegro, to the extent possible, is being replicated in the case of Macedonia. The 2009 Commission recommendation to start accession negotiations with Macedonia depended on the response to the 8+1 key priorities for progress identified in the Accession partnership. The Commission identified these key priorities as benchmarks following the introduction of the benchmarking system in the accession negotiations with Croatia (and Turkey).

**BENCHMARK 1:** To secure the implementation of all obligations set out in the Accession and Stabilization Partnership.

**BENCHMARK 2:** Promote a constructive and open dialogue within the democratic framework, particularly in the area that demands an overall consensus.

**BENCHMARK 3:** To secure the efficient implementation of the police legislation.

**BENCHMARK 4:** To secure continuous results in the implementation of the judicial reforms and to strengthen the independence and overall capacity of the judicial system. To implement the reforms in regards to prosecution and to conclude with the judge appointment procedure within the Judicial Council

**BENCHMARK 5:** To establish continuous results in the implementation of the legislation in the area of anti-corruption.

**BENCHMARK 6:** To secure the employment and advancement of the careers of state employees this will not be the target of political interference, to additionally strengthen the system of career advancements based on merit and to completely implement the legislation concerning state employees.

**BENCHMARK 7:** To reduce the obstacles in creating new vacancies with particular attention to youth employment and long-term employment.

**BENCHMARK 8:** To strengthen the general business climate with continuous betterment of the rule of law, by strengthening the independence of the regulatory and supervisory bodies, by strengthening the legal acts and continued registration of funds and estate.

**BENCHMARK 9:** To implement the recommendations from OBSE/ODIHR in order to secure free, impartial and transparent elections which fulfil international standards.

In March 2008 the Government of Macedonia adopted an Action plan for implementing the benchmarks. The implementation was monitored on a regular basis and was an initial item of each Government session regarding the status on European integration. The efforts of the Government in tackling the challenges associated with the implementation of the Action plan resulted in a 2009 positive recommendation by the Commission to open accession negotiations. According to the Commission's assessment, Macedonia has substantially addressed the key priorities of the accession partnership by sufficiently fulfilling the political criteria, thereby moving closer towards becoming a functioning market economy and progressing in a number of areas linked to its ability to take on the obligations of

membership.<sup>43</sup> However, the Report outlined that maintaining good neighbourly relations, including a negotiated and mutually accepted solution to the name issue, under the auspices of the UN, remains essential for future progress.<sup>44</sup> While taking note of the Commission's recommendation on the opening of accession negotiations the Council decided to postpone until the next Presidency the decision regarding Macedonia, primarily because of Greece's refusal to accept the preparedness of the country to start accession negotiation. Thus, the Macedonian accession to the Union was and remains to be hijacked by a single Member State of the Union, despite sufficiently fulfilling the political criteria.<sup>45</sup>

In order to push forward the reforms and reignite the accession process, on March 15, 2012, three years following the initial Council conclusion to postpone the decision to open negotiations, the Government of Macedonia and the Commission initiated the High Level Accession Dialogue (HLAD).<sup>46</sup> The HLAD mainly focused on rule of law issues, which were also prioritised in the accession processes of Croatia and Montenegro. More specifically, it was developed in relation to five priority areas: protecting freedom of expression in the media, strengthening the rule of law and fundamental rights, reforming public administration, electoral reform, and developing the market economy. Furthermore, the priority areas are

#### PRIORITY AREA I: MEDIA: FREEDOM OF EXPRESSION AND PROFESSIONAL STANDARDS

Target 1: Amend defamation legislation, improve court practice and strengthen professional standards

Target 2: Improve enforcement by the Broadcasting Council of media ownership rules and amendments to the legislation.

#### PRIORITY AREA II: RULE OF LAW AND FUNDAMENTAL RIGHTS

Target 1: Improve efficiency of justice

Target 2: Improve quality of justice and independence of the judiciary

Target 3: Strengthen anti-corruption measures and verifiable enforcement

Target 4: Increase efficiency and transparency of management of interception of communication investigative technique

Target 5: Improve inter-community dialogue

#### PRIORITY AREA III: PUBLIC ADMINISTRATION REFORM

Target 1: Improve human resource management

Target 2: Improve framework governing administrative procedures

Target 3: Further decentralisation

#### PRIORITY AREA IV: ELECTORAL REFORM

Target 1: Ensure sufficient separation between the state and party

Target 2: Address gaps and ambiguities in the Electoral Code

Target 3: Complete thorough audit and revision of the voters' list

#### PRIORITY AREA V: STRENGTHENING THE MARKET ECONOMY

Target 1: Improve labour market and education

Target 2: Improve business environment

Target 3: Strengthen economic policy making and implementation

<sup>43</sup> Enlargement Strategy and Main Challenges 2009–2010, COM(2009) 533 final.

<sup>44</sup> Ibid.

<sup>45</sup> Council conclusions on enlargement/stabilisation and association process

<sup>46</sup> Commission Progress Report 2012 Macedonia; Please see [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mk\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf)

complemented with 16 specific targets, which Macedonia has to meet in order to sustain the positive recommendation for opening accession negotiations.

Within the framework of the Accession Dialogue, co-chaired by the Macedonian Prime Minister and the EU Commissioner for Enlargement,<sup>47</sup> a Technical Dialogue regarding the rule of law chapters<sup>48</sup> has been launched. The promoted methodology is in line with the Commission's new approach towards negotiation of the Judiciary and Fundamental Rights and Justice, Freedom and Security chapters, which is part of the negotiating framework for Montenegro. By replicating the model, the Commission firmly anchored the rule of law related policy reforms in Macedonia's accession process. Consequently, the response of the Macedonian Government was similar with the one of Montenegro. Namely, based on the receipt of the HLAD reform priorities and the jointly adopted conclusion of the first HLAD meeting, the Government prepared and adopted an Operative Roadmap<sup>49</sup> for implementing reforms in the five priority areas. In order to address the specific target in each of the priority areas, the blueprint envisaged 50 objectives and measures with compliance time limits and 141 related activities. The Operative Roadmap contains an analysis of the implementation status, for each reform objective and each activity, taking into account the degree of utilisation of financial and human resources and the effects of activity implementation. Furthermore, it includes a comparison between the expected and the actual results of the implementation of the activities. The majority of the activities should have been implemented, according to the Roadmap, by the autumn Progress report on Macedonia for 2012.

In regards to the first reform priority – *protecting freedom of expression in the media* – some of the envisaged activities were related to decriminalisation of defamation and compensation for non-material damages. Another activity regarding the first priority was conducting an analysis of standards contained in the judgements of the European Court of Human Rights (ECHR) on Article 10 of the European Convention on Human Rights. 70 judgements of the European Court of Human Rights relating to the freedom of expression have been translated and made available on the websites of the Ministry of Justice in order to bring them closer to Macedonia's judges. Continuous trainings regarding jurisprudence of the ECHR on freedom of expression is conducted through the Academy for Judges and Public Prosecutors targeting judges from criminal and civil departments of the courts from all instances and public prosecutors from all instances. Furthermore, additional activities were envisaged to improve the enforcement record of the Broadcasting Council against concentration of ownership and conflict of interest within the political sphere.

Pursuing reforms under the second key reform priority – *rule of law and fundamental rights* – in 2012 activities were undertaken at all court levels which have resulted with a maintained positive clearance rate and a detectable progress in the reduction of case backlog. The capacities of the Basic Public Prosecutor's Office for Fight Against Organised Crime and Corruption have been further strengthened. In order to reinforce the principle of professionalism and merit-based recruitment, the Law on Courts has been amended in regards to the criteria for the selection of judges according to which, starting from 2013, all newly appointed first instance judges must be graduates of the Academy for Judges and Prosecutors. In regards to the prevention of corruption, the legal framework for verification of the content of declarations of interest has been changed and the Law on Financing of Political Parties has been amended in order to further strengthen the system of supervision. Furthermore, activities have been undertaken to prepare a "stock taking report"

47 Political-level meetings were held on March 15, May 7, September 17, 2012 and April 9, 2013.

48 Judiciary and Fundamental Rights and Justice, Freedom and Security.

49 See [http://www.sep.gov.mk/data/file/Dokumenti/Registar-na-dokumenti/Patokaz\\_MK.pdf](http://www.sep.gov.mk/data/file/Dokumenti/Registar-na-dokumenti/Patokaz_MK.pdf)

on the implementation of the Ohrid Framework Agreement, outlining the results achieved and setting recommendations for future work.

Regarding the third priority – *public administration reform* – the Government concentrated its action on three concrete objectives: improving the management of human resources, improving the framework for administrative procedures and continuing the process of decentralization. In this sense, actions related to the preparations of the Law on Administration and the Law on General Administrative Procedure were successfully undertaken.

*Electoral reform* – the fourth reform priority – envisaged activities aimed at ensuring proper separation between the state and political parties and increasing of the transparency of party funding were effectuated through amendments of the Electoral Code and the Law on Financing of Political Parties. Adopted in November 2012, they addressed issues raised in regards to the OSCE/ODIHR, Venice Commission and GRECO recommendations. Work has also been conducted regarding the audit and revision of voter's list.

The actions undertaken in the fifth priority area – *strengthening the market economy* – were oriented towards: a) improving the labour and education market by placing an emphasis on developing measures which would facilitate the entry of the young workforce in the labour market; b) enhancing the business environment by developing a comprehensive approach towards fulfilling the economic criteria and achieving a functional market economy; and finally c) improving the economic policy making and implementation of the economic policies.

With the purpose of monitoring the process of implementation of the actions outlined in the Operative Roadmap and the fulfilment of the objectives, the Government of Macedonia has established two mechanisms, a strategic and an operational/technical one.<sup>50</sup> The strategic mechanism covers the HLAD and its key priority areas, whereas the operational one covers the monitoring of the implementation of the activities agreed on the strategic (political) level. The status of implementation of the activities was reviewed on a Government session every two weeks.

The successful application of the Roadmap for the implementation of the priority activities of the High Level Accession Dialogue resulted in retaining the positive recommendation for opening accession negotiation for the fourth time. In the immediate years following the positive recommendation by the Commission, the 2012 Progress report highlights that Macedonia continues to sufficiently meet the political criteria.<sup>51</sup> In order to consolidate the pace and sustainability of the undertaken reforms under the HLAD, to mitigate the risk of reversibility of the process, to strengthen inter-ethnic relations and finally to bolster the credibility of the EU, the Commission expressed its readiness to present without delay a proposal for a negotiating framework, taking into account the need to solve the name issue at an early stage of accession negotiations.<sup>52</sup> In addition, it noted that a decision of the European Council to open accession negotiations would contribute to creating the necessary conditions conducive to finding such a solution.<sup>53</sup> While largely sharing the Commission assessment that the political criteria continue to be sufficiently met, the Council concluded that it will examine the possibility to open accession negotiations with Macedonia during the next Presidency subject to the

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50 See [http://www.sep.gov.mk/data/file/Dokumenti/Registar-na-dokumenti/Izvestaj\\_MK.doc](http://www.sep.gov.mk/data/file/Dokumenti/Registar-na-dokumenti/Izvestaj_MK.doc)

51 Conclusions on Macedonia (extract from the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2012-2013", COM(2012)600 final); Please visit: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mk\\_conclusions\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_conclusions_2012_en.pdf)

52 "Enlargement Strategy and Main Challenges 2012-2013" COM(2012) 600 final; Please visit: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0600:FIN:EN:PDF>

53 Ibid.

spring 2013 Commission report on progress made.<sup>54</sup> The assessment is made on the basis of the implementation of reforms in the context of the HLAD, as well as the steps taken to promote good neighbourly relations and to reach a negotiated and mutually accepted solution to the name issue under the auspices of the United Nations. Given this perspective, the Council concludes that such a report will be assessed during the next Presidency. Provided that the assessment is positive, the Council will invite the Commission to: a) submit without delay a proposal for a framework for negotiations with Macedonia, in line with the December 2006 Council conclusions and established practice; b) carry out the process of analytical examination of the EU *acquis* beginning with the chapters on the Judiciary and Fundamental Rights, and Justice, Freedom and Security. In the intervening time, following the 2012 Progress report on Macedonia, the Commission modified the HLAD taking into account the activities to be implemented until the next Council session in spring 2013.

In response to the December 2012 Council conclusions, the Commission prepared and submitted to the Council the 2013 spring report<sup>55</sup>. The report was divided into two segments, the first one being the assessment of the implementation of reforms in the context of the HLAD and its revised 2013 version; and the second segment being the assessment of steps taken to promote good neighbourly relations with all neighbouring countries, with a particular emphasis on relations with neighbouring EU Member States.<sup>56</sup> The second segment can be considered as a departure from the Copenhagen political criteria, and an effort of the Commission to deal with a visceral example of an EU Member State imposing bilateral conditionality on an accession country. This approach showed the intention of the Commission to positively contribute, to the extent possible, to the overcoming of the standstill by establishing the necessary conditions for the resolution of the problems. However, the generated positive atmosphere with the introduction of the HLAD, was disrupted by a political crisis emanating from the December 24, 2012 events in Macedonia's Parliament.<sup>57</sup> In spite of the crisis, the Commission's assessment was positive in the areas and policies regarding the political criteria. However, the whole build-up towards a decisive 2013 Spring report was impaired because of the lingering consequences of the political crisis. Following the Commission spring report, the June 2013 Council conclusions on enlargement did not even mention Macedonia. The internal political developments in Macedonia seem to have only contributed to the key reason for this outcome, i.e., the lack of progress in the promotion of good neighbourly relations and the reaching of a solution to the name issue.

The October 2013 Progress Report recommended opening of the accession negotiations for the fifth time, while noting the lack of such Council decision to date. The Commission remains ready to present a proposal for a negotiating framework without delay, taking into account the need to solve the name issue at an early stage of accession negotiations.<sup>58</sup> The reasoning of the Commission is that starting the screening process and the Council discussions on the negotiating framework would provide both a necessary incentive and additional time to find a solution to

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54 Council Conclusions on Enlargement and Stabilization and Association process; Please visit

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/134234.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf)

55 Report from the Commission to the European Parliament and the Council; Macedonia: Implementation of reforms within the framework of the High Level Accession Dialogue and promotion of good neighbourly relations COM(2013) 205 final; Please visit: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/mk\\_spring\\_report\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/mk_spring_report_2013_en.pdf)

56 Ibid.

57 The opposition's attempt to block the adoption of the 2013 State Budget ended when more than thousand opposition backed amendments were effectively dismissed in a controversial procedure. Ministry of Interior personnel removed journalists and most of the opposition Members of Parliament (MPs) from the chamber allowing the ruling coalition to expressly adopt the Budget. The largest opposition party announced a boycott of Parliament and threatened the resignation of their MPs as well as a boycott of the local elections.

58 See [http://europa.eu/rapid/press-release\\_SPEECH-13-816\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-816_en.htm)

the name issue. In contrast to the 2012 recommendation, the Commission went even further in specifying a concrete period for making progress in resolving the open issues with Macedonia's neighbouring Member States. Previous experience from recent accession processes suggests that the screening process lasts between 12 and 18 months.

## CONCLUSIONS

EU political conditionality can be genuinely effective only in cases where it is undeniably linked with the Copenhagen political criteria. Within a framework of strict but fair conditionality, whilst emphasizing the political criteria for membership, the prospect of accession in the Union provides a rock-solid anchor for genuine political reforms. The conditionality policy endorsed by the benchmarking system is an EU instrument to ensure compliance of accession countries with membership standards. At the same time it assists accession countries to implement and demonstrate deep and lasting reforms.

The accession of Croatia to the Union confirms that the EU political conditionality is the driver enabling advancement in the reform process leading to accession. Benchmarking and monitoring have become the key instruments of the conditionality policy. Their introduction has individualized the accession process and their achievement determines the duration of negotiations. Simultaneously, the achievement of the benchmarks positively influences the credibility of the accession process and the preparedness of the accession country.<sup>59</sup> Following this rationality, the EU, having grown to 27 Member States, accepts within its ranks only a country that is 100 per cent ready for membership. This leaves little leeway for the introduction of safeguard measures which accompanied the entry of Romania and Bulgaria in the Union. In an effort to avoid the mistakes made with the premature admission of the laggards of the fifth enlargement, the EU recognized the need to re-think its enlargement strategy. In relation to Croatia, additional provisions were added in the Accession Treaty which allows the Commission the ability to closely monitor the commitments that Croatia has undertaken in the negotiation process, including the ones which must be achieved before or by the date of accession, especially those of the Judiciary and Fundamental Rights chapter.<sup>60</sup> Thus, the negligent approach in applying political conditionality in the case of Romania and Bulgaria was rectified, mainly through the introduction of the benchmarking system and the application of stricter conditionality, particularly in the rule of law chapters. Both the former and the latter enabled the EU conditionality policy to be sufficiently tailor-made in order to address the multitude of challenges of the accession processes of western Balkan countries.

The political criteria applied in the case of Croatia, as well as the consistency of the EU conditionality policy could act as a guideline for the remaining accession countries. If the case of Croatia's accession to the Union is acknowledged as a success by the EU, its Member States, and accession countries, it can serve as a paradigm for future accession processes, and potentially bolster enlargement in the western Balkan. The most important lesson learned from Croatia's accession is to tackle the rule of law chapters – Judiciary and Fundamental Rights and Justice, Freedom and Security – early in the negotiations phase, as strengthening of the rule of law and democratic governance remains essential for fully assuming obligation of EU membership. This approach has already been laid down for the first time in the negotiation framework for Montenegro, in order to ensure irreversible, sustainable, and lasting reforms while prioritizing the track record of reform implementation. Consequently, these two rule of law chapters will also be among the last to be closed, allowing Montenegro maximum time to implement the needed reforms, while at the same time, providing the Commission with sufficient time to assess its preparedness and ability to take on the obligations of

<sup>59</sup> Institute for International and European Affairs; Post event report from the Balkans Group Roundtable with Croatia's Chief Negotiator in their accession talks with the EU, Ambassador Vladimir Drobnjak.

<sup>60</sup> Besides chapter 23, additional two chapters, 8 – Competition Policy and 24 – Justice, Freedom and Security were closely monitored.



membership. To this end, two additional principles were introduced, thus, laying the foundation for future negotiations processes. The first one is the possibility to propose *interim benchmarks*, in addition to opening and closing, in order to accurately track the legislative alignment with the *acquis* and assess the progress made in reference to the implementation track record. The second principle aims to ensure an *overall balance in the progress of negotiations across chapters*, while mainly focusing on the progress made in the rule of law chapters.

Following these patterns of applying political criteria in addition to the consistency of the EU conditionality policy in the negotiations process of Croatia and Montenegro, it can be concluded that in each of the succeeding negotiation processes with the western Balkan countries, a similar approach would be adopted and methodology would be applied. Having acknowledged this, future accession countries starting negotiations could expect the replica of the new approach to negotiations on the rule of law chapters. In addition, they can expect the implementation of the modified benchmarking system which introduces opening, intermediate and closing benchmarks and ensuring an overall balance across chapters.

Although bilateral conditionality imposed by individual Member States have always featured in the accession negotiations, like never before they are used to block the accession process of western Balkan countries, whilst undermining the whole concept of merit based accession within the framework of strict but fair conditionality. This prompted the EU Enlargement Commissioner Stefan Fule in 2012 to state that bilateral issues will be placed at the centre of the enlargement process in the future. Therefore, the Commission outlined in the negotiation framework for Montenegro that good neighbourly relations contribute towards prosperity, stability, reconciliation and a climate conducive to addressing open bilateral issues and the legacy of the past, encouraging the parties concerned to address bilateral issues in a constructive manner as early as possible, thus laying the foundation for future negotiation. By promoting the individual, tailor-made approach through the negotiation frameworks for each accession country, the Commission assures the sustainability of alignment with the EU *acquis* while offering the accession country a possibility of a parallel process, where the bilateral issues will be addressed along with the accession negotiations. This should take advantage of the momentum created by the accession process without turning the accession process into a hostage situation on bilateral issues.<sup>61</sup>

*Regarding what Macedonia could expect for the negotiation process*, the Commission in the 2013 Enlargement Strategy reiterates its already expressed intention to put forward, without a delay, a negotiating framework which would take into account the need to resolve the bilateral issue at an early stage of accession negotiations while the process of screening, in accordance with the new approach for negotiating the chapters on Judiciary and Fundamental rights and Justice, Freedom and Security, is in progress. Drawing on the Montenegrin experience, the Commission strives towards creating a conducive climate for finding a negotiated and mutually accepted solution to the name issue even before negotiating chapters are opened.

Although the new approach to accession negotiation was introduced in the negotiation with Montenegro, primarily based on the lessons learned from the negotiations with Croatia and previous enlargements, a conclusion can be drawn that the essence of the process is preserved and that there is consistency in applying political criteria. The consistent patterns related to the Judiciary and Fundamental Rights chapter in the case of Croatia and Montenegro, especially

<sup>61</sup> Commissioner Stefan Fule – Oral Evidence; Select Committee on the European Union – EU Enlargement, House of Lords.

in relation to the opening benchmarks, allow determining which are the general requirements to be met by other countries as well and how to measure the progress made.

In the case of Croatia, the three opening benchmarks were related to revising already existing national strategic documents and preparation of actions plans related to Reform of the Judiciary and the National Anti-corruption Programme including timeframes, bodies responsible and budget necessary for its implementation. Furthermore, Croatia had to draft additional two action plans for implementation of the Constitutional Act as well as of the Housing Care Programme. Concerning Montenegro, in accordance with the new approach to negotiations, the adoption of the action plan is considered to be the only benchmark for opening negotiations regarding this specific chapter. The plan should comprise related timetables and resource implications, setting out clear objectives, quantifiable indicators and the necessary institutional set-up.

Accordingly, in order to foster a rule of law culture, future accession countries starting negotiations could expect a similar opening benchmark for the Judiciary and Fundamental Rights chapter. More specifically, they would need to prepare and/or revise national strategies and programmes supported by detailed action plan(s) for their adoption including concrete timetables, responsible institutions, budget allocated, and quantifiable targets. In addition, for this specific chapter, as in the case of Montenegro, intermediate benchmarks will be set and will be closely linked to actions and milestones from the action plan(s). In order to experience in practice the negotiation process, Macedonia, in addition to Serbia, was invited to observe the explanatory screening sessions between Montenegro and the Commission on which the accession country gains insights in the legal provisions with which it needs to align with during the negotiation process. The new approach would provide maximum time to future accession countries starting negotiation needed to develop a solid track record of reform implementation, thereby ensuring that the implemented reforms are deeply rooted and irreversible. And finally, the countries could expect that implementation of reforms would be monitored also during the ratification period of the country's accession treaty. The pre-accession monitoring is aimed at showcasing that reforms are being implemented even after the closure of each negotiation chapter.

*Regarding what Macedonia could expect for negotiation of the Judiciary and Fundamental Rights chapter*, the Commission in the 2013 Enlargement Strategy stated that the country has achieved a high level of alignment with the EU regarding legislation, policies and administrative capacity considering where it is in the accession process and focus should be placed on ensuring effective implementation. The High level Accession Dialogue has initiated a process which boosted reforms and sufficiently maintains the positive momentum, especially in the rule of law area. Obviously, this short-term incentive mechanism is the current reform catalyst in Macedonia, a model which is being applied in Bosnia and Herzegovina and most recently, in Albania. This innovation can only be effective in the short-term, until the bilateral conditionality is removed from the accession process, and by any means cannot be a substitute for a long-term strategy. Following the objectives and containing targets provided in the HLAD, as well as taking in consideration the negotiation processes of Croatia and Montenegro, it can be concluded that Macedonia will be required, as an opening benchmark, to produce an action plan(s) related specifically to judiciary, anti-corruption policy as well as fundamental rights. The revised strategies and national programmes with concrete timetables, institutions in charge, measurable objectives and quantifiable targets would serve as a baseline indicator for measuring further progress in the

implementation of reforms outlined in the action plan(s).

Regarding the judiciary, a special emphasis in the action plan(s) ought to be placed on: a) the appointment, evaluation and disciplinary procedures for judges; b) systematic collection of comparable and quantifiable judicial statistics in all relevant judicial activities; c) ensuring sustainable track record of recruiting and appointing judges and public prosecutors from the Academy for Training Judges and Public Prosecutors; and d) reforming and strengthening the Judicial Council.

Regarding anti-corruption policy, emphasis should be placed on: a) ensuring sustainable track record for suppression and prevention of corruption, including high level corruption; b) ensuring independent, efficient and unbiased investigation and prosecution in organised crime and corruption cases at all levels; c) strengthening the public procurement monitoring system in addition to the supervision of implementation of awarded contracts.

Concerning the area of fundamental rights, emphasis should be placed on: a) promoting and ensuring that freedom of expression and media is consistently addressed and the Broadcasting council is further strengthened; b) ensuring sustainable implementation of all policies deriving from the Ohrid Framework Agreement; c) expanding the anti-discrimination legislation to include sexual orientation and ensuring proper implementation of anti-discrimination policies, including those protecting LGBTI community.

Based on these priorities, and taking into account the shift of focus to implementation according to the new approach to negotiation with the Judiciary and Fundamental Rights chapter, Macedonia could expect the following interim benchmarks: a) continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency while ensuring a more transparent judicial process; b) continue to conduct professional, efficient and effective, unbiased investigations into allegations of high-level corruption, especially in high-risk sectors such as public procurement; c) continue to ensure the principles of freedom of expression and media are respected in practice; d) continue to ensure sustainable implementation of the Ohrid Framework Agreement.

In case of dissatisfaction with reforms on the ground, the Commission could modify and/or update the interim benchmarks accordingly to the progress made in the implementation of reforms or propose to the Council other corrective measures including amendments and/or additions to the action plan(s).

It can be concluded from the elaborated cases that EU political conditionality can be a powerful instrument in the accession processes of the western Balkan countries. The analysis demonstrates that the conditionality policy can only be at its most when it works within the realm of the Copenhagen political criteria. Keeping this in mind, this approach can reach its greatest potential when utilized during the time-frame of the negotiations.

APPENDIX: SIDE-BY-SIDE EXAMINATION OF THE POLITICAL CRITERIA RELATED TO JUDICIARY AND FUNDAMENTAL RIGHTS IN THE ACCESSION PROCESS OF CROATIA, MONTENEGRO AND MACEDONIA

<b>JUDICIARY</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<i>Croatia</i>	<i>Montenegro</i>	<i>Macedonia</i>
<p><b>OBN 1:</b> Croatia provides the Commission with a revised Action Plan for the Reform of the Judiciary including timeframes, bodies responsible and budget necessary for its implementation with specific emphasis on (a) the appointment and the management of the careers of judges and state attorneys; (b) measures to improve the efficiency of the judiciary including the rationalisation of the court network; (c) the introduction of a comprehensive system of legal aid; (d) the integrity of proceedings as regards war crimes, both in terms of domestic cases and proceedings transferred from ICTY.</p> <p><b>CBN 1:</b> Croatia updates its Judicial Reform Strategy and Action Plan and ensures effective implementation. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia puts in place sufficient institutional capacity for the management of judicial reforms, including post-legislative scrutiny.</li> </ul> <p><b>CBN 2:</b> Croatia strengthens the independence, accountability, impartiality and professionalism of the judiciary. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia establishes a track record of recruiting and appointing judges, state prosecutors and Court Presidents based on the application of uniform, transparent, objective and nationally applicable criteria embedded in the law, including that the State School for Judges and Prosecutors begins effective operation;</li> <li>• Croatia reforms and strengthens the State Judicial Council and State Prosecutorial Council (including through the election by peers of professional members) so that these bodies perform professionally,</li> </ul>	<p><b>REC 1:</b> Montenegro should amend its Constitution in line with the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, inter alia, the following points:</p> <ul style="list-style-type: none"> <li>• The Judicial Council and the Prosecutorial Council should be composed by at least 50% of members stemming from the judiciary. These members should be selected by their peers, representing different levels of jurisdiction, without involvement of the Parliament (unless solely declaratory).</li> <li>• Prosecutors should not be appointed by the Parliament.</li> <li>• Reasons for dismissal of judges and prosecutors should be included in the Constitution.</li> </ul> <p><b>REC 2:</b> The recruitment process needs to be transparent and merit based. A single, nationwide recruitment system should be introduced, which could be based on anonymous tests for all candidates and obligatory training before being appointed judge/deputy prosecutor. The Judicial Training Centre could be involved in the testing process.</p> <p><b>REC 3:</b> A fair and transparent system of promotion of judges and prosecutors needs to be established together with a periodical professional assessment of judges and prosecutors' performance.</p> <p><b>REC 4:</b> Ensure internal independence of judges and review the system of orders within the prosecution system.</p> <p><b>REC 5:</b> Sufficient administrative capacities and financial means need to be ensured to the Judicial and the Prosecutorial Councils to effectively perform their tasks.</p> <p><b>REC 6:</b> Improve the system of random allocation of cases, possibly also through streamlining the court network.</p>	<p><b>TARGET II.1:</b> Improve efficiency of justice</p> <p><b>TARGET II.2:</b> Improve quality of justice and independence of the judiciary</p>

<b>JUDICIARY</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<i>Croatia</i>	<i>Montenegro</i>	<i>Macedonia</i>
<p>impartially and without political or other interference their key functions, in particular in the appointment, career management and disciplining of judges and prosecutors.</p> <p><b>CBN 3:</b> Croatia improves the efficiency of the judiciary. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia substantially reduces the case backlog before the courts, particularly as regards old civil and criminal cases and enforcement decisions, and implements adequate legal and organisational measures to prevent undue delay in court cases, including the introduction of new methods of enforcement to ensure court decisions are enforceable within a reasonable time period, improved use of alternative dispute resolution (ADR), including the simplification of ADR mechanisms, and a track record of implementation of the new Criminal Procedure and Civil Procedure Codes;</li> <li>• Croatia makes progress with the physical infrastructure and computerisation of courts, the accelerated introduction of case management systems, in particular the Integrated Case Management System (ICMS), the establishment of a unified statistical system for the monitoring of all types of cases handled before all courts and at prosecution services, and introduces random case allocation in all courts;</li> <li>• Croatia continues to implement the rationalisation of municipal and misdemeanour courts, ensuring efficient operation of the merged courts, and sets out clearly the long term logistical and financial means for completing the court rationalisation process; Croatia adopts a clearly defined plan for rationalisation of county and commercial courts.</li> </ul> <p><b>CBN 4:</b> Croatia improves the handling of domestic war crimes cases. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia establishes a track record of impartial handling of war crimes cases by the law enforcement bodies and courts and</li> </ul>	<p><b>REC 7:</b> Review application of disqualification procedures and amend where necessary.</p> <p><b>REC 8:</b> Amend “conflict of interest” rules, ensuring that there is an effective monitoring of asset declarations and cross-checking with other relevant information.</p> <p><b>REC 9:</b> Ensure effective monitoring of compliance with the code of ethics.</p> <p><b>REC 10:</b> Review rules on disciplinary and dismissal procedures and their implementation and amend where necessary.</p> <p><b>REC 11:</b> Review the system of functional immunity for judges and prosecutors. Procedures for removing functional immunity need to be strengthened to ensure full accountability of judges and prosecutors under criminal law.</p> <p><b>REC 12:</b> Ensure reliable and consistent judicial statistics and introduce a system to monitor the length of trials.</p> <p><b>REC 13:</b> Review and rationalise the court network and ensure sufficient funding for the efficient functioning of the entire court system. Further reduce the existing backlog, especially as regards civil cases.</p> <p><b>REC 14:</b> Strengthen the enforcement of judgements in civil cases.</p> <p><b>REC 15:</b> Ensure effective functioning of the Judicial Training Centre.</p> <p><b>REC 16:</b> Take incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors.</p>	

**JUDICIARY** (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)

<b><i>Croatia</i></b>	<b><i>Montenegro</i></b>	<b><i>Macedonia</i></b>
<p>takes effective action to address issues of impunity, in particular by ensuring the proper investigation and prosecution of as yet un-investigated and un-prosecuted crimes, including adoption and implementation of a clear strategy which addresses, inter alia, regional discrepancies within Croatia, as well as continued engagement at the bilateral and regional level;</p> <ul style="list-style-type: none"><li>• Croatia implements its action plan for the review of in absentia cases and the new provisions of the Criminal Procedure Code on renewal of proceedings and deploying other legal remedies such as protection of legality, ensuring renewal of proceedings requests and renewed trials are properly and impartially handled by all relevant judicial authorities.</li></ul>		

<b>ANTI-CORRUPTION</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<i>Croatia</i>	<i>Montenegro</i>	<i>Macedonia</i>
<p><b>OBN 2:</b> Croatia provides the Commission with a revised National Anti-corruption Programme and related Action Plans including timeframes, bodies responsible and budget necessary for its implementation with specific emphasis on (a) the establishment of an effective institutional mechanism of coordination for the implementation and monitoring of anti-corruption efforts; (b) the effectiveness of legislation on financing of political parties and election campaigns in addressing corruption; (c) measures to prevent conflict of interest.</p> <p><b>CBN 5:</b> Croatia establishes a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia further reinforces the operational capacity of USKOK, including by extending its remit to tax fraud linked to organised crime and corruption offences, improving financial expertise and ensuring sufficient training and resources in view of its new role in the accusatorial system introduced in July 2009;</li> <li>• Croatia takes measures to improve police effectiveness and independence, including through depolitisation and improved professionalism, strengthening specialised expertise, especially for financial crimes, and improved cooperation with other agencies, the financial sector and international partners; Croatia applies effectively and consistently the confiscation provisions of article 82 of the Criminal Code and establishes clear responsibilities and rules for the proper management of property confiscated in criminal proceedings.</li> <li>• Croatia increases the capacity of the courts to handle cases adequately, including in terms of human resources and logistics.</li> </ul>	<p><b>REC 1:</b> Strengthen and possibly review the institutional framework for the fight against corruption. In particular, DACI's competences need to be upgraded and its capacities reinforced.</p> <p><b>REC 2:</b> Improve the system of asset declarations, strengthening in particular the supervisory competencies and the professional capacity of the Commission for prevention of conflict of interest to ensure effective and substantial checks on assets, and introduce measures preventing conflicts of interest going beyond holding double public offices (such as public decision makers holding stakes in private companies etc.).</p> <p><b>REC 3:</b> Review the rules of procedure of the public administration, including appointment and internal control, to fully integrate prevention of corruption and conflicts of interest aspects.</p> <p><b>REC 4:</b> Improve the system of political party funding, ensuring reliable reporting as well as effective supervision and sanctioning powers by an independent authority. Strengthen the capacities of the monitoring bodies (the State Audit Institution (SAI) and the State Election Commission) and ensure a clear division of tasks and cooperation framework. Accounting obligations for political parties should be increased and all in-kind donations should be reported. The recommendations of GRECO should be followed-up.</p> <p><b>REC 5:</b> Ensure effective implementation of free access to information rules, inter alia, with regard to sensitive information with economic value. The provisions of the Law on prevailing public interest need to be clarified. Appropriate interaction between the Law on Free Access to Information and the Laws on Protection of Personal Data and on Data Secrecy should be ensured.</p> <p><b>REC 6:</b> The control system for public procurement is to be strengthened as well as the supervision of implementation of awarded contracts.</p>	<p><b>TARGET II.3:</b> Strengthen anti-corruption measures and verifiable enforcement</p>

**ANTI-CORRUPTION** (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)

<i>Croatia</i>	<i>Montenegro</i>	<i>Macedonia</i>
<p><b>CBN 6:</b> Croatia establishes a track record of strengthened prevention measures in the fight against corruption and conflict of interest. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia increases transparency and integrity in public administration and state owned companies, including by improving legislation on the access to information and its implementation, by adopting, amending and implementing legislation necessary for full application of the General Administrative Procedures Act, by implementing anti-corruption action plans in state owned companies and by continuous training of staff;</li> <li>• Croatia amends its current legislation on political party financing, inter alia, to extend its scope to election campaigns and to improve transparency and independent oversight;</li> <li>• Croatia ensures there are effective legislation and systems in place to protect against and sanction conflicts of interest at all levels of state/public administration, and to monitor and verify assets declarations of public officials and judges, including dissuasive sanctions for non-compliance. Croatia ensures that effective systems are in place to enable and support those reporting corruption and maladministration in public institutions.</li> </ul>	<p>Anti-corruption measures at local government level need to be stepped up.</p> <p><b>REC 7:</b> Develop specific measures to tackle corruption in particularly vulnerable areas, such as those identified in the findings of the risk assessment of July 2011. For these areas, separate Action Plans could be envisaged. Ensure that risks assessments are being used systematically.</p> <p><b>REC 8:</b> Strengthen the Parliament's role in fighting corruption by stepping up supervision of the executive. The Parliament should also pay specific attention to anti-corruption issues when revising and improving the legal framework. Ensure a thorough integrity system within the Parliament.</p> <p><b>REC 9:</b> Ensure that NGOs are involved in the anticorruption agenda.</p> <p><b>REC 10:</b> Ensure independent, effective specialised investigation/prosecution bodies, in particular through:</p> <ul style="list-style-type: none"> <li>• Constitutional and legal amendments strengthening the independence of the judiciary (see above) and to protect all investigative bodies from (potential) political pressure.</li> <li>• Provision of adequate resources (financial resources, staffing, etc.) to all investigation and judicial authorities involved in the fight against corruption, making corruption cases priority matters. A review of the definition of "high level corruption" in view of the SSPO's area of competence would be recommendable.</li> <li>• Ensure that prosecutors have real-time access to relevant databases and sufficient capacity to effectively implement of the Criminal Procedure Code.</li> <li>• Review the competences of the Special Investigative Team and ensure its access to relevant databases.</li> <li>• Ensure sufficient training, well qualified staff and international exchange of expertise to allow</li> </ul>	



<b>ANTI-CORRUPTION</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<i>Croatia</i>	<i>Montenegro</i>	<i>Macedonia</i>
	<p>for modern investigative techniques to be applied efficiently and on a regular basis. Similar training must be ensured for judicial authorities.</p> <p><b>REC 11:</b> Amend the Criminal Procedure Code where needed and ensure its effective implementation.</p> <p><b>REC 12:</b> Improve the use of financial investigations, possibly through establishing a team of highly qualified investigators for this purpose.</p> <p><b>REC 13:</b> Improve the cooperation and information exchange between authorities involved in the fight against corruption, including also tax and other only indirectly linked authorities.</p> <p><b>REC 14:</b> Improve the collection of unified statistics on corruption, distinguishing clearly between different types of criminal activities and allowing for a detailed assessment of length of the cases, outcome etc.</p> <p><b>REC 15:</b> The procedures for seizure, confiscation and management of proceeds of crime need to be further regulated and the professional capacity of the relevant State Agency strengthened.</p> <p><b>REC 16:</b> Take the necessary steps to make the system of whistle-blower protection more effective in practice.</p> <p><b>REC 17:</b> Review the system of immunities and ensure that effective procedures for lifting of immunities are in place. Review the procedure for closure of criminal cases and consider possibilities for appeals or complaints.</p>	

<b>FUNDAMENTAL RIGHTS</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<b>Croatia</b>	<b>Montenegro</b>	<b>Macedonia</b>
<p><b>OBN 3:</b> Croatia provides the Commission with two separate plans including timeframes, bodies responsible and budget necessary for their implementation for (a) the full implementation of the Constitutional Act on the Rights of National Minorities, and (b) the accelerated implementation of the Housing Care Programme within and outside the Areas of Special State Concern for those refugees who are former tenancy rights holders wishing to return; Croatia decides on measures to resolve the issue of convalidation.</p> <p><b>CBN 7:</b> Croatia strengthens the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM). In particular,</p> <ul style="list-style-type: none"> <li>• Croatia takes steps to ensure a tangible improvement in the level of employment of national minorities in state administration bodies and bodies of local and regional self-government, in the police and in the judiciary, and establishes an effective system of statistical monitoring, including through the adoption, implementation and monitoring of employment plans in all relevant bodies;</li> <li>• Croatia carries out a comprehensive study into the under-representation of minorities in the wider public sector not covered by the CARNM and adopts a plan to tackle the shortcomings identified;</li> <li>• Croatia undertakes measures aimed at reconciliation and increased tolerance among citizens, including through education and reviewing the role of schooling, through the media, and by an adequate response at the political and law enforcement level to racist or xenophobic incidents;</li> </ul> <p><b>CBN 8:</b> Croatia settles outstanding refugee return issues. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia fully implements its Action Plan on the Housing Care Programme for refugees and former tenancy rights</li> </ul>	<p><b>REC 1:</b> Introduce an effective legal remedy in line with Article 13 ECHR to redress violations of human rights under the convention.</p> <p><b>REC 2:</b> Fully implement the recommendations provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Improve prison conditions; measures to reduce the prison population, in particular alternative sanctions and conditioned sentencing could be further explored.</p> <p><b>REC 3:</b> Ensure protection of journalists against threats and violence, in particular through effective investigations and deterrent sanction of past attacks. Review and amend the legislative and institutional framework for the protection of media freedom.</p> <p><b>REC 4:</b> Ensure the independence of the audio-visual regulator and of the public broadcaster.</p> <p><b>REC 5:</b> Take concrete steps to ensure practical implementation of non-discrimination and gender equality, including through strengthening of the monitoring bodies and more effective reactions of the law enforcement bodies to possible violations, as well as through better awareness raising and support measures, especially on employment and public representation of women.</p> <p><b>REC 6:</b> Particular focus should be put on ending discrimination of the LGBT community.</p> <p><b>REC 7:</b> Take steps to ensure full transparency of trade unions' representativeness and the right to establish new unions, in line with the relevant national regulations.</p> <p><b>REC 8:</b> Improve the protection and enforcement of rights of the children and of persons with disabilities, including by strengthening the relevant councils, and continue deinstitutionalization where possible.</p> <p><b>REC 9:</b> Ensure the effective functioning of the free legal aid system, also through the allocation of sufficient financial means.</p>	<p><b>TARGET I.1:</b> Amend defamation legislation, improve court practice and strengthen professional standards</p> <p><b>TARGET II.4:</b> Increase efficiency and transparency of management of interception of communication investigative technique</p> <p><b>TARGET II.5:</b> Improve inter-community dialogue</p>

<b>FUNDAMENTAL RIGHTS</b> (OBN = opening benchmark; CBN = closing benchmark; REC = recommendation)		
<b><i>Croatia</i></b>	<b><i>Montenegro</i></b>	<b><i>Macedonia</i></b>
<p>holders wishing to return to Croatia, including meeting the targets for 2008 and 2009 for the provision of accommodation both within and outside the areas of special state concern; Croatia makes substantial progress in providing accommodation to all other successful applicants for Housing Care on the basis of a fully costed plan;</p> <ul style="list-style-type: none"> <li>• Croatia strengthens the handling of appeals for rejected housing reconstruction applications, eliminates the backlog of existing appeals and makes significant progress with the reconstruction of the remaining properties;</li> </ul> <p><b>CBN 9:</b> Croatia improves the protection of human rights. In particular,</p> <ul style="list-style-type: none"> <li>• Croatia improves access to justice, including by taking the necessary steps to ensure that, by accession, the Administrative Court is made a court of full jurisdiction in the meaning of Article 6 ECHR and Article 47 of the Charter of fundamental rights, both in law and practice; and by ensuring improved implementation of the Law on legal aid;</li> <li>• Croatia establishes a track record of implementation of the Anti-Discrimination Law and the Law on Hate Crimes, ensuring that law enforcement authorities deal effectively with cases and that the Office of the Ombudsman is strengthened.</li> </ul> <p><b>CBN 10:</b> Cooperation with the International Criminal Tribunal for the former Yugoslavia</p> <ul style="list-style-type: none"> <li>• Full cooperation with the ICTY remains a requirement for Croatia's progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.</li> </ul>	<p><b>REC 10:</b> Take concrete measure to prevent discrimination of minorities. Ensure their continuous registration, as well as their equal access to economic and social rights and their adequate representation in public authorities. Particular focus should be given to improve the living conditions of the poorest part of the RAE population and of the displaced persons.</p> <p><b>REC 11:</b> Ensure adequate prosecution of hate crime.</p> <p><b>REC 12:</b> Ensure the alignment with the acquis in the area of protection of personal data and allow for assessment through the preparation of the relevant transposition tables; ensure sufficient financial and human resources to the Data Protection Agency.</p>	

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There have been significant alterations in the EU enlargement policy when it comes to the western Balkan countries – mainly related to the scope of the criteria and approaches towards application of the conditionality policy. The paper aims to illuminate EU political conditionality's application in the accession processes of the western Balkan countries, concentrating on the conditionality instrument of benchmarking and monitoring. It examines whether the EU political conditionality is the driver enabling the western Balkan countries to advance in the accession process, and looks for patterns of consistency in the application of political criteria and related conditionality in the judiciary and fundamental rights policies. The methodology utilizes a comparative case study approach, identifying innovations and principles governing the negotiation process of Croatia and Montenegro, the application of political conditionality related to the judiciary and fundamental rights policies, and actions taken by these countries in order to meet the political criteria. In addition, it makes an analogy to the case of Macedonia, which has not yet started accession negotiations, drawing parallels and examining the comparable instruments and approaches which in major part concern the rule of law area.



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