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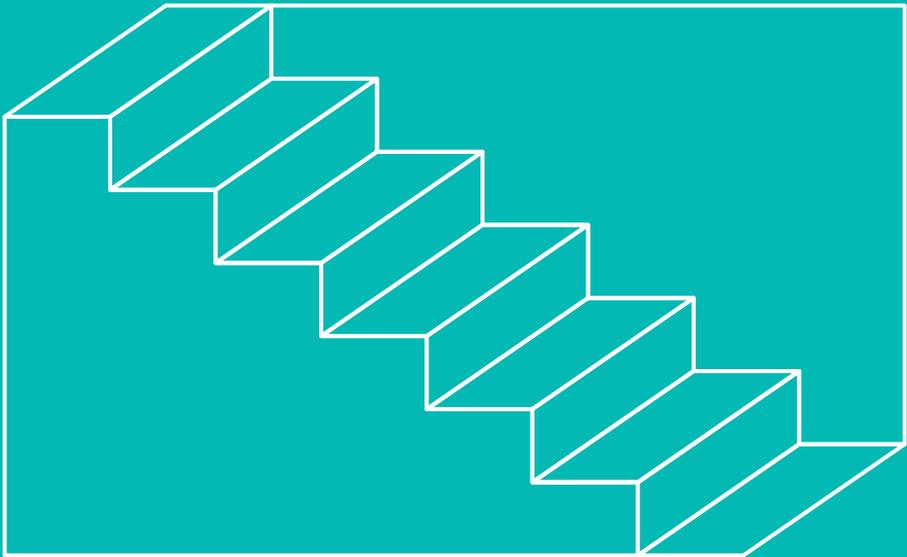
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The devil is in the details: negotiating North Macedonia's European Union accession

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Impressum

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Introduction

For more than 25 years, North Macedonia has been part of the EU accession process which has been a period of many great challenges for the country. The general political circumstances have required the adoption of several tough decisions directed at the progress of the country. Equally, North Macedonia often found itself dependent on EU member states, reflected in numerous decisions determining the near or distant future of the country in the European family.

According to the Treaty on European Union, any European State which respects the values of EU and is committed to promoting them may apply to become a member of the Union. However, it is also very well known that any more sensitive decision – to which the accession of a new member belongs - in the EU are subject to unanimity, that is to say, they are taken by consensus among all Member States.

Thus, any Member State, at any stage of the accession process, may say “no” to proceeding further with the accession. Up until recently, because of the issue with the country’s constitutional name Greece used to be the nay-sayer on North Macedonia’s accession. Prior to the adoption of the decision on opening the accession negotiations France persisted, among other things, on first changing the methodology of accession negotiations. Tomorrow the opponent might be Bulgaria. North Macedonia’s membership aspirations are therefore vulnerable to this reality and these rules of the “game”.

That is to say that, however, these rules apply both to us Macedonians and to all other countries that are in a negotiation process to become members of the Union. The EU accession process is a bargaining process and, with The Union being built on and functioning through dialogue and compromise, these are

the key elements defining the membership negotiations.

In practice this means that North Macedonia's negotiations for EU membership will be conducted amidst constant changes and, consequently, will require adjustments to new situations. Today this unexpected challenge is the Covid-19 crisis; who knows what tomorrow will bring. In the global world we live in change spares nobody. Everything around us changes and adapts rapidly, including the European Union. This policy paper will give an overview of the challenges that lay ahead of North Macedonia in the forthcoming period starting with the adoption of a Negotiating Framework and the holding of the First Intergovernmental Conference for accession of the country to the EU. Furthermore, it will discuss the general EU position on a draft Negotiating Framework and the setting it is adopted in, as well as the domestic conditions it will come across. In the end, this paper draws conclusions and recommendations on how North Macedonia could handle the newly arisen situation.

How did we get here and what can we expect further on?

16 years have passed since the day, North Macedonia submitted our Application for EU membership (March 2004), hence since the day our will and commitment to become a member of the EU were formally expressed. Only this March (2020) the Council of the EU decided unanimously that they (all Member States) are ready to open accession negotiations for our accession to the EU.

The road to this historic moment has been unusually long. Namely, immediately following the conclusion of the Interim Agreement with Greece and the establishment of official diplomatic relations with the European Union in 1995, the first contractual framework between the European Union (European Communities) and North Macedonia was laid down, in the form of a Cooperation

Agreement, which also secured us access to EU funds, through the PHARE programme. North Macedonia was the first country in the region to have signed the Stabilisation and Association Agreement (SAA) (2001) as a detailed contractual, political, economic, trade, and institutional framework for an in-depth association with a clear evolutionary clause for potential EU membership. The ratification of the SAA by all EU Member States (15 at that time) was finalised in 2004. The same year (2004), we officially submitted our Application for EU membership, as a decision of the generation and proof of the maturity of our society to determine its clear permanent geopolitical orientation. By submitting the Application, the country made it unambiguously clear that it wants to become an EU member state, aware of all obligations that such relation carries by itself. Having the application accepted by all Member States they made clear to us that our future is in the EU. In 2005, the country received candidate status, and following a certain stagnation in relations,

but also in-depth reforms, including access to the new financial IPA instrument (2007-2013), the European Commission assessed in 2009 that we are ready and officially recommended the Council of the EU to open accession negotiations. Nevertheless, the Council quietly refused to put the decision on opening negotiations on the agenda in the period between 2009 and 2018, above all due to the unresolved name issue with Greece.

After signing the Treaty on Good Neighbourly Relations with Bulgaria (2017) and the Prespa Agreement with Greece (2018), the Council of the EU accepted for the first time to put the decision on opening accession negotiations on the table in 2018, so that after the postponements in 2018 and 2019, finally in March 2020, it also adopted a Decision to open accession negotiations, confirmed by the European Council. Thereby, all Member States (27 currently), made clear that they want to see North Macedonia as a future EU Member State and are ready to set the accession requirements (i.e.

to define a General EU Position and a Negotiating Framework). This decision has been historic and finally laid out the way towards (the negotiation of) a new contractual framework between North Macedonia and the European Union, in a form of a Treaty of Accession, as a final act of the country's accession to the EU. The contents of the Treaty of Accession will be determined and will be the result of the accession negotiations.

Until the new contractual legal framework between North Macedonia and the European Union, i.e. the text of the Treaty of Accession, is under negotiation, the Stabilisation and Association Agreement remains in force as well as all other accompanying agreements concluded in the meantime between North Macedonia and the EU (of which there are plenty, in the sectors of transport, energy, agriculture, cooperation in the judiciary, police cooperation, border security, etc.).

Once negotiations are concluded, the

Treaty of Accession will be signed and ratified by all involved parties in the negotiations. In North Macedonia there has to be a Referendum on accession to the European Union conducted for the purpose of giving consent to transferring a part of its sovereignty to the EU. The Stabilisation and Association Agreement will cease to be valid as well as all other accompanying agreements and acts, but also all other bilateral free trade agreements (or other international treaties) we had concluded until then with third parties (e.g. Turkey, Ukraine, etc.) and are potentially in collision (in full or partially) with the Treaty of Accession. From that moment onward, North Macedonia will move from the status of an acceding country, to a Member State status with all the rights and obligations. From that moment on the entirety of the EU's *acquis* and its practice will complement our national legislation. At the same time, apart from our national authorities, also the institutions of the European Union shall take care of its implementation.

General EU Position and the Negotiating Framework

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Amidst a Pandemic and its strong negative impact on the political and economic internal and external position of the EU, as well as the effect of Brexit which is still an unsettled issue, the enlargement process seems to be the only bright light where things move according to plan at the moment. The European Commission and the Commissioner Várhelyi, as well as Member States and Croatia as the current holder of the Presidency of the Council of the EU, can mark success when it comes to the enlargement process and fulfilment of their promises to Western Balkan countries.

The EU-Western Balkans summit (Zagreb Summit) took place via video conference on 6 May 2020. It had both a working, but also symbolic nature expressing strong determination of the EU to continue

rounding up the enlargement process. The summit ended with the adoption of the Zagreb Declaration/ conclusions¹, which, apart from the overview of measures undertaken and solidarity in the fight against the implications of Covid-19, again reaffirmed the clear European perspective of Western Balkan countries. The Declaration shows utmost respect for the EU's fundamental principles and values, including the rule of law. More practically, an Economic and Investment Package, to be expected in autumn and aimed at supporting and giving dynamics to Western Balkan development, was announced. This recovery programme has the purpose of reducing economic disparities. Of course, as with all high level meetings, this one also did not lack subtle diplomatic messages² directed at almost all countries of our region (Serbia, Kosovo, Bosnia and Herzegovina, Montenegro), including North Macedonia. Thus, Bulgaria (and Greece) ensured for a sentence to be inserted in the Declaration text referring to the implementation of our mutual bilateral agreements with visible results. This could create a potential for

¹ European Council. 2020. Zagreb Declaration, available at <https://www.consilium.europa.eu/en/press/press-releases/2020/05/06/zagreb-declaration-6-may-2020/> (accessed 25.05.2020)

² Institute for Democracy "Societas Civilis" – Skopje. 2020 Institute for Democracy's reaction on the outcome of the 2020 EU-Western Balkans Summit in Zagreb, available at <https://idscs.org.mk/en/2020/05/07/institute-for-democracys-reaction-on-the-outcome-of-the-2020-eu-western-balkans-summit-in-zagreb/> (accessed 24.05.2020)

complicating the process of aligning the text of the draft negotiating framework, in the case Bulgaria (and Greece) insist on using stricter wording in relation to the implementation of the bilateral agreement(s), calling upon common EU position as (now) formulated into the Declaration.

Together with the Decision of the Council of the EU to open accession negotiations, the European Commission received the mandate to prepare the General EU Position, together with the Negotiating Framework on the conditions under which the European Union will accept the Republic of North Macedonia as its Member State (the same procedure is under way in parallel for Albania as well). The European Commission is drawing up the first draft of the Negotiating Framework which, according to an informal announcement, will be opened at the beginning of June³, first at the Collegiums meeting and then through COELA (the Enlargement Committee is a body of the Council of the EU in charge

of enlargement and negotiations) will enter the process of alignment with all the Member States, which will then need to go through the COREPER procedure (Permanent Representatives Committee) before it is adopted by the General Affairs Council (GAC), as well as confirmed by the European Council.

The Negotiating framework is considered to be the most important document in which Member States determine their main negotiation positions, obliging the European Commission as the institution leading the technical negotiations on behalf of the Member States, to adhere to them, with the obligation to regularly provide feedback and to inform Member States on the course and results of the negotiations. The Negotiating Framework defines the course, scope and structure and key requirements to be accepted and procedures and structures of negotiations. Within this, “Nothing is agreed until everything is agreed”, meaning that negotiations shall be considered open until the point of reaching full consent between

³ Tweet by Oliver Varhelyi on May 19, 2020, available at https://twitter.com/OliverVarhelyi/status/1262794317002874880?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1262794317002874880&ref_url=https%3A%2F%2Fwww.euractiv.com%2Fsection%2Fenlargement%2Fnews%2Fenlargement-package-postponed-until-autumn-negotiation-framework-to-go-ahead-in-june%2F (accessed 29.05.2020)

both parties regarding the overall text of the Treaty of Accession and its signing, followed by its ratification.

During the negotiating process, North Macedonia does not have the opportunity to directly intervene in the text thereafter. However, considering the experience of Montenegro and Serbia, the country can expect to be consulted in an appropriate manner. This certainly entails a high risk for contentious elements contained in the Declaration of Bulgaria (from October 2019⁴), adopted by the Bulgarian Parliament, whose main elements (regarding the language, the use of the constitutional name, minority rights, the way how history is read, to find their place in the Framework) are enclosed as a unilateral position (every Member State has such a right and possibility) to the Minutes of the Council of the EU on the occasion of adopting the Decision to open accession negotiations

(from March 2020). This could lead to unpleasant conditioning.

It is important to note in this segment that there are still not fully clarified elements of the implementation of the Prespa Agreement with Greece⁵ and the determined political transition of the overall national legal corpus therewith, which needs to flow in parallel with the accession negotiation process (5 years after opening each chapter, or according to the new Methodology, after opening each cluster of chapters). This, also, will probably find its place, in an appropriate manner, in the Negotiating Framework. Elements of these assumptions of ours related with the positions of Bulgaria and Greece are already visible in the text of the Declaration/ conclusions of the Zagreb Summit in the section on regional cooperation and strengthening of good neighbourly relations.⁶

⁴ The Bulgarian Parliament adopted a Declaration on North Macedonia and Albania, determining the preconditions under which these countries can start accession negotiations. The Declaration was adopted with 129 votes FOR, 4 votes AGAINST and 1 abstention vote.

⁵ Final Agreement for the settlement of the differences as described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the termination of the Interim Accord of 1995, and the establishment of a Strategic Partnership between the Parties. 2018. Available at: <https://www.mfa.gov.mk/mk/page/1708/> (accessed 26.05.2020)

⁶ European Council. 2020. Zagreb Declaration, available at <https://www.consilium.europa.eu/en/press/press-releases/2020/05/06/zagreb-declaration-6-may-2020/> (accessed 25.05.2020)

First Intergovernmental Conference for North Macedonia's Accession to the European Union

The discussion on and the process of aligning the text of the General EU Position and the Negotiating Framework among Member States, according to the experience gained so far (Montenegro and Serbia) could last several months (between July and December). Taking into consideration the complexity of the Negotiating Framework for us (new rules in line with the new revised Methodology) and the announced demands by Bulgaria (and Greece), the draft text is expected to cause serious discussions in the bodies of the EU (COELA, COREPER and GAC).

After aligning the Negotiating Framework for North Macedonia, conditions

will be created to hold the First Intergovernmental Conference (IGC). As things stand at the moment, it is expected that this will be held during the German Presidency of the Council of the EU in the second half of 2020. Nevertheless, a precise date cannot be stated as this depends on the adoption of the Negotiating Framework.

The circumstances under which the text of the Macedonian Negotiating Framework will be worked out are complex because there is a lot of work ahead of Germany in several fields at the same time, in particular, managing the unity of EU amidst the Covid-19 crisis and amidst a deep recession, through closing the negotiations with Member States on the 2021-2027 multiannual financial framework, to determining the new budget plan under the blow of Covid-19, etc.⁷ All these questions are of existential nature for the EU, now and in the future once the gravest crisis that the world is facing so far is overcome.

⁷ Closing the question of using the European Stability Mechanism and the potential Coronabonds, securing the functioning of the single market, including application of the rules aimed at protection of competition and state aid, as well as rule of law, regaining trust in the fundamental pillars that the EU rests upon, starting from the solidarity principle

This means that questions pertaining to the Conference on the Future of Europe will be debated. The Conference should start this year and will last until the second half of 2022. The question of completing EU enlargement (enlargement policy) will be addressed expectedly also through the lenses of the discussion on the future of Europe.⁸

Under such circumstances, the question of closing the Negotiating Framework and holding the First IGC will certainly additionally burden Germany's agenda (and the EU's as a whole) in the second half of the year. Looking on the bright side, the timing is ideal provided that these efforts are combined with the potential (but expected) credit of Germany for successfully closing the substantially increased Multiannual

Financial Framework. In addition, the Berlin Process, having been initiated by Germany, co-chaired this year by Bulgaria and North Macedonia and happening exactly at this period, could also be used as a leverage and instrument for dialogue for overcoming the different perspectives related with the country's EU integration process. Of course, here we also have the adoption of the expected large Economic and Investment Plan for the Western Balkans, which was only announced for this autumn in Zagreb (May 2020), and will be adopted and promoted⁹ during the German Presidency of the Council of the EU.

The IGC is of exceptional importance due to the fact that it also depends on this when the analytical overview of the European Acquis (screening) in

⁸ Speech by the German Chancellor Angela Merkel on May 27 2020, available at: <https://www.kas.de/de/veranstaltungsberichte/detail/-/content/europa-als-solidarische-handlungsfaeheige-und-gestaltende-kraft-weiterentwickeln> (accessed 29.05.2020)

⁹ A condition for this is first to reach an agreement within the EU about the volume and priorities in the new financial perspective or the 2021-2027 Multiannual Financial Framework

the second phase will continue, i.e. bilateral screening¹⁰ (in autumn or at the beginning of 2021) according to the new revised Methodology for Strengthened accession negotiations¹¹. Bilateral screening will be conducted according to the new Methodology over a period which will not last one year, starting with the cluster on Fundamentals, followed by the remaining five clusters (where 33 chapters are grouped), in particular Internal Market, Competitiveness, Connectivity, Agriculture, and Foreign Relations. The schedule as to how bilateral screening will be conducted will depend on the agreement with the European Commission, but also on the strategic priorities of the country and the institutional readiness to start negotiations.

Conclusions and recommendations related to the Negotiating Framework and the First Intergovernmental Conference

North Macedonia is in expectation of the Negotiating Framework, which will determine the format and the course of negotiations until the very membership in the Union, with a caretaker government. The fact that due to the Covid-19 virus elections needed to be postponed and that the country has been functioning for a longer period of time with an interim government that exists solely with the purpose of ensuring a clear electoral

¹⁰ The explanatory screening for 33 chapters was conducted between September 2018 and December 2019. Explanatory screening should be organised for the new EU regulations adopted over this last period as well as for the new fields that are part of the Strengthened Methodology, in particular, Economic Criteria and Functional Democratic Institutions.

¹¹ Tilev, D. 2020. The new EU enlargement methodology: enhancing the accession process. Institute for Democracy "Societas Civilis" – Skopje, available at [at https://idscs.org.mk/en/portfolio/the-new-eu-enlargement-methodology-enhancing-the-accession-process/](https://idscs.org.mk/en/portfolio/the-new-eu-enlargement-methodology-enhancing-the-accession-process/) (accessed 29.05.2020)

process is not favourable at all. A series of significant political decisions demanding full political capacity and a clean mandate need to be adopted. Not having the conditions, at least for now, to organise elections will negatively reflect on North Macedonia's EU agenda, for the reason that the preparation for the next phase (bilateral screening), as well as lobbying with Member States and in EU institutions in order to secure as favourable as possible text of the General EU Position and of the Negotiating Framework, is exceptionally hard when having such extraordinary circumstances.

In the direction of meeting the requirements and positions of certain Member States, particularly those arising from the bilateral agreements with Bulgaria and Greece, it is necessary to define and adopt argument-based positions by reaching consensus between the main political players in the country since it would not be favourable for us if this is included in the Negotiating Framework. This procedure should be preceded by a detailed analysis of all

positions of Bulgaria and definition of where there is space (if there is any, of course) to build compromise positions; whereas, when it comes to Greece, on the other hand, it is necessary to adopt a clear state position regarding the implementation of the Prespa Agreement, in particular in the part referring to the political transition which will have direct impact on the course of the accession negotiations.

It is necessary to intensify the dialogue with the Friends of Enlargement countries ("Tallinn Group¹²"), and especially with those who will preside with the Council of the EU in the period of key importance to establishing the basic principles of the negotiation process. Apart from them, it is also necessary to intensify the cooperation with Albania and to exchange information at this phase of preparation of the negotiating frameworks, with the full understanding that the further process of accession negotiations will be paved and dynamised by each country separately.

¹² 14 EU member states that clearly supports enlargement

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Information about IDSCS

IDSCS is a think-tank organisation researching the development of good governance, rule of law and North Macedonia's European integration. IDSCS has the mission to support citizens' involvement in the decision-making process and strengthen the participatory political culture. By strengthening liberal values, IDSCS contributes towards coexistence of diversities.

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Link

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