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# IMPRESSUM

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# HURDLING ON 3, 6, AND 9 MONITORING THE IMPLEMENTATION OF THE FIRST THREE MONTHS FROM THE 3-6-9 PLAN

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*Nothing is possible without men;  
nothing is lasting without institutions.*

*- Jean Monnet -*

## An ambitious goal

The new government of the Republic of Macedonia, led by the Social Democratic Union of Macedonia, the coalition partners of the Democratic Union for Integration, and the Alliance for Albanians, set itself the goal of opening the prospects for the country's entry into the EU.<sup>1</sup> This primarily means receive a clean recommendation for starting accession negotiations, but also convincing the Council and certain sceptical member states that Macedonia is ready for it. The fulfilment of the recommendations contained in the 2015 Priebe report and the Urgent Reform Priorities is key for obtaining an unconditional recommendation for the commencing of membership talks by

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<sup>1</sup> Zoran Zaev, „Statement by H.E. Zoran Zaev, President of the Government of the Republic of Macedonia at the 72nd Session of the United Nations General Assembly Plenary Meeting,“ 2017, 4.

the European Commission.

In the 2016 European Commission's annual report, Macedonia was described as a 'captured state' with captured institutions, while taking note that the country faces the most difficult political crisis since 2001.<sup>2</sup> This is the first case in the accession process when Macedonia is given such a negative diagnosis. Faced with political uncertainty in which the state functioned in the past two years, setting such a goal by the government seems ambitious.

In September 2017, group of independent senior rule of law experts led by Priebe published its second report with recommendations. While referring to the recommendations of 2015, the Report also provided new recommendations for reforms that Macedonia should follow and fulfil to prevent the possibility of replacing one 'capture state' with another.<sup>3</sup> Bearing in mind the aforementioned, the government should seriously focus its efforts on the implementation of the reforms, following the Priebe recommendations of 2015 and 2017, as well as the Urgent reform priorities.

Operationalization of the commitment by the government began with the launch of a reform plan related to the EU accession process, entitled plan 3-6-9. The genesis of the title arises from the time-frame it sets for the completion of the envisaged activities related to EU reforms and whose completion corresponds with the time of publication of the European Commission's regular

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2 European Commission, „Report on the Republic of Macedonia 2015“, European Commission, 2015, 8.; European Commission, „Report on the Republic of Macedonia 2016“, European Commission, 2016, 4, 8.

3 Expert Group, „Expert Group Assessment and Recommendations on Systemic Rule of Law Issues 2017“, European Commission, 2017, 3.

report on Macedonia. The plan was announced on July 4, 2017, almost a month after the formation of the new Government.

## Return to democracy

In direction of obtaining a clear recommendation for starting accession negotiations with the EU and creating a positive climate for advancement in the negotiations with Greece, it is necessary for Macedonia to show political maturity and capacity to implement the reform that, at least declaratively, are supported by all political and institutional actors. Hence, the government, which, above all, has the greatest responsibility, should take concrete steps towards reaching wide political consensus and support from all political parties, especially the parliamentary ones. The supra-partisan consensus regarding efforts to accomplish the country's strategic commitment for EU membership through the adoption of the Declaration in the Assembly<sup>4</sup> is a step in the right direction, however, it does not represent indispensable support for the activities and reforms that arise from this path. The government should regularly inform and consult on plan 3-6-9 with all political parties, both within the Parliamentary Committee on European Affairs and on the plenary sessions of the Parliament. This is important both for informing stakeholders and for reaching a consensus on a highest possible level.

The return to democracy should be complete with full respect of the principle of separation of powers. This is of particular importance, given that Macedonia is attempting to dismantle the

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4 Committee on European Affairs, „Declaration on the Acceleration of the Reform and Integration Processes of the Republic of Macedonia for the Accession in the European Union and NATO,“ Assembly of the Republic of Macedonia, July 14, 2017

‘captured state’. Hence, the character of this reform plan should reflect this reality. Given the fact that the government is the one reporting in Brussels on behalf of the country, it has the greatest responsibility in drafting and implementing the plan. Thus, the formulation of activities and reforms in the areas that are not in their jurisdiction, like the ones belonging to the legislative and judicial branch of power, must be approached with special care. The impression exists that this level of consideration has not yet been reached. In the priority area that covers the activities related to the work of the Parliament, the only obligation that the government can impose is on its officials, heads in the ministries, and in other government bodies to attend invitations for presence on parliamentary sessions that include, but are not limited to, discussions on issues related to the plan 3-6-9. Additionally, it is necessary to consider whether the absence of the above-mentioned function holders can be a basis for them to be sanctioned. This is the only way that the government can show a true understanding of its role in the democratic system of governance and will leave room for parliament itself to encourage reforms that will contribute to its more efficient and more essential functioning. Hence, all proposed measures in the ‘Parliament’ area should arise from and be promoted through proposals coming from the political parties themselves represented in parliament in cooperation with government representatives. Also, the area dedicated to cohabitation with the President provides activities that also emerge beyond the powers of the executive government, such as the election of a member of the Council of Public prosecutors and the Constitutional Court.

## Evaluation of the current state of play

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On the basis of the methodology for monitoring the implementation of the plan 3-6-9, analysis shows that out of 73 activities, 41% of the activities were fulfilled, 16% of the activities were partially fulfilled (on-going), 14% are not fulfilled, while 29% of the activities are not measurable.

Despite the government's ambition to return on the path towards the EU, the activities envisaged in the plan are far from the desired level of reform activities that the Secretariat for European Affairs (SEA), and thus the government, has the capacity to prepare and monitor. The plan does not specify the reform objectives for each of the priority areas, nor does it provide an explanation why certain areas are prioritized with respect to others. In addition, the introductory part to the plan lists a number of documents from which the priorities have been drawn. The plan lacks an explanation or established correlation between the activities and activities and proposals for reforms in the documents to which it refers. Furthermore, the absence of a number of activities that should address the key recommendations and priorities contained in the Priebe Report and the Urgent reform priorities is noticeable. Such is the example of the recommendations for reforms in independent oversight and regulatory bodies - areas that are widely discussed in the Priebe recommendations.<sup>5</sup> Almost no action is foreseen in this area in part 3 of the plan. Additionally, some of the activities included in part 3 incorrectly address the some of the above-mentioned recommendations and priorities. For example, in the area of media, part 3 of the plan 3-6-9 provides an overview of all previous cases of physical

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5 Senior Experts' Group, „Republic of Macedonia: Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues Relating to Communications Interception Revealed in Spring 2015,“ European Commission, 2015, 13-18

and verbal attacks and pressure on journalists,<sup>6</sup> however, fails to mention how to deal with cases of defamation lawsuits against journalists by politicians, which are often used as pressure on the media.<sup>7</sup>

It is of utmost importance to mention the need for harmonization of the reform activities in the plan 3-6-9 with the National Program for the Adoption of the Acquis (NPAA). This document is a key, strategic document that includes the priorities, the dynamics of harmonization of national legislation with the European, as well as the adaptation of national institutions to European administrative structures. Achieving complementarity is important from the standpoint that the plan 3-6-9 is an extraordinary instrument with a limited expiration date. Pursuant to the last NPAA (2016 - 2019)<sup>8</sup> and the annex (2017 - 2020)<sup>9</sup>, the Law on courts, the Law on the Judicial council, the Ombudsman, the Law on interception of communications and the Law on asylum and temporary protection - laws that cover issues that are of concern to the plan 3-6-9 can be pointed out as examples for harmonization. However, it is obvious that none of the aforementioned laws has been adopted within the stipulated deadline in accordance with the NPAA.

Certain activities foreseen in the plan do not represent reform activities in the way they are formulated, and the style in which

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6 Government of the Republic of Macedonia, „Plan 3-6-9,“ Secretariat for European Affairs, July 4, 2017, 4

7 Senior Experts' Group, „Republic of Macedonia: Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in Spring 2015,“ 20.

8 Secretariat for European Affairs, „Review of National Legal acts that are Subject to Compliance with EU legislation 2016,“ March 17, 2016.

9 Secretariat for European Affairs, „Review of National Legal Acts that are Subject to Harmonization with EU legislation 2017-2020,“ March 17, 2016.

they are drafted does not offer the possibility of establishing measurable performance indicators. One can take the example of ‘initiating technical meetings with the EC for harmonization of the national system with the relevant requirements of the EU and the Schengen rules’ in the priority area ‘migration’ or the activity ‘holding regular consultations with the EC regarding the text of the Draft Strategy’ in the part of the ‘judiciary’. In such or similar cases that lead to certain legal or other changes, it is recommended that they are reformulated in a way that would lead towards their concretization with precisely defined activities and policy-making phases. A good example of this, is the methodology used in the preparation of the NPAA, according to which the process of harmonization of the national with the EU legislation is determined in accordance with several indicators, as follows: 1) adopted and published laws in the Official Gazette; 2) laws that have entered the parliamentary procedure, 3) laws that are in governmental procedure; 4) laws that are in the phase of inter-ministerial consultation; 5) laws whose text is in preparation. Concerning activities involving dialogue or consultation, they should include the planned dynamics of meetings, as well as the modality of consultation and involvement of stakeholders.

There is an essential need to define the ultimate goal of the proposed activities and reforms. Although an attempt for that has been made, the plan insufficiently reflects the direction and goal that the government wants to take or fulfil. Consequently, the non-disclosure of sections part 6 and 9, when publishing the plan, significantly complicates its monitoring and leaves the impression of a lack of a clearly defined course of implementation of the reforms. Thus, it appears that individual parts of the plan are not complementary to each other, while the reform activities have no continuity. In other words, the question arises whether the activities that will not be met within the envisaged three-month period and the activities for which only the initial

implementation phase is envisaged will be covered in parts 6 and 9 of the plan. This group also encompasses activities related to establishing working group as an initial phase for preparation of a certain legal act. Such activities exist in almost all priority areas covered by the plan.

Other activities represent an expression of political will. In the part of judicial reforms, one activity envisages government's 'encouragement' for the Judicial council in order to further encourage judges to report political or any other type of pressure in their work. This can also be observed in another activity that provides giving full institutional support for the work of the Special Public Prosecutor's Office in accordance with the appropriate laws. In addition, there are activities, such as strengthening the capacities of the Ombudsman, which are not part of the assigned priority area - in this specific case 'judiciary'.

Finally, the government should take into account its own administrative capacities in conceiving its activities and reforms. Considering the current socio-political situation in the country, what is already envisaged in the plan and what is yet to be, should be realistic and achievable within the given deadline. The government should avoid a situation in which it sets itself a number of high priorities that are difficult to achieve within the expected timeframe. Of course, this should not be done at the cost of not taking actions, that is, not initiating crucial reforms that require a longer period of time.

The involvement of experts outside the public administration is more than necessary to achieve the goal and commence accession negotiations. Such examples already exist in neighbouring countries that are further ahead in the EU accession process. President of the government - ZaeV and Vice President for European Affairs - Osmani calls for greater transparency and stakeholders inclusion in the EU accession process are steps

in that direction, however, full operationalization is yet to happen. If things remain at the level as it was for part 3 of the plan, then these calls will remain only at the declarative level. The presence of highest representatives of the government at the meeting with the CSOs on which, among other things, the plan 3-6-9 was discussed, is more than welcomed. However, the existing model does not contribute to an effective inclusion of CSOs in monitoring and promoting the plan. Hence, there is a need for urgent structural involvement of the wider civil sector in the process. In accordance with the established practice and the functioning of the inter-ministerial working group for monitoring the implementation of the plan 3-6-9, one of the proposals that should be considered is to include and inform the CSOs about its work on regular basis, and at least once a month. This will contribute to better cooperation, will improve the conditions for monitoring and commenting reform activities in a timely manner. With the aim in mind to achieve better results in a more effective way and move forward on the EU agenda.

## Setting the priority right

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The perceived lack of proper prioritization of the reforms in the plan should be overcome, both at the level of priority areas and at the level of activities within the priority areas. The inadequate prioritization of the reform areas and activities is fundamental, but also visible, taking in consideration the existing plan structure. For instance, judicial reforms have been identified as primary ones both in Priebe's recommendations and Urgent reform priorities, while in the plan 3-6-9, they are referred to as the eighth priority area. More specifically, at the level of activities, the ones included in the area of judicial reforms, start with amendments to the Law on the Council for establishing facts and disciplinary responsibility of judges and the Law on the Judicial council; followed by establishment of various

working groups, to finish with the establishment of a Council for the implementation of judicial reforms that is responsible for drafting the draft strategy for Justice sector reform. This creates confusion and could be interpreted as the activities are listed without taking into account the big picture and the end goal towards which the new strategy should be pursued. And finally, it does not portray clear picture about the importance of certain reforms in relation to others.

It is also important to determine the weight of each individual activity within the priority areas according to the difficulty of undertaking the relevant reforms. For example, the 'migration' priority area encompasses reforms whose implementation, as foreseen, should not encounter any major difficulties. In contrast to this, reforms in the 'judiciary' area are overwhelming, and concentrated on 'dismantling' the 'captured state' and captured institutions. In addition, the implementation of these reforms should be based on a broad political and institutional consensus, as there are a multitude of laws that require a two-thirds majority. This situation is not reflected sufficiently in the framework of the plan. The solution that was used to include representative from the Judicial Council by direct referencing and without the approval from the President, sends a negative picture for the government's intentions in implementing judicial reforms.

## Methodology for monitoring the implementation of Plan 3-6-9

The fulfilment of activities is monitored by determining specific indicators and, in certain cases, sub-indicators. Measuring the status of fulfilment of the activities will take place according to the following logic: 1) Implemented; 2) Partially implemented (on going); 3. Not implemented; 4) Not measurable/cannot

be determined. This method of monitoring stems from the very nature and the way in which the activities in the plan are determined.

***Implemented:*** The activities that are considered as fulfilled indicate that the envisaged activity is fulfilled within the anticipated time frame of 3 months, i.e., with the local elections.

***Partially implemented (on-going):*** Partially fulfilled are those activities whose indicator and sub-indicators are partially fulfilled; only one of the indicators is met (in the case of multiple indicators); or the indicators are met, but not the sub-indicators.

***Not implemented:*** Those activities whose indicators and sub-indicators indicate that the envisaged activity is not fulfilled within the foreseen timeframe will be considered as unfulfilled.

***Not measurable/cannot be determined:*** The activities whose status of fulfilment cannot be determined are those activities for which there is no credible source that they are implemented, that are not implemented, or that they are partially implemented; activities that need to be reformulated in order to determine indicators; activities that by their nature are responsible for the competence of the competent institution, as well as activities that are not measurable by nature.

When determining the status of fulfilment for each of the activities, there is a source that serves as evidence and supports that its encoding has been done in accordance with the methodological guidelines provided.

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