THE NEW EU ENLARGEMENT METHODOLOGY:
ENHANCING THE ACCESSION PROCESS

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- March 2020
Right after October’s “fiasco” at last year’s EU Council meetings, France launched its Non-paper with the intention to initiate substantial reforms for the EU accession process, followed by “Tallinn Group” proposals, as well as suggestions by several other member states. In this way the process that had been at an impasse could be unblocked.

On February 5th this year, the European Commission launched a Communication to the EP, the Council, ECSC, and Committee of Regions with a proposal for “Enhancing the accession process - A credible EU perspective for the Western Balkans” to drive forward the EU accession process, by making it more credible through a stronger political steer and more dynamic and predictable. When officially presenting the Communication, Olivér Várhelyi, Commissioner for Neighborhood and Enlargement, emphasized the European Union enlargement to the Western Balkans as a top priority for the Commission, announcing a three tracks approach: (1) an enhanced accession process, (2) the opening of negotiations with North Macedonia and Albania and (3) the launch of an Economic and Development Plan for the Western Balkans in Zagreb during the EU-WB Summit on May 6th and 7th 2020.

The “Communication”, including a proposal for a new methodology for accession negotiations resulted from short but intensive political consultations between the Commission and member states on the one hand and among member states on the other hand. The political agreement ended with the widest possible amalgamation of different technical elements, aiming to balance a political vision with strict administrative requirements of the accession negotiations process. This new and changed approach intends to make the process of enlargement possible and realistic at the same time while understanding it as the “political unification and territorial consolidation” of the Western Balkans into the EU. As stated in the Communication enlargement “remains more than ever a geopolitical investment into stable, strong and united Europe”.

In order for this political intention to become reality accepted by both the EU and the candidate negotiation sides, there is certainly a need for detailed elaboration and a comprehensive, all-inclusive dialogue to begin as soon as possible. Such a dialogue would ensure that all stakeholders equally understand the magnitude of the changes and their impact, fundamentally preconditioning the overall success of the process. Despite the fact that many of the elements and the wording of the proposed methodology sound the same as before, careful reading brings us to the conclusion that the changes are deep and that novelties are substantial. The new approach is more complex, more political and more exposed to political changes, making it...
more dynamic, more demanding for both sides and certainly more costly.

The proposed methodology can be seen as a new political framework for (now more than) a technical process, which will be moved forward by political decisions as an "accession driven" gradual process, leading towards full EU membership of all Western Balkan countries, fully respecting merit-based principles.

CONTEXT (METHODOLOGY)

We are not the only ones, but we are not alone either. We must accept that there are, besides enlargement and the Western Balkans, other competing priorities within the EU. The full impact of Brexit or the exit of the UK cannot be predicted in detail, but definitely will unbalance the EU Budget and will change the structure of the New Multiannual Financial Framework. The EU is at the crossroads of a volatile political, defense, security and economic environment that requires adequate response and vigilance. Under these circumstances we have to appreciate it more that enlargement and the Western Balkans are considered a top geopolitical priority of the new Commission. We are back in the EU's focus of interest (the reasons are many), and we should use this opportunity to the maximum.

The accession process builds a strategic partnership and as such is a two-way street, so it has to work towards good results for both sides. This means that, on our (the candidate) side, we have to comply with the common union standards at all levels, and on the other side, the EU has to reform the structure of the enlargement process to become more efficient and to stay an attractive destination for people and businesses. We are convinced that these reforms at both ends can be done in parallel. Reforms (or changes) are neither the beginning nor the end of something. In a constantly changing world reforms have become a matter of survival and existential necessity.

This is the fourth time that the EU is formally introducing new rules in accession negotiations, starting in 1998 (in line with Copenhagen and Madrid criteria), continued in 2005 (introducing benchmark elements for Croatia), 2011 (strengthening the benchmarks approach and focusing on rule of law for Montenegro and Serbia) and now in 2020 (more comprehensive methodology a proposal for a more political approach for North Macedonia and Albania, and the countries to follow as well as (when ready, B&H and Kosovo), in some respects,
THE METHODOLOGY: SOME OF THE MAIN ELEMENTS AND SOME SUGGESTIONS

Four key points characterize the proposed new Methodology: Political commitment, Dynamism, Capacities, and Reversibility.

The first of the key points, political commitment, is at the epicenter of the proposed methodology that should make it more political, more credible, more accountable, more predictable, more dynamic and more concrete.

It has been noticed quite often during the last decade particularly that political statements and promises do not correspond with their implementation. This goes equally for the EU and accession countries. The habit of not doing what has been agreed or doing very little, dragged the accession negotiations in Montenegro and Serbia for too long and did not allow even a chance for North Macedonia and later Albania to open the negotiations. The new methodology seems to address this weakness through a proposed closer enhanced political steer. The main logic behind this is that once politicians agree on concrete roadmaps and action plans (rule of law, functioning democratic institutions,
and stronger links with the Economic Reform Programme), they first have to give clear public political statements/orientations, and then will have to keep promises and to deliver expected reforms through professional and depoliticized administration (to match that of the Union MS’s) in democratic and all-inclusive procedures. At the same time, all the way during negotiations, we will have to report what we have done and what not and why, thus strengthening accountability towards our citizens and the EU in a transparent way offering to the media and civil society the space they need to play their important monitoring and corrective role.

To ensure political steer and credibility, as well as trust on both sides, the Commission is proposing a set of institutional mechanisms as a mix of old and new (but enhanced) structures,

- Regular EU-Western Balkan Summits on an annual basis (so far there were three such Summits in Zagreb 2000, Thessalonica in 2003 and Sofia in 2018, with the fourth one announced for the beginning of May 2020 again in Zagreb), including more frequent ministerial meetings at sectoral level;

- Country specific Inter-Governmental Conferences (IGC) will occur on an annual basis, right after the Commission will publish enlargement packages and country reports, at the highest political level, to take stock of the achievements and plans for the next year, for opening new clusters, meeting determined benchmarks (opening, interim and closing benchmarks);

- Regular annual, but more political meetings of the Council for Stabilization and association, as well as Committee and Subcommittee meetings (where SAA association process will be blurred with accession negotiations process). These coordination bodies exist in the case of North Macedonia since 2004 with regular meetings once per year. What is new in the methodology is that, in addition to the SAA, these bodies also will discuss the pace of reforms and advancement of the accession negotiations process, on a very high political level;

- Another novelty is also that representatives of the member states will be invited to monitor closely the accession process with their experts and contributions to the Commission reports.

This is a very important part of the new Methodology that aims to ensure constant political steer of the accession driven reforms, and even with deeper involvement of the MS’s, with meetings on a regular annual basis, in order to check regularly and consistently implementation of the agreed commitments (credible, accountable, transparent).

However, clear ground needs to be ensured with answers to some questions to meet the concerns of the accession countries. We would suggest, as soon as possible, the following:

- These multi-level institutional mechanisms need to be set in the right order and with well
defined (redefined) responsibilities (Terms of reference, Rules of procedures), on both sides, in order to avoid any potential for overlapping, duplication, and erosion of efficiency;

- There is a need to better clarify the role of the MSs and their representatives on all levels, in order to avoid any misunderstanding or dysfunctioning during the negotiations;

- In addition to the above, it would have been much more convincing for the process to be on an equal playing field, if the new Methodology would have been applied to all Western Balkan countries. With a full understanding of the legal obstacles, the introduction of new rules only for those that yet need to start accession negotiations has, from a practical viewpoint, the potential to create space for misinterpretation of certain elements of the Methodology and its applicability.

**Dynamism is the second key element** that this Methodology is bringing forward, as a potential for accelerated accession negotiations.

The main novelty here is a clustering of all 33 Acquis chapters into six areas\(^\text{10}\). The body of the acquis remains the same, but is now clustered in **six logically connected groups.** At first glance, this seems very complicated, but offers a **chance to accelerate the process,** for example, with the opening of up to 8-9 chapters at once. **Preconditions for this to happen successfully are extremely good preparation, strategic organization when planning the process, the right priorities in good order and the availability of necessary resources to be able to keep the tempo of the implementation of expected obligations.** The new approach is also opening a chance to close chapters within a year if all benchmarks are met.

**Benchmarks**, as introduced in 2005 and enhanced in 2011, remain, but now with Opening Benchmarks (OBM) per cluster, plus Interim Benchmarks (IBM) for Chapters 23 (Judiciary and Fundamental Rights) and (24 Justice, Freedom, and Security) as a precondition for any advancement in all other clusters. In the end, Closing Benchmarks (CBM) will be set for all chapters.

"**Fundamentals**" is the most complex and certainly the most difficult cluster to negotiate. This cluster should lay down the fundament of trust and ensure a credible negotiation process. It will be the first cluster to be opened at the start of the accession process, remaining open until the very end. This makes this cluster the longest to negotiate. It includes Chapters 23&24 (with Interim benchmarks) and Chapters 5 (Public procurement), 18 (Statistics) and 32 (Financial control), as well as a new approach in the accession negotiations process, bringing inside this cluster also: **Economic criteria, functioning of democratic institutions and public administration reform.** These areas are not new: they were part of the accession process before, but their introduction as part of the accession negotiations is new and quite unclear.

The other five clusters (and other 28 chapters) can be opened in the order of their stage of preparedness and their level of priority. The order, our approach and dynamism need to be agreed with the Commission and with the member states. **Being well prepared and choosing the right priorities will**
have a direct impact on the tempo of the accession negotiations, ensuring access to EU policies in line with our mutual interests. In addition to that, we should not forget about Chapters 34 (Institutions, language) and 35 (Other issues, everything not covered with other 34 chapters) to be dealt with separately. In our case this may be very important and politically very sensitive.

This part of the new Commission Methodology (clustering), needs to be thoroughly reviewed, clarified and explained in more details, using practical examples, right after the final adoption of the Communication, considering the following:

• A detailed document (Guidelines for the New Enhanced Methodology) needs to be written and elaborated as soon as possible;

• Member states and EU institutions could consider, alongside the new methodology, to build and apply a “mirroring approach”, bringing candidate countries into the new Rule of Law monitoring mechanism, including Justice Scoreboard ("Enhanced Rule of Law Mechanism") at the earliest possible stage while also initiating the gradual introduction of all elements of the European semester under the Economic criteria as soon as possible, as all these are fundamentally important for successful and sustainable progresses in the accession negotiations;

• Countries concerned should be given a chance to ask questions in an open dialogue with the Commission services to better understand all new mechanisms and elements of the accession negotiations process;

• Existing "Screening Guidelines" need to be rewritten and aligned with the new approach,

• Elements of the Fundamentals cluster, additional to the conditions from chapters like economic criteria, functioning of democratic institutions and PAR, need much more detailed elaboration;

• "Bilateral screening" in cluster format needs to start right after the decision for the opening of accession negotiations, hence, a calendar for bilateral screenings needs to be agreed as soon as possible (and should not exceed 6-12 months maximum);

• Once the calendar is agreed, both sides need to make sure that preparations are set in the right order of the priority clusters and in line with the calendar;

• There is also a need for clarification on how the "Screening reports" will be prepared per cluster with defined opening benchmarks, which can set the dynamism of the entire process.

Capacity is the third key point of the Methodology, which in my view is essential for successful negotiations and reforms. This more complex and more demanding process has to be matched with mobilizing appropriate institutional capacities on both sides. If there is a political will on both sides, then the dynamism of the process will depend on the capacities and resources available, also on both sides. We certainly do not want to end with a good document and strong will, but without
sufficient resources (capacity) to implement it.

There will be planning and preparation of bilateral screening per clusters, a great number of political and technical meetings, preparation of roadmaps, drafting of action plans, writing of many reports, and not to mention the process of negotiations as such (which imply the translation, transposition, and harmonization of the acquis, implementation in practice, monitoring, enforcement, track-records, etc.). All that requires a lot of experts full time engaged into the process, on both sides.

In order to meet capacity requirements,

- On our side (as North Macedonia is concerned), we need to rethink, redesign and reorganize all existing coordination structures, clarifying the division of responsibilities among different government levels and institutions, in line with the new Methodology as soon as possible;

- Commission (and MS’s if they really want to participate in the process) needs (considered as institutional priority number one) to substantially strengthen DG NEAR, the Directorate dealing with Western Balkans and all horizontal units dealing with negotiations and respective EU Delegations. Other DGs should also have experts and adequate capacities on disposal to participate in the negotiation process on a full-time basis;

- MSs should allow as much participation (step by step approach) as possible, for our experts in the work of the Commission bodies (there are 320 Comitology committees at the moment) and for the first time also in the work of some of the Council bodies (there are 153 council bodies at the moment). There is no better way to strengthen our capacities in policy creation, including lessons for the decision-making system and process, than to become part of it;

- Common digital platforms could also be considered, for example the “Enhanced Accession Negotiations Digital Platform”, where all involved sides can share relevant information (on the acquis) during the negotiation process, screening and negotiations guidelines, screening documents and presentations, Q&A, calendars for all meetings, minutes and conclusions, reports, address books, news, and novelties, relevant statistics, lessons learned and experience, etc.

Last, but not least, the fourth key element in the new methodology is Reversibility, or positive and negative conditionality. It fully makes sense to award countries that are progressing with their reforms and advancing in accession negotiations (closer integration and increased funds), and the opposite, to sanction those that are stagnating, dragging behind, slowing down or even backsliding. Those sanctions include that negotiations are kept on hold, suspension, reduced funds, no concessions for market access. Complying with the required criteria, standards and full harmonization with the EU acquis (transposition, implementation, enforcement, and clear track record) is a serious challenge and requires a serious approach by all sides, always keeping in mind potential consequences.

In principle, there should be no objection to the
positive and negative conditionality, but what raises serious concerns is the **newly introduced decision-making model** for awards and sanctions, which is quite different from the one applying so far. In the case of Montenegro and Serbia (for sanctions/suspension in the case of serious breach) proposal can be placed by the Commission or 1/3 of the member states (at least 9 MS) and must be adopted by the Council with Qualified Majority Voting (QMV) (at least 15 out of 27), while according to the proposed new methodology that will be applied for other candidates, proposals can be placed by the Commission or just one MS and adopted in simplified procedures (14 out of 27), including reverse QMV (proposal can be turned down with QMV-15 out of 27).

The proposed decision-making mechanism and rules for awards and sanctions can challenge the potential for acceleration of the negotiation process (one MS can always find a reason to block the accession negotiation, “Someone can always say a NO”). In the case of North Macedonia, this mechanism can put us under substantial pressure on very sensitive national issues, not necessarily connected with the acquis, including possible differences in interpretation of some bilateral agreements.

Therefore there is a need for some **further considerations** about this part of the Methodology,

- While discussing the new methodology member states should seriously consider that the proposed decision-making model has the potential to impose increased risks for new disputes and obstacles during the negotiations;
- When the Negotiation Framework will be drafted, this part needs special attention to be safeguarded from becoming a hostage of the new methodology. One country to place a proposal for sanctions, compared with nine countries as it was so far, is making a great difference and may easily create new gaps;

  - There is also a need to clarify the part of sanctions referring to pausing or withdrawal of the “unilateral concessions for market access”, in correlation with the SAA in force.

The proposed **new Methodology is more complex** (more political) and demanding (lessons learned) than any other before, but if both sides are persuaded and dedicated, it offers a chance to lay down a credible, dynamic and sustainable political process. However, the risk of any member state to say “no” (to block or postpone the process) at any point in the negotiations remains open (unanimity rule). With the new decision-making method it will be even easier to confront the negotiations at any stage. One of the challenges to deal with is how to make sure that the new Methodology and the decisions that will go with it are not used or misused purely based on the position of just one member state against the candidate country.

The next steps after adoption of the new Methodology should be a decision to open accession negotiations with new countries and giving a mandate to the Commission to draft more detailed and complex (new generation of) Negotiation framework, on the basis of the new Methodology. This needs to be adopted at the Council level by unanimity. The commission will be drafting this document, previously thoroughly considered by relevant Council bodies (under the demands of any of the interested MSs).
TO CONCLUDE

The new Methodology has the potential to bring back the process to its fundamentals of an "accession driven" process that should not just enlarge the European Union, but should assist in its political unification and territorial consolidation with the Western Balkans as part of it. We cannot afford to be pessimists, but have to remain cautious optimists.

We would like to believe that the "historical mistake" made by the European Council in the case of North Macedonia (not taking a decision to start accession negotiations) was just a moment of weakness of the Union and we are convinced that the right decision will come very soon, hopefully with the beginning of Spring (March).

At March’s Council meeting, the decision to open accession negotiations with North Macedonia can be taken with a mandate for the Commission to draft a (new generation of) Negotiation Framework.

Expectations for the May Summit in Zagreb are high: opening of a new avenue for EU membership of the Western Balkan countries, including a potential boost of our economies and investments. Theoretically, June could be the month to have the 1st IGC with North Macedonia or it can start during the German Presidency in the second half of the year. In 2021, Portugal and Slovenia are taking forward the presidency, we believe with full steam (accelerated accession process) and adequate institutional support. In parallel with the beginning of our accession negotiations, the Conference for the Future of Europe will be close to its final phase (Closing event will happen at first half of 2022), at the time when France will be in the chair of the Council of the EU. We are deeply convinced that two processes can run in parallel together, and can complement and help each other towards the same goal: a more united, better coordinated, consolidated (enlarged) and better governed European Union.