



INSTITUTE FOR DEMOCRACY AND MEDIATION

# PARLIAMENTARY CHALLENGES IN THE EU ACCESSION PROCESS





INSTITUTE FOR DEMOCRACY AND MEDIATION  
IDM Center for European and Security Affairs

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February 2013

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**IDM 2013**

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## FOREWORD

A National Conference entitled “Improving parliamentary activity on EU accession” was scheduled by the Institute for Democracy and Mediation (IDM) to take place on 21st of December 2012, aiming to engage national decision-makers, Parliamentary and Governmental actors, civic and other stakeholders in a consultative process to discuss and reach consensus over possible legal and institutional alternatives to improve legislative’s role under the EU accession. This initiative, bringing regional experiences on lessons learnt and expertise from EU member states, was designed in the context of an IDM advocacy effort, offering alternatives and urging Albanian Parliament to move boldly towards improved performance in the context of EU accession and help its standing Parliamentary Committee on European integration (PCEI) to acquire the profile of a resourceful, influential and experienced parliamentary chain which is able to deliver on expectations for quality and broad consent over EU accession reforms.

As the National Conference was canceled due to reasons beyond the organizer’s power, IDM was left with the sole choice to address the “missing policy debate” through this publication of a series of critical analysis and experiences focusing on the role of the Parliaments under EU accession and CSOs’ involvement mechanisms.

At a time when the heated political debate of June 2013 General Elections has put on-hold EU accession reforms at least until autumn this year, IDM remains hopeful that the Parliamentary stakeholders of the next legislature will consider the advice and

contribution of this publication. Furthermore, the Institute will resume advocacy efforts and will re-submit its proposals on (1) institutional mechanisms to improve parliamentary consultations with non-state interest groups under EU accession, and (2) a new draft law on the functioning of PCEI.

IDM would like to thank the contributors of this series of papers - eminent representatives of civil society sector, former and current representatives of key institutions involved in the process of EU accession in Macedonia, Montenegro and Albania. Last but not least, we are grateful to the Think Tank Fund program of the Open Society Institutes (OSI, Budapest) for supporting this initiative and overall IDM advocacy efforts in the context of country's EU accession process.

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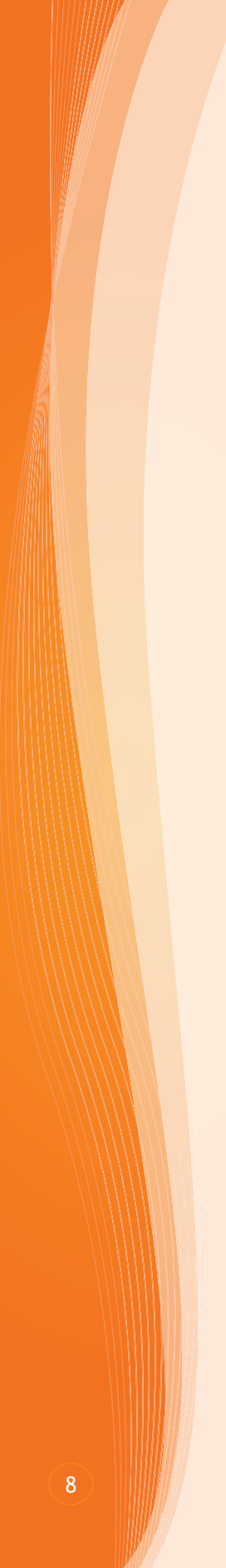
Tatjana Bulajić, graduated at the Faculty for Political Science, University of Montenegro (2008) and acquired the title of Specialist for International Relations. She currently serves as Second Secretary at the Office of Chief Negotiator (Ministry of Foreign Affairs & European Integration of Montenegro) and Adviser for cooperation with civil society and parliamentary cooperation in the accession negotiation process.

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# I. CIVIL SOCIETY AND INTEREST GROUPS' INVOLVEMENT IN THE LEGISLATIVE PROCESS

Author: Elton Kacidhja

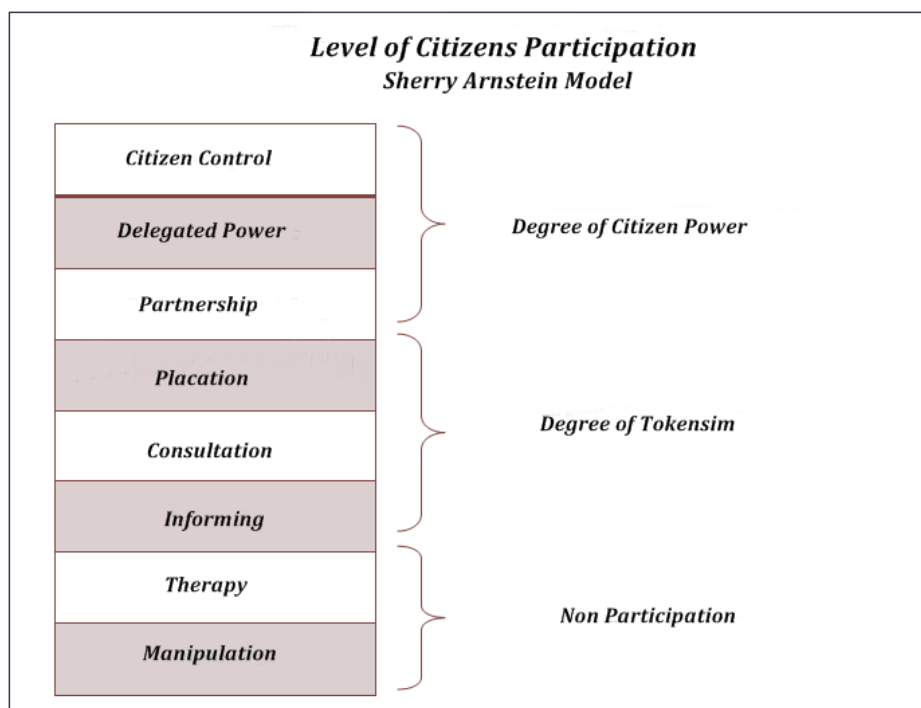
**T**his document includes an analysis of the legal spaces enabling involvement of interest groups and civil society stakeholders in drafting draft-laws as well as identifies the encountered problematic both in legal and practical aspects. It aims to provide insight on the legal practice and its procedural enforcement to facilitate inclusion of interest groups in the process of advocating the rights that shall be regulated and granted by domestic legal acts of the country. This analysis is based upon four core components, as follows:

1. The legal framework that enables the involvement of civil society and interest groups in the legal decision-making processes;
2. Challenges and problems encountered within the actual legal framework and institutional practices followed by the institution of the Parliament of Albania;
3. Informing and consultation as an EU recommendation;
4. Improvement of the legal framework and institutional practice to enable democratization of policy making processes.

## 1. Introduction

Public participation in governance, achieving good governance practices by exercising different communication, information and consultation forms as well as increasing transparency in the process of drafting policies with social impact is crucial for

a country struggling to fulfill what in the actual state theory is considered as democracy's greatest challenge: transition from representative democracy into a participatory one. In Western Countries, the theoretical and practical challenges to overcome this stage of democracy's development have a long tradition. Within this framework, in 1969 Sherry Arnstein<sup>1</sup> created what is known as "the Ladder of Civic Engagement" (figure 1) in which he introduced eight "rungs" of civil society stakeholders' participation in policy making and decision-making, identifying consequently three categories of societies: the society of passive citizens, the society where the image of civic participation in state initiatives with public impact is pre-installed and lastly, the active society in decision making processes effectuated by every chain of state power (presuming therefore a return of sovereignty to the sovereign by direct involvement in the process of drafting and approving legal or political initiatives with wide social impact).



As it can be easily concluded by the above chart, Albania is actually ranked into the second category where citizens and civil society stakeholders struggle to climb the last stairs of this

1. "The Guide to Effective Participation", David Wilcox available at: [www.partnerships.org.uk](http://www.partnerships.org.uk).

“floor”. In practice the process reveals double standards: on the one hand there are the representatives from civil society and interest groups which undertake an open institutional “battle” to move from “*information*” to “*consultation*”, whilst on the other hand there is another group of them that are “permanent” participants in every round table or consultation meeting.

The importance of citizens’ participation in decision-making processes through their inclusion in the processes of reviewing draft-laws is a fundamental right deriving from Article 23 of the Constitution of the Republic of Albania that defines the right for information. In specific cases, this right is also enforced by specific laws that regulate certain behaviors and relations in the Albanian society.<sup>2</sup>

It is important to note that the legal framework of the Republic of Albania lacks a specific law that obliges public institutions to organize public hearings and consulting sessions with interest groups. The “hearing practice” is foreseen within different laws as part of their drafting process and is also enshrined into internal Rules of Procedure of public institutions. In most cases, the right to be heard and the right for active participation in drafting strategies and draft laws on issues that impact certain groups is accompanied by Law No. 8503 “On the right for information over official documents” given that every interested group shall in principle be a priori acquainted with the draft-law. Within this framework, in June 1999 the Parliament of Albania approved the law on the right for information as a part of the legal basis enforcing the new Constitution. The above mentioned initiative was one of the first laws drafted in the framework of transparency of public institution and the right for information in Albania in function of implementing the principle of open and transparent administration. Several years after its approval, implementation of this law in practice with regard to providing information and including interest groups into the policy and decision-making processes, remains problematic.

2. For instance, the Draft Law on Strategic Environmental Assessment defines in articles 8 and 9 the right of interest groups to become part of consultations during the drafting of Strategic Environmental Assessment for works with environmental impact. Likewise, the Convention of Aarhus, ratified by the Parliament of Albania by Law No. 8672, date 26.10.2000, states in articles 6 and 7 the right of the public to participate during the drafting of plans, programmes and policies related to the environment.

## 2. Informing and consultation as a European Union recommendation

The importance of citizens' participation in drafting policies and laws is part of the fundamental principles of good governance. Within this framework, manuals and guidelines offering models from best experiences worldwide are drafted for states walking through the democratization process. Although with no binding power, they mark the borderline between democratic systems that promote empowerment and active participation of citizens in governance on one hand and authoritarian systems on the other.

On June the 2nd 2011, the European Commission introduced the Guide for European Governance,<sup>3</sup> that defines the principles of good governance and includes within its function "greater involvement and higher transparency" of institutions. The spirit of participatory democracy in legislative and policy processes at EU level, aimed to be transposed also among countries aspiring EU membership like Albania, is enshrined also in EU's most important document the Treaty of Lisbon. Article 11 of this treaty defines that: "*...institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas*" and that "*institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society*" by organizing consultations with interested parties.

Another important document, although with a non-binding character, is the Code of Good Practice for citizens' involvement in decision-making processes (a product of the Conference of International Non-Governmental Organizations of the Council of Europe of 2009). It defines as conditions for good governance the following steps: information, consultation and, partnership between public institutions and civil society actors.

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3. European Governance (A White Paper), 2011: <http://eur-lex.europa.eu>.

### 3. To whom does the practice of public participation in decision-making serve?

In democratic societies, the processes of drafting or reviewing of legal framework cannot occur isolated within the walls of state institutions. The need for transparency in legislative processes is addressed through wide consultations with the public, interest groups, non governmental organizations and other civil society stakeholders. Consultation practices are not only an expression of liberal and democratic practices of institutions, but on the other hand they enable the discussion of ideas and drawing adequate conclusions. It is important to state that the process of public hearings and consultative tables, as observed also in the European practice, has particular importance in assessing the impact of legislation as well as for defining its real impact and its potential side effects. Moreover, participation of interest groups possessing the relevant knowledge and experience in relevant areas provides to law makers the chance to gather the necessary information and details without which the quality of the law would not be the same. Likewise, public hearings as part of the process of drafting legislation serve also to guarantee wide acceptance of this legislation. Consultation tables and public hearings offer to civil society and interest groups stakeholders the chance to feel shareholders in the policy-making process fulfilling thereof the need of each initiative for legitimacy, what consequently would facilitate the following process (i.e. law enforcement).

The above discussion speaks about the importance and the need for re-enforcement of the practice of public hearings during legislative processes as a process serving to public institutions and citizens. Therefore requests for public hearings or for information addressed to institutions from civil society stakeholders shall not be perceived as “attacks” or “pressure” but instead like mechanisms that revive the principles of participatory democracy as means to improve performance of public institutions.



#### 4. Legal framework enabling involvement of civil society and interest groups in legal decision-making processes

##### The Constitution of the Republic of Albania

The Constitution of the Republic of Albania clearly sanctions that the right for collective organization can be exercised only for lawful purposes,<sup>4</sup> clearly and directly defining the responsibility of every collective entity to recognize and correctly enforce the legislation in force.

##### Law No.8503, date 30.6.1999 “On the right for information over Official Documents”<sup>5</sup>

One of the fundamental human rights provided in article 23 of the Constitution is the right for citizens’ information by state public institutions. The law states that: *“Everyone is entitled, upon his request to ask for information over official documents related to the work of state institutions and persons that exercise state functions without being obliged to explain the motives of such request. Public authorities are obliged to grant any information related to an official document, save when the law provides otherwise. Any information on an official document granted to a person cannot be refused to any other person requesting it, excluding the case when this information constitutes personal data about the person itself to whom information was provided.”*

##### Law No. 8454, date 4.2.1999, “On the People’s Advocate” amended by Law No. 8600, date 10.04.2000, and by Law No.9398, date 12.05.2005

###### Article 12

###### The right to complain

Every individual, group of individuals or non-governmental organizations that claim that their rights, freedoms or lawful interests have been violated by unlawful or improper actions or failure to act of the organs of public administration, shall have the right to complain or notify the People’s Advocate and to request his intervention to remedy the violation of the right or

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4. Chapter III of the Constitution of the Republic of Albania. The right for collective organization is defined in article 46 paragraph 1, and in article 11/1 of the European Convention of Human Rights.

5. In conformity with articles 23, 17, 78 and 83 paragraph 1 of the Constitution, by proposal of the Council of Ministers

freedom infringed.

The People's Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests.

## **Code of Administrative Procedures<sup>6</sup>**

### **Article 4**

#### **Interested party**

Interested party in any administrative procedure shall be considered every physical or legal person or any state authority whose lawful rights and competencies, be they individual or collective tend to be affected during administrative procedures.

### **Article 13**

#### **Principle of cooperation of the administration with private persons**

Organs of public administration exercise their activity in close cooperation with the private persons by:

- a. Providing the necessary information and clarification to private persons;
- b. supporting and stimulating initiatives of private persons, as well as welcoming their suggestion and information

Public administration is responsible for the written information it provides to private persons.

Organs of public administration ensure participation of private persons and/or associations in decision making, when the interests of groups that they represent are impacted by such decisions.

According to dispositions of this code, organs of public administration should give the chance to these subjects to express themselves.

### **Article 20**

#### **The right to be informed**

Every person participating in an administrative procedure

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6. Approved by Law No. 8485, date 12.5.1999



has the right to be informed and to access documents used in this procedure except in cases when there are limitations determined by the law.

The right mentioned in paragraph 1 one of this article may be exercised personally or through an authorized representative. The administrative organ conducting the administrative procedure is also required to provide information to participants in the procedure regarding their rights and obligations.

#### Article 50

##### Demanding the opinion of interested parties

The administrative organ may demand the opinion of interested parties at any phase of the proceeding. The opinion shall be submitted within a time limit determined by the administration in this case. The opinion may be demanded regarding any case. It is the duty of interested parties to collaborate completely with the administration for the clarification of facts.

#### **Law No. 9000, date 30.01.2003 “On the Organization and Functioning of the Council of Ministers”**

##### Article 1

##### Working groups with experts

Working groups with experts for drafting policy strategies, studies, or specific draft-acts can be established by Order of the Prime Minister or ministers for respective ministries.

Experts can also be appointed persons that are not servants of state administration. The payment of experts of working groups is covered by the State Budget or by foreign aid allocated for that purpose, while the measure and means of payment are defined by respective Order of the Prime Minister.

#### **Decision No. 584, date 288.8.2003 “On Approving the Rules of Procedure of the Council of Ministers”<sup>7</sup>**

The draft-acts are drafted under the responsibility of the legal structure, which in cooperation with the responsible structure and structures of the respective area of the ministries, organize

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7. In conformity with article 100 of the Constitution and article 21 paragraph 4, article 22 paragraph 2, article 24 paragraph 4 and article 25 paragraph 4 of Law No. 9000 date 30. 1. 2003 “On the organization and functioning of the Council of Ministers” by proposal of the Prime Minister or the Council of Ministers.

consultations with directors and specialists of directorates, sectors or entities as well as consultations with structures of civil society whose activity relates to the scope, aim and enforcement of the draft-law.

**Law No. 8652, date 31.7.2000 “On the Organization and Functioning of Local Governance” amended by Law No. 9208, date 18.3.2004**

Article 34

Open meetings

Council meetings shall be open to the public. Every citizen has the right to attend Council meetings according to the manner set forth in the Council’s Rules of Procedure.

The announcement of the Council meeting shall be made public in the places assigned by the Council and in the media. The announcement contains the date, place, time, and agenda of the meeting.

The Council, by majority vote of all the Councilors, shall decide for cases when the meeting will be closed to the public.

Article 35

Prior to discussing and approving its acts, the municipal or communal Council organizes public hearings with the community. The public hearings with the community are obligatory in cases determined in Article 32, paragraphs “dh”, “e”, “f” and “k” of this Law.

The public hearings shall be organized according to the manner determined in the regulations of the Council by using one of the necessary methods such as open meetings with inhabitants, meetings with specialists [experts], interested institutions, and NGOs or by means of taking the initiative to organize local referendums.

The Council Acts shall be displayed [posted] in public places within the territory of the commune or municipality and where available, the Council also shall set other forms to publicize its decisions. The information to the public shall be made in compliance with the law No. 8503, dated 30.06.1999 “On the

right for information over official documents”, and by additional rules determined by the respective Council for this purpose.

### **Law No. 9355, date 10.03.2005, “On social aid and Social Services”**

#### **Article 29**

The municipal/communal council has the following competences:

Approve cooperation programs with not for profit organizations, religious institutions, and representatives of civil society in compliance with the national and regional social assistance and social care services plan.

The above mentioned laws are part of the legal framework enabling participation of civil society and interest groups into the process of drafting public policies with wide social impact. Part of this legal framework are also other laws<sup>8</sup> regulating this process for different areas of socio-economic and political life of the country, which in their content recognize and regulate the way of public involvement in the policy making process.

## **5. The practice of citizens’ participation in public hearings in the Parliament of the Republic of Albania**

This part of the analysis focuses on the Parliament of the Republic of Albania as the main institution that reviews and approves legal initiatives proposed by the Council of Ministers, by line ministries, initiatives proposed by a parliamentary group or by a group of MP-s as well as legal initiatives proposed by interest groups and civil society. Regarding the last two, the Rules of Procedure of the parliament clearly define the practice of public hearings, the right to propose legal initiatives and participation of the public in meetings of parliamentary committees and in plenary sessions.

### **Rules of Procedure of the Parliament of Albania**

#### **Article 35**

#### **Publication of meetings**

8. Law No. 9607, date 11. 9. 2006 “On Business Consultative Service”; Law No. 9739, date 21. 5. 2007 “On blood transfusion services in the Republic of Albania”; and Law No. 10 138, date 11. 5. 2009 “On Public Health”.

As a general rule meetings of parliamentary committees are held open. The meeting is defined as open when media, interest groups, or visitors are allowed to follow it. The committee by majority voting of all its members can decide that its meetings or parts of these meetings are held with closed doors.

#### Article 36

##### Public hearing sessions

The committee may organize public hearing sessions with members of the Council of Ministers, high representatives of state or public institutions, experts, representatives of civil society, representatives of interest groups and other interested parties. The committee is obliged to conduct hearing sessions conform the definitions of this article if one third of total committee members requests this in a written and motivated form.

In preparing the public hearing session, the chairman in cooperation with the vice chairman and the secretary of the committee presents to the guests the issues for which information is required.

#### Article 80

##### Review in committees

The committees of the Parliament may organize public hearing sessions to receive remarks and thoughts from institutions, persons, or interest groups on the draft-law on State Budget and financial draft laws that are directly related to it.

#### Article 105

##### Open activity of the Parliament

The activity of the Parliament is open, saved for cases predicted under article 3 of this rules of procedure.

Open activity of the Parliament is realized through:

- a. Public participation in the legislative process;
- b. Reflecting of the activity of the Parliament and its organs in written and visual media;
- c. Publications of parliamentary documents;
- d. Website of the Parliament;
- e. Internal audiovisual network.

To realize the open activity of the Parliament specialized parliamentary information and documentation services are organized. The Bureau of the Parliament approves the specific rules of procedure for their functioning.

Media representatives that cover the activity of the Parliament are accredited at the Parliament according to a specific procedure approved by the Bureau of the Parliament.

#### **6. Practice of civil society access to the Parliament of Albania in accordance with article 35 of the parliaments' Rules of Procedure**

The Parliament of Albania, in absence of an organic law for its functioning exercises its activity based on the Rules of Procedure of the Parliament. Therefore, also the relationship with civil society and interest groups is regulated through the legal and procedural dispositions within this document.

From 1992 when the Democratic Party came to power by premature elections until the parliamentary elections of 2005, the Parliament of Albania did not record any practice of civil society following parliamentary sessions, although the Rules of Procedure stated that this institution is open to the public.

From 2005 to early 2007, the first practice of civil society access was established, which was regulated by means of bi-partite agreements between civil society organizations and the Parliament of Albania, with “passes” from 3 to 6 months similarly as it was operated with the media and written press. From 2007 to 2011 the access practice was no longer based on pre- signed agreements but on weekly requests for access to the parliament. All these changes were regulated by means of internal decisions of the administration of the parliament communicated through the Public Relations Office.

From November 2011 to date in practice, access to the Parliament of Albania is conducted through daily passes and not through mid or short term permits. The request for daily pass must be sent to the Office of Public Relations at 8:00 a.m. of the day on which

the relevant parliamentary committee meeting takes place, while for participation in plenary sessions the request must be sent one day prior to the plenary sessions, for approval by the Secretary General of the parliament. The argument sustaining this change of practice is based on parliament's inability to offer sufficient room for all interested parties requesting to follow parliamentary sessions.

This newly established practice by the Parliament of Albania, limits the right of citizens' access to parliamentary activities infringing therefore article 35 of the parliaments' Rules of Procedure on the publicity of meetings of parliamentary committees that states that committee meetings shall be open to the public, media, interest groups and visitors that wish to follow them. The same principle for granting transparency is applied also concerning plenary sessions regarding which, the Rules of Procedure stated in article 43 (paragraph 1) that: "*plenary sessions of the parliament are open to the public, save for cases when the parliament decides otherwise*". This fundamental right of the public is a constitutional one, clearly defined in article 23 of Albanian constitutional law that grants to anyone the chance to follow meetings of collectively selected organs (including the parliament as one of them).

## **7. Practice of interest groups access in accordance with articles 36 and 80 of the Parliaments' Rules of Procedure.**

The Rules of Procedure of the Parliament of Albania define in article 36 (paragraph 1) the way of organizing hearing sessions with interest groups and civil society actors for discussion of specific laws. Moreover, paragraph 2 of the same article predicts that "*The committee is obliged to conduct hearing sessions conform definitions made in this article if one third of the total members of the committee requests it in a written and argued form.*" Therefore when analyzing the Rules of Procedure of the parliament it is noted that hearings with interest groups remain under discretion of the chair of the committee or on that of one third of its members.



Another way how these groups can participate in discussions of draft laws and in proposals for legal amendments is by *request<sup>9</sup> for hearing* that interest groups send to the parliament when a specific issue is being discussed.

In practice, each interest group shall send to the Parliament of Albania an official request containing the name of the group that requests the hearing session, the purpose of the meeting and the issue that shall be discussed. The request shall be deposited in the Protocol Office of the Parliament of Albania one week prior to the date predicted in the parliamentary agenda for the meeting in question to take place. The one week deadline is not predicted by the Rules of Procedure of the parliament or in any internal decision of this institution. This rule is set based on prior practices of the parliament with interest groups. The hearing and consultation process in permanent parliamentary committees or in specific committees on a specific issue is followed by the hearing of the guest group(s) and by reviewing of their drafts (if there is one), priory deposited to the Protocol Office of the parliament. The guest groups cannot replicate with members of parliament in any case but it can only answer to their questions on the issue the hearing was requested. Replication can only occur in cases when the chairman of the committee allows it.

## **8. Challenges and problems encountered within the actual legal framework and present institutional practices**

The present legal framework poses several challenges but the main one relates to the fact that, despite the cases when public participation and the right for hearing is precluded on the content of the law, in any other case, the exercising of this right remains under discretion of the public decision making institution and its head (concerning the Parliament of Albania the right for organizing public hearing sessions with civil society or interest groups representatives is defined by the chair of the relevant committee or can be requested by a group of members

9. Request of the Alliance against Import of Waste reviewed with the Parliamentary Committee for Productive Activity, Trade and the Environment on 31. 10. 2011. available at: [http://www.parlament.al/web/Procesverbalet\\_10064\\_1.php?evn=srm&rp=p=6&rp=20&msv=msvSrc&ser=290](http://www.parlament.al/web/Procesverbalet_10064_1.php?evn=srm&rp=p=6&rp=20&msv=msvSrc&ser=290)

of parliament).

Another problem encountered by civil society and interest groups is that institutions like the Parliament of Albania or other executive agencies have difficulties in identifying and contacting all the groups that express their interest on a particular issue. This is at the same time one of the main justifications used by these institutions when asked by the media or by international actors. This insuperable challenge on the first sight, is in fact not at all a challenge, since every institution can refer to the District Court for being provided with a list of registered civil society organizations. This would also avoid the phenomena often encountered when looking at public institutions in Albania which often in a rather “one sided” way, invite the same group of organizations and stakeholders to conduct a fictive consultation.<sup>10</sup>

Another difficulty encountered by civil society organizations when attending activities of the Parliament of Albania relates to the obstacles created by the administration of the parliament. If one refers to *Unë Votoj* report, a publication of MJAFT Civic Movement, civil society organizations are often obstacles due to negligence by administration employees.<sup>11</sup> Justifications of administration employees relate mainly to the lack of passes, absence of the General Secretary of the Parliament to sign the passes, absence of Public Relations Office employees during official working hours and so on.

Lack of room in meeting halls of parliamentary committees<sup>12</sup> constitutes another obstacle regarding access of civil society to follow the process of discussion and approval of draft laws. Although a technical reason on the first sight, often this justification was used by employers of the Guard of Republic

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10. This phenomenon is particularly noted in the Ministry of Environment when consultation for environmental issues is limited to a small group of experts by civil society, living out of the process most interest groups. One case illustrating this statement is that of the Alliance against Import of Dangerous Waste which was left out of the discussion process of the draft law for integrated management of waste.

11. *Unë votoj* report, monitoring of the activity of the Parliament of Albania for the Period November 1-December 24 2011, [http://www.unevotoj.org/zgjedhjet09/subindex.php?faq=pagecontent/show\\_all\\_raportet](http://www.unevotoj.org/zgjedhjet09/subindex.php?faq=pagecontent/show_all_raportet)

12. Ibid.



of Albania oriented by the chairmen of the Parliamentary committees for not allowing monitoring of parliamentary meetings.

#### **9. Improvement of legal framework and institutional practice in function of democratization of policy making processes.**

Regarding the problems defined above, it is necessary that participation of interest groups in meetings of state institutions shall be institutionalized through legal disposal or by means of legal acts in order to increase the effective dialogue between the citizen and the power structures, especially on issues that impact the interest of large groups of citizens.

Publication of draft-legal acts by the Parliament of Albania in the moment when they are sent for review to this institution would help interest groups to be informed in advance on the content of the draft and would enable full transparency during review of draft-laws. Regarding transparency of official documents by this institution, there remains still a lot to be done regarding publication of documents during the preliminary stage.

Another suggestion relates to the creation of an extended and inclusive database for state institutions where all civil society organizations and interest groups categorized by their area of activity are identified. Identification of organizations and interest groups can be realized through information received by the District Court of Tirana. The creation of this database would increase the number of organizations that could be involved in discussion and drafting of draft-laws as well as would better orientate the institutions in identifying their contacts.

Based on the legal definitions on the “publicization of meetings of parliamentary committees and plenary sessions” it is recommended to take de-bureaucratization steps in following parliamentary activities by citizens, civil society organizations and interest groups in order to enhance participation in parliamentary activities by citizens, civil society organizations and interest groups. This in turn would help to increase the transparency and accountability of the institutions through

continuous monitoring of public institutions.

Another change that is proposed in the legal framework concerns amendments of some articles of Law No. 8503, date 30.6.1999 “On the right of information over Official Documents”. The main amendments shall be done concerning the legal deadlines for providing information since the actual law predicts for a system of deadlines which if totally exhausted by public administration amount up to 65 days.<sup>13</sup>

To conclude, a useful amendment on the above mentioned law relates to penalties that administration servants shall take in cases of breaching legal deadlines regarding answering to the interested parties.

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13. Authorities shall decide on “partial or total dismissal of the request within 15 days from its deposit” (article 10). “In case the request is accepted the authority has 40 days to fulfill it. ” (article 11). “Due to ‘the peculiarity’ of the request or due to the need for asking advice by a third party” the author can prolong the deadline with extra 10 days. ” (Article 12)

## II. THE MACEDONIAN PARLIAMENT AND THE EU: SCRUTINY AS A CHALLENGE

Author: **Dr. Malinka Ristevska Jordanova**

**P**arliaments have several main functions in the European Union (EU) accession process: a) political support, including communication to the public; b) parliamentary scrutiny of the government's actions for approximation with the EU; c) cooperation with the European Parliament, with other EU Member States' (MS) parliaments and parliamentary bodies. To some extent this differs from the role of parliaments of MS, whose main role is to scrutinize parliaments' actions towards EU policies and deliberate/approve negotiating positions in creating EU policies and legislation.<sup>14</sup> In general, in the aim of addressing the democratic deficit of the EU, the role of national parliaments has been increasing, additionally fostered by the Lisbon Treaty<sup>15</sup> provisions.

In this article we shall discuss the role of the Macedonian parliament in the EU accession process, focusing on the parliamentary scrutiny of Government.

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14. MS have different models of scrutiny, which, are generally divided in two: a) scrutiny of EU documents; b) procedural scrutiny - of the MS negotiation positions. Some MS have a mixed model of the two. (Source: COSAC: Eight Bi-Annual Report, Developments in European Union, Procedures and Practices relevant for Parliamentary Scrutiny).

15. The Treaty of Lisbon entered into force on 1 December 2009.

## 1. From declarative support to cooperation and to scrutiny

In the first several years of independence, which were marked with the struggle for recognition of the Macedonian state, the Macedonian Parliament has provided general political support to the EU integration process. Parliament's actions were following and supporting Government's actions, supporting the general strategic orientation to EU and NATO membership. Highly important, not only in terms of the parliament's role, but in the political dialogue between the Republic of Macedonia and the EU as a whole, was the cooperation with the European Parliament - with its quite active Delegation for relations with South-East Europe. The Parliamentary group for cooperation with the European Parliament established in 1996 was the first parliamentary body tasked specifically with responsibilities related to the EU integration process. During the legislature of 1998-2002, marking a significant development of the Macedonia - EU relations with the signature of the Stabilisation and Association Agreement in 2001, the Parliament strengthened its political role in the EU integration process. It adopted declarations for development of the relations with EU in 1998 and 2000, supporting the negotiations and signature of the SAA and committing to a more active role of the Parliament. The Committee on Euro-Integration was established in 1998. Its structure and Terms of Reference (ToR) were highly supportive of its role of political support, than scrutiny of the Government. It was only in 2003 that the Committee for European Issues (CEI) was established, with a more specific role of scrutinizing the Government in developing and implementing its EU accession policies. In 2007 an additional body was formed - the National Council for European Integration (NCEI), including MPs and outside members. Specific EU-related provisions were incorporated in the Parliament's Rules of Procedure in 2008.<sup>16</sup>

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16. <http://www.sobranie.mk/en/default-en.asp?ItemID=B1E2A59E1D94354F9C6B17D64F77079C>

## 2. Political support: easy on general issues, difficult on concrete ones

The parliamentary support to key issues of EU policy for the country has been steady. Following the two declarations of 1998 and 2000, the parliament supported the application for membership and the regional stabilisation and association process (2004), as well as the launch of accession negotiations (2007, 2009). The level of political consensus and “speaking with one voice” before external actors has not come in question when the general policy towards EU is concerned. However, when it comes to concrete issues impeding the EU integration process, such as the name dispute with Greece, parliament’s involvement by the Government has been low, practically non-existent. The Government preferred to keep the issue in its own hands, blocking substantial debate in the Parliament, despite the attempts of the opposition for a common approach, especially after 2008, when Greece blocked Macedonia’s NATO bid.

## 3. Parliamentary scrutiny - plenty of form, but how much essence?

Several modes of scrutiny have been introduced and practiced. General monitoring of government activities towards EU membership is carried out by the special bodies, the “regular bodies” and the plenary. The normative basis are the ToR of the committees (in a form of Assembly Decision), as well as the general provisions of the Rules of Procedure.

A practice of submitting quarterly reports of the Secretariat for European Affairs (SEA) and presented by the Deputy Prime Minister for EU Affairs to the CEI (and later on, to NCEI as well) was one of the first modes of regular scrutiny established in 2004. However, this practice not been applied systematically and throughout the years reports became irregular, less accurate and more technical. From time to time the Government delivers specific reports, as was the one on the High Level Accession Dialogue (HLAD) in July 2012, but usually after repeated requests by the Parliament.

Another practice is the annual deliberation on the European Commission (EC) annual progress report. After being presented to the CEI and NCEI by the EU Representative, committees in charge discuss the report from the point of view of their responsibility. The debate on the progress report is quite “partisan” - the position is pointing out the positive points, the opposition - the critical points, which per se should not be perceived as negative, as, after all, the Parliament is a plural institution. The real issue is how much the debate is essential and to which extent MPs manage to “connect” the European agenda with the interests and concerns of the citizens they represent in the Parliament. It should be admitted that the regular deliberation on the progress report in the Parliament has contributed to more involvement of the MPs in the European agenda - not only MPs that are “specialized in EU matters”, but practically all MPs, as they had to “learn by doing”. At this point, it can still be argued that party prevails over essential deliberation on the EU agenda, especially on the side of the Government. The deliberation ends up with a plenary debate and a document - resolution/conclusions, previously negotiated and agreed among the parliamentary groups. The negotiations on the text have been managed by the NCEI since its establishment.

Much focus is put on *legislative scrutiny* of draft laws. The Rules of Procedure require that a compliance statement is adhered to a proposed law aligning with EU law. In practice, a table of concordance with EU law is attached to the law for already five years and marked with an EU flag.<sup>17</sup> MPs find the tables of concordance very useful as a source of information and a basis for consultation and debate.<sup>18</sup> However, a compliance statement is attached only to laws that the Government has declared as “EU laws”, not to all laws. Thus, provisions contrary to EU law may “slip” - intentionally or simply because law-makers were unaware of them. Compliance statements and tables of concordance are not sufficient to provide all the information needed for parliamentary debate, as actual impact assessment of the transposition is missing. In addition, the “flagging” itself is an issue. When is the EU flag applied? Which law is an EU-

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17. Although under the Rules of Procedure of 2008 only the compliance statement is obligatory, Tables of concordance are also submitted.

18. According to interviews carried out by the author with several MPs in 2010.



related law? What about soft law? What about legislation related to political criteria, when it is mostly about implementation of standards or best practices? Currently only laws transposing EU law are “flagged”, while previously this was also the case with laws that are a benchmark in the integration process. The “flagging” has demonstrated all the discrepancies and specifics of the actual process of the Macedonian rapprochement to the EU (applicable also for other countries in the SAP). The main focus is still on political criteria, and not on transposition of EU law, which, on the other hand, has been taking place for already 15 years. This has resulted in a certain “technicisation” of the transposition, while on the other hand - legislative “recycling” of the political criteria. The Parliament, too, is “caught” in this gap of the accession process.

Specialized bodies for EU integration, especially the NCEI, have explored public hearings as a mode for scrutiny - both legislative and scrutiny of implementation. Public hearings have proved as a very valuable practice, as they allow for constructive involvement of stakeholders, bringing “real life” issues into the law-making debate. However, the current Government is reluctant to promote and exploit this form of deliberation, which is demonstrated by either absence of its high-level representatives, or simply lacking substantial discussion, or ignoring participants/discussions, which are not of its liking (if they cannot prevent their participation). Position MPs strictly comply with this Government strategy - while formally complying with the Rules of Procedure, they make their best efforts to ensure the omnipotent, dominant position of the Government by not entering into substantive debate.

Parliament’s specialized bodies on EU should be *consulted* on key EU related documents. This is the case with the National Program for Adoption of the Acquis, which is becoming a more technical document. However, this is not the case with e. g. the Roadmap for the HLAD, which is simply presented to the parliamentary bodies and the Parliament is practically out of the mainstream EU integration process.

#### 4. How many bodies, how effective, how...

The most debated issue of institutional character was the setting up of specialized bodies for EU integration.

The ToR of the CEI, formed in 2003 was modelled after the best practices of Central and Eastern European countries and is rather ambitious.<sup>19</sup> The scrutiny includes all government activity aimed at accession to the EU and specifically the implementation of the agreements with EU, legislative alignment and use of EU funds. According to the Rules of Procedure no EU law can be deliberated at the plenary, without being debated in the CEI. Even with such a strong “procedural” position and a comprehensive ToR, in practice the real impact of the Committee is not high. It mainly depends on the political will of the Government to share information, its own capacity to perform the scrutiny role and - on the capacity and motivation of its chairperson. Furthermore, the fact that Macedonia did not follow the best practice of the opposition chairing the CEI practically made the work of this committee quite uninteresting. Its scrutiny role is minimized and it practically does not put any pressure on the Government to share information, submit reports, deliver presentations, etc. , on the EU-related agenda. On the other hand, it does not have any capacity for legislative scrutiny of all EU related laws; thus, this role remains quite formal. The ToR includes an information and communication role of the Committee; however this function has never been systematically pursued.

One of the issues debated is: is there a need for two specialized EU bodies in the Parliament? In 2007 another body was created - the National Council for European Integration. The fact is that this body was created upon an initiative of the European Commission (the EU Ambassador in Macedonia), whose main idea was to have all main political actors and representatives of societal factors “on board” and the opposition to have an active role in the process, by chairing the NCEI. When reading the ToR of this body and comparing it to the CEI, it seems that their set-up and role is different. The Council is not strictu sensu a parliamentary body. It includes representatives of the Government and the civil sector - trade unions, chambers,

19. <http://www.sobranie.mk/en/default-en.asp?ItemID=8DA0974225DE8F489F9FAB4863734BCE>



NGOs and even the heads of the main religious communities. Its ToR focuses on accession negotiations. As there are no accession negotiations, practically the NCEI should not be “in business” at all. However, the first line in its ToR practically gives it the basis to scrutinize the entire accession process.<sup>20</sup> In practice, the Council has taken over the scrutiny role from the CEI. Frequently they have joint sessions, which seems to be a rational practice. The creation and operation of this body can be assessed as a success, as it is the only state body in the country encouraging essential discussion on EU related issues. Nevertheless, its success is largely due to the capacity and motivation of its chairperson- ex Deputy Prime Minister Radmila Shekerinska.

Under EU pressure to raise the capacity of the Parliament, the number of parliamentary staff significantly increased. A special section was established to support the NCEI. However, the increased number of staff (in a recruitment procedure suffering from politicization) did not result in increased capacity of the Parliament to carry out its scrutiny. In fact, more than ever, the Parliament lacks capacity for scrutiny and primarily depends on the information shared by the Government. The current Government does not have political will for any substantial discussion and improving the role of Parliament, which especially refers to EU issues. It seems that the only remedy for this situation is for the MPs to stretch out to society - NGOs, experts, journalists, etc.

After December 24, 2012, when the position practically expelled the opposition and media from the Parliament, and the main opposition party boycotted the Parliament for more than two months, the level of trust among political agents is at its lowest level ever. It is a big question mark if and when the Macedonian parliament will recover from this back-slide, which will certainly have a negative impact on the role of the Macedonian parliament in the EU integration process for a longer period of time.

When speaking of the role of parliaments in candidate states it is not justified just to focus on specialised EU bodies, as isolated islands on EU relations or expertise. The capacity and awareness

20. <http://www.sobranie.mk/en/default-en.asp?ItemID=7E9281E8BD8EDC40A4A0A64DBEAAB4F2>

of the “regular” responsible bodies, and of each MP, needs to be strengthened. This does not mean that every MP should be an expert on EU. It simply means that general knowledge of EU, timely and adequate information on the EU-related legislation and actions and lots of common sense and political will might suffice.

## 5. Conclusion: Lessons Learned

The scrutiny role of the Macedonian Parliament in the EU accession process has developed gradually. It was fostered by key developments in the relations between Macedonia and EU - signing of the agreements with EU (SAA), application for membership and candidacy.

Formal provisions do present an important and sufficient basis for scrutiny. However, it is not the formal provisions that make scrutiny successful, but actual political actions. The Macedonian experience has shown that when there is political will, practices of scrutiny can be established and performed under “regular” parliamentary procedures. When genuine political will is lacking, specific formal bases for EU policy related scrutiny cannot be the sole remedy.

The institutional set-up in the Macedonian case is not ideal. Formally the two bodies - CEI and NCEI do overlap in their “terms of reference”. In reality the NCEI has taken over the leading role, proving again that actual leadership and engagement is much more important than formal provisions.

The Macedonian example - especially the example of the NCEI - strongly proves that it is essential to keep the opposition in a participatory and active position in the EU agenda. There is no better setting for it than the Parliament.

The more information shared with the Parliament on legislative EU alignment - the better. It is especially advised to avoid the trap of technicisation of legislative scrutiny and to bring real life issues in the debate - policy options, choices, impact, etc. Concerning scrutiny of implementation, as well as encouraging

the consultative role of the Parliament, a lot of effort and concerted pressure on the Government is needed to achieve at least minimum result.

Recruiting more and more staff in Parliament to perform exclusively EU scrutiny does not make much sense, especially when resources are scattered and when parliament leadership does not foster merit-based recruitment. Nurturing small, but efficient teams with high capacity and specific EU expertise is much more efficient than large scale recruitments.

Inclusion of civil society representatives and especially of professional stakeholders' associations in the debate proved to be essential and can significantly upgrade the parliamentary debate on the EU approximation process, providing a concrete input.

Reaching out to civil society, experts and media, networking and consultations - formal and informal, building coalitions, working together - makes much more sense than pure procedural exercise of parliament's powers. However, these actions should also be done in a structured manner, based on an actual needs analysis for improvement of the Parliament EU scrutiny role.

The EU institutions can play a more constructive role in shaping the role of Parliament of candidate countries through the conditionality policy. Therefore, partnerships in upgrading the scrutiny should be established, especially with the European Parliament and EU Member States parliaments.

### III. INCLUSIVENESS, REPRESENTATIVENESS AND IMPACT OF CIVIL SOCIETY

#### Participation to the EU Integration and Accession Process: The Experience of CSO Representatives to the National European Integration Council in Macedonia

**Authors:** Tanja Hafner Ademi, MA & Ilina Nesik, MA

#### 1. Establishment, composition and role

Since its independence in January 1991, the Republic of Macedonia (RM) has emphasized membership in the European Union (EU) as one of its strategic objectives. Being guided by this strategic objective, the Parliament has adopted the Decision on establishing the National European Integration Council (NEIC)<sup>21</sup> at its session held on 19th November 2007. The aim of the Council is to strengthen the activities and responsibilities of all the relevant national and other bodies and institutions for securing a harmonized and coordinated action in the process of accession the RM to the EU. In a nutshell, the Council's task is to provide for a societal consensus-building over the issues related to EU accession, especially once negotiations for EU membership would start in the backdrop of difficulties in forming political consensus on strategic issues by political actors in the country generally.

According to the Article 2 of the Decision, the Council's respon-

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21. Decision (2007) and Amending of the Decision (2009), <http://www.sobranie.mk/en/default-en.asp?ItemID=D2098F31745BD34A84D09837D5BC089A>.

**sibilities** are to: monitor and evaluate the accession activities via adopting positions on the EC Progress Report, Government report on the realization of the National Programme for the Adoption of the Acquis (NPAA) and similar documents; give opinion and guidelines regarding the preparations for the start and process of accession negotiations; have regular consultations and exchange of information with responsible institutions such as the President, the Prime Minister, and the President of the Parliament; and give opinion, when needed, on the harmonization of the legislation with the Acquis communautaire. Thus, the mandate envisaged the Council to provide primarily for coordination between institutions responsible and involved in negotiations and especially anchoring the role of Parliament and relevant stakeholders into this process.

The Council has a Chairperson, Deputy Chairperson, 15 **members** and 9 deputy members. The Chairperson of the Council is a Member of Parliament (MP) from the opposition, while the Deputy Chairperson is an MP from the governing parties. The members of the Council are MPs, together with representatives from other institutions i. e. the Deputy Prime Minister responsible for European integration, representative of the Cabinet of the President, representative of the Cabinet of the Prime Minister, representative from the Macedonian Academy of Sciences and Arts, representative from the Association of the Local Self-government Units (ZELS) and representative from the Association of the Journalists of Macedonia. The Council also has **representatives**, which come from the ranks of other stakeholders outside the Parliament such as chambers of commerce (2 representatives), religious communities (5 representatives), trade unions (2 representatives) and civil society (1 representative). Once negotiations for EU membership are started, the Council envisages participation of the head of the negotiating team, the heads of the negotiating groups on the different Chapters and other scientists and experts in areas of importance for the process of negotiations. By including representatives of other stakeholders outside of institutions, the Council for the first time provides space for inclusiveness of relevant stakeholders into the EU accession process in Macedonia, nevertheless the representativeness and inclusiveness are limited by the fact that the different stakeholders have different numbers of mem-

bers to the Council as well as the fact that the representatives formally do not have the right to vote.

The Council **works** on meetings, organizes public debates, international meetings, conferences, working meetings and events in partnership with other institutions and organizations. Minutes are kept for the meetings and are available to the public via the Parliament website.<sup>22</sup> The meetings are convened by the Chairperson or upon a proposal of a minimum of 1/3 of the members of the Council. Although formally only members of the Council (vs. the representatives) have the right to vote, the difference in (non-)voting members is overcome by the fact that all decisions are taken by **consensus**. The quorum for the decision-making is secured if majority of the members with the right to vote are present at the meeting.

The main **rights and obligations** of members and representatives are substantively the same, save of the formal right to decide or vote, which is limited formally only to members. Each member has the right to address the Council, propose an agenda item or initiate organization of public hearing and participate to the work of a working body that can be established for the needs of working on a separate issue.

When reviewing issues in its competence, the Council can invite representatives of the Ministries and other bodies, high-ranking state officials from other countries, representatives from international organizations and other distinguished foreign dignitaries. It can also hold joint meetings with other relevant Parliamentary Committees such as with the Committee on European Affairs, the Committee on Foreign Policy, Delegation of the Parliament of the Republic of Macedonia to the Parliamentary Committee on Stabilization and Association or with other interested working body of the Parliament. The working bodies can decide separately on this joint meeting. To be operational, the Council is served by the **Department for Support of the NEIC**, which prepares the work of the Council.

The meetings of the Council are **public** unless no public participation is proposed by the Chairperson of the Council or by a

22. <http://www.sobranie.mk/en/default.asp?ItemID=646943899CCCFE4FABC068B1A05FD0E5>



minimum of 1/3 of the overall number of members of the Council. In this case, the Council issues a statement for the media which is adopted at the meeting of the Council. This is not the case with public hearings where experts and general public is invited as widely as possible. Minutes of each session are published on the website as well as the work programme and the report, including the attendance and activeness of each member/representative. Decisions of the sessions and public hearings are sent to the responsible institutions to insure that they are taken into consideration in the policy and decision-making on a particular issue.

A final important instrument and envisaged role of the Council is the right to organize **public hearings** on issues and bills of general interest. Unlike in public hearings organized by the Parliamentary Commissions where citizens and organizations have the right to submit written opinions and suggestions, a public hearing organized by the Council enables citizens and organizations the right to participate in the debate, to publicly explain his/her position, and respond to questions posed by MPs. Moreover, it can be a powerful instrument taking into consideration that public hearing can be initiated by all members and representatives of the Council, including those coming from non-parliamentarian ranks. Finally, its biggest strength lies in the fact that when public discussions are organized on the issue of Acquis-related legislation, the responsible Ministry or other public body is obliged to provide the piece of legislation in the version prior to sending it into to parliamentary procedure, thus enabling earlier access of MPs and stakeholders to the draft legislation and potential influence they can exercise in the course of the public hearing.

## 2. Practice

Since its establishment in 2007, the focus of the Council was on presenting itself and its role of public interest, to reaffirm the Macedonian EU accession objectives and to strengthen the joint responsibility of all political and social actors in the EU accession processes. In the first 3 years of functioning of the NCEI, 19 session and 18 public discussions were held. In 2009,

the European Commission (EC) Progress Report assessed the work of the NCEI positively as a body promoting public debates and in this manner increasing the participation of civil society.<sup>23</sup> The following Reports demonstrated similar assessments, making essential characteristic of the Council its inclusiveness and openness to participation of other stakeholders.

With the prolongation of the EU accession process and with continued lack of openness of the Parliament in terms of interested public and debates, the role of the Council became also disputed and criticized for trying to substitute the role of the Parliamentary Commission for European Affairs as the primarily responsible body for the EU issues. It was argued that the Council is a quasi-parliamentary body, but via its activities and visibility has taken the dominance over the parliamentary oversight on the EU accession issues.<sup>24</sup> During its last mandate since September 2011, most of the work of the Council was in fact done with the Committee for European Affairs via joint sessions, but mainly due to the fact of enabling substantive discussions on the Macedonian EU accession vis-à-vis the responsible institutions such as the Vice-Prime minister in charge of EU integration and his/her presence at the sessions.

The fact that 22 public discussion or 80% of all public discussion held by the Parliament between 2009 and August 2012 have been organized by the Council speaks to the importance of this instrument.<sup>25</sup> Moreover, considering that 6 of them were organized in cooperation or at the initiative of chamber of commerce, ZELS and civil society representative, this instrument presents the important possibility that the Council offers to relevant stakeholders represented in the Council.<sup>26</sup> Thus, in the absence of the start of negotiation for EU accession, the Council has become a rare forum providing public debate in the context of closed public institutions including the Parliament.

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23. EC Progress Report FYROM, 2009, p. 7. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/mk\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/mk_rapport_2009_en.pdf)

24. RistovaAsterud, Karolina (2011): Position and Function of National Parliaments in EU: Recommendations for EU Integration to the Parliament of the RM, <http://www.fes.org.mk/pdf/FES%20Ristova%20Asterud%20w-%20covers%20opt.pdf>.

25. Korunovska Avramovska, Neda (2012): Parliamentary Control over Government in RM, [http://soros.org.mk/dokumenti/podelbata\\_na\\_vlasta\\_vo\\_praksa\\_mk.pdf](http://soros.org.mk/dokumenti/podelbata_na_vlasta_vo_praksa_mk.pdf).

26. Ibid.



### 3. Involvement of Civil Society

In devising the composition and involvement of relevant stakeholders, the Council has provided the opportunity for creating inclusive debates, forum for discussion and formulating of positions that would reflect the **societal** or **society-wide consensus** on Macedonian EU accession path. Through its membership, diversity of stakeholders involved in the work of the Council has been provided by involving chambers of commerce, trade unions, civil society organizations (CSOs), journalists, local authorities and religious communities in Macedonia. Nevertheless, their participation is formally different as the representatives of the Association of Journalists and ZELS are members versus the rest whose role is only as representatives. Moreover, the two members are elected by the Parliament, while the representatives are elected or nominated based on the invitation of the Council to the respective representative organization, which in case of civil society is the Civic Platform for Macedonia (CPM).

For CSOs, this model of nomination or election is functional, but not most typical and enabling considering the fact that civil society has only 1 representative. This is problematic as the diversity of issues that CSOs work on should be presented only via one single representative of the sector. Finally, the issue becomes more complicated when the contribution, added-value and relevance of the particular stakeholder is considered as well his/her correlation to the number of representatives currently in the Council. For example, it has been the practice that representatives of religious communities participate only seldom and their roles is mainly symbolic, while on the other hand the representatives of CSOs and trade unions consider that they are not thoroughly represented in the Council, especially considering their area of work and relevance to the EU accession process.

In providing for inclusion of representative of CSO, a specific **procedure** has been developed on the part of the CPM platform, which became reference point for the Council and other public institutions in providing representatives of the sector to participate in the work on preparation of different (by)laws,

working groups as well as election of representative of CSOs to bodies related to EU accession issues such as IPA monitoring committees, Joint Consultative Committee between the EU and the RM and the NCEI.

The representatives of civil society is selected on the basis of an invitation from the appropriate institution to the CPM platform. CPM is a non-formal umbrella civil society platform initiated in 2003 by over 30 CSOs in country representing different sectors in which CSOs are active. The selection takes place upon the call for election of representatives organized by the CPM Secretariat. The public call consists of information about the name of the working body, institution and the number of places for which representative(s) should be elected, a description of the scope of the task force, method of work, deadlines, including deadlines and manner of submission of proposals. Participating candidates to the elections may be self-nominated or suggested by another organization. When a candidate is nominated by another organization, the candidate needs to be pre-notified and has to accept the nomination. The candidate can but he/she is not necessary representative of a CPM member organization.

The method of selection consists of preparing a list of candidates, of selection body and vote. The Proposals are received at the CPM Secretariat and go through technical check and approval of the list of candidates (name of organization representative/representative and his/her deputy/substitute). The choice of representative is carried out by the Committee of the CPM.

Voting is conducted at a meeting of the CPM Committee, or in writing (email, fax or mail). The voting is public. The elected candidate is the one who receives the most votes from members of the Committee. If two or more candidates have the same number of votes, the voting shall be repeated only for those candidates. CPM Secretariat publishes the results of the voting, informing who the elected candidate is, the number of votes per candidate and how the voting was conducted. In the case of NEIC, the election of representative takes place with each consequent Parliamentary election on the invitation of the Council. Up until now, 2 representatives have served and in the

last mandate, a substitute member has also been elected in order to make attendance and participation continues.<sup>27</sup>

Civil society representatives so far have been very active in the Council by participating to the sessions, public hearings as well as with using the right to speak when discussing the annual EU Progress Report, addressing concerns to high-ranking representatives of European Commission such as the Enlargement Commissioner or EU Member States representatives and propose topics and initiate public discussions of importance to civil society such as the situation of Roma population, discrimination, law on associations and foundation, Government strategy for cooperation with civil society.

By being one of the most active stakeholders at the Council, representatives of CSO in the Council have demonstrated the capacity and relevance of sectors presence in the body. However, 2 issues will need to be addressed in the near future so CSO could give full contribution to the EU accession process, especially in the negotiation phase for which the Council has originally been set up.

First, due to the fact that CSOs work on a variety of issues of importance for the Macedonian EU accession, one CSOs member is not able to bring all available and relevant expertise of the sector and here consideration for selection of at least 2-3 representatives would be needed. For example, as elected representative of CPM, the obligation to consult and report exists only towards the members organizations of CPM, while the intention in setting up the function was to represent the “collective voice” of civil society. In the current mandate, the CPM representative has been addressing this by self-organizing consultative meetings and exchange of information beyond CPM members, which requires considerable time and resources on the part of the representative.

Secondly, the issue of representation also needs to be further explored internally to civil society in the sense that CSO have called for CPM to change the procedure in allowing not just

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27. Aleksandar Krzalovski (MCIC) served as the first representative between 2009-2011 and Tanja Hafner Ademi (BCSDN) and Ilina Nesik (BCSDN) as substitute have been representing CPM to the Council since September 2011.

open nomination of candidates, but also open registration of voters so that the representative would have stronger legitimacy as the “collective voice” of civil society in the Council. A case of such civil society election procedure exists and functions in several countries and especially in Slovenia.<sup>28</sup> This issue could also be addressed by opening a public call by the Council to select representative(s) instead of addressing and transferring this responsibility to the sector-wide representation body especially in situations and sectors with lacking cohesion and strong umbrella organizations which is the case not only for civil society but also trade unions.

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28. Procedure for Selection of CSO representatives, CNVOS, [http://www.cnvos.si/article?path=/zagovornistvo/nvo\\_predstavniki](http://www.cnvos.si/article?path=/zagovornistvo/nvo_predstavniki) (information only available in Slovenian).

## IV. ROLE OF THE PARLIAMENT OF MONTENEGRO IN EU ACCESSION NEGOTIATIONS

Author: **Tatjana Bulajic**

**E**uropean Union (EU) integration has been one of the main foreign policy goals of the Government of Montenegro. Since the regaining of independence in 2006, relations with the European Union have been constantly developing. Sustained by general political consensus and high level of support to the EU membership, Montenegro submitted application for EU membership on 15 December 2008 and consequently was granted a candidate country status by the European Council on 17 December 2010. Following intensive reforms and providing a solid track record in the implementation of the adopted legislation, the European Council, based on the recommendation of the European Commission, concluded on 29 June 2012 that the accession negotiations with Montenegro should be initiated. Therefore, the first Intergovernmental Conference between Montenegro and the European Union was held, whereby the accession negotiations were officially launched.

### 1. Montenegro in the Accession Negotiations with the European Union

With the progress in the EU integration process, the Government of Montenegro has worked upon establishing negotiation structures in order to successfully prepare for the next phase

of the process, in terms of legislative and institutional framework.

Thus, the Government adopted the Decision on appointment of the Chief Negotiator for accession negotiations with the European Union (Official Gazette of Montenegro 66/2011 of 30 December 2011), as well as the Decision on establishment of the negotiation structure for accession of Montenegro to the European Union (Official Gazette of Montenegro 9/2012 of 10 February 2012) laying down the foundations for the negotiating structures.

According to the second Decision, the negotiation structure of Montenegro consists of the following six bodies:

- College for Negotiations on Accession of Montenegro to the European Union;
- State Delegation of Montenegro for Negotiations on Accession of Montenegro to the European Union;
- Negotiating Group for Negotiations on Accession of Montenegro to the European Union;
- Working Groups for Preparation of Negotiations on Accession of Montenegro to the European Union on Individual Negotiating Chapters - chapters of the EU acquis;
- Office of the Chief Negotiator;
- Secretariat of the Negotiating Group.

Having in mind the fact that the EU integration is a comprehensive and demanding process, the Government of Montenegro decided to include all the segments of the Montenegrin society in the negotiations. As a result, for the first time in accession negotiations with the EU, representatives of civil society were given a possibility to become fully fledged members of the negotiation structure of Montenegro (Negotiating Group and Working groups) and more than seventy civil society organization's representatives became members of the 18 working groups established by the end of 2012. In addition, the representatives of the General Secretariat of the Parliament of Montenegro were invited to become members of the working groups and take an active role in the work of the negotiating structures in order to directly involve the Parliament in the EU Integration process of Montenegro.



## 2. Role of the Parliament of Montenegro in the Accession Negotiations with the European Union

As mentioned above, even though negotiations with the EU are the exclusive competency of the Government of Montenegro, the Parliament's responsibility and role in this phase is to carefully analyze the procedures, involve a broad spectrum of social and interested groups into discussions on different aspects of the EU Integration of Montenegro and enhance the entire process.

In addition, the process of negotiations on accession to the European Union includes negotiating the terms under which a candidate country accepts the EU *acquis* i. e. EU's legislation. As the legislative body, the Parliament of Montenegro plays an important role in the adoption of the legislation and its full harmonization with the EU *acquis*. Therefore, its function is not only to control the executive power as stipulated by the Constitution, but also to directly contribute to the integration process through its legislative role.

It is very important to point out that the accession negotiations with the EU are supported by general consensus amongst all parliamentary political parties, which was also confirmed through the adoption of the Resolution on the necessity of accelerating the process of integration of Montenegro into the EU and Euro-Atlantic structures by the Parliament on 3 October 2008. This gives an additional impetus for enhanced progress towards becoming an EU member state.

According to the Decision on the establishment of the negotiation structure for EU accession of Montenegro, the Parliament of Montenegro plays very important role in the negotiation structure on Montenegro's side.

Pursuant to Article 3, paragraph 2 of the Decision on the establishment of the negotiation structure for accession of Montenegro to the European Union, *the College for Negotiations on Accession of Montenegro to the European Union is supposed to review draft negotiating positions and, following the completed procedure in the authorized Parliamentary body, to submit*

*them to the Government of Montenegro for adoption.*

In this way, the Parliament of Montenegro is represented in the negotiation structure through the Parliamentary Committee for European Integration. In addition, the representatives of the General Secretariat of the Parliament of Montenegro are invited to become members of the working groups and it should be emphasized that there are 33 representatives of the Parliament of Montenegro in the existing 18 working groups for preparation of the negotiations.

There are different bodies and levels of cooperation in which the Parliament of Montenegro contributes to the accession process.

In the previous mandate of the Parliament, the Committee on International Relations and European Integration regularly considered all key issues of importance for progress of Montenegro in the EU integration. However, having in mind the progress Montenegro achieved in the EU integration, the Parliament of Montenegro adopted the Decision on Amendments to the Rules of Procedure of the Parliament of Montenegro in May 2012, stipulating establishment of a special Committee on European Integration and a Committee for International Relations and Emigrants. This would provide for the specialized Committee that would deal exclusively with the EU integration process of Montenegro and would be the sole body of the Parliament which would give opinions, make suggestions and present views regarding the negotiation process.

In addition, besides the role at the national level, the Parliament of Montenegro actively contributes to the EU Integration process through its bilateral relations both with the national parliaments of the EU Member States, but also directly with the European Parliament within the framework of the Stabilisation and Association Parliamentary Committee. Moreover, the representatives of the Committee on European Integration actively participate in the meetings of the Conference of Parliamentary Committees for Union Affairs (COSAC) since 2011 thus providing them for the direct communication with the EU Member States National Parliaments and the European Parliament.

### 3. Overview of the former and current parliamentary bodies in charge of EU integration of Montenegro - role of the Parliament at the national level

The **National Council for European Integration (NCEI)** was established on 19 March 2008 by the Decision of the Parliament of Montenegro.

The National Council was designed as a strategic advisory body, whose role was to contribute to better coordination and monitoring of the Stabilisation and Association Agreement as well as the future negotiations on Montenegro's accession to the European Union. Although this description corresponds to the former and current parliamentary Committee in charge of European integration of Montenegro, it had one significant difference.

Unlike the relative parliamentary working bodies, the National Council for European Integration, apart from the representatives of the Parliament of Montenegro, also involved representatives of: the President of Montenegro, the University of Montenegro, the Montenegrin Academy of Sciences and Arts, the Judicial and the Prosecutorial Councils, NGOs and the Social Council.

However, since its establishment the NCEI has faced administrative difficulties, which affected its efficiency. In addition to this, the constant overlapping of duties and competences with the Parliamentary Committee for International Relations and European Integration raised the issue of necessity of its existence.

Over the three years of its existence, the National Council for European Integration has submitted only one report, for the period from September 2009 to March 2010.

#### **Parliamentary Committee for (International Relations and) European Integration**

The scope of duties and competences of the newly established Committee for European Integration is defined in Article 42a of the Rules of Procedure of the Parliament of Montenegro:  
The Committee for European Integration:

- monitors the negotiations on accession of Montenegro to the EU;
- monitors and evaluates the course of negotiations and gives opinions and guidelines on behalf of the Parliament on the prepared negotiating positions;
- analyses information on the negotiation process, and considers and gives opinions on the matters likely to come up during the process of negotiations;
- discusses and evaluates the performance of the Negotiating Group.

The Committee is composed of a president and twelve members. The first and, so far, the only meeting of the Committee was held on 26 December 2012.

The Committee for European Integration should strengthen and improve communication and cooperation between the Parliament and the Government of Montenegro, especially in the light of the negotiations on accession of Montenegro to the EU. However, this parliamentary body should, also, maintain strong and good relations with overall civil society of Montenegro (representatives of NGOs, media, academic society, business society, employer organizations, trade unions, etc. ).

Bearing in mind that the establishment of the negotiation structure of Montenegro is still in progress and that it is strongly connected with all segments of Montenegrin society, overall communication among the participants is seen as the most important and useful tool in this process.

### **Role of the Parliament of Montenegro in the accession negotiations at the European Union level**

The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part was signed on 15 October 2007 in Luxembourg and entered into force on 1 May 2010. Consequently, the **Stabilisation and Association Parliamentary Committee between representatives of the European Parliament and the Parliament of Montenegro (SAPC)** was established on the basis of the European Parliament's

Conference of Presidents decision of 10 June 2010 and of the Montenegrin Parliament's College of the President decision of 1 June 2010, pursuant to Article 125 of the Stabilisation and Association Agreement.

The SAPC is defined as a *forum for Members of the Parliament of Montenegro and of the European Parliament to meet and exchange views (Article 125 of SAA).*

The first meeting of the Stabilisation and Association Parliamentary Committee was held on 27 and 28 September 2010 in Brussels. Since then, five meetings of SAPC have been held. This implies that the determined interval for SAPC meetings is twice a year, once in one of the seats of the European Parliament and once in Montenegro.

Also, pursuant to Article 125 (paragraph 2) of the SAA, it is clarified that the *Stabilisation and Association Parliamentary Committee shall consist of members of the European Parliament and of members of the Parliament of Montenegro, as well as that the Stabilisation and Association Parliamentary Committee shall be chaired in turn by a member of the European Parliament and by a member of the Parliament of Montenegro, in accordance with the provisions to be laid down in its rules of procedure (paragraph 4).*

The SAPC represents one of the five joint bodies of the European Union and Montenegro which considers all aspects of relations between the EU and Montenegro and, in particular, the implementation of the SAA.

In that regard, the most commonly discussed topics during past SAPC sessions were in line with the current phase of Montenegrin accession to EU. Those were: protection of fundamental rights, progress in the fight against organized crime and corruption, economic development and regional cooperation of Montenegro.

The official opening of the accession negotiations between Montenegro and the European Union on 29 June 2012, when Montenegro entered the most demanding and challenging phase on

its path towards the EU, additionally emphasized the role and importance of this joint body.

In addition, soon after gaining a candidate country status on 17 December 2010, delegation from the Parliament of Montenegro was invited to the **Conference of Parliamentary Committees for Union Affairs (COSAC)** for the first time in 2011. As the Conference gathers EU Member States National Parliaments' committees dealing with European affairs as well as representatives from the European Parliament, members of the Montenegrin Parliament are enabled to exchange information and best practices on the European Integration issues and thus contribute to the political, but also practical aspects of the accession negotiations of Montenegro with the European Union.

#### 4. Conclusion

Having in mind the past and current activities of the Parliament of Montenegro in the European Integration process, its important role in the accession process of Montenegro to the European Union is evident.

The Government of Montenegro opened the way for the representatives of the Parliament to directly contribute to the process through their engagement in the working groups on different chapters of the EU acquis. In addition, as stipulated by the Decision on establishment of the negotiation structure for accession of Montenegro to the European Union, through the work of the newly established Parliamentary Committee on European Integration, the members of the Parliament will be enabled to follow the negotiating process through the constant consultations and communication with the Government representatives and the Chief Negotiator.

Further promotion of reforms and results in different areas is being presented by the members of the Parliament in the joint body sessions with the members of the European Parliament (SAPC), making the role of the Montenegrin Parliament not only important at the national, but also at EU level. The active participation of the delegations of the Montenegrin Parliament in



the COSAC meetings further strengthens the role of the Parliament in the European Integration process as well.

To conclude, the role of the Montenegrin parliament will be important at the end of the process as well, as according to the Article 15, Constitution of Montenegro stipulates that the Parliament shall decide on the manner of accession to the European Union. In addition, the Parliament will have to ratify the Accession Agreement with the European Union thus making the Parliament one of the most important players in the European integration process of Montenegro.

## V. CIVIL SOCIETY INVOLVEMENT IN ACCESSION NEGOTIATIONS: TOO MUCH TO ASK?

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Montenegro is currently the only country in the Western Balkans that is negotiating with the European Union on membership in this supranational community. It is certainly a success for the small state administration with just more than 600 000 inhabitants, which, in addition, is still facing the challenges of transforming the country into a market economy. Yet, one of the key problems from the beginning of the integration process, which is also potentiated by EU officials in progress reports,<sup>29</sup> is the ubiquitous lack of administrative capacities.<sup>30</sup> Public administration reform is not carried out in accordance with the challenging preconditions for the preparation, adoption and implementation of the EU acquis. State administration is still cumbersome, politicized and inflexible, and, on the other hand, unprepared for the challenges stemming from the demanding process of negotiations. Hence, alongside with the other reformation processes, it is necessary to harmonize the performance and organization of the public administration in Montenegro with the principles operating in the framework of European administrative area.

29. See: European Commission, Progress Report, Montenegro, 2011, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/mn\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mn_rapport_2011_en.pdf)

30. It is reflected in the lack of number of employed staff in certain state institutions, but also the lack of understanding of the EU integration process by the existing staff.

The process of European integration is a highly participatory one. It (should) involve all the available potential of a society. However, the civil sector in Montenegro had no significant role in the process until the end of 2010, whereby the clear message from Brussels to the Government highlighted the necessity to improve cooperation with this segment of society.<sup>31</sup> Therefore, it can be argued that the enhanced cooperation between the Government and the NGO sector is the result of EU conditionality. Its intensification, however, is a product, of civil society's "used chance", but also due to many other factors, such as the lack of administrative capacity of state institutions, and to a certain extent, the specific knowledge that the civil sector in Montenegro has.

The Montenegrin Government's decision to include non-governmental sector in the negotiating working groups had almost no foothold in comparative practice. During the previous negotiation experiences of the candidate countries with the EU, civil society was involved in the process, mainly, through a standard model of cooperation that had already been established.

### 1. Modalities for the CSO participation in the negotiation process

Based upon the specific traits of the negotiating process during the previous "waves of accession to the EU," and the role of civil society, best examples and practices are provided as follows.

*Joint CSO monitoring of negotiations:* A group of leading NGOs in Croatia teamed up before the end of the negotiation process in a joint effort to assess the course of negotiations in Chapter 23 (*Judiciary and Fundamental Rights*). The common goal was to indicate that in the negotiation process within Chapter 23, all the requirements from Brussels were not fulfilled, at that

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31. In its Opinion on Montenegro's membership application, the European Commission made the beginning of accession talks conditional upon progress in seven priority areas which require extensive harmonisation with membership criteria. European Commission's Opinion on Montenegro's membership application underlines the strengthening cooperation with civil society as one of these seven priorities. See: European Commission's Opinion on Montenegro's membership application, Brussels, 9 November 2010, COM(2010)670),

time,<sup>32</sup> therefore, the conditions for the closure of negotiations on this chapter (or the whole negotiation process) were not there. During the negotiation process the coalition prepared two monitoring reports.<sup>33</sup>

The joint action of civil society organizations in Croatia was important for several reasons. This approach showed that joint civil society activities provided more systematic, comprehensive and quality monitoring of negotiations in the framework of Chapter 23. In their monitoring reports, these organizations indicated, the issues that have been in the background during the process, and which received less attention from the state institutions. Baring in mind the importance of such an external, impartial and expert monitoring assessment, Croatian civil society initiative is a good example for a systematic and comprehensive monitoring method of all areas of the acquis (provided that there is a sufficient number of interested and qualified CSOs). Also, the example of Croatian organizations showed the existence of a great field for influence, which remained unused just because civil society capacities were mobilized at the very end of the process. Since Montenegro is, still, at the beginning of negotiations, the CSOs will be able to timely organize and focus their capacities in the direction of monitoring negotiations, not only on chapter 23, but on other chapters as well.

Following the example of abovementioned CSO's initiative in Croatia, a group of fifteen influential non - governmental organizations in Montenegro constituted a Coalition for monitoring negotiation process within Chapter 23. Coalition, at a press conference held in December 2012, sent more than 200 requests for changes in the institutional and legal framework to the newly appointed Government.<sup>34</sup>

*Contribution to the progress within the process through the already established mechanisms for cooperation and communication:* During the negotiation process in the countries of Central and Eastern Europe, CSOs have contributed to the process within the three levels: a) participation in designing of public

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32. Beginning of 2011

33. February and May 2011

34. See: <http://www.crnvo.me/index.php/vijesti/crnvo-vijesti/8117-vie-od-200-zahtjeva-novoj-vladi>

policies (harmonization with the *acquis*), including a contribution to the formulation of national program for implementation of the *acquis* b) as members of the bodies overseeing the implementation process c) by raising public awareness. Depending on the profile of CSOs, various organizations, dealing with different issues / areas, had an important role. In Hungary, for example, the most active non-governmental organizations during the negotiations were those dealing with environment protection.

In Montenegro, all of these models of cooperation between civil society and state institutions have been established already, but significantly intensified after 2010.

Direct involvement in negotiating working groups?: Apart from Croatia, where civil sector representatives were members of the wider working groups (not influential and which essentially do not participate in the negotiations),<sup>35</sup> representatives of the NGO sector were not integrated into the negotiating working groups in any other state.

Such approach leaves no room for explanation of the direct participation of civil society in negotiating structures.

## 2. Civil society in Montenegro

Until the adoption of the new Law on NGOs in July 2011, there were over 6000 registered non-governmental organizations in Montenegro. A large number of them, however, were neither active nor functional. The new Law stipulated an obligation of NGO's "re-registration" in the electronic register at the Ministry of Interior. Even though the number of NGOs has decreased significantly after such re-registration, there is still a considerable large number of NGOs in Montenegro. However, only a small number of them, mostly registered in Podgorica, employ permanent staff, and thanks to their capacity are able to absorb and manage large projects (funded by the EU). These NGOs actively and continuously contribute to the improvement of public policies in Montenegro. However, the great number of local non-governmental organizations has a smaller budget,

35. Gordan Bosanac's Commentary from Centre for Peace Studies, Zagreb, for European Pulse, Centre for Civic Education, No 83, August 2012

impact, and therefore a narrow area of interest and scope of engagement.

Certainly, experience of the countries that joined the EU during 2004 and 2007 indicate that the donor interest decreases with the progress of the reformation processes in the country. On the other hand, state funds allocated for projects of non-governmental organizations in Montenegro are insufficient for building the capacity of civil society. Despite the funding problems, the NGO sector in Montenegro is very active and its work attracts a lot of media attention.

### **3. Overview of the relationship between civil society and state institutions in the EU integration in Montenegro**

NGOs in Montenegro had the less prominent role within the EU integration process until the end of 2010. National Programme for Integration of Montenegro (NPI) to the European Union for 2008-2012 recognizes, the importance of cooperation with non-governmental organizations. This document highlights the objectives of this cooperation, based upon: institutional creation of various mechanisms for the improvement and further development of mutual communication; improvement of the working conditions of non-governmental organizations and the principles of cooperation; independence of NGOs.<sup>36</sup> NPI also envisaged the adoption of the Strategy for Cooperation of the Government and Non-governmental organizations, and the Action Plan for its implementation. Strategy and Action Plan were adopted in 2009. During the same year, the Ministry of European Integration concluded a Memorandum of Cooperation with 14 NGOs.

Nonetheless, cooperation between the two sectors was not a cooperation of trust and constructive dialogue. State institutions untimely responded to civil sector's requests for free access to information. Also, a very small number of state employees answered the calls for interviews or the invitations to participate in certain project activities organized by NGOs. Despite such practice of state institutions, the process of European integration could not be carried out without NGOs. Therefore, the

36. "Decision on cooperation between the Government of Montenegro and NGOs, "Government of Montenegro, 2006



NGOs, through their projects, continuously contributed to the process, with practical policy proposals that were a good basis for improving the underlying of public policies. Such practice allowed NGOs to gain a certain degree of expertise. Though, the cooperation still was unsatisfactory and it was clearly pointed out by the European Commission in the Opinion on Montenegro's readiness for EU membership. Therefore, it was stated, in order to obtain the right to start negotiations on membership Montenegro had to:

*"Enhance media freedom. . . . and strengthen co-operation with civil society."*<sup>37</sup>

As a result, the Government promoted the active engagement of civil society in a public debate on the Action Plan for implementation of recommendations from the European Commission's opinion in the early February 2011. At the initiative of the NGO sector, the Government also adopted obligation on monthly reporting to the Parliament of Montenegro on the implementation of the Action Plan.<sup>38</sup> Newly appointed Prime Minister Igor Lukšić established the practice of consultations with representatives of non-governmental sector, and NGOs became part of many working groups for the development of legal and strategic framework. In late 2011 and early 2012 two significant regulations were adopted to specify the participation of non-governmental organizations (and civil sector in general) in creation of public policy.<sup>39</sup>

Since February 2012, following the adoption of the Decision on establishing a structure for negotiating for the accession of Montenegro to the European Union,<sup>40</sup> until March 2013 the Government has adopted decisions on the establishment of twenty-one negotiating working groups.<sup>41</sup> One chapter has been opened

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37. Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 9. 11. 2010

38. Institute Alternative's initiative

39. The Decree on the manner and procedure for cooperation between state authorities and non-governmental organizations (Government of Montenegro, 22. 12. 2011), and the Decree on the procedure and conduct public hearings in preparing the legislation, the Government of Montenegro, 2. 2. 2012)

40. For overview of important dates in the EU integration process of Montenegro see: Annex 1

41. For the chapters: Free movement of goods (1); Right of establishment and freedom to provide services (3); Free movement of capital (4); Public procurement (5);

and temporarily closed.<sup>42</sup> The Decision on establishing a structure for negotiating for the accession of Montenegro to the European Union does not foresee a specific article with regard to the direct engagement of civil society representatives.<sup>43</sup> However, shortly after the adoption of this decision, the Ministry of Foreign Affairs and European Integration initiated a public call for the interested civil society representatives to participate in the working groups. Therefore, 6 NGO representatives have become members of the working groups for Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security). Such practice of including NGO representatives was followed by with the establishment of other working groups. Although most members of the working groups were representatives of the Government and the Parliament, all working groups included representatives of NGOs, academics, trade unions.<sup>44</sup>

However, the work of civil society representatives in the working groups is burdened from the start with many problems and limitations. Namely, the Decision on establishing a structure for negotiating for the accession of Montenegro to the European Union stipulates that institutions fund respective members of the working groups. This provision has prevented members of the working groups from the NGO sector to attend explanatory and bilateral screenings (analytical reviews) in Brussels since their organizations do not have the necessary funds. Their work was further (and especially) made difficult with attempts to prevent them to freely express their opinions about the course of the negotiations in public. Specifically, the Working Group's Rules of Procedure predict that just the Chief negotiator, the

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Company Law (6); Intellectual property law (7); Competition (8); Information society and media (10); Agriculture and rural development (11); Food safety, veterinary and phytosanitary policy (12); Fisheries (13); Energy (15); Economic and monetary policy (17); Enterprise and industrial policy (20); Regional policy and coordination of structural instruments (22); Judiciary and fundamental rights (23); Justice, freedom and security (24); Science and Research (25); Education and culture (26); Environment (27); Consumer and health protection (28).

42. In a single day Montenegro opened and provisionally closed chapter 25 "Science and Research", Brussels, 18 December 2012

43 Available at: [http://www.mip.gov.me/en/images/stories/download/Predlog\\_Odluke\\_o\\_uspostavljanju\\_strukture\\_1.pdf](http://www.mip.gov.me/en/images/stories/download/Predlog_Odluke_o_uspostavljanju_strukture_1.pdf)

44. Information on formed working groups are available on the website of the Ministry of Foreign Affairs and European Integration, see: <http://www.mip.gov.me/index.php/Dokumenti/saop271212.html>

Negotiator for the particular chapter and Head of the working group may present views on the progress within the process to the public. Despite numerous restrictions, NGO sector (its representatives in the working groups) has taken part in making the screening lists, but also in the development of the action plans for the opening of individual chapters.

#### 4. Final remarks

The decision of the Government of Montenegro to include representatives of the civil sector in the negotiating structure is significant for several reasons. In this way, the Government has sent a message that the process of European Integration is a process that concerns the entire society and that it will be open, transparent, with a constant dialogue between all interested parties. However, problems that have arisen so far indicate that the new “modality of cooperation” between the Government and NGOs will face many challenges during the negotiations. In the previous period, the challenges were dealt with the constructive approach of either side (or both). Taking into account that the negotiating process is long and tedious, compromises will obviously be necessary in the future.

#### Annex 1: Important dates in the EU integration of Montenegro

2007	15. 10.	Signed a Stabilization and Association Agreement
2008	15. 12.	Submitted an application for EU membership
2009	9. 12.	Presented answers to the Questionnaire
	19. 12.	Visa liberalization granted
2010	9. 11.	EC prepared Opinion on Montenegro's application for membership of the European Union
	17. 12.	Granted the status of candidate for membership
2011		Adopted the Action Plan for implementation of recommendations from EC's opinion on Montenegro's application for membership
2012	8. 3.	Established the first negotiating working groups for the Chapters 23 and 24
	18. 12.	Opened and provisionally closed Chapter 25 "Science and Research"

## Literature

- 2011 CSO Sustainability Index for Central and Eastern Europe and Eurasia, USAID, 2012
- Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 9. 11. 2010
- Decision on establishing a negotiating structure for the accession of Montenegro to the European Union, Government of Montenegro, February 2012
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- Parliament of Montenegro and the Process of European Integration - Just Watching or Taking Part?, Institute Alternative, December 2011
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## VI. KEY FINDINGS & RECOMMENDATIONS OF IDM MONITORING OF PCEI 2011 - 2012 ACTIVITY

Under the framework of IDM Parliamentary Monitoring Initiative, IDM's Center for European and Security Affairs has been monitoring the activity of the Parliamentary Committee of European Integration (PCEI) since January 2011. The responsibilities and involvement of this committee within the framework of country's EU integration process remain crucial, especially in terms of its role as a filtering, controlling, and co-coordinating body of the contributions generated from the executive as well as those by other potential stakeholders. The annual monitoring reports are discussed at public events with parliamentary and other institutional stakeholders, civil society, media etc. and they normally follow the interim reports published in September covering the first half of the respective year.

The monitoring of the activity of the committee is conducted by IDM experts<sup>45</sup> by directly participating in the PCEI meetings and by analyzing the official minutes of the committee meetings in relation to key indicators such as attendance in meetings of PCEI members; involvement of MEI and other line ministries' representatives; formal procedures and table of concordance of draft laws; involvement of civil society and interest groups in PCEI meetings etc.

Interim and Annual Monitoring Reports for 2011 and 2012 on the

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45. Annual reports on PCEI activity for 2011 and 2012 have been prepared by Gjergji Vurmo (IDM), Ketrina Cabiri (IDM Associate) and Suela Jahaj (IDM Associate).

activity of PCEI, as well as monitoring reports on the work of other parliamentary standing committees (on National Security and on Legal Issues) under IDM Parliamentary Monitoring Initiative can be found at [www.idmalbania.org](http://www.idmalbania.org).

## **1. Key Findings & Recommendations on PCEI performance in 2011**

In total, during January - December 2011, PCEI held 31 meetings. It reviewed 27 draft laws in 22 meetings. Five meetings were intended for public hearing sessions with the Minister of Integration, one public hearing with the Minister of Interior on progress of visa liberalization process, and two meetings for the action plan on the implementation of 12 priorities. Two other meetings were intended for discussion on PCEI calendar of proceedings. During 2011, several measures were undertaken that positively affected the parliamentary activity in the framework of the European integration process, involvement and transparency of the work of Parliament.

Out of a total of 31 meetings with an average time length of 60 minutes per meeting, nine meetings of PCEI have been held without the attendance of opposition MPs (February - July 2011 period); individual attendance of 4 PCEI members in the meetings of this Committee is problematic - two opposition members have been absent in 42% and 39% of the meetings respectively, and two members from the ruling majority have missed 29% and 25% of the PCEI meetings.

The representatives of the Ministry of Integration have been absent during the review of four draft laws in three PCEI meetings, whereas the representatives of other line ministries have always been present in introducing the draft laws to the commission. Regardless of the legal requirement, it is disturbing to note that in several cases the draft laws are submitted to PCEI without soliciting the final opinion of the Ministry of Integration in advance<sup>46</sup>. In addition, in few cases, PCEI has reviewed draft laws in the absence of the table of concordance, which clearly

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46. Annual reports on PCEI activity for 2011 and 2012 have been prepared by Gjergji Vurmo (IDM), Ketrina Cabiri (IDM Associate) and Suela Jahaj (IDM Associate).



stipulates the extent of compliance with EU standards.<sup>47</sup>

The active involvement of civil society and non-public interest groups by means of discussions and provision of expertise is identified in three PCEI meetings of February 2, April 19 and October 11, 2011, whose agenda included the draft Law “On the Right to Transfer of State and Private Ownership for the Construction of Electronic Communication Network”, Action Plan in pursuance of 12 priorities, and the draft Law “On Protection from Non-Ionizing Radiations”.

The low level of involvement of interest groups in PCEI meetings, the overloaded legislative agenda and the limited time for PCEI members to review the draft laws are quite disturbing and affect the quality of the adopted laws.

In view of the findings of this monitoring, some recommendations for the improvement of the work of the Assembly in general and PCEI in the context of membership in EU include the following:

1. The steps taken during 2011 to improve the access of civil society to the meetings of the parliamentary committees must be further consolidated and guided by a proactive approach. The encouragement of the involvement of interest groups from non-state sectors in the parliamentary review and in PCEI activity in the framework of EU accession must form part of a more consolidated and well-coordinated approach of the administration of the Assembly, parliamentary structures as well as the Ministry of Integration. PCEI and other representatives of the Assembly must also consider the option of establishing the National Council of EU Membership as a complementary alternative to the opening up of the integration process, of its activity and parliamentary scrutiny in general.
2. The increase in human resources and expertise available to PCEI must be associated with continuous investments for the consolidation of capacities. The establishment of a special

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47. This fact has been pointed out in PCEI meetings held on January 19, October 11, and December 7, 2011.

analytical-research structure for European integration issues within the Assembly will thus serve not only to PCEI but also to other parliamentary structures. Another possibility to this option is the close collaboration with think-tanks and research entities and contracting their services.

3. Strict abidance to formal procedures of parliamentary review at PCEI, consolidation of coordination with the structures of Assembly, Ministry of Integration and other lines ministries must serve to the improvement of parliamentary practice in conformity with the oversight functions of the Assembly and the contextual review of the strategic and legal documents in the framework of integration process and broader.
4. In light of problems identified from PCEI monitoring during 2011 as well as from the overall parliamentary practice of the recent years, it is necessary to allow for more space and time to the parliamentary contextual review and active involvement of all PCEI members in the discussions in the PCEI meetings. Likewise, it is necessary to increase the number of members in this committee and amend the current 'Zela' law on its functioning in the framework of a broader parliamentary reform, which must incorporate other committees and the sectoral/thematic configuration of several permanent parliamentary committees.

## **2. Key Findings & Recommendations on PCEI performance in 2012**

The Monitoring Report concludes that PCEI performance in 2012 compared to the previous year has made modest improvements only in some indicators such as, the presence of PCEI members in meetings and the quality of parliamentary review of draft-laws and other acts, while it shows regress when compared to other aspects such as the involvement of civil society and interest groups in PCEI meetings.

During January - December 2012, PCEI has organized 39 meetings, has reviewed 28 draft-laws and 1 normative act, and has organized several hearing sessions with Ministers and Deputy

Ministers, as well as one meeting with the civil society representatives. PCEI membership has increased by one member, coming from the Socialist Movement for Integration (SMI), deepening as such the majority/opposition balance to 6/4 members.

From the direct observations of PCEI's meetings, there has been noticed that PCEI meetings start several minutes with delay (up to 25 minutes delay), a phenomenon which is not evident in the official 'minutes of meetings' published online. On the other hand, there are several cases when PCEI members do not respect the scheduled time of meetings, up to 30 minutes of delay. Furthermore, two PCEI members, from the majority, have been absent in 73% and 36% of the meetings. Only 19% of PCEI meetings are being organized within the presence of all members. There are cases when the Table of Concordance is not being mentioned at all, neither from the representative of the Ministry presenting the draft-law, nor from the representative of the Ministry of Integration. In other cases, the Table is being submitted in the English language or is incomplete.

The involvement of civil society and other non-state actors has marked a significant deterioration during 2012, not only compared to the previous year but also compared to its involvement into other Parliamentary Commissions' work. Discussion in PCEI is limited to 3 or 4 members in most of the meetings. Average duration of PCEI meetings has been 45 minutes, limiting as such the in-depth discussions held.

Despite modest improvement in the activity of the Parliamentary Committee of European Integration, a set of unaddressed concerns that have a considerable impact on plenary reviews of this committee remain present. Within this context and in continuation of the progress made during 2012, the below **recommendations** aim to encourage concrete steps towards consolidation of the role and contribution of the PCEI:

- Encourage regular and active participation of MPs in PCEI discussions as well as enable the necessary time for preparation (prior to meetings) and conducting of discussions on draft laws during the Committee's meetings. Special attention shall be dedicated also to different alternatives to address the limited expertise available for PCEI members;

- All PCEI members shall pay more attention and dedicate more discussion time to issues concerning the instruments and criteria of pre-accession instead of issues regarding the core of the draft law and/or the legislative technique;
- Respect conditions set up by PCEI for political and technical representation at PCEI meetings by representatives of line ministries to enable appropriate technical and political review of draft laws. Ensure rigorous enforcement of review of the table of concordance;
- Undertake new initiatives and strengthen the existing ones regarding the increase of the number of consultancies with civil society aiming to encourage their substantial involvement. Based on a clear vision, PCEI shall review within this context the alternatives generated by civil society itself as well as regional best practices.
- Improve the infrastructure for parliamentary review of PCEI aiming to include the opinion and recommendations of interest groups by non-state sectors within the framework of having efficient and sustainable legal initiatives during the process of European integration.