

# TICKING BOXES: CSOs IN POLICYMAKING IN THE EUROPEAN UNION ACCESSION NEGOTIATIONS IN SERBIA

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## Summary

Effective cooperation between the government and civil society organisations (CSOs) in the European integration process is important to establish sound and well-governed institutions and improve the policymaking process. Serbia is establishing a legal, strategic and institutional framework to support CSO participation in the decision-making process. However, this opportunity has not been fully utilised yet.

CSOs do not often actively participate in or contribute to the European Union (EU) accession negotiation process. Their rather passive role is caused by irregular feedback from national authorities and neglect of CSOs' contribution, an overall lack of transparency, an absence of trust in the established platforms for CSO participation and a perceived lack of expertise in certain areas. An additional issue to be addressed is the inadequate information provided to citizens, for which both national authorities and CSOs are responsible. Building on the recognised problems and the experience of other countries, this policy brief provides recommendations on how to utilise the accession negotiations to improve democratic practices in Serbia.

The key conclusions are that the accession negotiations take place in an environment of modest quality of policy and legal framework, lack of information and transparency, as well as low CSO capacities to use the existing scope for participation and to push for its widening and improvement. Thus, the recommendations are geared towards tackling each of the mapped problems and addressed to both CSOs and public institutions.



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## CONTEXT FOR ACCESSION NEGOTIATIONS: RECONCILING COMPLEXITY AND DYNAMICS

By 2016, it has been three years since Serbia embarked on the EU accession process. This is the last phase of Serbia's hitherto 16-year-long integration process, whose goal is to achieve extensive and sustainable compliance with the EU norms and standards. It is important to highlight that the EU accession process is very different from earlier enlargement rounds. The extensive EU requirements to measure progress using new and demanding instruments (such as opening, interim and closing benchmarks and related action plans) require the mobilisation of all available resources, good coordination and exchange of information, constant in-depth monitoring and communication with the final beneficiaries of the accession – citizens. One of the most challenging tasks before Serbia's accession is to comply with the ever-changing EU legislation, both today and after becoming a Member State. However, these requirements cannot be met unless the Serbian domestic actors put in significant effort to strengthen democracy and good governance. A second task will be to establish a well-developed policymaking process, based on the principles of transparency, accountability and inclusiveness of non-state actors. In particular, CSOs should feed into the process with their expertise and monitoring capacity. In 2013, the EU launched a new enlargement approach, which highlights that CSOs, as domestic non-state actors, should have a higher stake in the process. They could significantly contribute to improvements in policymaking and democratic practices. In practice, Serbia is following recommendations of the EU and learning from the experiences of other Western Balkans countries (Croatia and Montenegro).

In Serbia's EU accession negotiations, cooperation between the national authorities and CSOs exists, but has not been fully utilised yet. This relationship must also reflect the requirements of the EU accession process, the domestic context and citizens' views. It is important for several reasons: a) understanding the real situation of implementing public policies in the process of the harmonisation of the national legal system with that of the EU; b) preparing the negotiating positions defined by objective criteria (capacities and competencies of the actors for their implementation); c) achieving the benchmarks set as the requirements for opening or closing negotiations in a specific negotiating chapter. Due to the complex procedures of the accession process, its speed and the limitations imposed by deadlines, all domestic actors must be prepared to meet the requirements of the process. In the long run, the accession negotiations may improve the national policymaking framework. This final phase of EU integration is an opportunity for all domestic actors, particularly CSOs, to cooperate in making a full use of their resources and expertise.

The data used in this brief were substantiated by a research conducted by the Belgrade Open School in 2015. The research methods used were: survey, interviews and focus groups. Research participants consisted of representatives of CSOs interested in monitoring and engaging in the accession negotiations, and representatives of the institutional structure for the European integration process in Serbia.

## FALLING SHORT OF ITS POTENTIAL: CSOs' PARTICIPATION IN THE EU ACCESSION NEGOTIATIONS IN SERBIA

The utilisation of cooperation between the negotiating structure and CSOs in the negotiation process raises several issues. The crucial ones are the issues of the existing scope for cooperation (created by the legal and institutional framework and the existing civil society platforms), the response of the negotiating structure and the response of CSOs, i.e. their way of organising their engagement and its impact.

The overall scope secured by the domestic decision-makers and the EU for CSOs to engage in the accession negotiations is, to a certain extent, favourable to their engagement; on the other hand, it contains gaps, which could entirely defeat several years' efforts towards civil society empowerment. A positive, although not obligatory, push from the EU for deepening CSO engagement in the accession process was stressed in the recent European Commission (EC) progress reports, the Enlargement Strategy, as well as the Opinion of the European Economic and Social Committee. Prior to these, Serbia had already developed some elements of a legal, strategic and institutional framework for supporting CSO participation in the decision-making process. The Government's Office for Cooperation with Civil Society has existed since 2011, while the documents such as the Law on Public Administration and the Law on Local Self-Government, as well as the Rules of Procedure of the Government and the National Assembly provide for the citizens' right to seek an opinion on the legislative process, the right to be included in various forms of direct citizen participation in the local government and the right to take part in public consultations. The above-mentioned documents, along with the Law on Free Access to Information of Public Importance, regulate the transparency of information of public importance. However, Serbia still lacks a national strategy for civil society development and binding regulations on its participation. Such a strategy has been under development since 2014, but has yet to be adopted. In the overall environment in which attempts are made by the government and CSOs to include the latter in the EU accession negotiations, the lack of such an important strategy could be tantamount to "building a house on sand". Thus, CSO inclusion is based on the requirements of the process itself, the EU and domestic government interests, rather than reflecting the real state of the CSOs in Serbia, their capacities, strengths and weaknesses, and needs for further development so that they could qualitatively respond to the actual requirements of the process and act as the guardian of citizens' interests.

Another problem worth mentioning emerges from the legislative process itself. The number of laws passed according to the urgent procedure, which excludes the possibility of public consultation, exceeded 70% in a one-year period (2014-2015), which adversely affected the scope for public participation. The urgent procedure is, in most cases, initiated under the excuse of the EU accession process requirements, which is legally unfounded.

As the process accelerates, it is expected that the urgent procedure will be used regularly and more intensively, which puts a question mark over the quality of such legal documents and possibilities of their implementation.

Therefore, CSOs in Serbia are faced with a moderate policy and legal framework for participation and its rather poor implementation in practice, particularly with regard to the domestic legal framework. But, the scope for participation does exist, even though its quality is not satisfactory. Its improvement depends to a large extent on CSOs' capacities to seize opportunities, address problems and push for solutions. Such an opportunity is seen within the accession negotiation process.

For CSOs in Serbia, the EU accession negotiations were perceived as an impetus to undertake serious policy reforms. CSOs mobilised early on, not only to prepare for involvement in the process, but also to monitor and influence the process from its very beginning. There are currently several civil society platforms actively engaged in monitoring the EU accession negotiations at the national and regional level, such as the National Convention on the European Union (NCEU), the "prEUgovor" Coalition, Coalition 27, "Let's Speak about Negotiations", Eastern Serbia towards the EU and Platform of Banat. These platforms act through various forms of activities in order to make an impact on and participate in Serbia's EU accession process as a regular policymaking process. Half of the currently existing platforms had been founded before the accession negotiations started, which shows a clear determination of CSOs in Serbia not only to be involved in the process from the outset, but also to make use of it for building a visible and relevant position in the process.

The CSOs' expressed determination to engage in the process from its very beginning, together with supportive signals from the EU and experiences from two existing, albeit different, models from the neighbourhood, namely Croatia and Montenegro, suggested that Serbia's accession process would become participative and open to a revolutionary extent. However, the model applied in Serbia did not entirely fulfil the expectations and open the gates of the process to the CSOs. Their representatives are not directly engaged as members of negotiating groups. However, the government recognised the importance of CSO participation to a certain extent. CSOs were given the opportunity to follow the explanatory screening meetings through live-stream and to have de-briefing meetings with the Chief Negotiator and heads of negotiating groups. Also, as of last year, one member of the Serbian Negotiating Team comes from a CSO as an expert on several chapters. The NCEU, the most extensive civil society platform gathering more than 570 civil society actors, is the only one recognised as a channel for informing the interested public on the developments, content and documents created in the accession negotiations (including on summarized versions of negotiating positions) by the Decision on Establishing the Negotiating Team. The NCEU is divided into 21 working groups regularly debating issues related to the negotiating chapters with all stakeholders, including negotiating groups, and formulating opinions and recommendations. Before considering the proposed negotiating positions, the negotiating structure considers the proposals and recommendations provided by the civil society, i.e. the NCEU.

In addition, NCEU representatives have an opportunity to take part in the sessions of the Parliamentary Committee on European Integration. In contrast to the NCEU, other existing CSO platforms have not been granted official recognition and act as independent monitoring mechanisms ("PrEUgovor", Coalition 27, "Let's Speak about Negotiations", Eastern Serbia towards the EU and Platform of Banat), with some of their individual members being members of the NCEU, as well.

For the purpose of examining the functionality of such a structure, particularly the extent to which CSOs use the opportunities available and the usefulness of their contribution, representatives of the negotiating structure were interviewed. Many of the interviewees recognised the benefits of the relationship between the authorities and CSOs for the accession process, institutionalised in such a manner, but many of them focused on the shortcomings of the existing structure. One of these is that the NCEU and the CSO expertise it generates do not cover all the negotiating areas, which would be useful in the eyes of the negotiating structure. Specifically, the interviewed representatives of the negotiating groups felt that what was missing within the NCEU is actually expertise and capacities for engagement in certain issues, such as finance and economy, particularly when it comes to the information from the local level. But, importantly, CSOs certainly cannot and should not have expertise in each chapter and there is no need to compel CSO representatives to engage. Rather, it is necessary to have an established and functional tool of intervention within the process, as well as to have it used by CSOs. For example, when 18 out of 35 negotiating chapters are related to finance and economy, the role of CSOs, as a contributor, as well as the watchdog of the entire process, gains great importance. The NCEU gathers a large number of CSO representatives in general, such as academia and various professional associations. Within the NCEU working groups dealing with the chapters on economy and finance, beside CSOs, there are representatives of regional chambers of commerce, universities dealing with the economy, law and finance, professional associations of experts engaged in the economy, legal and finance sectors, managers of enterprises and economic institutes. Furthermore, there is a set of actors not included within these groups which hold the expertise and information from the "very field", such as trade unions. Currently, according to the information stated above, the existing modality of CSO participation does not use its existing potentials. Criticism is also levelled at the negotiating structure, as the need for input on certain issues is not clearly pointed out.

Evidence that CSO potential is poorly used not only by the accession negotiation structure, but also by CSOs, can be found elsewhere, and not just in the NCEU work. Specifically, despite having established bottom-up platforms, as a result of early mobilisation, according to BOS research, a majority of CSOs are trying to achieve an impact through individual work, while nearly 39% of respondents act both individually and through platforms. Although CSOs are often invited to give their input on the progress report for Serbia, 61% of them have never developed such a contribution, while only 4% publish their expert opinions and recommendations regularly. Even when it comes to the consultation meetings with the stakeholders, it is striking that the role of CSOs at these meetings is passive in most of the cases

and their contribution, if any, is not taken into account. Also, the authorities usually do not provide feedback whether CSOs' input was taken into account or not. CSOs' platforms are more active when it comes to the content based on monitoring activities, developing analyses and recommendations. For example, the NCEU has created a Book of Recommendations in each of the negotiating chapters. The "prEUgovor" coalition and Coalition 27 produce shadow reports on the progress made in the negotiating chapters they monitor. This shows the importance of platforms for overall participation, as joint initiatives lead to pooling resources, better positioning and increased input of CSOs.

Yet, there are some good practice examples where expertise and engagement exist and can be fully utilised. The most illustrative examples in this regard are the NCEU working groups dealing with Negotiating Chapters 23: Judiciary and Fundamental Rights and 24: Justice, Freedom and Security. Nevertheless, such good practice examples in these chapters are sometimes not "blueprinted" on the part of either public authorities or CSOs.

### **Good Practice and Flawed Practice Examples**

The practice of the Ministry of Justice, which is in charge of leading the negotiating group on Chapter 23, should serve as a good practice example during the policymaking process on both sides, particularly when having public consultation sessions. The Ministry of Justice regularly publishes public consultation reports, containing a tabular overview of overall comments given on a certain document, comments accepted, comments partially accepted or comments not accepted, together with the pertinent explanations and reasons why certain comments were rejected or partially accepted.

The accession negotiations on Chapter 24 could be emphasised as a flawed practice example regarding the role of the negotiating structure. Namely, the ministry in charge, the Ministry of Interior, withheld the Action Plan for Fulfilling the Opening Benchmarks from the public. Eventually, after the CSOs gathered around "prEUgovor" and the NCEU started a wide initiative which attracted public attention, the second draft of the Action Plan was made publicly available. However, this initiative was only partially successful, as the Action Plan was published in English only, and the supporting documents have not been published yet.

Criticism is also directed at both the negotiating structure and CSOs with regard to the level of information being published and education provided to the citizens in general. According to the most recent poll conducted by the European Integration Office in December 2015, 50% of the respondents did not know the answer when asked about the most important event regarding Serbia's EU accession process. Although some of the CSOs' platforms have models for informing the interested public, such as the website and monthly newsletter "Let's Speak about Negotiations" and regular presentation of "prEUgovor" reports, the majority of citizens still remain uninformed on the process. The government is, on the other hand, still lagging behind the few existing CSO initiatives when it comes to the provision of information to citizens, due to the fact that there is still no official government website dealing with the accession negotiations.

Though certain responsibility for this state of play lies with the public authorities and the media, part of the responsibility is borne by the CSOs, which should get more engaged, particularly at the local level, to fill the information gap between the citizens and the government.

Although there is scope for participation, as well as civil society platforms, the problem of weak engagement persists. In general, CSOs in Serbia act very passively when it comes to the engagement in Serbia's European integration process. Furthermore, it is also evident that this process is not recognised by the authorities as a regular policymaking process where CSOs can make a real impact and give their inputs in certain policy areas. It is crucial that CSOs utilise the legal tools and instruments provided within the domestic framework more frequently and better understand the linkage between the domestic policymaking and the EU integration process.

In order to improve the quality of the impact of CSO participation in the process, the practices of the countries with similar experiences (Croatia and Montenegro) are presented below. Using these examples, it will be examined how similar obstacles can be overcome and whether some useful practice can be followed in Serbia, as well.

## **“OUTSIDE” AND “INSIDE” MODELS: CROATIA VS. MONTENEGRO**

As stated above, in order to gain an insight into the advantages and disadvantages of the different examples when it comes to the subject of this policy brief, the practices of Croatia and Montenegro will be compared with the Serbian case. These Western Balkans countries have recently completed or are currently in the EU accession process. With regard to their political, legal and economic systems, as well as civil society development, these countries also share similar experiences with Serbia. Having in mind this comparative relationship, the particular emphasis of this comparative approach will be put on the aspects such as the existing scope for CSO participation in the EU accession process, civil society initiatives, as well as the overall relations between the government and CSOs.

The key challenge encountered in Croatia's negotiations was a discrepancy between the professed political commitments to transparency and inclusiveness and the actual practice. The foundations for the institutional empowerment of CSOs and their inclusion in decision-making had been laid in Croatia long before it was the case in other Western Balkans countries and before the EU expressed an interest in cooperating with non-state actors, particularly CSOs. However, the process was driven by a sense of urgency and even fear that public disclosure of negotiation documents, public debate on acquis-related legislation and extensive public consultations might stifle the process, weaken Croatia's position and create political resistances. The negotiating structure established in Croatia included: the Croatian Parliament, 1800 experts in working groups from the civil

society, professional associations, academia and the media, and the Government Coordination for Negotiations, tasked with facilitating different segments of the negotiating structure at the political level, particularly between the executive and legislative branches of government and the Negotiating Team. The experience showed that such negotiating structure was not immune to political pressure and arbitrary decisions of the elite, despite the above-mentioned innovative elements that had the capacity to ensure transparency and inclusiveness. The experts engaged in working groups did not have descriptions of their positions or duties, which adversely influenced their engagement and contribution. Gradually, the established procedures were disregarded, the public was excluded from the process and, as time passed, it became clear that the negotiation process was entirely in the government's hands. At the very beginning, the content of the negotiation process was not of great interest to CSOs, since it encompassed an extremely wide and complex area. The delayed CSO mobilisation and in one chapter only, through Platform 112, revealed the substantial lack of knowledge on the part of the CSOs about what the EU integration process meant and, most importantly, about their role in the society, in general. Also, there were severe obstacles to information flow from the negotiating structure towards the civil society and citizens, as documents were withheld from the public even without a settled norm on their confidentiality.

The closed nature of negotiations led to a low level of public understanding of the process and the EU policies in general. Thus, the EU accession was solely a government exercise and did not stimulate a balanced public debate, which would have been crucial to achieving a well-informed decision on EU membership at the end of the process in 2013. The results of the referendum on accession showed support to membership by two thirds of the citizens who voted. However, this result should be analysed together with the total number of eligible voters, whose turnout was only 43.5%. Having this in mind, as well as the fact that the CSOs in Croatia mobilised late in the process, the negotiations were not fully utilised for establishing an enabling environment for further development of the cooperation between the authorities and CSOs.

On the other hand, CSOs in Montenegro as a country currently engaged in the EU accession process have gained an opportunity for being included in the negotiating groups. This opportunity has resulted from domestic CSOs' efforts and external pressure exerted by the EU. The Opinion on Montenegro's Application for Membership of the EU set the base for CSO involvement in the negotiation process. Upon receiving the Opinion, the government began to develop action plans for implementing recommendations from the document, which were also focused on CSO involvement in the process. Along with this, the Montenegrin Government adopted the Decision Establishing the Negotiating Structure for the Accession of Montenegro to the EU. This document enabled the involvement of "subject field experts" in the working groups, thus establishing the legal grounds for the inclusion of CSO representatives, as well. Prior to these, Montenegro had already established an institutional (i.e. Council for Development of CSOs and Focal Points in Ministries), legal (i.e. The Decree on the Manner of and Procedure for Establishing Cooperation between State Administration Bodies and NGOs and The Decree on the Manner of and Procedure for Conducting Public Consultation in Law-Making) and strategic (i.e. The Strategy for the Development of CSOs) framework on civil society participation in the policymaking process.



Thus, the civil society, including CSOs, as well as universities, trade unions and professional associations, take part in each negotiating group. However, they were also required to sign a confidentiality agreement, which derogates the seemingly transparent approach to negotiations. In response, CSOs practice bottom-up engagement, as well, in the form of a coalition for monitoring the accession process in Chapter 23, aiming to raise its transparency. Interestingly, the CSOs, which are already included in the official negotiating group on Chapter 23, also act from the “outside” through a coalition. The coalition gathers 16 CSOs and acts similarly to the “PrEUgovor” Coalition in Serbia by regularly publishing periodic reports on the state of play within Chapter 23 in Montenegro.

This model, which heavily involves CSOs in the official negotiating structure, efficiently stimulates CSO engagement in the accession negotiation process and utilises the process for strengthening the cooperation between the national authorities and CSOs. It could also soften the cutting edge of criticism coming from the civil society and make CSOs more passive in their actions for the purpose of improving the overall democratic practices in Montenegro. However, dissatisfaction on the part of CSOs persists and is primarily focused on their level of involvement in the process, treatment in the working group, the dynamics of the work and transparency. In the Progress Report, the EC also criticised the lack of continuity of the cooperation between the state administration authorities and CSOs.

Country	Serbia	Croatia	Montenegro
Scope for CSO participation	Existing; lacking an obligatory framework; lack of transparency	Existing; partially participation-friendly; lack of transparency	Existing; formalised and obligatory participation framework; lack of transparency
Organisation of CSOs' initiatives	Existing; timely organisation; several CSO platforms	Existing; late organisation; coalition 112	Existing; need-based organisation; Coalition for Monitoring Chapter 23
Activities of CSOs' initiatives	Meetings, shadow reports, consultations	Expertise, bottom-up pressures	Expertise, shadow reports, advocacy
Government response	Not included in the negotiating structure; one platform selected as	Some experts from CSOs included in the negotiating structure; most of the CSOs left out	Included in the negotiating structure
Overall CSO-government cooperation	Inconsistent practice; different relations towards different initiatives	Scarce practice; intensive bottom-up pressures directed towards the EU	Existing and solid cooperation; certain aspects still need to be improved

*A Comparison of the Practices of Serbia, Croatia and Montenegro on CSO Participation in the EU Accession Negotiations*

The EU integration process may contribute to the creation of a better environment for civil society development and better institutional and legal arrangements as a key precondition for its development. However, it may not directly help the improvement of substantial relations between governments and CSOs. This remains an internal issue of each country and it is up to the domestic stakeholders, especially the government, to change their attitude towards CSOs and understand the importance of their engagement in the decision making process.

# CONCLUSIONS AND RECOMMENDATIONS

Although implementation and practice are scarce, the legal framework in Serbia provides scope for cooperation for civil society initiatives and cooperation with the public authorities in the EU accession process. The overall cooperation with the CSOs in the negotiation process is positively evaluated by the public institutions. However, the authorities are focused on having a simplified approach and “filter out” many options coming from the civil society by working with the NCEU. Furthermore, CSO engagement in the regular legislative process must be achieved, irrespective of whether the accession process is taking place or not. Also, mutual recognition, greater solidarity and continuous mobilisation of CSOs and their platforms around shared topics and values is needed in order to pool capacities and resources and achieve a better impact on the decision-making process.

## RECOMMENDATIONS

### ◆ For CSOs ◆

- 1 More active CSO engagement is needed in order to participate fully in the EU accession process. This means that the CSOs should: focus on developing timely analyses of the issues covered by negotiating chapters; actively advocate the recommendations made on the basis of their analyses; be involved in creating regular inputs for EC progress reports, whether individually or through some kind of civil society network; and actively take part in meetings with government officials, as well as in parliamentary committee sessions.
- 2 CSOs should fully utilise the existing legal framework for participation, as well as the legal instruments for access to justice and protection of citizens’ rights.
- 3 CSOs need to be better strengthened and organised for monitoring the EU accession process. Through such organisation, relevant expertise in certain issues will be gathered and adequate response to certain issues regarding the EU accession process on the policy agenda will be created.
- 4 CSOs and their platforms need to share all relevant information with the civil society in general, as well as with the public. The voice of local communities, particularly through further engagement of CSOs active at the local level, should be utilised more frequently. Interested parties will thus have the necessary information on the process and their potential engagement within it.

- 1 Regular and timely consultations of national authorities and institutions with CSOs in the EU accession process should be ensured in the various stages of the process. In this case, it would be particularly useful to sustain the good practice model of cooperation with the CSOs already established within Negotiating Chapter 23.
- 2 The official negotiating structure should clearly indicate to CSOs what data and what kind of analysis are needed. More concrete CSO participation can thus be achieved and adequate response and contribution made.
- 3 Relevant documents and information within the negotiation process should be made available to the public promptly and translated into the Serbian language, in order to allow interested parties to submit suggestions, comments and recommendations and to monitor the process. The process should be kept transparent, with all relevant information and documents within the negotiation process made available to the public promptly. A good practice example to be followed in this regard is the publication of the information on Negotiating Chapter 23.
- 4 An official website of the Government of the Republic of Serbia dedicated to the process of Serbia's accession to the EU must be created. Such a website would contain published accession negotiation documents and enable systematisation, regular updates and flow of information.
- 5 A strategy for civil society development, accompanied by an action plan, should be adopted promptly.

## NOTES

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3. Skrabalo, Marina, *Opinion of the European Economic and Social Committee on Enhancing the Transparency and Inclusiveness of the EU Accession Process*, European Economic and Social Committee, European Union, Brussels, Kingdom of Belgium, 2014.
4. Public consultation (in Serbian "javna rasprava") is the expression used by the authors to denote the process whereby public authorities seek public's input on matters affecting them within the regular legislative process.
5. The existing Guidelines for Inclusion of Civil Society Organisations in the Regulation Adoption Process, adopted in 2014 based on the Code of Good Practice for Civil Participation in the Decision-Making Process, represent a non-binding document containing recommendations only.
6. "Making Better Law – Improving the Legislative Process by Better Defined Urgent Procedure", research conducted by Centre for Research, Transparency and Accountability (CRTA) in 2015.
7. Prior to this initiative, a request for access to information was sent to the Ministry of Interior, which responded that the document development stage would not be open to civil society participation.
8. Since 2006, the Government's European Integration Office has conducted regular biannual opinion polls on Serbia's European integration process.
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