

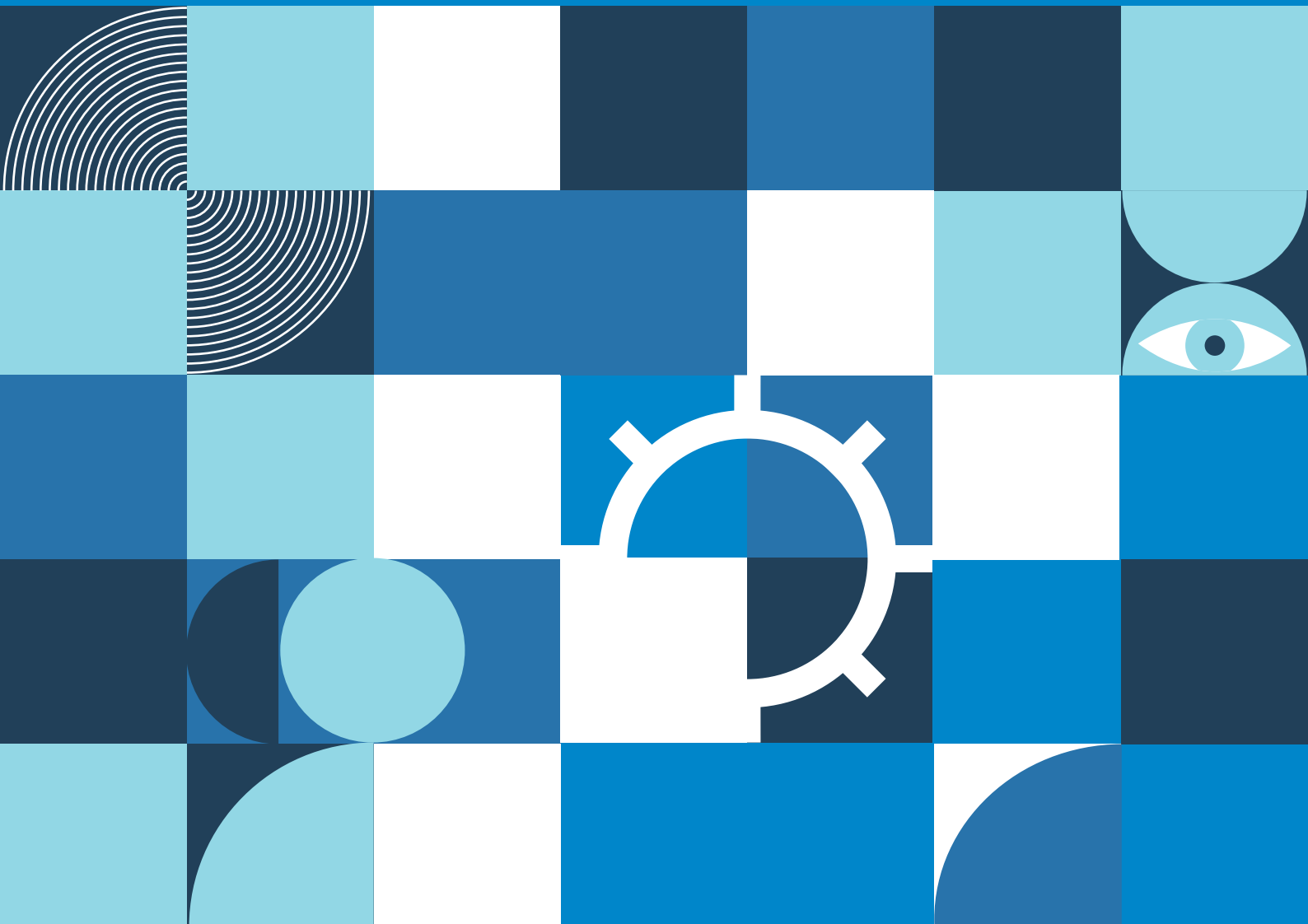
Policy brief

A comparative analysis of the layout of the negotiating framework for fighting against corruption in the context of European integration (an analysis of the Croatian, Montenegrin and Serbian experience)

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Introduction

In 2018, the European Commission presented its strategy for 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans' which, among other things, states that this effort is "a geostrategic investment in a stable, strong and united Europe"¹. The approach used as a foundation for this enlargement policy is based on *fair and rigorous conditionality*, as well as the principle of one's own merit. On the other hand, what is required of the Western Balkans countries in the process is to deliver essential reforms and results in key areas, which, inter alia, include: rule of law, fight against corruption and organized crime, judicial reform, protection and promotion of human rights and the functioning of democratic institutions.

This once more confirms the European perspective of all Western Balkans countries, and this commitment was of particular importance to North Macedonia and Albania who, after several consecutive positive recommendations by the European Commission, were expecting a date for launching EU negotiations. Still, a year later, at the Brussels summit held in October 2019, despite all expectations, the Council of the European Union did not reach a conclusion for the start of the negotiations with these two countries². Unofficially, this decision came about because of the opposition of a smaller number of EU member states headed by France, which voiced their concern for the state of affairs in these countries, above all in respect to the rule of law, the judiciary and especially in terms of corruption. In addition, these countries raised the issue of revision and reform of the accession

process, in order to ensure that the countries that are to open the negotiating chapters would achieve palpable and essential results in those areas.

In terms of the fight against corruption, as one of the key areas, it must be mentioned that the Western Balkans countries have made great strides, especially in the period between 2003 and 2016, when the average corruption pressure on citizens in the region decreased from 40% to 26% percent³. Still, despite this progress, the average is far below that of the EU countries. In comparison, the average in the best country in the group (Serbia, 26%), is twice as large as the one in the worst country (Bulgaria), which means that much more than the commitment so far is required⁴.

For North Macedonia, European Union membership is one of the strategic priorities that the country uses to "... manifest its determination to build a society grounded on values identical to that of the Union - respect of human rights, democracy, the rule of law and a working market economy"⁵. This pledge has received strong support from most of the citizens⁶, so as a result the political leaders constantly point out their commitment in this direction in order to ensure the support of their political platforms. However, the corruption in the country remains to be one of the key challenges en route to the EU. This statement has been consistently underlined in the annual EU integration country progress reports, in which serious challenges in this area have been detected, but it must also be mentioned that the EU has recognized certain progress, as well.

¹ Available at: <https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

² <https://www.consilium.europa.eu/media/41087/17-10-euco-art50-conclusions-en.pdf>

³ <https://seldi.net/publications/publications/shadow-power-assessment-of-corruption-and-hidden-economy-in-southeast-europe/>

⁴ Ibid

⁵ <https://www.mfa.gov.mk/mk/page/6/eu-chlenstvo>

⁶ In accordance with the most recent data from the Eurobarometer (11/2019), 74% of the Macedonian citizens believe that the country will reap the benefits of the EU membership. Available at <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/4/groupKy/313>

Recognizing the importance of the fight against corruption as one of the key areas in the EU negotiating chapters, the purpose of this policy brief is to contribute to the organization and implementation of the negotiating framework in Chapter 23, particularly in the fight against corruption in the context of EU integration. In the

same vein, this document contains a comparative analysis of the organization of the negotiating frameworks of Croatia, Serbia and Montenegro, which are in a more advanced phase, in order to obtain experiences and lessons and, in turn, use them to draft recommendations that would aid policymakers and decision makers.

1. A comparative analysis of the negotiating frameworks in the countries in the region

1.1 A brief overview of the eu enlargement methodology

The postponement of the decision to start the negotiations with North Macedonia and Albania at the meeting of the Council of the European Union in October 2019 was received with disappointment both by the countries and by many European diplomats. A large number of politicians in the country and in the EU feared that this move would be risky for the credibility of the EU in the enlargement process, which would have ramifications on the so-called transformative power of the EU in the implementation of the reforms in these countries. Furthermore, this decision was made in a period when the nationalist forces are on the rise both 'domestically' and within the framework of the EU.

In order to restore its credibility and its position and role in the Western Balkans countries, in February 2020, the EU launched its new enlargement methodology⁷, which is expected to provide a new momentum to the enlargement, but also meet the requests of some EU countries, above all France, which were dissatisfied with the performance of the candidate countries, largely in terms of rule of law, judiciary and corruption.

What did the previous enlargement methodology consist of? The previous, so-called 'Classical Community Method' for enlargement, described by Christopher Preston⁸, is mainly based on the full adoption of the *acquis* (*acquis communautaire*). Still, the experiences from the negotiation rounds so far have shown that the adoption and acceptance of the EU legislation by itself does not guarantee that the country has made quality progress, or in other words that, together with the EU *acquis*, the "European" values and norms have been adopted and are

being respected. This is best seen in combatting corruption, where, despite membership, there is no significant drop in corruption. Thus, the disillusionment of some countries by the reform quality of the aspiring countries resulted in the so-called "enlargement fatigue", which is to be overcome, among other things, also by changes in the enlargement methodology.

What is prescribed in the new enlargement methodology? The new methodology is based on 4 principles: credibility; predictability, dynamism; a larger scope of political governance, and the chapters are organized in 6 thematic clusters: a fundamental area, which includes the rule of law, as well; the internal market; competitiveness and inclusive growth; the green agenda and sustainable connectivity; resources, agriculture and cohesion of foreign relations⁹.

Such a setup is expected to yield better dynamics of the process, and thus speed up the process itself, on condition that the countries implement the reforms on time. According to the EU enlargement commissioner, Olivér Várhelyi, a cluster could be closed even within a year, in contrast to the 6 to 8 years it would take to close a chapter, as it was until now¹⁰.

The process also foresees greater involvement of the EU in its monitoring, but at the same time involves its reversibility. This means that, unless the countries deliver high-quality, tangible results in the reform process, they may regress in the negotiation process.

⁷ Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology_en.pdf

⁸ <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-5965.1995.tb00543.x>

⁹ *ibid*

¹⁰ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649332/EPRS_BRI\(2020\)649332_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649332/EPRS_BRI(2020)649332_EN.pdf)

1.2 What does the enlargement negotiating framework contain?

First of all, in its opening statement, the European Union remarks on the importance of the enlargement policy, both for the aspiring countries, seen through the prism of their transformative power, and for the EU member states, seen as a guarantee for stability, security and an opportunity for economic partnership in their neighborhood, that is, later on, within the same borders of the EU. In terms of its legal basis, the negotiating framework is based on Article 49 of the Treaty on European Union, as well as all relevant conclusions of the Council of the European Union¹¹. Furthermore, it is also stated that the EU membership negotiations are based on Serbia's own merit in terms of meeting the EU requirements, and the progress shall be monitored continuously, which will be reported to the Council of the European Union on a regular basis¹².

The legal framework for fighting against corruption in the European Union is based on Article 83 of the Treaty on the Functioning of the European Union¹³, which prescribes the authority of the European parliament and the Council of the European Union to adopt directives

for establishing the minimum rules concerning the definition and sanctions in the area of corruption¹⁴.

On the other hand, the standards for fighting against corruption within the European Union are mainly grounded on documents created by international organizations, since the area of fighting against corruption has the least number of "proprietary" standards. These are the documents used as a foundation for the standards for fighting against corruption: The UN Convention against Corruption, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, adopted by the Council of the European Union in 1999, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business of 1997, the recommendations of the Council of the European Union for codes of conduct of public officials, the UN Convention against Transnational Organized Crime of 2000 and others. Of the documents adopted and passed by the European Union, it is worth mentioning the Commission Decision of 6 June 2011, establishing an EU anti-corruption reporting mechanism for periodic assessment.

¹¹ The negotiating framework of Serbia and the EU is available at <https://www.mpravde.gov.rs/sr/tekst/26543/pregovaracki-okvir-i-uvodna-izjava.php>

¹² Ibid

¹³ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

¹⁴ Ibid

1.3 Croatia

In the so-called Western Balkans group, within the Stabilization and Association Process¹⁵ (Albania, Bosnia and Herzegovina, Serbia, Montenegro, Republic of North Macedonia and Kosovo), the Republic of Croatia¹⁶ is the only country in the bloc that became a member of the European Union, on July 1, 2013. It became its 28th member. In 2004, Croatia was given an official candidate country status by the European Commission, while the European Council launched the accession negotiations in October 2005 with the adoption of the negotiating framework for EU accession¹⁷. After the last enlargement wave in 2007, in which Bulgaria and Romania became members, Croatia was the only country in the history of the enlargement process that was separate and that did not belong to a regional group. Another idiosyncrasy of this process is the fact that the European Commission introduced the principle of benchmarks, that in fact changed the approach the Union uses to negotiate with the candidate countries.

The Republic of Croatia is the first country in which the new approach of the Commission in the area of democracy and rule of law was implemented, namely Chapter 23 - Judiciary and fundamental rights and Chapter 24 - Justice, freedom and security, after the lessons learned from the process with Bulgaria and Romania. In line with the Croatian negotiating framework¹⁸, the Union adopted the following negotiating principles: "respect of the principles of freedom, democracy, respect of human and fundamental rights and the rule of law... judicial reforms, regional cooperation and fight against corruption" and introduced a clause for suspending

negotiations in Article 12, if the country does not abide by the fundamental principles as defined in the framework.

In the section about fight against corruption, an integral part of Chapter 23 - Judiciary and fundamental rights, that constitutes the corpus of political chapters, Croatia faced serious challenges in the introduction of reforms in the national system in order to harmonize it with the best European practices. Croatia was required to draft a comprehensive framework¹⁹ for fighting against corruption as a precondition for preparing for and launching the negotiations within Chapter 23. The Croatian accession process demonstrated that the Union focuses on tackling political corruption. Thus, for example, the European Commission demanded from Croatia to adopt a revised version of the National Anti-corruption Program and suitable action plans with a clearly defined timeframe and institutions competent for implementation of measures and budgetary implications, with a special focus on: 1) establishing effective institutional mechanisms for coordination of the implementation and the monitoring of the national measures for prevention of corruption, 2) effectiveness of the legal framework for financing political parties and election campaigns in terms of dealing with political corruption and 3) measures for prevention of conflict of interest.

Since it announced the screening of Chapter 23 - Judiciary and fundamental rights for Croatia in December 2007, the European Union adopted the position of the country following the remarks noted

¹⁵ Stabilization and Association Process. Available at: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/sap_en#:~:text=The%20Stabilisation%20and%20Association%20Process,establishing%20a%20free%20trade%20area.

¹⁶ Accession of Croatia to the European Union. Available at: https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/croatia_en

¹⁷ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/st20004_05_hr_framedoc_en.pdf

¹⁸ Ibid

¹⁹ The framework for fighting against corruption of Republic of Croatia. Available at: <https://rm.coe.int/16806ee7b6>, pp. 88 – 103.

²⁰ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf

in the document as late as the beginning of 2010. That was mainly due to the severely critical tone of the Commission about the capability of the country to tackle corruption, which it assessed as being “widely spread and influencing the various aspects of the way the society works²⁰” It was determined that petty corruption is also tolerated and is also widely spread. In addition, the report stated that corruption is aided by the lack of good governance, transparency and responsibility of the public administration, as well as a code of ethics and good conduct by the public and civil servants. In addition, the Commission used the screening to condemn the inadequacy and limitations of the National program for fight against corruption, as well as of the implementation of the foreseen measures for prevention and suppressing corruption.

Still, the Commission found promising the state endeavors to improve the capacities of the Bureau for Combating Corruption and Organized Crime (USKOK)²¹ by bolstering the administrative-technical capacities of the institution and appointing a professional to manage it. In the process of the Croatian accession negotiations, USKOK had a pivotal role in providing a performance record by assuming the main role in the fight against corruption in the country. This model of policy coordination was further copied in all the benchmarks for the fight against corruption in the Western Balkans countries.

After Croatia caught heavy flak for its fight against corruption, in 2008 the country implemented a comprehensive bundle of measures for revision of its Anti-corruption Strategy, which was followed by

a detailed action plan which contained specific measures for addressing the key remarks in terms of tackling corruption. This was underlined by the European Commission, and in the 2008 country progress report it is stated that Croatia has assumed all the preparatory steps to make changes to the necessary legal framework, including the criminal code, as well as the key step of the country - introduction of a new system for prevention of conflict of interest²², that is a system for screening of the public and civil servants. This remarkable feat of the Croatian government was deemed to be a step in the right direction, even though Croatia needed an additional 3 years to adopt a comprehensive legal solution for prevention of conflict of interest²³, which was in fact the requirement for closing Chapter 23.

In the context of political corruption, Croatia also had serious issues with the implementation of the OSCE/ODIHR and GRECO recommendations in the context of financing political parties. Even though after it published the screening report Croatia did adopt the new law, the financing of political campaigns was still omitted, which was criticized by the European Commission. Under public pressure, and in order to enter the EU sooner, Croatia amended this regulation in 2011²⁴, similarly to the amendments to the Law on prevention of conflict of interest.

In spite of the relative progress in 2008, Croatia in 2009²⁵ and 2010²⁶ began to deliver in the key segments related to fighting against corruption, namely:

²¹ http://rai-see.org/wp-content/uploads/2015/08/Legislation_Office-for-the-Suppression-of-Corruption-and-Organized-Crime.pdf

²² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/press_corner/key_documents/reports_nov_2008/croatia_progress_report_en.pdf, pp. 9

²³ http://rai-see.org/wp-content/uploads/2015/08/Croatia_Law-on-prevention-of-Conflict-of-Interest_2011_en.pdf

²⁴ <http://rai-see.org/wp-content/uploads/2015/08/POLITICAL-ACTIVITY-AND-ELECTION-CAMPAIGN-FINANCING-ACT-EN.pdf>

²⁵ https://danube-inco.net/object/document/10750/attach/hr_rapport_2009_en.pdf

²⁶ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/hr_rapport_2010_en.pdf

- Implementation of the Strategy for fighting against corruption. Croatia in this respect is unique as a model, as it also adopted a special program for fighting against corruption in state-owned companies²⁷
- Strengthening of the role of USKOK,
- Increasing the transparency and integrity of public administration,
- Improving the legal framework for financing political parties,
- Improving the mechanisms for prevention of white-collar crime,
- Providing horizontal interoperability between all institutions that are part of the system for fighting against corruption.

Croatia made the biggest leap in the area of fighting against corruption in 2011, 16 months before it

officially entered the Union as its full-fledged member. In line with the most recent Commission progress report on Croatia²⁸, the country has moved forward as a result of the improved coordination of the national efforts for coordinating the policies for prevention and suppression of corruption, especially the role of the National Council and the Ministry of Justice.

The approximation of the national legislation to the best European practices and international agreements in the field of fighting against corruption received stellar marks²⁹. Croatia, as a future member state, was also required to draft a plan for reinforcing all institutions that are part of the system in order to continue the proactive efforts for carrying out their mandates.

The role of USKOK was highly praised, especially in terms of its active approach for pressing charges for high-level corruption. The fact that the country maintained a performance record by increasing the number of processed cases despite inadequate resources was also assessed positively.

²⁷ Program for fighting against corruption for state-owned companies. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme/docs/d.dubravica-acp-for-soes-croatia_en.pdf

²⁸ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2011/package/hr_rapport_2011_en.pdf

²⁹ <http://www.rai-see.org/legislation-croatia-anti-corruption-institutional-framework/>

1.4 Montenegro

Montenegro has a total of 44 interim benchmarks in line with the negotiating framework for Chapter 23. Apart from the horizontal guidance from the Commission for providing effective and constant monitoring of the process of implementing the measures of the action plan for Chapter 23, 18 interim measures refer to the area of the judiciary, 14 to fighting against corruption and 11 to the fundamental rights. Montenegro is still in negotiation on Chapter 23, and as of October 2020³⁰, the Union has not yet adopted benchmarks for closing the chapter in line with EU's 2011 Enlargement Strategy. Despite the initial progress of Montenegro in the negotiation process and Chapter 23, which was officially opened on December 18, 2013, judging by the reports of the European Commission on Montenegro (especially the one issued in 2016³¹), vendi duket se mbetet prapa direktivave kryesore, përfshirë prioritetet për luftën kundër korrupsionit³². The most recent review of the action plan in Chapter 23³³ - Judiciary and fundamental rights, the key benchmark for the launch of the negotiations, was carried out in 2015.

In the fight against corruption, especially in terms of prevention³⁴, the basic aim of Montenegro is to ensure the implementation of the National strategy for fighting against corruption and organized crime (2010-2014) and the corresponding action plan. In order to implement this key activity, the country was expected to ensure a continuous and consistent monitoring and assessment of the way in which the measures contained in these key documents influence the development of the corpus of legislation for fighting against corruption. The screening reports for Montenegro³⁵, reveal that the point of the

benchmarks in this area is to provide for the creation of an administrative-normative mechanism that would be able to react systematically and timely by means of suitable measures in line with the overall public policy in regards to the fight against corruption. The measures for prevention of corruption in Montenegro were integrated in the action plan for the implementation of the Chapter 23 policies - judiciary and fundamental rights^{36,37}. During the negotiation, in response to this key benchmark, in 2016 Montenegro established an Anti-corruption Agency with a clear mandate, but which also boasted legal potential to carry out that mandate in practice. This model of policy coordination (which was previously established during the Croatian negotiation process, as well) became the default practice and a benchmark for every EU candidate country. In terms of this segment, and in regards to Montenegro, the Commission still insists that the yardstick for the success of the work of the agency is the extent to which it is proactive in the fight against corruption, that is the number of initiatives it has submitted on its own, as well as the degree to which the institutions have responded. Great attention is paid to the necessary independence that will be ensured by allocating financial resources and suitable staff in order to provide uninterrupted implementation of the strategic documents adopted by the country.

Identical to the benchmarks for reforms in the public administration, focus is laid on the integration and respect of the principles for employing high-quality staff by using the merit system and providing continuous training for the employees of the agency. In addition, the Commission insists that the Montenegro government will ensure that the nominations for the head of the Anti-corruption Agency will be done using a transparent procedure, and that the person that is

³⁰ <https://www.eu.me/en/library>

³¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf

³² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

³³ <https://mvp.gov.me/en/library/action-plans?AccessibilityFontSize=default%3Fquery%3DEnter+search+query%3A%3Fquery%3DEnter+search+query%3A%3Fquery%3DEnter+search+query%3A%3Fquery%3DEnter+search+query%3A&alphabet=lat>

³⁴ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf

³⁵ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf

³⁶ For further information, please visit: <https://www.eu.me/en/23/item/458-chapter-23-judiciary-and-fundamental-rights>

³⁷ Information shared by Montenegro on the lessons learned in terms of the development, evaluation and influence of the strategies for fighting against corruption. Available at: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2019-September-4-6/Contributions_NV/Montenegro_EN.pdf

in charge of the agency will be elected on the basis of criteria and merit that have been determined in advance³⁸. In that way it is believed that the institution has professional credibility to carry out its mandate³⁹ and an integral system for implementation of the policies for fighting against corruption has been established. In this segment in particular, as part of the key benchmarks in the chapter, it is stated that the functionality of the Agency is ensured, especially the option of launching administrative proceedings. As a result of these measures, Montenegro climbed from the 76th to the 61st spot⁴⁰ in the Corruption Perceptions Index in 2016.

In terms of cooperation with the other institutions, one of the benchmarks is the provision of a system of interoperability between the institutions that are competent in implementation of the policies for fighting against corruption, as well as provision of a database for collecting data for further analysis.

After the initial progress that Montenegro achieved in terms of the implementation of this bundle of administrative benchmarks, especially in 2017, when it strengthened the internal capacities of the Anti-corruption Agency, the Commission has noted a less proactive approach in the last two years. This was underlined in the 2020 report for Montenegro, where it is stated that "there are challenges in terms of the (agency) independence, its capacity to prioritize, its selective approach and the quality of the decisions it has made."⁴¹ According to the analysis of the Commission, despite the fact that Montenegro managed to provide an initial performance record in the last 4 years, it has still failed to consolidate the Agency's efforts. According to the policy brief⁴² of the Southeast Europe Leadership for Development and Integrity (SELDI), there is a delay, or regression, in

the achievement of the benchmarks related to the independence of the agency and its management. It is believed that, in the last 3 years, Montenegro has witnessed political interference in the work of the agency by appointment of managers that are connected to the political elite⁴³. As a result of the regression in the fight against corruption, Montenegro fell to the 66th spot in the Corruption Perceptions Index⁴⁴.

As the Western Balkans countries gradually intensified their EU accession process, the Commission also pointed out another key benchmark for dealing with political corruption in the candidate countries. Specifically, Montenegro was required to make amendments and additions to the Law on prevention of conflict of interest by establishing an internal, efficient and objective system for screening of potential conflict of interest at all levels of state and public administration. Like in the case of the Anti-corruption Agency, success is measured by means of whether a performance record was established by using the available information for the number of discovered and resolved cases linked to conflict of interest, including the introduction of suitable sanctions and an effective compensation of potential damages to the state budget. In addition, in the same context, another benchmark that was introduced was the request for introducing a title deeds system and a suitable and independent screening system. Thus, as a measure that would ease the implementation of this priority, the Commission recommended taking preventive measures against false (or incomplete) completion of the title deed by additional amendments to the section on sanctions in the Criminal code, if illicit wealth is accumulated by public officials in the country.

³⁸ Anti-corruption Agency of Montenegro. Available at: <http://antikorupcija.me/me/novosti/saop%C5%A1tenje-sa-34-sjednice-savjeta-agencije-za-sprje%C4%8Davanje-korupcije-2016-11-30/>

³⁹ Report of the European Commission on the Progress in the Accession Process of Montenegro. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf, pp. 16.

⁴⁰ Available at: shorturl.at/bjpwU

⁴¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf, pp.27.

⁴² http://media.institut-alternativa.org/2019/12/Anti-Corruption-Agencies-in-the-Western-Balkan-Countries_new.pdf

⁴³ Ibid, pp. 6.

⁴⁴ <https://www.transparency.org/en/countries/montenegro#>

⁴⁵ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

What is interesting about this benchmark, which is a focal point in the mandate of the Montenegrin Anti-corruption Agency, is the fact that in the last two years⁴⁵ this entity has achieved progress in the screening of the statements for conflict of interest and the title deeds of the public officials. For instance, even though 57 public officials were recalled based on the Agency's findings, the Constitutional court repealed all the decisions of this institution. On the basis of key negative trends, especially political interference through legal authorities, the Commission anxiously found that Montenegro needs to achieve full integrity of the Agency, especially in terms of the precedents set by the courts and the influence of their decisions on the work of the Agency.

In terms of the legislation that regulates the financing of political parties, Montenegro is required to implement the GRECO recommendations, as well as to suitably bolster its administrative capacities and the independence of the supervisory bodies in this area. As an additional measure, the European Commission demands that all members of the executive and legislative government adopt and implement a code of ethics in the area of prevention of conflict of interest, by introducing a system of responsibility for the public officials.

What is specific for Montenegro in terms of fighting against corruption, especially in the sense of suppressing corruption, is the considerable increase in the type of benchmarks that relate to key systemic solutions for processing corruption cases (especially high-level corruption). Despite the requests for an efficient and effective system for tackling this phenomenon by strengthening the investigation and helping the judiciary reach final verdicts, Montenegro introduced a new Special Public Prosecutor's Office for fighting serious crime and high-level corruption.

After the Special Public Prosecutor's Office for fighting corruption was established, the Commission in 2016 applauded the efforts of this institution because of how serious its approach was in dealing with high-level corruption. The Prosecutor's Office received special commendation because it pressed charges against key political figures (for example, the Budva mayor) and other high party officials. Still, the excessive plea-bargaining between the accused and the prosecutor's office was looked at unfavorably. In any case, in the last two years, the European Commission has consistently voiced its concern over the work of this institution, especially in terms of the inertness in tackling a number of scandals in Montenegro⁴⁶.

⁴⁶ <https://institut-alternativa.org/funkcioneri-za-deceniju-casceni-136-miliona-eura/>

The benchmark for white-collar crime was the considerable boost in the capacity of the Ministry of interior for carrying out white-collar crime investigations. In the same vein, the Commission required that Montenegro adopts suitable legislation for asset recovery, that is an institutional solution by establishing a Confiscation Department and by manning it appropriately. As was the case with the other benchmarks, the Commission insisted on the creation of a performance record by means of quantitative monitoring of the number of cases and decisions for confiscation of illegally acquired property, including the cases of high-level corruption.

Despite the success of the launch of the negotiations on Chapter 23 - Judiciary and fundamental rights, including the fight against corruption as early as 2013, in the last two years Montenegro has languished and regressed on account of key interim benchmarks. Even though Montenegro managed to

draft the action plan for the chapter successfully and with full capacity, the measures in the plan are considered to be obsolete and inadequate for the real situation at the moment. As it can be seen, the Commission returns the focus on the functionality of the already established institutional mechanisms and on guaranteeing their independence by ensuring they are suitably staffed and budgeted. There is an increasing number of remarks for the lack of political will, the interference of the political elites in the work of the institutions by appointing suitable management and a general delay in the work seen as a whole because of the frequent political turmoil in the country. The Commission carried out the assessment for 2020 based on the abovementioned parameters, and it insists on maintaining a performance record (on the basis of quantifiable evidence) for the functioning of the system. In 2020, the German presidency did not propose benchmarks for closing the chapter.

1.5 Serbia

The EU accession negotiating process for Serbia was officially launched at the first Intergovernmental Conference held on January 21, 2014 in Brussels. This was preceded by the April 2013 recommendation of the European Commission and the unanimous recommendation for the start of negotiations submitted by the Council of Ministers for Foreign Affairs to the Council of the European Union in June 2013. At the same time, the Council of Ministers made a recommendation to the European Commission to create a negotiating framework for negotiations with Serbia⁴⁷.

In September 2013, Brussels was host to a screening process, i.e., an analysis of the legislation for Chapter 23, which is composed of four areas, including the fight against corruption. Three years later, on the basis of the screening recommendations, Serbia passed and adopted the action plans for chapters 23 and 24, and these chapters were officially opened in July 2016, at the third Intergovernmental Conference, when the decision for opening these chapters was adopted⁴⁸. Furthermore, it is important to underline that in 2018 there were amendments and additions to the action plan for Chapter 23, and that interim and final benchmarks were formulated in order to assess the progress of the reforms that were implemented during the negotiation process.

The review of these documents and the analysis of the Serbian legal framework reveal that most of these standards have been already adopted and integrated in the Serbian legal system⁴⁹. The Group of States against Corruption (GRECO), which operates within the Council of the European Union, also monitors the implementation of the anti-corruption provisions⁵⁰.

As we already mentioned, on the basis of the screening for Chapter 23 and the European Commission recommendations, Serbia drafted a five-year national anti-corruption strategy and a suitable action plan for the period between 2013 and 2018. However, Serbia has not yet adopted a national anti-corruption strategy and a suitable action plan for the period after 2018 in order to bolster the political will and dedication in the fight against corruption, which was also noted in the EU country progress reports⁵¹.

As outlined in the strategy, its aim is to eliminate corruption as much as possible, as corruption represents a hindrance to economic, social and democratic development⁵².

In order to monitor the implementation of the action plans, the Serbian government established a Council for implementation of action plans for Chapter 23, which is tasked to submit progress reports every three months⁵³. Still, as pointed out by some of the civic organizations in Serbia, the progress reporting of this working group is mainly reduced to a mere inventory of the activities carried out without a thorough analysis of their effectiveness in regards to the goals and tasks that were set in this area⁵⁴.

If we take a look at the Serbian progress reports for the period between 2016 and 2019, the EU has not given high marks for the achievement of the anti-corruption goals. Thus, in the 2016 report, it is stated that Serbia is relatively prepared for prevention and fight against corruption, and that corruption remains to be widely spread in many areas and continues to be a serious issue⁵⁵. Among the key issues in the report are the failure of the institutional framework to act as a credible anti-corruption factor, as well as the inefficient court processes, especially when it comes to high-level corruption. In the next EC report, for 2018,

⁴⁷ <https://eupregovori.bos.rs/hronologija-odnosa-srbije-i-eu.html>

⁴⁸ <https://eupregovori.bos.rs/hronologija-odnosa-srbije-i-eu.html>

⁴⁹ Nemanja Nenadic, *Evropskeintegraciji I boraprotivkorupcije u Srbiji*, TransparentnostSrbija, 2017

⁵⁰ <https://www.coe.int/en/web/greco>

⁵¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf (page 26)

⁵² National anti-corruption strategy in Serbia 2013-2018 available at: <http://www.rai-see.org/wp-content/uploads/2015/08/Serbia-National-Anti-Corruption-Strategy-2013-2018.pdf>

⁵³ <https://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php>

⁵⁴ Nemanja Nenadic, *Evropskeintegraciji I boraprotivkorupcije u Srbiji*, TransparentnostSrbija, 2017

⁵⁵ 2016 EC report on the progress of Serbia, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf#page=54&zoom=100,90,597

certain progress is noted in terms of the enactment of amendments to the Criminal code; however, serious criticism is directed towards the delay in the adoption of the law on the Anti-corruption Agency, as well as towards the capacity of the investigative bodies and the judiciary to carry out investigations and to render court decisions in high-level corruption cases in a fair independent court process⁵⁶. Even the next report does not mention any significant progress in terms of the fight against corruption, and it states that the recommendations in the previous report have not been adhered to yet.⁵⁷

The first session of the working group for the review of the action plan for Chapter 23 was held in early 2020. In terms of the draft document, the experts commented that most of the European Commission recommendations were not considered in the course of the implementation of the previous action plan. Thus, Nemanja Nenadic, the Transparency Serbia program director, pointed out that the action plan that was proposed contains *"the selfsame shortcomings as in the previous action plan, which were already noted. As much as four years after the adoption of the most recent action plan, a few activities were not even implemented on paper, which leads us to believe that an efficient mechanism for tackling [the corruption] issue does not exist"*⁵⁸. On the other hand, Jovana Spremo, the councilor in the EU integration committee and a coordinator for Chapter 23, stressed that a large share of the Commission's recommendations on the topic of Chapter 23 were accepted, especially in terms of developing indicators and assessing the influence of the strategic documents⁵⁹.

In June 2020, as part of the mechanism for monitoring the reforms in chapters 23 and 24, the Commission published a working document, the so-called non-paper, on the situation in the

abovementioned chapters, where it condemned the delay in the reforms, especially in terms of the judiciary, the fight against corruption, the freedom of the media, the handling of war crimes and the fight against organized crime⁶⁰. Still, despite such general remarks outlined in the working document, the Serbian EU integration minister, Jadranka Joksimovic, expressed optimism that despite the remarks on the delay, Serbia will continue on the reform path by opening other chapters⁶¹. This optimism was soon afterwards refuted by official Brussels, too; its officials emphasized that unless there is no progress in the abovementioned chapters, no new chapters shall be opened⁶².

In the working paper it is also mentioned that the judiciary is still under political influence, that pressure from senior politicians continues to be felt and that there is still an insufficient number of charges pressed against senior politicians and court verdicts. The freedom of the media is also by and large curtailed, and the independence of the Electronic Media Regulatory Committee is brought into question as well.

In terms of the fight against corruption, it is believed that the situation in the most vulnerable areas, such as: public procurement, health, infrastructure, spatial planning and public companies, that is in the segments that deal with large sums of money and where there is direct and frequent contact with the citizens, has not changed in comparison to the previous reports⁶³. The document stresses the importance of enacting amendments to the Law on Corruption Prevention in the sense of bolstering the capacities and resources of the Serbian Anti-corruption Agency, even though these amendments have not yet been approved by the Council of the European Union, that is GRECO. Furthermore, the work of the newly introduced anti-

⁵⁶ 2018 EC report on the progress of Serbia, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

⁵⁷ 2019 EC report on the progress of Serbia, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>

⁵⁸ <https://europeanwesternbalkans.com/2020/02/27/serbias-revision-of-the-action-plan-for-chapter-23-many-activities-have-not-even-been-completed-on-paper/>

⁵⁹ Ibid

⁶⁰ https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf

⁶¹ <https://europeanwesternbalkans.com/2020/06/30/ec-non-paper-on-serbia-delays-in-reforms-pressure-on-the-judiciary/#:~:text=Infographics-EC%20non-paper%20on%20Serbia%3A%20Delays%20in,refor%20C%20pressure%20on%20the%20judiciary&text=The%20European%20Commission%20has%20recognized,its%20rule%20of%20law%20agenda>

⁶² Ibid

⁶³ https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf

⁶⁴ <https://rm.coe.int/grecorc4-2019-5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55>

corruption departments within the office of the senior public prosecutor, which is beginning to yield results, is also encouraged.

In April 2019, GRECO (Group of States against Corruption) published its interim compliance report for Serbia within the fourth evaluation round⁶⁴. In its report, the overall assessment of the degree to which Serbia complies to the GRECO recommendations in terms of prevention of corruption among the members of parliament, judges and public prosecutors is no longer “generally unsatisfactory”, but a certain progress in the implementation of

certain recommendations is acknowledged. Yet, further in the report it is stated that despite the fact that none of the thirteen recommendations from the previous report have been implemented “satisfactorily”, there is still certain progress in three of the areas the recommendations point to. In regards to the amendments to the Law on Corruption Prevention, in accordance to GRECO, it is especially important to adopt the ones that regulate conflict of interest among the members of parliament, judges and public prosecutors, as well as those that refer to the strengthening of the capacities and resources of the Anti-corruption Agency

2. Conclusion

From the analysis above it is more than evident that the fight against corruption is a key factor in the EU membership negotiations. This also stems from the fact that this area, as part from Chapter 23, is among the first to be opened, and is closed near the end of the negotiations, so that it can ensure continuity in the delivery of results, as well as better compliance with the EU standards in this area.

If we analyze the Serbian, Croatian and Montenegrin experience in the European Union negotiation process through the prism of the fight against corruption in Chapter 23 of the negotiating framework, we can easily conclude that the situation in all three countries, as well as in the region beyond, is virtually the same, if not identical. Corruption as a phenomenon has permeated all pores of society in the Western Balkans countries, thus greatly undermining the democratic values and the quality of life overall. On the other hand, the progress in tackling the corruption-related challenges is questionable and it seems to have difficulties in achieving continuity. As it was mentioned in the example from Montenegro, and this applies for the fight against corruption in the Western Balkans as a whole, the process can be described as "one step forward, two steps back". Thus, corruption bogs down the approximation to a full-fledged EU membership, as these countries are quite unprepared to tackle corruption.

Having in mind the lessons learned from the previous enlargements, which suggested that the reforms in the fight against corruption can be brought to a halt en route to EU membership, and perhaps even take a few steps back, the EU introduced the so-called benchmarks which were aimed at focusing attention on the results when delivering reforms, which would yield a more realistic picture for the progress in this area. Here, as well, we must also point out that the

results and the success of the reforms in all the Western Balkans countries depend to a large extent on the involvement of the EU in the process itself. This points to the fact that the entire reform process is still dependent on the so-called transformative power of the EU which, relying on the "attractiveness" of EU membership in these countries, has managed to *impose* results, and thus keep the reform process afloat.

Still, even this centripetal force is insufficient in its own accord if we take into account the serious challenges facing the legal-political and the institutional framework, which is further compounded by the lack of political will for efficient dealing with the corruption. This has constantly been a focal point of the progress reports for all countries, as well, and later of the frameworks for the negotiating process.

Thus, a common theme for these three countries is the fact that EU has demanded from all the countries to focus on high-level or political corruption when they open Chapter 23, as it is the most severe issue. Virtually all around the region, the countries are to a smaller or greater extent 'trapped' by the ruling party, which uses the state resources for the benefit of the party, thus equating the party to the state.

Furthermore, the EU rebukes the legal framework for fighting against corruption of these countries, as well as the extent to which the public prosecutor's offices are efficient in prosecuting high-level corruption. There are doubts of corruption and/or political influence over the prosecutor's offices essentially everywhere, which brings into question the trust the citizens have in these institutions. This can also be seen in the number of charges pressed against senior officials, as well as how serious the charges were when it comes to the prescribed sentences. In

addition, in its recommendations, the EU frequently referred to the selectivity in filing indictments for high-level corruption at the expense of "petty" corruption. This is linked to the poor capacity of the investigative bodies, which are frequently understaffed, lack funding for implementation of the planned activities, and commonly rely on the executive power.

The next challenge in the fight against corruption that the EU has identified in the case studies within the negotiating process is the efficiency of courts. So, for example, even if there is an indictment, the political influence frequently impedes the rendering of a court verdict in certain cases that (by accident or otherwise) are usually linked to "high-level", i.e., political corruption. Consequently, another feature that unites all the countries in the region seems to be the "reliance" of the judiciary on political elites, which subverts the journey towards Europe the specific country has taken.

Last but not least in the negotiating process, we have the challenges related to the functioning of the

state committees and bodies for prevention of corruption and conflict of interest, which are the pivotal coordinating bodies for establishing an efficient anti-corruption system. These bodies are more often than not limited by human and material resources, which makes the fight against corruption more challenging. The weak system layout of these bodies and institutions frequently hinders them from coordinating interinstitutional cooperation, which is key for an efficient fight against corruption.

In terms of the enlargement process itself, the changes in methodology unquestionably point to the fact that the EU will invest additional effort in delivering results in the negotiating process, with a special focus on the fight against corruption, which is the most pressing issue in Albania and North Macedonia. The dynamic of the process will depend greatly on the results in this area, which means that the countries will be expected to be much more committed to the reform process.

3. Recommendations

The comparative analysis of the anti-corruption negotiating framework in Croatia, Montenegro and Serbia reveals a number of key recommendations that should contribute to speeding up the dynamic in the process of fulfilling the obligations from Chapter 23 of the *acquis communautaire* for North Macedonia, especially the ones that are related to the fight against corruption.

- Serious and unequivocal dedication to delivering results within the negotiation process and achieving the Chapter 23 benchmarks. This is directly linked to whether the political elites are willing to approximate the country to the EU standards in this area. According to the new, 2020 enlargement methodology, the political will is a precondition for an efficient fight against corruption;
- Drafting of a comprehensive, efficient national strategic and action plan for fulfilling the obligations related to the fight against corruption and a high level of compliance with the judiciary reforms. These strategic interventions must be supported by clearly defined implementing measures that will also be bolstered with suitable financial backing;
- Strengthening of the role and the capacities of the SCPC in terms of preventing corruption and equipping it with all necessary mechanisms so that it can carry out its mandate. The Commission should especially be provided with an opportunity to be independent and the interference of the political elites should be prevented;
- An assessment of the needs and capacities of the institutions that fight against corruption in order for them to be able to deliver the results from the national strategic plan for fulfilling the obligations in a certain area;
- Strengthening of the capacities of key institutions in the fight against corruption on the basis of the institutions' needs and capacity assessment;
- Provision of professional staff, on the basis of the principle of merit and promotion, as well as mechanisms for retaining the staff in the institutions in charge of fighting against corruption;
- Strengthening of the capacities of the bodies for auditing, monitoring and evaluation of the efficiency of the anti-corruption institutions. In the same vein, the system for supervision of these bodies should also be strengthened, especially in the Assembly, using the institute of public and supervisory hearings;
- Bigger involvement of the civic sector, especially of the civic organizations that work on the monitoring and evaluation of the reform process, as well as getting it involved in all of the phases of preparation and implementation of the public policies in this area;
- Promotion of a legal framework for financing political parties as a measure designed to prevent the influence of the political parties on the will of the citizens and institutions in the country.

