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Policy brief

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Accession negotiations between Montenegro and the EU

ACTIVE AND WELL INFORMED CITIZENS OR MERE
OBSERVERS IN THE PROCESS?

I Summary

In June 2012 Montenegro has started the EU accession negotiations. The Government of Montenegro had earlier issued the decision to form negotiation structure, which included representatives of civil society organizations.

However, the negotiation structure is still incomplete, because the Parliament of Montenegro has not yet managed to define its place and role in the negotiations. Besides, the compulsory transparency level of the process and the deadlines and methods for publishing information and providing information to citizens throughout the negotiation process have not been precisely defined. Despite involving the non-governmental sector representatives in the

work of negotiation groups, the role of civil society in monitoring the process and increasing its transparency has not yet been recognized. Citizens are also insufficiently informed about the process due to the lack of well-conceived and well-prepared communications.

By making decision about the level of transparency and inclusiveness of the negotiation process, Montenegro is on the way to choose one of the two approaches in providing information to citizens. Negotiations closed for public, that some countries opted for, had some advantages with regard to speed and efficiency, but also numerous flaws when it comes to support and trust. The Government of Montenegro has to confirm its many times reiterated support for the open government concept through choosing the model of transparency, participation and communication.



II How to provide information to citizens?

In 2005, Montenegro defined joining the European Union as one of its strategic priorities. Since starting its European path, Montenegro has been conducting activities directed at informing citizens on those aspects of the integration process which the officials consider most important. However, often times the perspective of Montenegro citizens is neglected - although they are the ones who are essentially the reason for existence of the process - as well as the need for information to be available, understandable and relevant for citizens. There is no comprehensive study that analyzes the citizens' need for information on the EU accession process or evaluates their actual knowledge about the topic.

What do citizens lose and what do they gain by joining the EU?

The opinion polls conducted so far have been focused mostly on the percentage of citizens' support for the EU accession. These percentages undoubtedly indicate that there is indeed huge support for the EU integrations. However, in sev-

eral most recent opinion polls¹ a descending support trend has been noticed (from 76,1% in 2009 to 60,9% in 2013), which can be the result of various outside and internal factors. The reasons for oscillation in support for European integrations are actually more important than the percentages themselves. This is the piece of information that would reveal what the citizens' trust (or the lack of it) is based on, what do citizens build their opinion on and why is the opinion changing. In addition, it is very important to figure out what are citizens actually interested in when it comes to the process and what are the credible sources of information about the EU which they most often use. Only after obtaining this information, decision-makers, and the society in general, will know which direction the communication on the European topics should take.

Wanting to contribute to the quality of dialogue on the topic, the Center for Democratic Transition (CDT) started the project "Euphoria"² within which the study, i.e. comparative analysis, has been conducted about the Montenegrin strategy for informing the public on the EU and similar strategies of the countries from the region³. The key objective was to avoid the flaws in communication between citizens and government and the mistakes that other countries were making

¹ CEDEM, Political public opinion, March 2013, <http://www.cedem.me/en/programmes/empirical-research/political-public-opinion/finish/42-political-public-opinion/384-political-public-opinion-march-2013.html>

² The project is supported by the Embassy of the Kingdom of Netherlands. Development of policy brief is part of CDT's analytical, communication and organizational capacities development that was supported by Think Tank Fund, Open Society Foundations.

³ Biljana Jovanović, Informing citizens on the process of European integrations Analysis of communication strategies and review of information campaign and good practices, Podgorica, January 2013, Center for Democratic Transition (CDT), <http://www.cdtmn.org/images/stories/docs/cg/2013-01-inf-gradj-eu.pdf>

in the process. The results of the study indicate that there are significant flaws regarding implementation, monitoring, evaluation and financing of the existing Communication Strategy for Informing the Public on the European Union and the Preparations of Montenegro for Accession. The Strategy itself does not sufficiently define target groups or mechanisms of cooperation with the key partners – the media and NGOs. Besides, the goals and activities of the Strategy remained mostly wishful thinking, because in the past two years there were no action plans for its implementation³, therefore there were no coordinated and strategically planned activities. In addition, no adequate monitoring and evaluation of conducted activities have been conducted⁴, and there have never been funds planned in the budget for implementation of activities prescribed by the Strategy.

How to obtain information?

Basic information on the negotiation process is not available for general public. The Government of Montenegro has not yet adopted precise rules and procedures for announcing negotiation positions and other documents relevant for the negotiations. The positions for Chapters 25 and 26, which are temporarily closed, were announced, but, without binding regulations, this cannot be considered a guarantee that this would also be the case with other negotiation documents. Although we can consider announcing negotiating positions to be a positive message, this is an ad hoc decision by the Government, and cannot substitute a regulation which would bind the Government to publish documents and which would define the methods for their publishing. It happens often that, instead of information on the content of what is being harmonized and negotiated, citizens are offered a series of unclear information about technical aspects of the process. Thus, the Montenegrin citizens know who was in Brussels for explanatory and bilateral screening and when, but they do not know what was discussed there and what were the results of the meeting under such a complicated name. There was also a case when members of a working group saw the final negotiation position only after it had passed through the Government and the Parliament. It also sounds unbelievable that the repre-

sentatives in the Parliament of Montenegro, but also other decision-makers, found out from the media about the content of the screening report for Chapter 23. Due to huge interest of the media and NGOs, the European Commission started publishing screening reports on its website. Thus, the Government did not precisely define which negotiation documents will be public, is publishing of these documents an obligation towards citizens or a sign of the Government's good will, how will these documents be made public or what the deadlines for that are.

What is the role of the Parliament?

It is important to emphasize that the Parliament, as the representative body of citizens, should have an important role in the integration process. The Parliament of Montenegro has been failing to define what kind of role they want in the negotiation process, although they were supposed to do that in the first quarter of 2011⁵. Currently, a resolution that is supposed to regulate the issue is in the process of being made. In addition, the Parliament of Montenegro does not have a well-conceived strategy for communication with citizens regarding the EU accession process, so the communication of Parliament representatives with citizens is reduced to an ad hoc approach.

What is the real role of civil society?

In the process of creating the negotiation structure, the chance was missed to use the knowledge and skills of NGOs for a very important role – to affect transparency and demystification of the process. Although openness of working groups for NGOs was a significant step forward in making the negotiation process more transparent, the way in which the rules for their participation were later formulated lead the NGOs to make an unavoidable choice: to be a part of the working groups, or to be out of the process and continue with the role of a correction factor in the society, seeing as it is impossible to do both at the same time. That way, an originally excellent idea limited in practice the possibility for civil society to contribute to increasing the quality of negotiations and communication with citizens through its advice, recommendations and studies.

⁴ Only one Action Plan was made, for 2010.

⁵ Evaluation was supposed to be conducted by the Working Team that took part in preparation of the Communication Strategy. In addition, periodical opinion polls were prescribed as an important indicator of successfulness of the Strategy's implementation, but the polls have never been conducted.

⁶ The Government of Montenegro, Ministry of Foreign Affairs and European Integrations, Action Plan for Monitoring Implementation of the European Commission Recommendations, Podgorica, 17 February 2011.

III Transparency and efficiency: mutually exclusive or two sides of the same coin?

In the EU accession process, the Central and Eastern Europe countries defined their political and administrative structure for negotiations differently. The choice depended on a number of factors – the countries differed in size, legal and institutional tradition, level of development of civil society and the level of political culture. In addition, the negotiation process has changed significantly in the last two decades. Different negotiation models can be grouped based on several criteria, one of the most important ones being the approach to providing information to citizens. In that respect, we clearly distinguish between countries which opted for a closed approach and control over the information and those in which transparency and inclusiveness were an important trait of the process.

Control of information: the EU for elites

A centralized negotiation structure, with limited number of participants in decision-making and strong control over information about the content of negotiations has certain advantages, but also certain flaws.

The negotiation structures in the countries which opted for this approach (Hungary, Estonia, Croatia...) are actually a reflection of desire to finish the accession process very quickly. Strict hierarchy in negotiation structure resulted in more discipline. Smaller number of parties involved means faster decision-making and adoption of European laws, which, in the end, means faster and more dynamic accession. Some of the characteristics of transition democracies are often unstable political environment and parliaments with insufficient administrative and political capacity to get fully involved in the process. Therefore, a part of these countries decided to give an advisory role to parliaments, which means limited supervision and non-binding recommendations. Information on the course and content of negotiations were kept

within government structures, which was justified by the European Commission requirements, the need to preserve a better negotiation position through protection of information, and the necessity to act fast leaving no room for consultations with general public. Anyhow, the citizens were provided with information only after the most important decisions had already been made.

Despite the afore-mentioned advantages, this approach also showed a number of flaws. Too much insistence on speed affects quality negatively. Closeness reduces the possibilities of monitoring and control over the process, posing the risk of having membership obligations not complied with thoroughly and completely. Control over information creates a gap between citizens and decision-makers, affecting negatively the perception of the negotiation process and the public support for integrations. Finally, it is not only the state institutions that are joining the EU, but all the citizens as well, and this kind of approach does not guarantee that they will be well-informed, ready and equal citizens of Europe.

It is believed that overload and huge time pressure are the key reasons for poor quality of legislation in Estonia, as well as policy analyses which are not good enough⁶. Following the accession of Bulgaria and Romania in the EU, due to this kind of accession, the institutions in these countries were not prepared to continue in the same pace after the accession process. In Croatia, the information on the content of negotiations was available to citizens only right before the referendum. Public debates were only about problems and obstacles to the accession



⁷ Marsic, Tomislav, *The EU Accession of Croatia, Challenges of Participation*, Institute for Public Finances, Zagreb, 2006, p. 45

process, which affected citizens' trust negatively and lead to poor referendum turnout. Namely, Croatia is the country with the smallest turnout (43,68%). That unpopular record was earlier held by Hungary (45,6%).

It is understandable that the Government is trying to be secretive about information which could hinder the negotiations. It is also understandable that information legally classified as secret is not available. However, Montenegro must not put accession speed in front of citizens' awareness. A country which has, at least verbally, opted for transparency and which is a member of the Open Government Partnership, must not allow to follow the closed model in the EU accession process. The CDT, as a civil society organization, is against the closed model, for both moral and practical reasons.

Transparency and participation: the EU for citizens

A smaller number of countries chose the approach characterized by transparency, a strong and responsible role of the Parliament and an active role of civil society. The citizens were offered information and explanations, so that they, and not only administration, would be ready for integration into the EU.

Slovenia is the only example of a country in which parliament had the leading role in the accession process and was adopting the negotiation positions' drafts. Reviewing negotiation positions in a wider forum open for public, such as parliament, contributed to a better awareness of citizens with regard to the EU. The studies showed that the citizens of Slovenia were better informed about the EU than citizens of other countries on the same level of integrations⁷. In addition, civil society was included in the Slovenian negotiation team.

Negotiation positions were public in Slovenia, Slovakia, the Czech Republic, and are now public in Iceland. Currently, Iceland is an excellent example of transparency and of how political decision-makers should treat citizens in the ne-

gotiation process. Through a specialized and simple website, citizens have access to all information regarding the course and content of negotiations. It included screening reports, negotiation positions of Iceland and the EU, and excellent visual solutions explaining progress and dynamic of the negotiations.

Regarding citizens' awareness of the EU, Eurobarometer showed that in 2002 Slovenia, Malta and Cyprus held the first three places. Due to its specific political situation and weak administrative capacities, Malta created a unique model which included wide inclusiveness and engagement of various political figures and representatives of civil society and interest groups. Cyprus is an example of a good practice regarding the important role of parliament in informing citizens. Malta also had the biggest turnout on the EU accession referendum (90.9%). At the end of the list, when it comes to citizens' awareness, were: Hungary, Bulgaria, Romania, Estonia and Turkey.⁸

Montenegro is specific and it should build its own model, but good experiences of the countries that went through the negotiation process can be useful. In addition to experiences of Croatia, which is the latest country that finished with negotiations and with which we have a lot in common, it would be useful to consider using good practices from other countries in communication with citizens and civil society. Primarily, there is an excellent example of Slovenia, which is only three times bigger than Montenegro and with which we share similar legal tradition and institutional design. Montenegro is not an island, but it could use experiences of small European countries – Iceland, Malta and Cyprus. Small countries have a lot in common regarding the institutional capacities, and they have specific experiences when it comes to keeping information. In small communities information find a way to get to citizens more easily, especially when they are trying to be hidden.

An open and transparent integration process, characterized by availability of information and an active dialogue, will make citizens to finally feel that they are indeed a part of it.

⁸ (Eurobarometer 2001. Damjan Lajh and Alenka Krasovec: "Referendum on Slovenian accession into the European Union: International Comparative View", March 2007.) taken from Analysis of the Government Communication Strategy for Informing the Croatian Public on the European Union and Preparations for Accession, GONG, Zagreb, 2011.

⁹ Candidate Countries Eurobarometer 2002, First results, European Commission, Directorate General Press and Communication, Public Opinion Analyses, 2002.



IV How to solve problems?

Transparency – publishing of negotiation documents

The first step in demystifying the negotiation process is to enable providing citizens with information on negotiations through publishing negotiation documents. Slovenia, Slovakia and the Czech Republic made their negotiation positions public, and it is nowadays being done by Iceland which is publishing all documents regarding the negotiations.

In Montenegro we do not have a clear government policy regarding publishing of negotiation documents. Screening reports were first published in the media and then, after media and NGOs showing interest, the European Commission published them on its website. After that, the Ministry of Foreign Affairs and European Integrations translated and published them on its website. After temporary closing of negotiations for Chapters 25 and 26, the negotiation positions of Montenegro were published. These positive examples are what a precise and long-term government policy should be built on, defining transparency of the negotiation process.

The CDT believes that the Government of Montenegro should adopt a suitable act precisely defining which documents, in which stage of negotiations and in which manner will be available to citizens. By adopting this recommendation, the Government would demonstrate understanding and respect for the principle of transparency, i.e. the principle of good governance, which is that the rules should be known in advance.

In order for publishing of documents to make sense, it is necessary to create a separate website dedicated to negotiations, based on the Iceland example. The website should be user-friendly and systematic, and it should contain, in addition to documents, all information regarding negotiations, including information on members of negotiation structure and their contact information.

Openness – a proactive approach to providing information

Openness is one level up from transparency and means a pro-active approach to information process. Publishing of documents is the first step meaning that information is available to everybody searching for it. Larger number of citizens can be reached only if relevant information is placed in an interesting and understandable context.

A part of negotiating process deals with harmonization of regulations, and the other part deals with the actual negotiations. With regard to both, citizens need to be informed about their rights and responsibilities, but also with the responsibilities that the country is accepting on their behalf. Therefore it is important to inform citizens on time about what awaits them in the future in order to avoid disappointment in later stages of negotiations, or after joining the EU.

The CDT believes that it is necessary to actively involve the media in informing citizens. The content of European legal legacy and the negotiation process are complicated and citizens need accurate and clear information which can only be passed on by the media understanding the essence of the process.



Our recommendation is, instead of ad hoc communication between the media and decision-makers and communicating only some hot topics, to establish constant mechanisms of cooperation between the media and the negotiation structure. This would let media representatives know a few months in advance which important events will happen in the negotiation process which would enable good quality preparation of journalists and therefore also good quality and objective information. It is now of crucial importance for the information which the media provide to citizens to be content-based and not of technical nature. This entire mechanism should be organized in a way not to jeopardize independent editorial policy of the media.

NGO – a partner and a correction factor

Unavoidable partners of the Government in the EU accession process are definitely non-governmental organizations. Non-governmental organizations have a dual role in this. They can act from inside, through negotiation structure, and help negotiation process with their expert skills. The second role of NGOs is to act as a correction factor in the negotiation process providing information on the process to citizens from a critical distance. While the first role of NGOs is rather successfully incorporated in the Montenegrin negotiation structure, the second, maybe even more important function is neglected.

The CDT believes that the NGOs' potential can best be used through forming of a consulting body to monitor the negotiation process. The role of the body would be to inform the main negotiator, during regular meetings, about its observations regarding the negotiation process and to present both positive and negative practices in our negotiations. That would provide a direct and official channel of communication between the Government and NGOs which does not exist now. The Government would gain new quality, i.e. "second opinion" which would supplement the Government's views and opinion regarding the negotiations. NGOs would get necessary information about the negotiations, but also a chance, through official cooperation with the Government, to regain the status of a correction factor in the society. That would enable good quality flow of information between the Government and NGOs, but also help avoid misunderstandings which often emerge and are being resolved only in the media, without concrete progress and results. Members of this advisory body would be elected based on the experience of organizations

in the area of European integrations, the quality of their projects and reputation in the society, but also biographies of their representatives which would become members of the afore-mentioned body.

Government and Parliament - communication and coordination need to be intensified

The Montenegrin mechanism of negotiations with the EU is incomplete, due to the fact that the Parliament has not been able, two years already, to define its role and find its place in the process. This affects negatively the transparency of the process, because we are already deep in the negotiations, and the key political institution in the country does not have a defined role in them. The message of the CDT is to intensify communication between the Parliament and the Government regarding the issue, in order to complete the negotiation structure and to give a role to the Parliament that is suitable for legal and political importance of the institution.

Also, the Parliament and the Government need to coordinate communication with citizens regarding the European integrations, and prepare fully compatible strategies, based on which activities aimed at educating and informing citizens would be planned and implemented. Since there is no consensus in the Montenegrin Parliament regarding European integrations, this is the chance for opposition parties to get more actively involved in the process.

Opinion poll – understanding the citizens' needs

In order for the communication to be successful, the Government needs to know who it communicates with. The CDT recommends that the Government should start conducting regular and comprehensive opinion polls, using quantitative and qualitative methods. Opinion poll is necessary at the very beginning, prior to defining target groups, messages, and channels of communication.

Regular opinion polls will help the Government to understand what citizens base their conclusions and build their opinion on, what interests them, what worries them, and what they believe in when it comes to European integrations. The opinion polls of this sort should be conducted every six months, as prescribed by good practices.

V Conclusion

The circumstances in which Central and Eastern European countries joined the European Union differ significantly from the situation in which the Western Balkan countries are attempting to join the EU. The transition to democracy was the main goal of political elites and citizens of these countries and accession to the EU was seen as the final proof of democratization and the end of transition. Rational questions regarding negotiations emerged only right before the accession of these countries, and that delay in understanding rational, mostly economic topics, still burdens and divides the EU.

The Western Balkan countries face a more difficult task. Different messages regarding the future of the integration and our place in it can be heard from different EU countries. In these circumstances, some very practical aspects of integrations interest the citizens of Western Balkan. At the very beginning of the negotiation process various opinions can be heard in Montenegro, including fear regarding economic security following accession to the EU. In new circumstances, the approach to informing citizens needs to change as well.

Montenegro must not choose propaganda, but objective way of providing information to the public. The EU might no longer be a fairy-tale from the 1990's, but it is still the most rational choice for Montenegro. For that reason, political elites have to split their responsibilities for integration with the citizens. The citizens of Montenegro deserve to enter the EU with their eyes open, fully informed, and aware of all advantages and flaws. Only that way they can be equal citizens of Europe, and not newcomers from the Balkans who are yet to be taught what democracy is all about.

