



European Economic and Social Committee

REX/401
Enhancing the transparency
and inclusiveness of the EU
accession process

Brussels, 10 July 2014

OPINION

of the
European Economic and Social Committee
on
Enhancing the transparency and inclusiveness of the EU accession process
(own-initiative opinion)

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At its plenary session of January 2014, the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on

Enhancing the Transparency and Inclusiveness of the EU accession process.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 June 2014

At its 500th plenary session, held on 9-10 July 2014 (meeting of 10 July.), the European Economic and Social Committee adopted the following opinion by 132 votes in favour with 2 abstentions.

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1. Conclusions and recommendations

- 1.1 The EU's enlargement policy, while perhaps not the most popular EU policy area, is among the most successful political projects of the EU. In recent years, there have been a number of improvements to the transparency and inclusiveness of the accession process, as has been apparent in the current processes in Serbia and Montenegro. The strategic shift of the EU institutions towards the fundamentals – the rule of law and economic governance - creates an opportunity to foster participatory democracy within, rather than in parallel with, enlargement policy as a whole.
- 1.2 Nevertheless, there are several challenges ahead. Greater consistency is needed to ensure that both the EU institutions and the governments concerned adopt a transparent and inclusive approach throughout the accession process, across all policy areas and in all candidate and potential candidate countries. There is a need for tighter policy integration as regards (1) the actual negotiations (2) fostering civil society development and social dialogue and (3) institutional capacity building, all of which should be more appropriately reflected in the funding of pre-accession assistance.
- 1.3 The EESC recommends that the European Commission, the Council of the European Union and the European Parliament:
- Substantially increase its financial support for building institutional capacities and developing citizen engagement in the accession process, as well as for strengthening the professionalism and independence of the media.

- Encourage both stronger civil and social dialogues in enlargement countries and link this more closely to the accession process.
- Increase its communication efforts to explain the benefits and challenges of enlargement policy to EU citizens, in cooperation with civil society organisations.
- Disclose all key documents for accession negotiations i.e. screening reports, translations of the EU *acquis* and opening and closing benchmarks and that these documents be published on the websites of the EU Delegations.
- Make it compulsory for enlargement countries to adopt and implement legislation on public access to information, public consultations and ensure that this is an integral part of the progress monitoring process.
- Apply the *DG Enlargement Guidelines for EU Support to Civil Society in Enlargement Countries 2014-2020*¹ equally in all enlargement countries and revise these guidelines in order to address in more detail the specific challenges faced by the social partners in the context of social dialogue.
- Aim to fully implement the *DG Enlargement Guidelines for EU Support to Media Freedom and Media Integrity in Enlargement Countries, 2014-2020*².

1.4 The EESC recommends that the national governments of negotiating countries:

- Adopt and publish a written policy on access and disclosure of negotiation-related information, ensuring that:
 - negotiation structures, procedures and timetables are transparent and publicly available;
 - national negotiation positions are available to members of parliament and that their summaries are, at the very least, available to the public.
- Invite representatives of civil society, including the social partners, to take part in all expert groups, chapter working groups and meetings of the core negotiation team whenever they are affected by accession issues.
- Define their national priorities prior to starting the negotiation process in order to help the core negotiation team to defend priority sectors more effectively and thus achieve better negotiation results.
- Carry out regulatory impact assessments (RIA) when preparing national negotiation positions and legal harmonisation in order to identify adjustment risks; to engage non-state actors, including the business community, trade-unions and representatives of affected social groups when carrying out RIAs.

¹ http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf.

² http://ec.europa.eu/enlargement/pdf/press_corner/elarg-guidelines-for-media-freedom-and-integrity_210214.pdf.

- Involve the social partners and business associations more closely in economic governance and labour market reforms and in calculating the social and economic costs of harmonisation, ensuring that concerns for social cohesion and competitiveness are taken into account.
- Involve economic and social councils when programming pre-accession assistance aimed at addressing the social partners' needs.
- Include the social partners and other relevant stakeholders, such as business associations, in technical assistance and in the funding schemes available to civil society.
- Ensure that national parliaments play a proactive, deliberative and supervisory role in the accession process in a timely and strategic manner.
- Refrain from reverting to direct nominations for joint consultative committees but instead use inclusive and transparent procedures involving economic and social councils and national consultative bodies for civil society when selecting candidates.

1.5 Recommendations for the EESC:

- Joint consultative committees (JCCs) should attempt to fill "empty niches" which are not covered by other bodies in the negotiation process and focus on a select number of areas, in particular the four overarching themes of the current enlargement strategy– the rule of law, economic governance, strengthening democratic institutions and fundamental rights, as well as the enhancement of both civil and social dialogues.
- JCCs should maximise their outreach to national and other level stakeholders, through public hearings, online consultations, and cooperation with national TACSO³ advisers and key policy monitoring projects.
- Exchange of information should be improved between JCCs and the Commission, the Council and the European Parliament's relevant bodies in order to facilitate communication between the EU institutions and civil society stakeholders in the enlargement countries.
- To take urgent measures to encourage and facilitate a better gender balance of EESC members serving on JCCs.

2. Key features and changes in the EU's enlargement policy over the past five years

- 2.1 While some of its long-term societal and political effects are open to question, the EU's enlargement policy has clearly been instrumental in accelerating changes in national governance structures towards market economies and democracies, as well as in fostering regional cooperation in the post-war Western Balkans. In terms of the scope of the EU accession negotiations, the transition periods for implementing EU legislation are a key issue,

³ TACSO is an EU funded technical assistance project for civil society development in enlargement countries, <http://www.tacso.org/>.

as are the related financial costs for both the EU and the candidate countries. As the opening and closing of each negotiation chapter is subject to a unanimous vote at the Council, the pace and timing of negotiations can be highly unpredictable in view of the potential impact of national politics in one or more Member States.

- 2.2 The EU has proved to be open towards improving and adjusting the negotiation process in line with changing political circumstances. It is important to note that the current negotiation methodology has greatly evolved over the years, based on this "learning by doing" approach.
- 2.3 As announced in the Commission's *Enlargement Strategy and Main Challenges 2013-2014*⁴, "a key lesson from the past is the importance of addressing the fundamentals first", starting with the rule of law, which has been "placed at the heart of the enlargement process". This represents a significant strategic shift from specific policy adjustments to the broad issue of democratic governance, finally understood as prerequisites for meaningful and sustainable policy harmonisation with the EU *acquis*. Accordingly, during the ongoing accession negotiations (Montenegro, Serbia, Turkey) the Commission intends to keep Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) open throughout the accession negotiations, the pace of which may well depend on the progress made in these two critical chapters.
- 2.4 On the one hand, changes in the negotiation methodology used in the accession process are an indication of the EU's flexibility and its genuine concern for ensuring the effectiveness of negotiations. The greater attention given to "evidence-based" enlargement has strengthened the position of non-state actors, whose independent information is valuable for the regular assessments made by the Commission in its progress reports. On the other hand, the changes introduced may be perceived as primarily reflecting the EU's selective need for evidence while ignoring the administrative burdens they impose on negotiating countries, unless there are clear procedures for data collection and stakeholder engagement.
- 2.5 The *Negotiating Framework with Serbia*⁵ is the first negotiating framework to refer explicitly to the principles of inclusiveness and transparency: "In order to strengthen public confidence in the enlargement process, decisions will be taken as openly as possible so as to ensure greater transparency. Internal consultations and deliberations will be protected to the extent necessary in order to safeguard the decision-making process, in accordance with EU legislation on public access to documents in all areas of Union activities." This is an important lesson learned from the case of Croatia - where voter turnout in the EU referendum was the lowest ever (43%) - and represents a step towards the formalisation of a number of improved practices in the case of Montenegro.

4 COM(2013) 700 final.

5 <http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT>.

- 2.6 The EU's stronger focus on economic governance envisages the introduction of national economic reform strategies and action plans for public financial management, in the hope that more timely information and macroeconomic surveillance might help prevent a protracted economic recession and an excessive deficit, which occurred in Croatia immediately after its accession. Accordingly, it is planned that enlargement countries will undergo scrutiny comparable to that of the EU Member States under the "European Semester". It is essential to ensure the timely preparation of the business sector in order to help companies become more competitive and face the challenges of the EU's single market, while the involvement of social partners is critical for assessing and agreeing the social dimension of the economic reforms.
- 2.7 According to the *DG Enlargement Guidelines for EU Support to Media Freedom and Media Integrity in Enlargement Countries, 2014-2020*⁶, a vibrant civil society is critical for stimulating pluralism and participatory democracy. EU support for civil society should therefore focus on (1) achieving an environment that is conducive to civil society activities and (2) to building the capacity of CSOs so they can function as effective and accountable independent actors. These guidelines would appear to be a useful tool for the integration of civil society provided that their implementation is in line with their level of ambition.
- 2.8 So far, enlargement policy has failed to fully respond to the challenge of informing EU citizens about its vital importance for the security and prosperity of the entire continent, which could help allay the fears of further enlargement that can surface along with other forms of xenophobia, especially in times of economic crisis. As the memories of the Balkan wars fade, the current crisis in Ukraine can act as a reminder that a lack of peace and democracy can affect us all.

3. **Public access to negotiation documents**

- 3.1 Although the accession process does not provide for conditionality in the area of transparency and inclusiveness, public expectations in this area are increasing in those countries negotiating their EU accession. In the case of Croatia, there was a lack of information about the technical procedures for negotiations: although a protocol on internal policy coordination on EU negotiation positions was adopted, it was never actually published in the official gazette. All EU negotiation related documents produced by the Croatian Government, other than legal drafts, were discussed and adopted during government sessions held *in camera*. This meant that the public could not even request non-classified documents as there was no formal information about their existence. It took several years of civil society pressure before the government began to publish basic information about the documents discussed during the sessions.

⁶ See footnote 2.

- 3.2 In terms of parliamentary oversight, Slovenia's good practice was unprecedented - the national parliament had the right to veto negotiation positions⁷, which were also disclosed to the public. While the Croatian Parliament acted competently as a guardian of the political consensus throughout six years of cumbersome EU negotiations, it fell short of catalysing the broader engagement of parliamentarians, experts and general public in policy deliberations. Negotiation positions and reports were restricted to government officials and selected groups of members of the National Committee for Monitoring the Accession Negotiations, resulting in the virtual exclusion of the vast majority of MPs, let alone the general public. This scenario should not be repeated in the forthcoming rounds of negotiations.
- 3.3 Timely insight on the part of non-state actors and the media and the independent monitoring of the negotiation process were also hindered by the fact that the documents produced by the European Commission and the Council, such as EU Common Positions, were not the property of the Republic of Croatia. As a result, the Croatian government claimed that it had no authority to disclose them. This was accompanied by a lack of proactive disclosure on the part of the EU institutions⁸.
- 3.4 There has been a clear improvement in the disclosure of negotiation-related documents in the case of Montenegro. The Commission has published all screening reports on its website, which may serve as valuable diagnostic tools for all stakeholders on the non-compliance of national legislation with the EU *acquis*. Furthermore, the Council has proactively published the EU Common Positions for Chapters 23 and 24 in view of the significance and public interest in the reforms involved. It remains to be seen if this good practice will translate into a policy to be followed in the case of Serbia and Turkey or with regard to those chapters already open. In addition, there is no formal reason why the Council should not be able to publish the opening benchmarks in full once they have been unanimously approved. Timely access to these key documents for negotiations is crucial for civil society input and contribution, informed media reporting and independent monitoring of the governments' actions to meet their obligations.
- 3.5 Drawing on the lessons learned from past rounds of enlargement, the Commission has become more sensitive to the vital role of independent and professional media, as evidenced by the organisation of two conferences entitled Speak-Up in 2011 and 2013 and by the adoption of the *Guidelines for EU Support to Media Freedom and Media Integrity in Enlargement Countries, 2014-2020*, which should also serve as a basis for funding allocations. One challenge that remains, however, is how to ensure media outreach to EU-

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<http://www.ijf.hr/eng/EU4/marsic.pdf>.

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In practice, the Council has released accession-related documents upon demand, upon extraction of sensitive information mostly related to the positions and documents owned by the Member States, on the grounds that they require intergovernmental consultations and concern international relations, in line with Article 4 of Regulation (EC) No 1049/2001 of 30 May 2001. The classification policy of the Council also restricts access to accession-related information in the European Parliament, where special rooms are set aside for storing and viewing classified documents.

based audiences, who also need to be aptly informed about the meaning and dynamics of enlargement policy.

4. **The role of civil society in the accession process**

- 4.1 Civil society engagement in the accession process consists of (1) direct involvement in the actual negotiations (i.e. screening, preparation of national positions, oversight of progress) (2) social and civil dialogue related to policy formulation and legislative harmonisation with the *acquis* (3) participation in the programming of pre-accession funding (4) independent monitoring of progress and social effects of the reform processes. The performance of these roles requires adequate financial support, through national government and EU pre-accession funding.
- 4.2 The Croatian and Montenegrin working groups for the preparation of negotiation positions included a high proportion of civil society experts (over one third of all members). In both cases, open calls for applications were organised and the names of all working groups' members were published. Yet, in the case of Croatia, the scope of involvement was largely dependent on the leadership style within each group: in some cases, civil society members did not have an opportunity to see the draft negotiation positions required. Accordingly, civil society input primarily concerned the initial screening phase, with little impact on the design of the negotiation strategy and early assessments of social and economic costs and benefits.
- 4.3 The EU institutions have provided several channels for consultation with civil society in order to collect evidence on the progress of accession-related reforms, including online correspondence, annual civil society consultations in Brussels, in-country meetings, briefings and public events during visits by EU officials. The Commission has also been open to independent monitoring reports prepared by civil society organisations. Yet the Commission has admittedly been much more proactive towards NGOs than towards trade unions and business associations. This is evident in terms of both the level of contact as well as the scope and purpose of pre-accession funding schemes for capacity building and policy monitoring.
- 4.4 If we look back at Croatia's accession process, it represents a missed opportunity to strengthen social dialogue in the country in connection with its EU accession, which could have helped to ensure more effective and sustainable conditions for Croatia's EU membership, as had happened in Bulgaria. National economic and social councils were not sufficiently used to debate the social and economic adjustment costs and support measures, nor for the programming of pre-accession assistance. A very low proportion of pre-accession funding was directed towards strengthening social dialogue structures and the organizational capacities of the social partners. The capillary structure of the business associations and trade unions should be used more fully as key platforms for the deliberation of the accession costs and benefits and the timely preparation of the economy.

4.5 In terms of policy formulation, in the case of Croatia and in line with negative trends in the previous rounds of accession, over 80% of *acquis*-related legislation was fast tracked, often without any public consultation, with a minimum scope of regulatory impact assessments (RIAs), damaging the quality and transparency of the legislative drafting⁹. On a more positive note, the programming of the Instrument for pre-accession assistance (IPA) was inclusive, especially as regards the civil society component, and was steered by the Council for Civil Society Development, with technical support from the Government Office for Civil Society. This led to the development of highly relevant grant schemes, supportive of independent policy monitoring in several critical reform areas and allowed for the important intervention of social partners in allocating funding for strengthening competences for social dialogue. The inconsistency between the two processes described above should be avoided and the inclusive approach in policy-making should always prevail in the forthcoming accession processes.

5. The EESC's role in facilitating civil society engagement in the accession process

5.1 As a strong supporter of enlargement policy, the EESC has set up joint consultative committees (JCC), which bring together CSOs in order to draw up recommendations for the political authorities on both sides and to foster public debate on EU integration in enlargement countries. These structures have enabled informed discussions about the negotiations, based on multiple perspectives, and made it possible to identify the consequences of adopting the EU *acquis* for different sections of society, supporting civil society engagement in the process. In addition to the JCCs, the Western Balkans Civil Society Forum serves as a regional platform for addressing political authorities and provides opportunities for networking among WB CSOs, while analysing the major problems of civil society in the region.

5.2 The following list includes some of the challenges identified in the work of the JCCs:

- governments tend to exert too much influence on the nomination processes for JCC members;
- there have been disruptions in terms of work and relations due to significant changes in the EESC's members in individual JCCs; equally, however, too little turnover on the part of the partners countries may well have prevented outreach to new organisations;
- JCCs have limited organisational capacities to reach out to a wider circle of local civil society organisations, outside the capital and urban centres;
- JCCs tend to engage more male EESC members, with a current average ratio of 78%. This represents a serious gender imbalance and the EESC is urged to seek and implement measures to remedy this unsatisfactory position.

⁹ SIGMA Assessment Croatia, May 2011.

- 5.3 Increasing awareness about the role of civil society and including social partners in the accession process has been both a mission and a challenge for the EESC. In some countries, governments have maintained a negative attitude towards civil society and, as a result, JCC recommendations have had little resonance. Nevertheless, JCCs have created opportunities for direct exchanges between civil society, EU and national politicians and officials, even if they have had little impact on government policies. With this in mind, JCCs would benefit greatly from stronger backing and closer cooperation with the Commission, the Council and the EP, ensuring that key concerns about the national realities of accession, stemming from the civil and social dialogue in the countries, may be heard in all relevant policy-making arenas.

Brussels, 10 July 2014.

The President
of the
European Economic and Social Committee

Henri Malosse
