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EU CONDITIONING ON THE ELECTIONS IN MONTENEGRO AND SERBIA

Podgorica, May 2021



Kingdom of the Netherlands

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For the publisher:

Jovana Marović

Authors:

Aleksandar Ivković, Nikola Burazer, Radoš Mušović

Design:

Dragana Koprivica

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Summary

Despite being in the process of EU accession for years, elections in Montenegro and Serbia are still not free and fair. European Union is in a unique position to tackle this problem given its leverage when it comes to Montenegro and Serbia, and it is in its interest to do so in terms of its enlargement policy and its credibility. The mechanisms currently available to the European Commission and the European Parliament provide a good starting point, but they can still be improved in multiple ways. Reporting of the European Commission, revised enlargement methodology and mediation of disputes over electoral conditions are the elements of EU's policy towards the Western Balkans that can lead to significant improvements in the quality of their elections, if recalibrated and implemented properly.

INTRODUCTION

The capability of Montenegro and Serbia to hold free and fair elections has been a condition for their EU membership since the start of the accession negotiations in 2012 and 2014, respectively. The countries' progress in the accession negotiations depends on the fulfilling of the so-called Copenhagen Criteria for membership, originally defined in 1993.¹ Democratic elections, as a part of the political criteria, remain one of the most important conditions in this regard.

However, it is worrying that almost nine years since the start of the accession negotiations with Montenegro and seven years since the start of negotiations with Serbia neither of these countries currently meets the necessary threshold for its elections to be considered free and fair.

This assessment is based on the long-term findings of international observers (in particular OSCE/ODIHR Missions to Montenegro and Serbia) and domestic observers, and remained valid in 2020, when both countries held parliamentary elections.

The 2020 elections in Montenegro led to the first change of government in 30 years, with all participants in the elections accepting the results, but the observers still noted that the incumbent party at the time of the election, the Democratic Party of Socialists (DPS), had an undue advantage. It remains to be seen how the change of government will influence the electoral conditions in the future.

In Serbia, on the other hand, a deep political crisis broke out in 2020, when the majority of opposition parties decided to boycott the parliamentary election, assessing that there were no conditions for their free and fair conduct. Far from becoming gradually fairer and more democratic, the elections in Serbia seem to have gone in the opposite direction during the country's EU accession process.

Both countries face similar kinds of problems. The media were assessed negatively in 2020 in terms of professional coverage of the election campaigns. The established practice of abuse of state resources and blurring of the lines between official activities and partisan campaigning helped the ruling parties as well, while the reports and allegations of pressure on voters also persisted in 2020. In both Serbia and Montenegro, observers found multiple flaws with the work of the institutions managing the electoral process, as well as the laws regulating the process.

The deficiencies of the electoral process in Montenegro and Serbia have been reflected in the relatively poor rankings by influential international organisations, such as Freedom House² and V-Dem Institute³. The long-term problems have also left a worrying effect on the public perception of elections. According to a poll conducted in 2020, only 5% of

¹ Council of the European Union, <https://www.consilium.europa.eu/en/policies/enlargement/montenegro/>, <https://www.consilium.europa.eu/en/policies/enlargement/serbia/>, Accessed on 5 April 2021

² Freedom House, <https://freedomhouse.org/country/serbia/freedom-world/2021>, <https://freedomhouse.org/country/montenegro/freedom-world/2021>, Accessed on 5 April 2021

³ V-Dem Institute, https://www.v-dem.net/media/finder_public/74/8c/748c68ad-f224-4cd7-87f9-8794add5c60f/dr_2021_updated.pdf, Accessed on 5 April 2021

youth in Serbia (aged 15 to 30) believe that elections in their country are free and fair.⁴ Another poll released in January 2021 shows that, while 43% of citizens of Serbia believe that the government can be changed through elections, 32% do not believe that this is the case, the latter percentage being the highest in the region.⁵

There is an urgent need for the European Union to tackle the issue of elections in Montenegro and Serbia in the context of their accession processes. This current state of affairs undermines the reputation of the EU accession process in general, given the expectation that it gradually brings a candidate country closer to the EU values and standards. This has negative consequences for the effectiveness and credibility of the Enlargement Policy, which has previously been described as one of the most successful policies of the European Union.⁶ Furthermore, it is in the interest of the EU to ensure that the countries which will, at some point, become Member States, do not have systemic problems with their state of democracy, thus adding up to the already existing problems within the EU. Commitment to democratic standards in the candidate countries will also provide the EU with additional credibility when it comes to tackling the deficiencies within its current Member States.

The EU is in a unique position to tackle the problems with elections in Montenegro and Serbia. Given the nature of the EU accession process, it can condition further progress with concrete reforms and improvements in this area. The financial resources allocated to Montenegro and Serbia from the EU budget can also serve as leverage in achieving these goals. Finally, regular comprehensive evaluations of the state in the EU candidate countries, as well as high intensity of political communication, provide the EU with much more robust tools to affect these issues than any other international actor, including OSCE/ODIHR.

However, the EU's current impact on the quality of elections in Montenegro in Serbia remains limited, mostly due to the

fact that it has not used the available mechanisms to the fullest extent. In the cases where it has used them, they have suffered from the problems of clear monitoring and benchmarking, as described in other analyses of the EU's approach to the rule of law in the Western Balkans.⁷

This paper focuses on the three mechanisms available to the EU in this regard: 1) Reports of the European Commission (EC), 2) mechanisms made available through the new enlargement methodology and 3) Inter-Party Dialogue which is carried out by the European Parliament, but where EC can also contribute. It analyses the shortcomings of the current mechanisms and recommends ways for their improvement.

MECHANISMS OF THE EUROPEAN UNION FOR INCENTIVISING IMPROVEMENT OF ELECTORAL CONDITIONS

» European Commission reports

European Commission releases annual Enlargement Package, which consists of reports on each EU candidate and potential candidate country. In 2018 and 2019, reports were released in April and May, respectively, while in 2020 they were released in October due to the COVID-19 pandemic. These documents, previously known as “Progress Reports”, provide a comprehensive assessment of the country's readiness to become an EU Member State, including the political and economic criteria for membership, as well as the alignment with the Union's *acquis*.

Commission reports are one of the

4 National Youth Council of Serbia, <https://koms.rs/wp-content/uploads/2020/09/Alternativni-izves%CC%8Ctaj-o-polož%CC%8Caju-i-potrebama-mladih-u-RS-2020.pdf>. Accessed on 5 April 2021

5 Marović, J. and Prelec, T. *No longer voting for the devil you know?*, BiEPAG, January 2021, <https://biepag.eu/wp-content/uploads/2021/01/Elections-No-longer-voting-for-the-devil-you-know.pdf>. Accessed on 11 May 2021

6 European Parliament, <https://www.europarl.europa.eu/factsheets/en/sheet/167/the-enlargement-of-the-union>. Accessed on 11 May 2021

7 Marković, J. et al, *Strengthening the Rule of Law in the Western Balkans: Call for a Revolution against Particularis*, <http://biepag.eu/wp-content/uploads/2019/03/Strengthening-the-Rule-of-Law.pdf>. Accessed on 11 May 2021

most important mechanisms through which the EU can influence the quality of elections in Montenegro and Serbia. They are given a significant amount of attention in the national media, though a recent research in Serbia has found that pro-government media used various means to distort the message of the 2020 report and downplay the criticism found within it, particularly when it comes to the findings on elections.⁸ The fact that the reports are one of the main bases for the decisions of the Council on whether the country would progress on its EU path gives them political weight in the national debate and a possibility to incentivise reforms in the areas where significant problems persist.

» Lack of a systematic approach

There is, however, still room for improvement for the way in which the Commission assesses the elections. There are three shortcomings of the European Commission reports when it comes to the assessment of the elections in Montenegro and Serbia: 1) problems with the electoral process are not systematically presented in a report; 2) unlike in other areas, there is neither an assessment of the *level of readiness* (for EU membership, assuming that the country ready for EU membership meets the threshold of free and fair elections) nor *progress achieved* in the past year; 3) unlike in other areas, there are no priority recommendations for a country regarding elections nor any benchmark for further progress which tackles the electoral issues directly.

In the 2020 reports on Montenegro and Serbia, problems with the elections in both countries are mostly presented in the section Elections, which is the first individual area on which the reports focus, primarily quoting the findings of OSCE/ODIHR Election Assessment Missions. Even there, however, there is no systematic overview of election shortcomings, but rather a simultaneous presentation of the political context, election results and the limited attempts to improve the electoral

conditions in both Montenegro and Serbia leading up to the 2020 elections.

The section *Elections*⁹ is not the only part of the report in which the problems with elections in Montenegro and Serbia are discussed. Chapter 23: Judiciary and Fundamental Rights focuses on the work of the Anti-Corruption Agency in Montenegro with regard to its role in the electoral campaign, noticing its failure to impose sanctions in several cases. The work of the Anti-Corruption Agency in Serbia is also analysed in this section of the report, but *no specific shortcomings* have been stressed with regards to the 2020 elections.

Furthermore, the section *Freedom of Expression* within Chapter 23 touches upon the problems related to the election campaign. In the case of Montenegro, this is the increased harassment of journalists during that period, while in the case of Serbia the focus is on the work of the Regulatory Body for Electronic Media (REM), an independent institution tasked with the oversight over television channels and radio stations during the election campaign. The equivalent institution for Montenegro, Agency for Electronic Media (AEM) is analysed within Chapter 10: Information Society and Media.

8 Burazer, N., Muminović, E. et al. *Love from China and Slaps from Brussels*. Centre for Contemporary Politics, 2021. <https://europeanwesternbalkans.com/wp-content/uploads/2021/04/Serbian-Media-Reporting-on-the-European-Union-2020-Love-from-China-and-slaps-from-Brussels.pdf>. Accessed on 11 May 2021

9 Montenegro 2020 Report, page 9, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf. Accessed on 11 May 2021; Serbia 2020 Report, page 9, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf. Accessed on 11 May 2021

Table 1 shows the parts of the 2020 European Commission reports on Montenegro and Serbia that tackle the shortcomings of the elections in the respective countries.

Table 1: Shortcomings of elections in Montenegro and Serbia in the 2020 EC reports	
Montenegro	Serbia
Elections	
dominant media coverage of the ruling party	dominant media coverage of the ruling party
abuse of office	abuse of office, blurring the line between state and party activities
abuse of state resources	
non-transparent dispute resolution system; lack of effective remedies	Regulatory Body for Electronic Media (REM) and the parliaments Supervisory Board remained passive
gaps in legal framework, especially with regards to campaign finance	campaign finance regulatory framework still does not ensure transparency; last-minute changes of electoral system (threshold)
State Election Commission did not entirely fulfil its regulatory role	8-10% of polling stations featured irregularities on election day
no legal conclusion for election-related affairs (“audio recordings”, “envelope”)	
numerous ODIHR recommendations remain unaddressed	numerous ODIHR recommendations remain unaddressed
Chapter 23: Judiciary and Fundamental Rights: Fight against corruption	
Anti-Corruption Agency did not impose sanctions with respect to the expenditure reports, despite the fact that these did not correspond to ACA findings.	
shortcomings in the existing legal framework on political parties’ financing	
Chapter 23: Judiciary and Fundamental Rights: Freedom of expression	
anonymous harassment of journalists intensified via a dedicated website in the run-up to the elections	Regulatory Body for Electronic Media (REM) did not clarify the distinctions in treatment of public and private broadcasters
	REM did not clarify how its monitoring methodology counts the airtime of public officials supporting a party
	REM and parliamentary Supervisory Board remained passive (repeated assessment)
Poglavlje 10: Informaciono društvo i mediji	
Agency for Electronic Media’s oversight over the media in the campaign overlaps with an ad-hoc parliamentary committee	
AEM lacks the authority to effectively monitor and penalise broadcasters	

As Table 1 shows, there is no *single section* of the report on either Montenegro or Serbia dedicated specifically to *the problems* with the elections in these EU candidate countries. As we have mentioned above, even the section *Elections* is not focusing on these aspects alone, but rather regards them as a part of the wider political context. A lack of systematic overview of the electoral shortcomings, unlike with the shortcomings in other areas of the report, fails to put an emphasis on the need for improvements in these areas, despite the fact that these improvements, as the observers and other international organisations show, are urgently needed.

Another problem in this regard is the lack of assessments of the level of readiness of a country and progress achieved in the past year in the area of elections. These assessments exist for the majority of other areas of the report, including every individual negotiating chapter, as well as economic criteria for EU membership. In the case of elections, there is just a simple description of certain problems in the field of electoral conditions without a general assessment in the area, i. e. how close the country is to fulfilling the Copenhagen Criterion of “stability of institutions which guarantee democracy, rule of law, respect for human rights and protection of minorities”. The assessment of the current state of affairs and progress achieved in the reporting period would provide the citizens with a better understanding of the fact that more needs to be done in the area of elections, while also taking into consideration the fine line between giving a negative assessment and questioning the political legitimacy of the current government.

For example, an assessment that Montenegro and Serbia have “some level of preparation” or are “moderately prepared” for holding free and fair elections (without prejudice to what the assessment of the EC would actually be) would clarify the expectations of the EU much better than currently is the case. In the context of the ongoing efforts to improve the electoral conditions (including the Inter-Party Dialogue in Serbia facilitated by the European

Parliament), assessments that the countries have achieved “some progress” or “limited progress” would also serve as an incentive, given the fact that these reforms receive a high level of political attention from all political actors.

Furthermore, almost every other area of the report also includes priority reforms Montenegro/Serbia should pursue in the period until the next report (“In the coming year, Montenegro/Serbia should...”). This is not the case with the elections, which also represents a missed opportunity to provide valuable incentives for the political actors in the country to focus on specific reforms in the near future.

The reports in their current form invite Montenegro and Serbia to implement ODIHR recommendations, which does not suffice. This is because there are more than 20 such recommendations in the case of Montenegro¹⁰ and more than 30 in the case of Serbia.¹¹ Due to their comprehensive nature, ODIHR recommendations do not necessarily highlight the areas that are of political importance (such as media reporting and pressures on voters in Serbia) as the priority ones, while even the priority recommendations can be too vague or too reliant upon legislative changes. European Commission has an opportunity to invite Montenegro and Serbia to give particular attention to areas that are politically relevant to both internal stability of the country and its fulfilment of the EU reforms.

» **Lack of sufficient scrutiny in some areas**

The previous part of this paper mostly analysed how the current level of analysis in the European Commission reports can be better organised and presented in order to provide stronger incentives for priority reforms. This, however, does not mean that the current level of scrutiny is sufficient, especially given the fact the political importance of the elections as a political criterion of EU membership and the existing problems in this area.

¹⁰ ODIHR Montenegro 2020 Final Report, page 24, <https://www.osce.org/files/f/documents/5/2/473532.pdf>, Accessed on 11 May 2021

¹¹ ODIHR Serbia 2020 Final Report, page 24, <https://www.osce.org/files/f/documents/a/3/466026.pdf>, Accessed on 11 May 2021

One of the areas where more scrutiny of the European Commission would be extremely useful is the analysis of the work of the Anti-Corruption Agencies with regards to their role in elections.

Anti-Corruption agencies are relatively young institutions in both Montenegro and Serbia, regulated by the *Law on Prevention of Corruption*¹² and *Law on Financing of Political Entities and Election Campaigns*¹³ in Montenegro and the *Law on Prevention of Corruption*¹⁴ and the *Law on Financing of Political Activities*¹⁵ in Serbia. Table 2 provides an overview of the Agencies' role in the elections in Montenegro and Serbia, based on the above-mentioned four Laws.

Table 2: The role of the Anti-Corruption Agency in the Montenegrin and Serbian elections		
	Montenegro	Serbia
Anti-Corruption Agency	<ul style="list-style-type: none"> oversight of campaign finance oversight of the use of state resources during the campaign oversight of social welfare payments and budgetary expenditures during the campaign oversight of employment during the campaign issuing a warning or initiating misdemeanour proceeding if the Laws are violated 	<ul style="list-style-type: none"> oversight of campaign finance oversight of the use of state resources during the campaign oversight of the abuse of office to promote a political party issuing a warning or initiating misdemeanour proceeding if the Laws are violated

As shown in Table 1, the Anti-Corruption Agencies were insufficiently analysed in the 2020 reports (Chapter 23: Judiciary and Fundamental Rights). Only a couple of sentences¹⁶ in both reports were dedicated to these institutions' activities in the 2020 elections, which is in contrast to its important role in the three aspects of elections that not only contribute to their overall fairness but also cause political controversy for their violations: 1) political party financing; 2) abuse of state resources; 3) use of office for political promotion.

In its Final report on the 2020 Elections in Montenegro, ODIHR Limited Election Assessment Mission noted that “some interlocutors alleged largely unequal financial capacities of the contestants, due to the access of the ruling DPS to state resources, preferential access to public premises for campaign events and public media space for promotion, as well as

12 Zakon o sprečavanju korupcije, “Sl. list CG”, br. 53/2014 i 42/2017 – odluka US, https://www.paragraf.me/propisi-crnegore/zakon_o_sprečavanju_korupcije.html, Accessed on 11 May 2021.

13 Zakon o finansiranju političkih subjekata i izbornih kampanja, “Sl. list CG”, br. 3/2020 i 38/2020, https://www.paragraf.me/propisi-crnegore/zakon_o_finansiranju_politickih_subjekata_i_izbornih_kampanja.html, Accessed on 11 May 2021

14 Zakon o sprečavanju korupcije, “Sl. glasnik RS”, br. 35/2019 i 88/2019, <https://www.paragraf.rs/propisi/zakon-o-sprečavanju-korupcije.html>, Accessed on 11 May 2021

15 Zakon o finansiranju političkih aktivnosti, “Sl. glasnik RS”, br. 43/2011, 123/2014 i 88/2019, https://www.paragraf.rs/propisi/zakon_o_finansiranju_politickih_aktivnosti.html, Accessed on 11 May 2021

16 In the context of the 2020 elections, the EC report on Montenegro noted only that “In the run-up to the elections, ACA performed its monitoring activities. It initiated i.a. verifications of some 700 donors to political campaigns. It further initiated over 400 proceedings concerning abuse of public resources for electoral campaigns purposes and instituted 25 misdemeanour proceedings. The ACA did not impose any direct sanctions with respect to expenditure reports submitted by the contestants or published any conclusions, despite the fact that these did not correspond to ACA findings”. In the case of Serbia, no assessment of the ACA's work in the context of the elections was included.

pressure on voters, including for receiving contributions”¹⁷ and that “the choice of contractors by some parties was seen as cronyism and an opportunity to prove parties’ loyalty to the authorities”. These assessments would imply the ineffectiveness of the Anti-Corruption Agency, which is tasked with preventing exactly this sort of behaviour.

NGO Centre for Monitoring and Research (CeMI), a Montenegrin election observer, further noted that the Agency had fulfilled the majority of its reviews, but not the ones that caused the “biggest public attention”, including the cases related to the then ruling Democratic Party of Socialists.¹⁸ It also noted that the legal basis for the functioning of the Agency has its shortcomings, since it prevents it from reviewing the majority state-owned enterprises, which can also be abused for electoral purposes.

In the case of Serbia, ODIHR Special Election Assessment Mission (SEAM) outright noted that “the institutions responsible for monitoring the compliance with the campaign regulations, such as the Anti-Corruption Agency (ACA), did not effectively respond to issues and allegations of misuse of office and state resources” during the 2020 parliamentary elections.

The report described in detail the ways in which public officials in Serbia blurred the line between their official activities and promotion of the ruling parties, which could be assessed as a violation of Article 50, Section 3 of the new Law on Prevention of Corruption, which requires the officials to clearly distinguish whether they make the statements on behalf of the state and on behalf of the party.

These findings support the assessment that the European Commission reports on Montenegro and Serbia lack the necessary analysis of the problems related to the effectiveness of the work of the Anti-Corruption Agencies when it comes to their role in the elections. The reports could be significantly improved if they included the analysis of the reasons behind the insufficient effectiveness, as well as a

more detailed track record of the election-related cases and clear recommendations for the improvement of the ACA’s work.

The EC has generally been successful in identifying the problems in the fulfilment of the necessary criteria, but not so much in finding their root causes and addressing the solutions for them. For example, the independence and impartiality of the Director of the Anti-Corruption Agency in Serbia, a former member of the ruling party, has been called into question multiple times by the civil society.¹⁹ The 2018 EC report on Serbia only noted that he had been elected that year.²⁰ This seemingly important factor for the functioning of this institution in Serbia, including in the matters of elections, has not been scrutinised enough by the Commission, alleviating any possible pressure for the rectification of the situation.

Another set of institutions analysed by the European Commission reports were the Regulatory Body on Electronic Media (REM) in Serbia and the Agency for Electronic Media (AEM) in Montenegro. REM and AEM, which are regulated by the respective Laws on Electronic Media, have a significant role in the course of the election campaign, in particular ensuring that the public broadcasters (RTS and RTCG) and private media outlets provide professional coverage of the election campaign. The institutions have a set of instruments for sanctioning the behaviour of electronic media, from issuing a warning to withdrawing their licence (though, in Montenegro, the problems with AEM’s authority persist, as the ad-hoc parliamentary committee first needs to notify the Agency of the breaches of the Law on Election of Deputies and Councillors). However, the observers in both countries gave a negative assessment of the work of these agencies in 2020.

“According to the ODIHR LEOM (Limited Electoral Observation Mission) interlocutors from the media sector, the lack of independence of the Public Service Broadcaster Radio and Television of Montenegro (RTCG) and of the regulator Agency for Electronic Media (AEM) undermines their ability to ensure that

17 ODIHR Montenegro 2020 Final Report, page 15, <https://www.osce.org/files/f/documents/5/2/473532.pdf>. Accessed on 11 May 2021

18 CeMI, page 52, <https://cemi.org.me/wp-content/uploads/2020/12/14.12-cemi-prelom-mne-verzija.pdf>. Accessed on 11 May 2021

19 PrEUgovor, page 28, <https://preugovor.org/Alarm-izvestaji/1449/Izvestaj-koalicije-prEUgovor-o-napretku-Srbije-u.shtml>. Accessed on 11 May 2021

20 Serbia 2018 report, page 20, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>. Accessed on 11 May 2021

balanced and comprehensive information is provided to the public by media”, the report reads.

In Serbia, REM’s work was in particular focus during the 2020 campaign, given the fact that the work of this institution has been one of the main topics of the European Parliament-mediated Inter-Party Dialogue in 2019.

“The REM acted only upon receiving complaints or appeals, rather than ex officio. Its decision making was often unclear and at times lacked sound legal reasoning, and communication with the complainants was insufficient. Shortly before the elections, the REM acted promptly and instructed broadcasters to stop airing some election-related advertisement, including a spot by the ruling party that was in breach of regulations concerning the protection of minors, and another one promoting the election boycott”, ODIHR SEAM reported.

As can be seen in Table 1, 2020 EC reports put more focus on the work of REM and AEM than on the respective Anti-Corruption Agencies. The conclusions on the work of these bodies are often taken from the ODIHR missions and are more detailed and precise in detecting some of the problems. The shortcoming of the reports is, however, that the priority reforms are too general (for example, ensuring that REM in Serbia is more “independent” and “proactive”, without going into further details). As was pointed out earlier, this part of the report is not a part of a systematic overview of the electoral conditions in general.

Finally, there are four other parts of the European Commission reports on Montenegro and Serbia that are indirectly connected to the shortcomings of the electoral processes but never analyse the situation from this point of view. Given the political importance of the elections for the EU accession process and the fulfilment of the political criteria, consideration should be given to including the election-related aspects of these sections of the reports (the optimal solution remains to have a separate section comprehensively analysing all the shortcomings) in order to achieve a truly comprehensive analysis and, preferably, provide recommendations for the priority reforms in these areas. Table 3 gives an overview of these areas and the possibility for their extension with election-related aspects.

Table 3: Sections of the EC reports that can also include the relevant analysis of election-related aspects	
Section of the report	Election-related aspects that could be included
Public Administration Reform	Political interference in the recruitment process which is tied with the pressure to support the ruling party.
Chapter 23 – Independence of the Judiciary	Review of judicial track record connected with the election-related cases, most importantly with the cases of pressures on voters.
Chapter 23 – Human Rights	Protection of the right of data privacy, given the allegations that they are being used for pressuring voters
Chapter 23 – Freedom of Expression	Analysis of every aspect within this section in the context of elections; for Serbia, inclusion of the fulfilment of the Action Plans for the new Media Strategy

Problems with elections, as can be seen from Table 3, are multi-faceted and related to almost every section of the EC reports dealing with the rule of law. Covering as much ground as possible would primarily serve to underline the importance of this area for the European Union, while the problems more important than others could and should be emphasised through the category of “priority reforms”.

A special emphasis given to Serbia’s Media Strategy reflects the attention given to this document by EU officials discussing the country’s fundamental reforms.²¹ The commitment of the Government to reforms in this area has been called into question, which indicates the need for the Strategy to remain in focus.²²

» Revised enlargement methodology

European Council endorsed the European Commission’s Communication “Enhancing the accession process – A credible EU perspective for the Western Balkans”, informally known as the new methodology for EU enlargement, in March 2020. Originally proposed for the accession process of North Macedonia and Albania, the new methodology was also accepted by Montenegro (in May 2020) and Serbia (July 2020). The aim of this approach is to put even more focus on the political criteria – democratic institutions and the rule of law – for EU membership and provide space for the Member States to get involved in the process, making it more “political”.

European Commission’s proposal²³ for the implementation of the new methodology to Montenegro and Serbia was endorsed by the Member States on 11 May 2021, while elements of it reached the public in March 2021. This new approach would not significantly affect the main principles guiding the process. While a possibility for Serbia to open chapters more quickly now exists due to their re-organisation

in six clusters (Montenegro has already opened all negotiating chapters), the principle of conditionality with regards to countries’ progress remains the same.²⁴ The political will of the EU to sanction lack of progress or backsliding remaining the deciding factor.

However, the new approach contains several elements that open the possibility of incentivising the election-related reforms even further.

First of all, European Commission’s proposal stresses that no new negotiating chapter with Montenegro and Serbia will be closed before the interim benchmarks for chapters 23 and 24 are fulfilled. This could make the category of the accession process the most politically significant in the following years, which can also be used as an opportunity to put more focus on elections in Montenegro and Serbia. As was described above, Chapter 23 includes several areas which are indirectly connected with the country’s ability to hold free and fair elections.

Council of the European Union has adopted Common Positions for Chapter 23 within the negotiations with Montenegro and Serbia, which defines the interim benchmarks for both countries. Table 4 lays out the interim benchmarks relevant for the quality of electoral process in the candidate countries.

21 Meeting of the Head of EU Delegation and the President of Serbia, <https://europa.rs/meeting-of-the-head-of-eu-delegation-and-the-president-of-serbia/?lang=en>, Accessed on 11 May 2021

22 The EU: defender of media freedom in Serbia?, <https://www.clingendael.org/pub/2020/declining-media-freedom-and-biased-reporting-in-serbia/4-the-eu-defender-of-media-freedom-in-serbia/>, Accessed on 11 May 2021

23 EWB: Application of the new methodology to Montenegro and Serbia: Principles remain the same, more emphasis on interim benchmarks, <https://europeanwesternbalkans.com/2021/03/24/application-of-the-new-methodology-to-montenegro-and-serbia-principles-remain-the-same-more-ephasis-on-interim-benchmarks/>, Accessed on 5 April 2021

24 Nechev et al, *The new EU accession methodology. Is it enough to pull the Western Balkans in?* https://idscs.org.mk/wp-content/uploads/2021/05/A5_WEB_New_Accession_Methodology_EU_WB-1.pdf, page 15, Accessed on 11 May 2021

Table 4: Interim Benchmarks indirectly related to the elections in Serbia and Montenegro

Interim Benchmarks – Serbia	Interim Benchmarks – Montenegro
<p>Serbia adopts the new Law on the Anti-Corruption Agency (ACA) providing it with a clear and strong mandate. Serbia ensures that ACA continues to enjoy the necessary independence, receives sufficient financial and human resources as well as training and is well connected to other relevant authorities (including to their databases). Serbia ensures that bodies that fail to report and cooperate with ACA are held accountable.</p>	<p>Montenegro establishes a new Anti-Corruption Agency with a clearly defined mandate and effective competencies. This Agency should show a proactive attitude, have the necessary independence, sufficient resources, including merit-based recruitment as well as trained staff, and should be well connected with other relevant institutions (and their databases). Montenegro shall ensure that the appointment of the head of the Anti-Corruption Agency is transparent, based on merit and objective criteria, including professional capacity.</p>
<p>Serbia amends its Law on Financing of Political Activities and reinforces the independence and administrative capacity of relevant supervisory authorities, in particular the State Audit Institution and the Republic Electoral Commission. Serbia provides an initial track record on the proper implementation of the law, including deterrent sanctions where required.</p>	<p>Montenegro changes the current legislation governing the financing of political parties, ensures that it is fully in line with GRECO recommendations and strengthens the administrative capacity and independence of supervisory authorities. Montenegro shall provide an initial balance of results achieved in the correct application of the law, including the application of dissuasive sanctions when necessary.</p>
<p>Serbia fully respects the independence of the media, applies a zero-tolerance policy as regards threats and attacks against journalists, and prioritising criminal investigations should such cases occur. Serbia provides an initial track record of progress in the work of the “Commission for consideration of the facts that were obtained in the investigations that were conducted on the killings of journalists” including further investigations, effective prosecution and deterrent sanctions for perpetrators.</p>	<p>Montenegro ensures the promotion of freedom of expression and the media in the country and applies a zero-tolerance rate for threats and attacks on journalists and sets priorities for criminal investigations if they occur. Montenegro is establishing a Commission to monitor the activities of the competent authorities in the investigation of old and recent cases of threats and violence against journalists, including the case of murder. Montenegro shall provide an initial balance of the results achieved in the progress made in the investigation, effective prosecution and dissuasive sanctions for the perpetrators of these acts.</p>
<p>Through the implementation of the Strategy for the Development of Public Information System, Serbia takes active measures for reforming its media landscape thus creating an enabling environment for freedom of expression, based on transparency (including on ownership of media), integrity and pluralism.</p>	

These interim benchmarks are relevant to the electoral conditions in Montenegro and Serbia due to the importance of the Anti-Corruption Agency, political financing and media landscape, all of which were already discussed in the previous section. Focusing on the fulfilment of these particular benchmarks and the activities envisaged by the Action Plan, including in the European Commission's non-papers on the fulfilment of Chapters 23 and 24, would provide another incentive for the electoral reform in Montenegro and Serbia.

However, one of the problems with the current interim benchmarks is that they were defined at the very beginning of the process, in 2013 for Montenegro and in 2016 for Serbia. As can be seen from the table, they are not specific enough to help the negotiating states to better respond to the demands. The countries adopted Action Plans for Implementation of the reforms, but many deadlines have been missed, some even repeatedly. The time that has passed and the lack of specificity is a problem that the European Commission failed to rectify in its proposal for the application of the new methodology to Montenegro and Serbia.²⁵

In addition to the focus on the interim benchmarks, application of the new methodology to Montenegro and Serbia also introduces regular political Intergovernmental conferences between the candidate country and the Member States, the aim of which is to communicate more clearly to a candidate what is expected of it in the process. With a contribution of the European Commission, elections could become one of the topics of the discussions.

It is difficult to see how advancement of the reforms in this area would lead to the accelerated (or "partial") integration with the EU. This aspect of the new methodology seems to be more suitable to the aspects of the integration process such as economy and energy. However, the sanctions in the new methodology refer to the cases of serious delays or

even backsliding, which can apply to the political criterion of free and fair elections. The Commission's proposal, however, does not envisage any new sanctioning mechanism, with the possibility of the activation of the balance clause remaining on the table as it did before.

» **Mediation of the European Union between the political forces in the candidate country**

Elections in the majority of the Western Balkan countries have been a political controversy throughout the past decade, with the opposition parties often accusing the government of unfair electoral conditions and threatening to boycott or, in the case of 2019 local elections in Albania and 2020 parliamentary elections in Serbia, actually boycotting the elections.²⁶ In most of these cases, European Union, sometimes with other international partners such as the United States, got involved in a mediation process between the political forces in the country, including in North Macedonia (2015–2016), Albania (2019–2020) and Serbia (ongoing).

In the case of Serbia, the Inter-Party Dialogue (IPD) has been the result of the invitation of the National Assembly to the European Parliament to hold rounds of discussions between the ruling and the opposition parties on the electoral conditions. The first phase of the IPD concluded in late 2019, and the second one, following the boycott of the 2020 elections, officially started on 1 March 2021, though the actual meetings between the government and the opposition have not yet taken place.

The IPD in Serbia is mostly carried out by the European Parliament, but it has the backing of all institutions, including the Commission, the Council and the European External Action Service. The 2020 European Commission report on Serbia summarised the results of the first round of the IPD.

The process in Serbia has proven to be a particular challenge due to several factors. These include the inability of the

²⁵ Ivković, A. *Application of the new methodology to Montenegro and Serbia: Principles remain the same, more emphasis on interim benchmarks*, March 2021, <https://europeanwesternbalkans.com/2021/03/24/application-of-the-new-methodology-to-montenegro-and-serbia-principles-remain-the-same-more-emphasis-on-interim-benchmarks/>. Accessed on 11 May 2021.

²⁶ Ivković, A. *Western Balkan countries dangerously close to electoral crises in 2020*, December 2019, <https://europeanwesternbalkans.com/2019/12/26/western-balkan-countries-dangerously-close-to-electoral-crises-in-2020/>. Accessed on 11 May 2021; Freedom House, *Nations in Transit 2021*, April 2021, page 8, https://freedomhouse.org/sites/default/files/2021-04/NIT_2021_final_042321.pdf. Accessed on 11 May 2021

participants to agree on the seriousness of the problems and the adequacy of the proposed measures, cherry-picking of measures and improvements by the ruling majority, somewhat inadequate criteria for measuring the success of the implemented measures and the disagreements over the format of the Dialogue. The process is still ongoing, and it is yet to be seen whether it will lead to significant results.

The criteria for measurement of the success of the Dialogue has proven to be of particular importance when it comes to the parts of the process that depend exclusively on the EU. Multiple analyses have shown that the measures enacted by the ruling party so far served primarily for them to be perceived as serious concessions, while simultaneously changing little “on the ground”.²⁷

EU institutions could still do more to motivate the actors to take the Inter-Party Dialogue seriously. The backing of the process, although clearly stipulated in the documents and official statements, could be even clearer and more decisive, so that the political forces in the country receive more incentives to engage in the process constructively. Serbian opposition even asked for special reports dealing with the rule of law and the situation in the media in July 2020, modelled after the “Priebe report” written for North Macedonia during its 2014–2016 political crisis.

While the European Commission rejected the proposal of the Serbian opposition at the time, in the context of this paper, which argued for a more systematic monitoring of the situation in elections, a special report dedicated to this issue would only represent an additional step in the right direction. A special report would be expected to raise even more political attention and serve as an even stronger incentive for reforms.

Another way in which not only the European Commission, but the Council of the EU as well, could help the process conclude successfully, is conditioning further progress in the EU accession process of Serbia with a successful resolution of the Inter-Party Dialogue. A similar mechanism was used in the case of Albania in 2020, when the electoral reform was set as a condition by the Council to hold the first Inter-Governmental

Conference. Given the fact that the Inter-Party Dialogue takes a relatively small amount of time, this kind of conditioning would not significantly postpone the EU accession process, while at the same time injecting some much-needed political weight to the process. European Commission should consider proposing to the Council to take this step when it comes to Serbia and in other situations when the IPD or similar mechanisms are used.

Despite all the difficulties, the IPD in Serbia has also provided an opportunity to flesh-out a mechanism that could be endorsed by the EU institutions more universally when it comes to the electoral disputes in the region and beyond. Elements such as 1) the support of all EU institutions, 2) putting the right issues on the agenda, 3) choosing a format of the dialogue that will correctly reflect the political weight of the participants and 4) establishing objective criteria for the evaluation of the success of the dialogue, proved to be important.

While the elections in Serbia have become a deeply controversial issue, it does not mean that a similar format cannot be implemented with more success when the situation is not polarizing to such an extent and the issues on the agenda are less controversial. In these cases, IPD as implemented in Serbia would probably lead to more significant results more quickly.

CONCLUSION

The elections in Montenegro and Serbia have never been the central part of their EU accession processes, leaving an impression that the EU had taken it for granted that their democratic quality would improve over time. As this paper has shown, this has not happened. However, the EU, as the international actor with most meaningful leverage over the reforms in this area, can and should use its position in relation to Montenegro and Serbia to provide more political incentives for necessary improvement.

²⁷ Ivković, A. Elections in Serbia: Measures adopted in EP-mediated dialogue prove to be insufficient, <https://europeanwesternbalkans.com/2020/06/10/elections-in-serbia-measures-adopted-in-ep-mediated-dialogue-prove-to-be-insufficient/>, Accessed on 11 May 2021

These incentives can be achieved through various existing and new mechanisms and they mostly boil down to a more systematic, precise and exact monitoring and setting of clearer benchmarks. This would also require from the EU to remain a credible actor and deliver its end of the bargain when sufficient progress is made.

When it comes to the issue of elections, European Commission reports represent the main channel through which the EU can influence reforms in Montenegro and Serbia, due to their high traction and detailed approach. However, there are multiple ways in which the reporting can be improved, which include the introduction of a section solely focused on electoral shortcomings, with a clear assessment of the current level of preparedness, progress made during the past year and priority reforms. More scrutiny in some existing areas would be beneficial for putting additional pressure on the authorities, while analysing additional layers of electoral process would primarily serve to underline the importance of this process for the EU.

In addition to the EC reports, two more mechanisms – new enlargement methodology and the EU mediation between the political forces – can also further the cause of improving the quality of elections in the Western Balkans. While the revised accession methodology does not bring much new to the table, especially when it comes to Montenegro and Serbia, it has elements – such as the insistence on rule of law benchmarks and regular inter-governmental conferences – that can be used in the context of electoral shortcomings. The recent experience of the Inter-Party Dialogue in Serbia, on the other hand, has showcased the possibilities and the limits of EU institutions in their joint work on resolving sometimes hotly disputed issues. A relative success of the Dialogue could raise the possibility of implementing a similar platform when it comes to less contentious disputes as well.

RECOMMENDATIONS

1. European Commission should introduce a new section of its reports on Montenegro and Serbia, which would consist of a systematic overview of all shortcomings of the electoral process. This section should be separate from the reporting on the results of the recent elections and other elements of the political context. It should assess the state of preparedness and progress for the new section on the shortcomings of the electoral process. *European Commission should consider recommending that no new chapters be opened or closed in the cases of serious backsliding or delays of reforms.*
2. European Commission should include priority recommendations in the area of elections in its reports. The recommendations should be more precise than OSCE/ODIHR recommendations and the current rule of law benchmarks, giving a specific aim for Montenegro/Serbia to achieve within a year.
3. EC reports should analyse the work of the Anti-Corruption Agencies in Montenegro and Serbia in greater detail when it comes to their role in the elections and provide specific priority recommendations for the work of these institutions. The analysis should primarily be focused on the independence and the effectiveness of the ACAs, as well as the work of the REM in Serbia and AEM in Montenegro when it comes to their role in elections. EC should provide more precise recommendations on the possible improvement of the work of these institutions.
4. European Commission should highlight the interim benchmarks related to the electoral conditions in its further reporting on the accession process of Montenegro and Serbia, clearly pointing out that no new chapters will be closed until these benchmarks are met. The current rule of law benchmarks for Montenegro and Serbia should be revised, updated and provided with clearer indicators for a successful

assessment of their implementation. This should be done in the context of the implementation of the revised enlargement methodology and with the help of the European Commission.

5. European Commission should recommend to the Member States to stress the importance of improving electoral conditions to the Governments of Montenegro and Serbia during the regular Intergovernmental conferences.
6. European Commission should contribute to the Inter-Party Dialogue in Serbia by helping monitor the implementation of the agreed measures and establishing clear criteria for their fulfilment. It should consider supporting the Dialogue through special reports on elections. Whenever an Inter-Party Dialogue is launched in the region, its successful conclusion should be a condition for progress in the EU accession process.

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