

# Guide for Monitoring the EU Accession Negotiations Process



# IMPRESSUM

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# **Guide for Monitoring the EU Accession Negotiations Process**



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## ABBREVIATIONS

**CEFTA** – The Central European Free Trade Agreement

**COELA** – Working Party on Enlargement and Countries Negotiating Accession to the EU

**COREPER** – Committee of Permanent Representatives (fr. Comité des représentants permanents)

**ECAA** – European Common Aviation Area

**COM** – European Commission

**EP** – European Parliament

**EU** – European Union

**EC** – European Communities

**IGC** – Intergovernmental Conference

**NPAA** – National Programme for the Adoption of the EU Acquis

**NPI** – National Program for Integration of the Republic of Serbia into the European Union 2008–2012

**OBAR** – Opening Benchmark Assessment Report

**OCD** – Civil Society Organisation

**SAP** – Stabilisation and Association Process

**ITA** – the Interim Trade Agreement

**RS** – Republic of Serbia

**Council** – Council of the European Union

**SAA** – Stabilization and Association Agreement

**TEU** – Treaty on European Union

**TFEU** – Treaty on the Functioning of the European Union

## FOREWORD

The Western Balkan countries are committed, but also strongly convinced that their future is in the European Union (EU), which has been unanimously and several times confirmed at the summits of the leaders of the EU and the Western Balkan countries, since 2003. However, even with having achieved significant progress in the implementation of political and economic reforms, the Western Balkans is facing big challenges related to the rule of law, reform of the public administration and judiciary, fight against corruption and organised crime, and sustainability of the economic model of development. This affects the fulfilment of the EU requirements, which determines the pace of the European integration of Western Balkan countries.

The entire process of the European integration of the Western Balkan countries should be viewed through the overall process of europenisation of society, which includes establishment and implementation of comprehensive reforms and acceptance of European standards and values which contribute to better quality of life of all citizens. Therefore, it is extremely important for the European integration process to be familiar to the citizens, so everyone can jointly participate in, contribute to and further develop the process, thus making it the property of citizens, and not of the political elite.

The team of the Belgrade Open School, together with the group of experts, has produced this Guide in which the most important information on the EU accession negotiations process has been presented, it being the first necessary step in understanding the entire process. The Guide was created within "Let's Speak about the Negotiations" initiative, launched by the Belgrade Open School in 2013 with the support of the Fund for an Open Society in Serbia.

The purpose of this Guide is to provide knowledge and information to the representatives of the civil society from the Western Balkan countries, which will enable them to appropriately monitor the EU accession negotiations process and recognise the way in which they can make this process the property of citizens. Heterogeneity, different interests, various areas of activity and communication instruments are the basic traits of the civil soci-

ety. The role of the civil society in modern democracies is to familiarise the citizens with the decision making processes, enable the interests of particular social groups and local communities to be adequately represented and defended before the decision makers. The role of the civil society is to exert influence on increasing the responsibility and transparency in the work of public authorities, thorough monitoring the EU integration process, and thus contribute to the implementation of democratic reforms. With this Guide, we strengthen the capacity of civil society organisations to truly represent the interests of citizens, their members and their communities. Only transparent governance can enable all stakeholders in a society to become participants in the process of europeanisation. On the other hand, what we assume by the term “good governance” today would be unfathomable without basing the decision making processes on free access to relevant information and citizen participation.

In order to be able to make the negotiation process transparent and public institutions responsible, the representatives of the civil society must be well familiar with the process aspects of the negotiations with the EU, but also with communication instruments. Therefore, the information on the course of the EU accession negotiations process itself can be found at the beginning of the Guide, together with the detailed description of each step, key actors and institutions. In addition, documents created in each individual stage of the negotiation process are here presented and analysed. The text referring to the monitoring of the accession negotiations with the EU opens a new chapter related to the monitoring matrix itself, i.e. to how the civil society and other stakeholders can actually monitor the accession negotiations and give their contribution to the process itself according to the stage of the negotiations. The last section of the Guide refers to the transparency of the EU accession negotiations process, with special reference to the legal framework for access to documents created through the work of the EU bodies. A useful overview of the documents significant for monitoring the European integration process and of possible scenarios of the course of negotiations can be found at the very end.

The authors aimed to represent the EU accession negotiations process in the most practical and the simplest way possible, and to draw attention to the most significant aspects of this process. We hope that this Guide will be useful for your work and contribute to creating a transparent and responsible process of conducting the EU accession negotiations by the Western Balkan countries, based on dialogue and partner cooperation between the civil society and public authorities.





**INTRODUCTION –  
EUROPEAN  
INTEGRATION  
PROCESS**



The path of a country from expressed commitment of its society to European values to formal membership in the European Union (EU) is a complex legal and political process. This process is most commonly divided into two subsequent and inter-conditioned stages: association and accession. Each of these stages consists of a number of substages, where moving to the next one depends on the fulfilment of criteria and a set of steps in each part of the process which bring the country closer to the EU membership.

The public concerned should be familiarised with the steps in this process in order to be able to effectively direct its activities. Whether we are participants or observers of the process, it is necessary to determine at which step we are, at any time. Therefore, we begin this Guide with the scheme of the steps in the process, because we repeatedly return to it when commencing each new activity as a result of the wish to participate in the process.

## STEPS TOWARDS THE EU MEMBERSHIP

**(I) ASSOCIATION includes:**

**(1) Stabilisation and Association Process (SAP)**

- Preparatory stage for signing the Stabilisation and Association Agreement (SAA)
- Feasibility study
- Negotiations on the conclusion of the SAA, including the Interim Trade Agreement
- Signing and preparation of the SAA

**(II) ACCESSION includes:**

**(2) Candidacy for membership**

- Submission of the application for the EU membership
- the European Commission Questionnaire on the preparedness of a candidate country to undertake the obligations of membership
- the Avis of the European Commission
- the Decision of the European Council on granting the EU candidate status (and on the beginning of negotiations)

**(3) Opening of Accession Negotiations**

- Accession negotiations (in 35 negotiation chapters)
- Closing of Accession Negotiations and signing the Accession Treaty

**(4) Ratification of the Accession Treaty**

**(5) Entry into EU membership**

## 1.1. Stabilisation and Association Process (SAP)

Stabilisation and Association Process was launched in June 1999 as new type of the European Union regional approach within its enlargement policy for the Western Balkan countries. The goal of the EU strategy, within the Stabilisation and Association Process, was the stabilisation of the region, while the association to the Union was emphasised as a long-term goal. As in the case of the accession of the Central and Eastern European countries, the EU set forth the same criteria for the Western Balkan countries within the SAP, which were defined at the European Council summit in Copenhagen in 1993. They are the following:

- **political criteria**, which are reflected in the existence of stable institutions which guarantee democracy, rule of law, human rights and the respect and protection of minorities;
- **economic criteria**, which are reflected in the existence of active market economy which is capable of sustaining competitive pressure and the effects of market rules within the Union;
- **legal criteria**, which are reflected in the ability to undertake the obligations of membership, i.e. in the adoption of the EU *acquis*.

At the European Parliament session in Madrid, in December 1995, it was concluded that the full implementation of Copenhagen criteria must be followed by appropriate administrative structure. Therefore, another criterion was added to the abovementioned criteria, **Madrid criterion**, which refers to the adjustment of administrative structure aiming to ensure the requirements for gradual integration. This primarily refers to the strengthening of administrative capacity, creating an efficient system of state administration with a view to ensuring an efficient process of the adoption and implementation of the EU *acquis*.

One of the most important steps in the stabilisation and association process is the signing of the Stabilisation and Association Agreement (SAA), which represents a new type of contractual relation between the EU on one side, and the Western Balkan countries, on the other. By signing the Stabilisation and Association Agreement, the country also gains the status of a potential EU candidate. The path from signing the SAA to entering into EU membership consists of several stages. The duration of each individual stage depends solely on the country's progress in implementing the reforms and on the success in fulfilment of obligations undertaken by signing the SAA.

## STABILISATION AND ASSOCIATION PROCESS IS CHARACTERISED BY:

1. **equal requirements for all countries in the process** – all countries must fulfil the same requirements if they wish to get closer to the EU;
2. **clear perspective of the EU membership** – according to the opinion of the Union, the only way to keep the stability of the region is a clear perspective of the EU membership;
3. **individual approach** – speed at which an individual country moves through different stages of the process depends on the ability of each country to undertake and fulfil the obligations arising from the process of association to the EU;
4. **regional cooperation** – within the process, special attention is dedicated to regional cooperation; although strong connections are created between each country and the EU in the process, cooperation among countries participating in the Stabilisation and Association Process is simultaneously strongly encouraged as well.

## STABILISATION AND ASSOCIATION AGREEMENT (SAA)

Stabilisation and Association Agreement (SAA) is an agreement which regulates the rights and obligations of a country which initiated the process of association to the EU. With the conclusion of this agreement, the country's status of potential EU candidate is confirmed in the Evolutionary Clause.<sup>1</sup> The agreement is signed for an indefinite period with a view to contribute to the economic and political stability of the future EU candidate country. The SAA is the new, third, generation of association agreements offered exclusively to the Western Balkan countries, within the Stabilisation and Association Process. The SAA is a "mixed" agreement, which means that, beside the EU, all Member States are parties to the agreement, given that the SAA includes areas which do not fall under the exclusive competence of the EU, but also under the competence of the Member States.

By signing the SAA, the country enters into its first contractual relations with the EU. Given that is a mixed agreement, in order for it to enter into force, it must be acknowledged (ratified) in the parliaments of all Member States, as well as in the European Parliament. Until the completion of the ratification process in the EU, the Interim Trade Agreement is in force, which constitutes a part of the SAA and largely regulates the matters of trade and transport between the country concerned and the EU. With the SAA entering into force, the potential EU candidate country is granted the status of an associated country.

<sup>1</sup> Evolutionary Clause is a formulation in the Stabilisation and Association Agreement. With this clause, a country initiating the process of association expresses its commitment to joining the EU, and the EU accepts it.

## THE EU ACCESSION PROCESS CONSISTS OF TWO PARALLEL PROCESSES BASED ON DIFFERENT LEGAL BASES AND DIFFERENT TASKS. THEY ARE THE FOLLOWING:

- (I) **process of association to the EU** based on the Stabilisation and Association Agreement, whose primary goal is to ensure the framework for the process of aligning the national legislation with the EU *acquis*, as well as for its implementation – refers to the entire EU *acquis*, alignment with it and its implementation within the national legal order.
- (II) **EU accession negotiations process**, in which the candidate country should reach an agreement with the EU Member States on the requirements of its accession to the Union – it deals with specific issues in the process of transposition of the *acquis* and ends with the completion of the negotiations.

### 1.2. European Union Accession Negotiations

The path after the signing of the Stabilisation and Association Agreement until the opening of the accession negotiations with the EU includes several steps. After the entry into force of the SAA and the formal obtaining of the potential candidate country status, the key precondition for moving onto the next stage of the European integration process, i.e. for initiating the accession negotiations is the full application and fulfilment of the obligations undertaken under the SAA, and the ability to meet the necessary criteria for the EU membership defined in the European Council conclusions from Copenhagen and Madrid.

With reference to the Treaty on European Union (TEU)<sup>2</sup>, a country submits the application for the EU membership. The European Commission (EC) subsequently delivers to the country the Questionnaire consisting of a set of questions based on which the EC gives its opinion on the country's application for membership. Providing detailed answers to the forwarded Questionnaire is one of the conditions for obtaining the candidate status, which is completed by the submission of the answers to the delivered Questionnaire. Based on the submitted answers, the EC prepares the *Avis* on the country's application for the EU membership. In the *Avis* on the country's candidacy, the EC gives recommendation to the Council of the European Union (Council) to grant the country concerned the status of candidate country, but does not necessarily at the same time decide on granting the date of the beginning of the negotiations. Accession negotiations between a candidate country and the EU are formally opened at the first Intergovernmental Conference (IGC).

<sup>2</sup>The application is submitted in accordance with Article 49 of the TEU.

The pace of the Western Balkan countries' progress towards the EU membership<sup>3</sup>

	Albania	Bosnia and Herzegovina	Montenegro	Kosovo*	Macedonia	Serbia
<b>Stabilisation and Association Process</b>						
The beginning of the negotiations on the conclusion of the SAA	31/1/2003	25/11/2005	10/10/2005	28/10/2013	5/4/2000	10/10/2005
Signing of the SAA and the ITA (Kosovo* does not have the ITA)	12/6/2006	16/6/2008	15/10/2007	27/10/2015	9/4/2001	29/4/2008
Entry into force of the ITA	1/12/2006	1/7/2008	1/1/2008	N/A	1/6/2001	1/2/2010
Entry into force of the SAA	1/4/2009	1/6/2015	1/5/2010		1/4/2004	1/9/2013
<b>EU Accession Process</b>						
Submission of candidacy for membership	28/4/2009		15/12/2008		22/3/2004	22/12/2009
Receipt of the EC	16/12/2009		22/7/2009		1/10/2004	25/11/2010
Questionnaire						
Submission of answers to the EC Questionnaire	14/4/2010		9/12/2009		14/2/2005	31/1/2011
Granting the candidate status	23/6/2014		17/12/2010		17/12/2005	1/3/2012
Opening of accession negotiations			29/6/2012			21/1/2014

<sup>3</sup> European Commission Directorate-General for Neighbourhood and Enlargement Negotiations [http://ec.europa.eu/enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/index_en.htm) (last accessed on 16/11/2015).



**EUROPEAN UNION  
ACCESSION  
NEGOTIATIONS  
PROCESS**

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The second section of the Guide is dedicated to the overview of the EU accession negotiations process, with the detailed description of each step in the process. The aim of this section of the Guide is to provide a clear picture and show the course of accession negotiations with the EU, so that all stakeholders would get a clear representation of the entire process, understand the key actors and institutions included in the process, and equally participate in its monitoring.

With a clearer picture of the steps themselves and the methodology of conducting the accession negotiations, the representatives of the civil society organisations (CSOs), and of other stakeholders as well, have the opportunity to be included in the process of monitoring the negotiations through their activities in two ways: (a) by giving their qualitative contribution to the proposed solutions, measures and steps during the process itself, and (b) by informing the citizens on the course of the process and the content of the negotiations.

The EU accession negotiations represent the key stage of the accession process and include negotiations on the requirements and ways of accepting and implementing the EU *acquis*. The negotiations are not conducted in the true sense of the word, because the negotiations do not tackle the content of the EU *acquis*, but rather assume negotiating on the arrangements, requirements and timeframes in which the candidate country will accept the EU *acquis* in the form in which it applies to all EU Member States at the moment of their accession. The acceptance of all rights and obligations on which the EU is based, including the institutional framework in which it acts, is the requirement for the entry into EU membership.

The EU *acquis* and other sources of law are divided into 35 negotiation chapters. Each chapter is negotiated on separately. The negotiations last until the EU and the candidate country agree on the conditions under which the candidate country will align its legislation to the EU *acquis*.

The EU accession negotiations process can be divided into three stages:

- 1) analytical review of the legislation (screening);**
- 2) the actual negotiations (opening, provisional closing of chapters);**
- 3) conclusion of the Accession Treaty.**

After the positive opinion and recommendations by the EC, and the conclusions and recommendations by the Council of the European Union, the European Council confirms and adopts a political decision to open the accession negotiations with the candidate country. It simultaneously invites the EC to draw up a draft negotiating framework for the negotiations with the candidate country with the intention of holding the first IGC.



**The Negotiating Framework of the EU** represents a part of the EU general position, i.e. a general framework on which the accession negotiations with the candidate country are based. It is a document which defines the principles, substance and procedures under which the accession negotiations will be conducted. It is based on the experience and practices of previous enlargement processes, on the continuously growing EU *acquis*, including the new approach to monitoring the progress in Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security). The new approach implies that a potential suspension of the negotiations on the aforementioned chapters means the suspension of the entire negotiating process.<sup>4</sup> Furthermore, this framework also includes some elements (mostly political in nature) which are specific to the country which should initiate the negotiation process. Beside the aforementioned elements, the content of the negotiating framework also includes two additional annexes:

- 1) procedures for the organisation of negotiations (presidency, frequency of meetings, organisation of logistical details);
- 2) the list of the chapters of the EU law on which the negotiations will be conducted (this list is without prejudice to the decision on the order by which individual chapters of the EU law will be negotiated on).

The previously adopted Negotiating Framework is the condition for setting the date and holding of the first IGC.

Formally, the EU accession negotiations are conducted within the bilateral IGC between the candidate country on one side, and the EU Member States, on the other. The EC coordinates the entire negotiation process within the IGC. **The First Intergovernmental Conference** represents an important political step forward and the formal beginning of accession negotiations. This conference has a ceremonial character, at which the representatives of the EU Member States and the candidate country present their expectations regarding the upcoming negotiations. The EU delegation includes the representatives of the Council and the EC. The EU delegation is headed by the minister of foreign affairs of the country presiding over the Council at that moment and by the EU commissioner in charge of the matters of enlargement policy (currently, the Commissioner in charge of Neighbourhood Policy and Enlargement Negotiations). The delegation of the candidate country is represented by the highest state officials – the Prime Minister, the Minister of Foreign Affairs/European Integration and the person appointed to conduct the accession negotiations. General Negotiating Positions (including the previously adopted Negotiating Framework), Negoti-

<sup>4</sup> GENERAL EU POSITION, Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union, Brussels, 21 January 2014

ating Teams and the calendar, i.e. the timetable for holding the upcoming meetings are presented at the First Intergovernmental Conference. The formal and actual opening, but also the closing of the accession negotiations by individual chapters, is later organised in the form of such bilateral accession conferences twice a year, usually once at the ministerial level, and once at the level of deputy head of delegation.

## 2.1. Stages of the Accession Negotiations Process

### 2.1.1. Analytical Review of the Legislation (Screening)

Screening is an analytical review of the alignment of the candidate country's legislation with the EU *acquis* and represents the initial step in the accession negotiations, in which the assessment of alignment of the legislation in each individual chapter is given.<sup>5</sup> The purpose of this process is to determine the existing differences between the EU legislation and the legislation of the candidate country. In the screening process, the representatives of the EC, i.e. the representatives of competent general-directorates, participate on behalf of the EU, while the members of working groups for the preparation of negotiations by individual negotiation chapters and the representatives of public administration authorities and bodies participate on behalf of the candidate country. Screening is conducted separately for each negotiation chapter, but may be conducted for several chapters simultaneously. Its duration by chapter depends on the scope and the amount of the *acquis* in the given chapter, and may last between one and several days, while the entire screening procedure approximately lasts for a year. The basic stages of the analytical review of the legislation are:

- 1) Explanatory Screening;
- 2) Bilateral Screening;
- 3) Screening Report.

**Screening Timetable** is prepared by the EC, after which the EC coordinates it with the candidate country. The timetable represents the indicative timeframe in which the process of analytical review of the candidate country's legislation will be conducted, as well the process of assessment of the level of its alignment with the EU law. The timetable also includes the order in which the analytical review of all negotiation chapters will be conducted, as well as the time needed for both explanatory and bilateral screening. The new approach implies that when making the screening timetable, chapters 23 and 24 should be put first. It is also important to mention that, so far,

<sup>5</sup> Although the practice used to be to initiate this stage after holding the First IGC and presenting general positions, this was not the case with Montenegro and the Republic of Serbia. Due to the EU's special interest in chapters 23 and 24, the screening process began before the First IGC was held.

screening hasn't been conducted for Chapter 34 (Institutions) and Chapter 35 (Other issues).

**Explanatory screening** aims at thoroughly presenting the EU legal framework in the given chapter for individual policy areas to the representatives of the candidate country. It is prepared by the EC and conducted in the form of a meeting with a strictly established agenda, where the EC representatives point out the most important information and facts from the given corpus of the EU law, through different presentations.

**Bilateral screening** is prepared by the candidate country in accordance with the material submitted by the EC (screening lists, questions, additional questions etc.). At the meetings of bilateral screening, the representatives of the candidate country's delegation present the national legal framework in the given negotiation chapter, as well as the assessment of the level of alignment and plans for achieving the full alignment with the EU *acquis* by the entry into membership. Furthermore, problems and difficulties which may occur in further process of alignment are also indicated. This screening is conducted in the form of a meeting, following the same or a similar agenda to the one established for explanatory screening meetings.

After the bilateral screening meeting is held, the EC prepares the **Screening Report** for each negotiation chapter, which contains the assessment of the level of alignment of the candidate country's legislation with the EU *acquis*, as well as the recommendations for further alignment of the national legal framework with the EU *acquis*. Documents and information, presented by the candidate country both at the screening itself and after it, are used in the preparation of this report. The findings given in the report largely determine the further course of activity in the entire process. The EC presents the Screening Reports to the EU Member States, i.e. the Council of the European Union, which takes them into consideration and subsequently adopts them. Depending on the EC assessment, i.e. on the conclusion of the Screening Report, there are two possible scenarios:

The EC concludes in the report that the candidate country has sufficiently aligned its legislation with the EU *acquis* and that it is ready to initiate the negotiations on the given chapter, and gives the recommendation accordingly. The report is submitted to the Council for consideration and adoption. In case where the EU Member States within the Council do not have objections to the report, the Council directly invites the candidate country to submit its Negotiating Position for the given chapter.

Based on the information presented in the report, the EC concludes that the candidate country is not ready to initiate negotiations on the given negotiation chapter and that it has to conduct necessary activities which

would lead to further alignment with the EU law. In that case, in the report, the EC gives recommendations, i.e. **opening benchmarks** which must be met in order for that negotiation chapter to be opened. Opening benchmarks for individual chapters may have different forms, such as requirements for the adoption of strategies and action plans, requirements for the fulfilment of contractual obligations towards the EU – primarily the implementation of the Stabilisation and Association Agreement, and requirements for the adoption of laws and bylaws. Benchmarks may be revised or amended, especially in the cases when the country negotiates for a long time, and the EU adopts new regulations in that area, in the meantime.

The Council deliberates on the screening report prepared by the EC, and adopts a document called the **Outcome of the Screening**, based on it. This document contains recommendations for the opening of the negotiations on a certain negotiation chapter, i.e. benchmarks which the candidate country should meet as a precondition for the opening of the negotiations on the given chapter. The EC, in consultation and cooperation with the candidate country, monitors the execution of plans for meeting the benchmarks and submits the Report to the Council of the European Union.

**Opening Benchmark Assessment Report** represents the review of the measures the candidate country intends to implement in order to overcome the shortcomings in the Screening Report. When the EC is satisfied with the quality of the action plans and when the candidate country meets the set benchmarks, the EC presents the prepared report to the competent bodies of the Council of the European Union. Based on the facts presented and the EC assessment, the Council adopts the conclusions and invites the candidate country to submit its Negotiating Position for the given negotiation chapter.

### 2.1.2. The Actual Negotiations

The EU accession negotiations are conducted based on the Negotiating Positions of the EU and the candidate country, which are prepared for each negotiation chapter based on the results of the screening process. The Council of the European Union adopts the decision on the opening of the negotiations for a certain chapter after it was previously determined that all preconditions for the opening of the negotiations were met. The opening of the negotiations on the chapter for which the opening benchmarks were set may begin only after the Council decides that the candidate country has met those benchmarks.

The Council will, if it assesses that the candidate country is ready for the opening of a certain chapter, invite the candidate country to submit its **Negotiating Position** for a certain chapter. The Negotiating Position represents the platform for the candidate country's negotiations on the given

chapter of the EU law. In its Negotiating Position for an individual chapter, the candidate country presents the achieved level of alignment with the EU *acquis*, the programme for the remaining alignment, and the overview of the existing and future administrative capacities for the implementation. In addition, in the Negotiating Position, the candidate country also defines requests for transitional periods, i.e. exemptions in those segments in which it considers it won't be able, due to justified reasons, to fully transpose the legal order of the EU into the national framework by the moment stipulated for the accession to the EU. In the course of the negotiations, the candidate country may submit to the EU a supplement, i.e. a change of Negotiating Positions. The Negotiating Position for each chapter is drawn up by the Negotiating Groups, i.e. the Negotiating Team, using the coordination mechanism established for accession negotiations. The Negotiating Position for a chapter is forwarded to the Council of the European Union after the formal adoption in the candidate country.

The EC prepares a Draft European Union Common Position and submits it to the Council for adoption. Through the Draft European Union Common Position, the EC may:

- 1) note that the candidate country has reached a sufficient level of alignment with the EU *acquis* for that chapter, and that further negotiations on the chapter are not needed; in that case, the chapter is provisionally closed;
- 2) note that the level of alignment is not at the level enabling the provisional closing of the chapter, thus it sets the requirements, i.e. **closing benchmarks** which the candidate country must meet in order for that chapter to be closed;
- 3) additionally introduce **interim benchmarks** for particularly sensitive chapters 23 and 24 so that the progress in the execution of reforms and the process of alignment of the legislation could be monitored more clearly in these important areas, and only after they have been met are the closing benchmarks defined.

The Council of the European Union adopts the **European Union Common Position** as the answer to the position of the candidate country. If the candidate country has achieved a sufficient level of alignment with the *acquis* in a chapter, it is noted that further negotiations on this chapter are not needed and it is provisionally closed. If it is assessed that further steps towards the alignment of the national legal framework with the European frameworks are needed, closing benchmarks, which the candidate country should meet in order for the negotiations on the given chapter to be provisionally closed, are defined.

Negotiation chapters are opened and provisionally closed at the intergovernmental conference which is organised in accordance with the course and dynamics of the opening of negotiation chapters and meeting the

benchmarks for their opening or provisional closing. It should also be noted that, depending on whether there are opening, closing or interim benchmarks, different procedures of the course of the negotiations on each chapter are possible.

*See a detailed matrix of the course of negotiations with possible scenarios, indicating the complexity of the EU membership negotiation process, in Appendix 1 (Course of Negotiations – Five Possible Scenarios).*

### 2.1.3. Conclusion of the Accession Treaty

After the negotiations on each individual chapter have ended, the EC composes a special report containing the overview and assessment of the overall readiness of the candidate country to undertake the EU membership obligations, and proposing the conclusion of accession negotiations. This proposal undergoes the same procedure at the level of the Council, which approves that the formal completion of negotiations be pronounced at the final Intergovernmental Conference, proposes the signing of the Accession Treaty, as well as the date of the accession. This is subsequently noted in the conclusions of the European Council. Until the European Council confirms the completion of negotiations on all chapters, there is still a possibility to open each of the negotiation chapters, in case the state has not fulfilled or does not fulfil the undertaken obligations.

The results of the accession negotiations are presented and included in the draft **Accession Treaty** and the accompanying **Act of Accession**, which regulate all the details and requirements of the accession of the candidate country, i.e. the date of the accession, negotiation results, requirements for accession and transitional periods in the areas the Commission identified as needing further alignment, participation in the work of the EU bodies (allocation of votes in the Council and the EP, as well as the number of members in the EP).

The Accession Treaty is a bilateral international treaty between the EU Member State, on one side, and the candidate country, on the other.

Having been signed, the Accession Treaty enters the period of ratification in the EU Member States and needs to be approved in the EP as well. Until the Accession Treaty enters into force, upon the completion of ratification procedure, the country participates in the work of the EU bodies as an observer, in order to be able to closely monitor the process of the adoption of decisions at the EU level. Moreover, the country should continue to align the national legislation until the Accession Treaty has entered into force and until the date of the accession into full membership. A country becomes a full EU member on the day defined in the transitional and final provisions of the

Accession Treaty, provided that the ratification process is finished in the parliaments of all Member States on time.

## 2.2. Actors in the Accession Negotiations Process

Participants of the accession negotiations are the EU Member States and the candidate country.

EU structures and bodies involved in the negotiation process are basically the same as the ones used in the previous cycles of enlargement. The EU negotiating positions are represented by the presidency of the Council of the European Union on behalf of the Member States.

Bodies and structures involved in the accession negotiations differ among candidate countries, depending on the legal and political system and tradition, and in some cases, on the persons involved. All countries have the main negotiator or the Head of the Negotiating Team, who attends the meetings in Brussels, which is the only aspect they all share.

### 2.2.1. Negotiating Structure of the European Union

In accordance with the Conclusions of the European Parliament of December 2004, the accession negotiations with candidate countries are conducted based on the Negotiating Framework, which determines the manner and principles of conducting the negotiations.

**The Council of the European Union (the Council of Ministers)** considers the screening results, assesses the ability of a candidate country to apply the *acquis* in a negotiation chapter and invites the candidate country to submit the Negotiating Position if all the requirements are met. The EU Negotiating Positions are prepared by the working groups of the Council of Ministers. The Working Party on Enlargement and Countries Negotiating Accession to the EU – COELA, consisting of the representatives of the permanent representations of the Member States to the EU, coordinates the process of the preparation of the EU Negotiating Positions and regularly informs the members of the Committee of Permanent Representatives (COREPER) thereon.

**The European Council** adopts the decision that a candidate country may initiate the EU accession negotiations and confirms the Negotiating Framework. Upon the completion of accession negotiations, the European Council adopts the decision on the formal conclusion of negotiations.

**The European Commission** prepares the documents and draft Negotiating Positions for the Council. The EC conducts the accession negotiations on behalf of the EU at the operational level and advises the candidate country

with regard to achieving the objectives of public policies and the application of the EU *acquis*. As such, the EC is traditionally the ally of the candidate country negotiating on accession.

**The European Parliament** gives consent for the full membership of the candidate country which successfully went through the accession negotiations. The EP may put pressure on the negotiating parties by giving opinions on certain specific issues related to the accession negotiation process (most commonly on issues related to the achievement of the objectives of certain EU public policies or on problems in the application of the *acquis* in one of the policy areas).

**The EU Member States** develop national positions, which are conformed into a single Negotiating Position towards the candidate country through consultations and joint work within the working groups of the Council and within COREPER. In order for the Accession Treaty to enter into force, it must be confirmed (ratified) by all Member States.

### 2.2.2. Negotiating Structure of the Candidate Country

There is no previously determined form of the negotiating structure of the candidate country. The negotiating structure is established by the candidate country itself, taking into account its own capacities, as well as the scope of the anticipated work. On one hand, the negotiating structure of the candidate country depends on the existing internal legal order and system of government, while on the other, the needs for its establishment may cause reforms in the internal legal order itself and contribute to the establishment of new bodies and positions.

With a view to easier coordination and distribution of work, each candidate country in the accession negotiations process, or having successfully completed the process, has established a special structure for conducting the accession negotiations. As mentioned before, the only aspect common for all countries, with regard to the negotiating structure, is the appointment of the person who is on the head of the negotiation process, i.e. the Head of the Negotiating Team or the Main Negotiator. The main task of the appointed person is the comprehensive coordination of work in the negotiation process, as well as connectedness and communication between administrative and technical actors, and actors involved in the process at the highest political level.

Big part of the work within the accession negotiations falls under the responsibility of public administration, i.e. the employees in the government institutions and bodies, dealing with the activities within the European integration process, as well as working on the implementation of specific policies at both the national and the local level.



Another similarity related to the established structures for conducting the accession negotiations is the existence of the Secretariat of the negotiating structure which coordinated the work of numerous actors involved in the process and which is responsible of the communication with the institutions and bodies of the European Union.

Depending on the socio-political system and the decision made at the highest political level, the parliaments of the candidate countries, as well as other stakeholders, i.e. the representatives of the civil society, may also have a significant role in the accession negotiations.



**REVIEW AND ANALYSIS  
OF THE STRUCTURE OF THE  
DOCUMENTS CREATED IN THE  
NEGOTIATION PROCESS**

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The aim of this Guide is to provide a detailed review of the documents created in the process of accession negotiations, in each of its individual stages. Through the access to documents and their proper understanding, the stakeholders in the accession negotiations will have the opportunity to monitor the entire negotiating process more clearly, through each of the steps referred and through each individual document created as a result of the negotiation process. By knowing the structure and content of the documents themselves, the stakeholders in the negotiation process, but also those who continuously monitor the negotiation process, but are not directly involved, will have the opportunity to more efficiently monitor the fulfilment of obligations set in the process for both parties, as well as the ways, time and financial frameworks necessary for their fulfilment.

With the access to the content of the documents in each stage of the process, a clearer overview of the situation in a certain area of the candidate country's policy is provided, as well as the necessary steps for its alignment with the European legal framework. In addition, in this way, there is a possibility to work on further assessment and monitoring of the situation through drawing up relevant reports, studies and analyses to be presented to the decision makers of the candidate countries involved in the process, as well as to the EU institutions, stakeholders in the Member States, and the general public.

As previously said, the EU accession negotiations process is conducted in three stages:

- 1) screening;**
- 2) the actual negotiations (opening, provisional closing of chapters)**
- 3) conclusion of the Accession Treaty**

For the purposes of this Guide, only documents which are created as a result of the first two stages of the negotiation process will be elaborated on in this section.

### **3.1. Screening**

Screening represents the initial stage in the negotiations process where the assessment of alignment of the national legal framework with the EU legal framework is given for each negotiation chapter separately. Screening consists of two stages, *explanatory screening*, in which the representatives of the EC present the EU legal framework in a certain policy area to the candidate country, and *bilateral screening*, in which the candidate country's delegation presents the current level of alignment of the national legal framework with the EU legal framework for each of the given chapters, as well as the plans for further alignment. After the bilateral screening

meeting has finished, the EC composes the Screening Report for each individual negotiation chapter.

### 3.1.1. Screening Report

Screening Report is drawn up by the EC. After the text has been agreed on, it is approved within the Working Party on Enlargement and Countries Negotiating Accession to the EU – COELA.

This is an extremely important document for all stakeholders involved in the accession negotiations process, since it provides starting points for further course and progress of the negotiations on a certain chapter.

The Screening Report itself is composed of three part:

- 1) chapter content;**
- 2) country alignment and implementation capacity;**
- 3) assessment of the degree of alignment and implementing capacity.**

A brief overview of the EU *acquis* within a certain chapter is given in the chapter content, where the basic principles, on which the legal framework in a certain policy area is based and which arise from the EU founding treaties, are most commonly emphasised. Moreover, some of the key provisions of the EU secondary legislation (regulations, directives, decisions), with which it is necessary to align the national legislation within a certain chapter, are mentioned.

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#### EXAMPLE 1: SCREENING REPORT FOR MONTENEGRO FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)

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##### I. CHAPTER CONTENT

“...EU policies in the area of the judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the judiciary must be independent and impartial.”

Screening Report for Montenegro for Chapter 23 (Judiciary and fundamental rights), p. 2.<sup>6</sup>

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<sup>6</sup> Screening Report for Montenegro for Chapter 23, p. 2, [http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch23.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf) (last accessed on 16/11/2015).

The second part of the document, Country alignment and implementation capacity, gives the review of the alignment of the national legal framework of the candidate country with the EU legal framework and the review of the capacity of the candidate country for the implementation of the legal framework. This review is given based on the information provided by the candidate country at screening meetings, as well as on the additional information requested by the EC for the purpose of drawing up the given document, which the candidate country submitted. The second part of the Screening Report is the most comprehensive and the most important part of the document, given that the review of the alignment of the candidate country's legal framework, as presented by the state authorities, institutions and bodies involved in the process of monitoring the accession negotiations, is provided therein, while at the same time providing other stakeholders involved in the process of monitoring the accession negotiations with a clear state of play, as well as the opportunity to check the stated information, indicate shortcomings, but also to direct further activities, in particular activities of the civil society, towards strengthening and conducting the activities which lead towards improvement and towards efficient implementation of the aligned legal framework.

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## **EXAMPLE 2: SCREENING REPORT FOR MONTENEGRO FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)**

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### II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

#### I Judiciary: Efficiency

"...On 31 December 2011, with around 11,500 unresolved cases in all courts in Montenegro, the backlog was approximately 4% lower than at the end of 2010. Out of these unresolved cases, 38% are civil cases, 8% criminal, 1,5% non-contentious and 58% enforcement cases. With the exception of the Basic Court in Podgorica, the backlog of cases is gradually being reduced."

Screening Report for Montenegro for Chapter 23 (Judiciary and fundamental rights), p. 6.<sup>7</sup>

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In the third part of the Screening Report, Assessment of the degree of alignment and implementing capacity, the assessment of the level of alignment and of the implementing capacity of the candidate country in a cer-

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<sup>7</sup> Screening Report for Montenegro for Chapter 23, p. 6, [http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch23.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf) (last accessed on 16/11/2015).

tain policy area is given, within each of the negotiation chapters. This part of the Report is particularly important because it also contains, for each of the policy areas included in the negotiation chapter, recommendations for enhancing the level of alignment of the legal framework in the specific chapter with the existing EU legal framework. These recommendations represent guidelines for the adoption of measures, activities or action plans necessary to carry out before the negotiations on a certain chapters can be opened. These guidelines are called the opening benchmarks.

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### EXAMPLE 3: SCREENING REPORT FOR MONTENEGRO FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)

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#### III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

##### I Professionalism/Competence/Efficiency:

Ensure reliable and consistent judicial statistics and introduce a system to monitor the length of trials. Review and rationalise the court network and ensure sufficient funding for the efficient functioning of the entire court system. Further reduce the existing backlog, especially as regards civil cases. Strengthen the enforcement of judgements in civil cases. Ensure effective functioning of the Judicial Training Centre. Take incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors.

Screening Report for Montenegro for Chapter 23 (Judiciary and fundamental rights), p. 23.<sup>8</sup>

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### 3.1.2. Outcome of the Screening

Outcome of the Screening is a document adopted by the Council, after having been discussed within COELA. The document represents the summary of the Screening Report and it clearly lists the recommendations specified within the Screening Report, representing the opening benchmarks. The Outcome of the Screening itself is composed of two parts:

- 1) introductory part – summary of the Screening Report on a certain chapter and**
- 2) recommendations.**

The Outcome of the Screening only confirms what has been included in the Screening Report, putting emphasis on the assessment of alignment of the candi-

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<sup>8</sup> Screening Report for Montenegro for Chapter 23, p. 22, [http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch23.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf) (last accessed on 16/11/2015).

date country's legislation with the EU legal framework in a chapter. Moreover, this document again lists the recommendations for increasing and reaching the appropriate level of alignment of the legislation in a given chapter. Since the EU accession negotiations are, in fact, the negotiations with the EU Member States, the Outcome of the Screening which confirms the recommendations from the Screening Report additionally emphasises the need for the candidate country to fulfil the listed recommendations, i.e. opening benchmarks, and the importance of it, given that they have been adopted by the Member States within the Council.

In view of the new approach and methodology for conducting accession negotiations defined within the EU Negotiating Framework, the negotiations with candidate countries will first be opened on Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security), and the progress in all other negotiation chapters will depend on the progress in these two chapters. In addition, having regard to the area of policies and reforms included in these two chapters, the recommendations defined within the Screening Report and confirmed in the Outcome of the Screening will be defined within special Action Plans the candidate country must draw up in cooperation with the EC.

### 3.1.3 Action Plan

In accordance with the new approach to negotiations, Action Plans for the given chapters represent a roadmap for the candidate country for fulfilling the recommendations defined within the Screening Report. Within the Action Plan, the candidate country must define measures which lead towards the fulfilment of the recommendations and which are related to legislative reforms, strengthening of administrative capacities, the application of reform policies and its results, budgeted expenditure, responsible authorities and timeframes.

Each of the listed recommendations must be defined in such a way that it defines:

- 1) the measure;**
- 2) authorities responsible for its implementation**
- 3) timeframe for the fulfilment of the stated measure;**
- 4) indicator of result;**
- 5) indicator of impact.**

Action Plan is a document which should serve all stakeholders involved in the accession negotiations process or in the monitoring of accession negotiations as a "guide" for fulfilling the recommendations defined by the EU. It is of great importance that this document, as well as all documents created in the negotiation process, be public so that the results of the process could be followed and that all existing capacities, both in public and civil sector, could be used for carrying out the proposed measures for the fulfilment of recommendations.

Such defined document provides the stakeholders monitoring the negotiation process the opportunity to have insight into the work of competent authorities in charge of implementing certain measures for the fulfilment of recommendations, within the defined timeframe, and to monitor their work. In addition, the document particularly provides the opportunity to CSOs to plan and defines their activities in accordance with the set recommendations and measures for their fulfilment.

#### EXAMPLE 4: ACTION PLAN OF MONTENEGRO FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)\*

1.4. PROFESSIONALISM, COMPETENCE AND EFFICIENCY IN THE JUDICIARY						
No.	Measure / Activity	Responsible authority	Deadline	Required funds / Source of financing	Indicator of result	Indicator of impact
1.4.1. Recommendation: Ensure reliable and consistent judicial statistics and introduce a system to monitor the length of trials.						
1.4.1.1.	Setting up reliable and consistent judicial statistics according to CEPEJ guidelines on judicial statistics	Ministry of Justice (Branko Lakočević, Nataša Radonjić), Judicial Council (Danko Drašković)	September 2013 to second quarter of 2015	Regular budgetary funds EUR 220,000	Reliable and consistent judicial statistics established in accordance with CEPEJ guidelines.	CEPEJ Report Data obtained through PRIS are Reliable and consistent
1.4.1.1.1.	Drafting a regulation about procedures, methodologies and timeframes for the collection of statistical figures in compliance with CEPEJ guidelines by the working group composed of representatives from the Ministry of Justice and Judicial Council	Ministry of Justice (Branko Lakočević, Nataša Radonjić), Judicial Council (Danko Drašković)	September 2013 until March 2014	Budget	Working group established; Draft regulation prepared	

\* Action Plan of Montenegro for Chapter 23 (Judiciary and fundamental rights), Government of Montenegro, 27 June 2013, p. 43. The Action Plan is available on the website: <http://www.eu.me/mn/23/23-dokumenti> (last accessed on 16/11/2015).



### 3.1.4. Report on the Implementation of the Action Plan

Report on the Implementation of the Action Plan for a given chapter is drawn up by the candidate country quarterly or biannually, depending on the set timeframe for the implementation of measures. The Report on the Implementation of the Action Plan represents a guide for carrying out the listed measures in an envisaged timeframe, in accordance with the defined results.

The Report on the Implementation of the Action Plan on a given chapter contains the same defined measures and components as the Action Plan. Having regard to the reporting period, each of the achieved results and indicators of result for the envisaged measure within a defined timeframe, which coincides with the period of drawing up and publishing of the Report on the Implementation of the Action Plan, must be listed.

Drawing up and publishing of the Report on the Implementation of the Action Plan is significantly important both for all parties involved in the accession negotiation process within a given negotiation chapter, and for all stakeholders, which, beside their regular activities of monitoring the accession negotiation process and carrying out measures for the fulfilment of the specified recommendations, can get a clearer perspective on what the state authorities responsible for carrying out a certain measure within the Action Plan achieved in the envisaged timeframe. Drawing up and publishing of the Report at the quarterly, i.e. biannual level helps all parties involved in the process to obtain clearer guidelines for carrying out steps which lead towards the closing of the negotiations on the negotiation chapter.

## 3.2. The Actual Negotiations

The Negotiating Position is prepared by the candidate country, after the Council, upon the EC recommendation, has confirmed that the opening benchmarks have been met, i.e. that all appropriate measures and timeframes have been stipulated in the action plans for the fulfilment of the recommendations from the Screening Report on a given chapter, and invited the candidate country to submit its Negotiating Position for the given chapter.

The Negotiating Position is prepared and adopted in accordance with defined procedures and standards in the candidate country. After it has been adopted, the Negotiating Position is forwarded to the EC and the Council, and it is discussed at the IGC where the negotiations on the given chapter are conducted.

**EXAMPLE 5:  
ACTION PLAN OF MONTENEGRO FOR CHAPTER 23  
(JUDICIARY AND FUNDAMENTAL RIGHTS) – THE FIFTH REPORT\***

**1.4. PROFESSIONALISM, COMPETENCE AND EFFICIENCY IN THE  
JUDICIARY MJ – Tijana Badnjar**

1.4.1. Recommendation: Ensure reliable and consistent judicial statistics and introduce a system to monitor the length of trials.

No.	Measure / Activity	Responsible	Deadline	Required funds / Source of financing	Indicator of result
1.4.1.1.1	<p>Drafting a regulation about procedures, methodologies and timeframes for the collection of statistical figures in compliance with CEPEJ guidelines by the working group composed of representatives from the Ministry of Justice and Judicial Council</p> <p>(1) 31 XII 2013 [RK]</p> <p>(2) 31 III 2014 [NR] The Ministry of Justice, in cooperation with IMG within the “Strengthening Judiciary in Montenegro” project, ensured expert support in strengthening the capacities of the Ministry of Justice regarding the use of statistical reports and their analytics.</p>	MJ	September 2013 until the second quarter of 2015	<p>Working group established;</p> <p>(1) 31 XII 2013 (2) 31 III 2014 [NR] (3) 30 VI 2014 [R ]</p> <p>With a view to the execution of „Strengthening of Judiciary in Montenegro“ project, supported by IMG, the officials of the Ministry of Justice and the Judicial Council Secretariat were appointed to participate in this project, cooperate with the engaged experts and attended training for using the Model for the analysis of judiciary system in accordance with CEPEJ guidelines.</p> <p>(4) 30 IX 2014 [NR] Note: The working group was not established in the reporting period. Through EUROL project, the Ministry of Justice received expert support which will include drawing up of Draft Instructions, which will subsequently be considered and elaborated by the Working group whose establishment is expected in October.</p>	CEPEJ Report; Data obtained through PRIS are reliable and consistent.

\* Action Plan of Montenegro for Chapter 23 (Judiciary and fundamental rights) – The Fifth Report, Government of Montenegro, December 2014, pp. 69–71. The Action Plan is available on the website: <http://www.eu.me/mn/23/23-dokumenti> (last accessed on 16/11/2015).

No.	Measure / Activity	Responsible	Deadline	Required funds / Source of financing	Indicator of result
1.4.1.1.1	<p>This project will also include, inter alia, drawing up of the regulation on procedures, methods and deadlines for gathering statistical data in accordance with CEPEJ guidelines.</p> <p>(3) 30 VI 2014 [DR]  (4) 30 IX 2014 [NR]  (5) 31 XII 2014 [DR]</p>			<p>(5) 3. XII 2014 [R ]  Working group was established by the decree of the Ministry of Justice. The members of the Working group are the representatives of the Ministry of Justice and the Judicial Council Secretariat.</p> <p>Draft regulation prepared  (1) 31 XII 2013 [RK]  The officials of the ICT and multimedia Sector initiated the preliminary analysis with a view to a more efficient fulfilment of this measure.</p> <p>(2) 31 III 2014  (3) 30. VI 2014 [DR]  Through the project of the Ministry of Justice and IMG, "Strengthening of Judiciary in Montenegro", experts were engaged, who worked together with the representatives of the Ministry of Justice and Judicial Council Secretariat, on connecting these two institutions with a view to enable the Ministry of Justice to have direct access to the data from PRIS. In this way, within this project, the Ministry of Justice was enabled direct access to the part of the data from PRIS, necessary for the analysis in accordance with CEPEJ guidelines.  (4) 30 IX 2014 [NR]  (5) 31 XII 2014 [R ]  With the support of the expert engaged through the project "Support to the Rule of Law" (EU RoL), the Working group prepared Draft Instructions on drawing up statistical reports on the work of courts in accordance with the guidelines of the European Commission for the Efficiency of Justice (CEPEJ).</p>	

### 3.2.1. Negotiating Position of the Candidate Country

The document which defines the negotiating position of the candidate country consists of the following sections:

- 1) **introduction;**
- 2) **legislative and institutional framework;**
- 3) **alignment of legislative and institutional framework with the EU *acquis*.**

#### STRUCTURE AND CONTENT OF THE NEGOTIATING POSITION

##### 1) INTRODUCTION:

- summary of the Negotiating Position;
- requests for transitional periods;
- situation with regard to specific chapter at the time of the preparation of the Negotiating Position;
- level of alignment with the EU *acquis*;
- assessment of institutional capacities for the implementation of aligned regulations.

##### 2) ELABORATION:

- in which a detailed description of the situation with regard to the specific chapter and to the existing regulations is given, as well as the summary of the process of alignment with the EU *acquis*;
- in which a detailed explanation of each request made for transitional periods or exemptions (derogations) is given;
- in which the institutional framework for the implementation of aligned regulations is defined.

##### 3) APPENDICES

- timetables, analyses, additional information etc. (if necessary).

**Transitional periods** which the candidate country requests for the full application of the *acquis* after the expected date must be clearly defined with regard to objectives and timeframe; the requests must be convincingly presented and well argued; the EU may also request them.

**Exemptions (derogations)** are requested by the candidate country with regard to the application of a certain EU regulation or a part of a regulation; they are approved only in exceptional cases.

**Technical adaptation of the EU *acquis*** is requested by the candidate country in those areas in which the country may bring “added value” to the EU *acquis*.

**Additional clarifications** are given at the request of the EU institutions, and contain all additional information regarding the submitted Negotiating Positions and are prepared in written form.

**Action Plan for the preparation and adoption of the *acquis* in a given negotiation chapter** is annexed to the Negotiating Position.

In the introduction of the summary of the Negotiating Position, the candidate country expresses acceptance of the EU *acquis* in a given chapter and states whether, in this chapter, it will request additional transitional periods for alignment with the *acquis* or exemptions from its application.

In the section related to the legislative and institutional framework, the candidate country defines and states the legal framework defining a specific policy area, as well as the state of play and the functioning of the legal framework in the area of policies included in the given negotiation chapter.

The last section of the Negotiating Position related to the alignment of the legislative and institutional framework with the EU *acquis* refers to the candidate country's assessment of the extent to which the legislation in a given chapter has been aligned and which measures will be carried out in the following period in order to fully align the legislation.

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## **EXAMPLE 7: NEGOTIATING POSITION OF MONTENEGRO FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)**

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### 1. JUDICIARY

#### 1.4. Professionalism, competence and efficiency in the judiciary

"...Strengthening of the efficiency of judiciary is one of the objectives of the Judicial Reform Strategy 2013–2018, while the main areas of activity will be related to the rationalisation of judicial network; resolution of backlog cases through determining rules and adopting annual programmes, and regular reporting on the resolution of backlog cases at the level of all courts, as well as through voluntary assignment of judges, delegation of cases, improvement and control of the work of the delivery and enforcement service, monitoring of work, alternative forms of dispute settlement, improvement of judicial management and administration, improvement of alternative forms of dispute settlement by means of mediation, court settlement and arbitration, as well as through development of other judicial bodies (attorneys, notaries, bailiffs, experts, court interpreters)."

Negotiating Position of Montenegro for Chapter 23 (Judiciary and fundamental rights), p.41<sup>9</sup>

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<sup>9</sup> Negotiating Position of Montenegro for the Intergovernmental Conference on the Accession of Montenegro to the European Union for Chapter 23 (Judiciary and fundamental rights), October 2013, p. 41. The Negotiating Position is available on the website: <http://www.eu.me/mn/23/23-dokumenti> (last accessed on 16/11/2015).

### 3.2.2. EU Common Position

The Common Position is prepared by the EC and adopted by the Council, and it is presented at the IGC where the negotiations on a given chapter are conducted. In the Common Negotiating Position, the EU may note that the candidate country has reached a sufficient and necessary level of alignment with the EU *acquis* in a given chapter and the negotiations on the chapter will be provisionally closed.

If the EU notes that a sufficient level of alignment has not been reached, it will define closing benchmarks, which the candidate country should meet in order for the negotiations on the chapter to be provisionally closed.

The document which defines the EU common position for a certain chapter consists of:

- 1) **introduction and**
- 2) **further recommendations for alignment with the *acquis* by areas in a given chapter, based on the views expressed in the Negotiating Position of the candidate country.**

The introduction of the EU Common Position makes reference to the Negotiating Framework presented to the candidate country at the first IGC and to the principles contained therein and emphasises the obligation the state undertook when it committed to accept the EU *acquis* in a given negotiation chapter.

The second part of the EU Common Position contains a set of recommendations and steps the EU will take in the following period so that the candidate country may continue the process of alignment with the *acquis* in a certain policy area, in the way it presented in the Negotiating Position.

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#### EXAMPLE 8: EU COMMON POSITION FOR CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS) FOR MONTENEGRO

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JUDICIARY: Professionalism/Competence/Efficiency

“The EU follows the information on professionalism, competence and efficiency of judiciary, particularly on measures concerning the development of judicial statistics and performance indicators, on plans of Montenegro related to further rationalisation of judicial network, measures for the improvement of the enforcement of judicial decisions, introduction of the system of incentives for voluntary mobility/transfer of judges, and Montenegro’s commitment to further reduce the num-

ber of pending court cases. The EU emphasises the importance of further stable reduction of the number of pending cases as the key step for greater efficiency of Montenegrin judiciary. In this regard, the EU points out the need for further investigation and encouraging the use of alternative measures, such as mediation, court settlements and arbitration. The EU invites Montenegro to ensure tangible progress in ensuring coherence regarding competences and enforcement of all judicial decisions, inter alia, by mediation of bailiffs, in order to contribute to the improvement of legal security.”

EU Common Position for Chapter 23 (Judiciary and fundamental rights) for Montenegro, p.5<sup>10</sup>

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### 3.2.3. Report on the Fulfilment of Obligations under a Negotiation Chapter

Report on the Fulfilment of Obligations under a Negotiation Chapter is prepared by the candidate country and it included the period from the formal opening of the negotiations on a given chapter to the provisional closing of the chapter.

The report contains the overview of adopted measures, activities conducted in each policy area for the purpose of adopting the *acquis* in a certain chapter, as well as the overview of administrative and institutional capacities of the application of undertaken obligations.

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<sup>10</sup> GENERAL EU POSITION, Ministerial meeting opening the Intergovernmental Conference on the Accession of Montenegro to the European Union, Brussels, 29 June 2012, [http://ec.europa.eu/enlargement/pdf/st20002\\_05\\_mn\\_framedoc\\_en.pdf](http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf). Translation of the Common Position is available on the website: <http://www.eu.me/mn/23/23-dokumenti> (last accessed on 16/11/2015) p.5.

# IV

## MONITORING THE EUROPEAN UNION ACCESSION NEGOTIATIONS

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In this section, the Guide gives insight into how the civil society and other stakeholders may specifically monitor the accession negotiations and give their contribution to the process itself. It is extremely important for the civil society in the candidate countries and all other stakeholders not directly involved in the EU accession negotiations process to understand the significance of accession negotiations and, taking into account their capacities, to give particular contribution and continuously monitor the course of negotiations, and thus make the negotiation process as sound as possible, in the most efficient and effective way. Participation in negotiations and monitoring the accession negotiations implies understanding of the institutional and administrative framework within which the negotiations are conducted, the way in which the negotiations are conducted, the content of negotiation process and available instruments by which the civil society and other stakeholders may influence the process.

The success of European integration is founded on the civil society and other stakeholders not acting as passive actors, but as active partners who improve the quality of negotiations and influence their final outcome. The inclusiveness of the process ensures full application of the EU *acquis* in the candidate country and achievement of the objectives of the EU public policies, which will be based on realistic expectations and objective timeframes for their achievement, engagement of limited resources, taking into account the interests and needs of all actors in the process as well.

#### 4.1. Matrix for Monitoring the EU Accession Negotiations

Matrix for Monitoring the EU Accession Negotiations in this Guide has been created as a response to the need for strengthening the capacities of the civil society for its participation in the process and monitoring the negotiation process. In the dynamic environment of the accession negotiations, where decisions are usually made in short timeframes, and the process itself is marked by a large amount of quickly exchanging information, as well as documents created for the purpose and as a result of negotiations, timely and appropriate action is of essential importance for an effective impact on the improvement of the quality of the negotiation process. The matrix represents a useful framework for the civil society and other actors concerned with monitoring the EU accession negotiations of the candidate country because it contains the following elements:

- 1) **Steps in the accession negotiations process** – Depending on whether there are opening, closing or interim benchmarks, different procedures of the course of the negotiations on each chapter are possible. For the purposes of the Guide, one of the more complex scenarios in the accession negotiations process is presented, i.e. the case in which both opening and closing benchmarks have been set before the candidate country for a cer-

tain chapter. This will not be the case in all negotiation chapters. The (non) existence of these benchmarks will depend on the quality of the reforms the candidate country has implemented in public policy areas included in the specific negotiation chapter and the existing capacities of the candidate country to achieve the objectives of the EU public policies and apply the EU *acquis* in practice.

*See a detailed description of the steps in five possible scenarios of the course of negotiation in Appendix 1 (Course of Negotiations – Five Possible Scenarios).*

2) **Specific contribution to the negotiation process** – WHAT does specific contribution to the negotiation process imply? It implies a substantial contribution of the civil society and other stakeholders to: (a) the execution of a specific stage of the negotiation process (e.g. contribution to the drawing up of the Action Plan, Negotiating Position etc.); (b) monitoring the implementation of the defined measures and informing thereon (e.g. analyses, reports, studies of practical policy, state of play etc.); (c) informing the public concerned and citizens on the content and course of negotiations, as well as on the key challenges and results of the negotiation process.

3) **Manner of communication** – HOW the contribution to the negotiation process is defined and how to communicate with the stakeholders in the negotiation process? This refers to the INSTRUMENTS of communication and CHANNELS of communication. The instruments of communication include all types of analytical, practical and political, and “advocative” documents which ensure that the arguments and solutions of the civil society and other stakeholders become constituent part of the decision making process in each stage of the accession negotiations, as well as all types of content which serve to inform the public and citizens of the negotiation process. Channels of communication refer to how the civil society and other stakeholders obtain information during the negotiation process (e.g. meetings, letters, request for access to information of public importance etc.) and how they transfer information and findings further (media, events, social networks etc.).

4) **Institutional framework** – WHO do we contact? Each of the steps in the accession negotiations process implies a different level and quality of inclusion of a large number of institutions and actors. Recognising the institutions and actors involved in different stages of the accession negotiations enables the influence on the course and the results of the negotiations, as well as on effective engagement of the civil society and other stakeholders in this process.

No.	STEP IN THE ACCESSION NEGOTIATIONS PROCESS	SPECIFIC CONTRIBUTION (WHAT?)	MANNER OF COMMUNICATION (HOW?)		INSTITUTIONAL FRAMEWORK
			INSTRUMENTS OF COMMUNICATION	CHANNELS OF COMMUNICATION	
1.	Explanatory Screening	<ul style="list-style-type: none"> <li>- Familiarising with the objectives of the EU public policies and the EU acquis for the given negotiation chapter</li> <li>- Monitoring the explanatory screening meeting, asking for clarification and additional information</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Methodology for transferring knowledge and information, presentations, texts on the content of EU policies and the EU acquis etc.</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Factsheets</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/networks/platforms and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Education activities (lectures, training, seminars, workshops etc.)</li> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/networks/platforms</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> <li>- International non-governmental organisations</li> </ul>



2. Bilateral Screening	<ul style="list-style-type: none"> <li>- Drawing up the factsheets on the level of alignment of public policies and legal system with the EU public policies and the EU acquis for the given negotiation chapter</li> <li>- Answers to additional questions of the EC after the bilateral screening</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative reports on the level of alignment</li> <li>- Studies, analyses of the effects of the application of legislation and capacity assessments etc.</li> <li>- Factsheets</li> <li>- Contributions to the EC Annual Report on the progress of Serbia in the process of EU integration</li> <li>- Reports on the level of fulfilment of Action Plans/ Strategies/ Plans for alignment with the EU acquis</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/networks/platform and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Education activities (lectures, training, seminars, workshops etc.)</li> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/networks/platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The Council of the EU</li> <li>- The European Commission</li> <li>- The European Parliament</li> <li>- Diplomatic missions of the Member States in Brussels</li> <li>- The EU Member States</li> <li>- International non-governmental organisations</li> <li>- Mission of the candidate country to the EU</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> </ul>
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<p>3. The EC prepares the Screening Report and recommends opening benchmarks to the Council</p>	<ul style="list-style-type: none"> <li>- Assessment of the level of alignment of public policies and legal system with the EU public policies and the EU acquis</li> <li>- Review of the country capacity to achieve the objectives of the EU public policies and the application of the EU acquis</li> <li>- Review of the alternative opening benchmarks (if necessary)</li> <li>- "Inputs" for EC expert teams coming to visit during the preparation of the Screening Report for the given chapter</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative reports on the level of alignment</li> <li>- Factsheets</li> <li>- Studies, analyses of the effects of the application of legislation and capacity assessments etc.</li> <li>- Position Papers on of the level of alignment of public policies and realistic possibilities for the application of the EU acquis</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/networks/platform and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- The Council of the EU</li> <li>- The European Parliament</li> <li>- European Economic and Social Committee</li> <li>- Committee of the Regions</li> <li>- Diplomatic missions of the Members States in Brussels</li> <li>- The EU Member States</li> <li>- International non-governmental organisations</li> <li>- Mission of the candidate country to the EU</li> </ul>
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<p>4. The Council of the EU accepts the Screening Report and opening benchmarks and invites the candidate country to meet them</p>	<ul style="list-style-type: none"> <li>- Communication with the Council of the EU – expert bodies of the Council and permanent representations of the EU Member States on the level of alignment of public policies and legal system with the EU public policies and the EU acquis in the given negotiation chapter</li> <li>- Constant communication with the representatives of the EU Member States (line ministries and diplomatic offices in the candidate country)</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative reports on the level of alignment</li> <li>- Factsheets</li> <li>- Studies, analyses of the effects of the application of legislation and capacity assessments etc.</li> <li>- Position Papers on of the level of alignment of public policies and realistic possibilities for the application of the EU acquis</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- Working Party on Enlargement and Countries Negotiating Accession to the EU</li> <li>- COELA</li> <li>- Diplomatic missions of the Member States in Brussels</li> <li>- Diplomatic missions of the EU Member States in the candidate country</li> </ul>
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<p>5. The candidate country undertakes appropriate steps to meet the opening benchmarks</p>	<ul style="list-style-type: none"> <li>- Supplements, guidelines, comments on meeting the opening benchmarks</li> <li>- Drawing up of the alternative plan for meeting the opening benchmarks – proposing and advocating specific steps and activities for meeting benchmarks</li> <li>- Monitoring the implementation of the opening benchmarks</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative plan for meeting the opening benchmarks</li> <li>- Analysis of the effects of proposed measures and activities which have been implemented (e.g. capacities of competent authorities, timeframes for their fulfilment, proposed financial resources and the quality of set indicators of the execution of measures)</li> <li>- Reports on the implementation of the plan for meeting the opening benchmarks</li> <li>- Communication with the representatives of public authorities competent for the given chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/networks/platform and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> <li>- Relevant government bodies and agencies</li> <li>- European Integration Committee and/or line parliament committees/ representative body of the candidate country</li> </ul>
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<p>6. The EC monitors and, when the candidate country meets the benchmarks, composes the Opening Benchmark Assessment Report – OBAR and submits it to the Council</p>	<ul style="list-style-type: none"> <li>- Monitoring the application of measures for meeting the opening benchmarks</li> <li>- Contributions for the EC Opening Benchmark Assessment Report</li> <li>- Drawing up of the alternative plan for meeting the opening benchmarks</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative plan for meeting the opening benchmarks</li> <li>- Analysis of the effects of proposed measures and activities which have been implemented (e.g. capacities of competent authorities, timeframes for their fulfilment, proposed financial resources and the quality of set indicators of the execution of measures)</li> <li>- Reports on the implementation of the plan for meeting the opening benchmarks</li> <li>- Factsheets on the achieved results in meeting the opening benchmarks</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Working Party on Enlargement and Countries Negotiating Accession to the EU</li> <li>- COELA</li> <li>- Diplomatic missions of the Member States in Brussels</li> <li>- Diplomatic missions of the EU Member States in the candidate country</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> </ul>
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<p>7. The Council of the EU notes that the opening benchmarks have been met and asks the candidate country to submit its Negotiating Position</p>	<p>Communication with the Council of the EU, expert bodies of the Council and permanent representations of the EU Member States on the level of alignment of public policies and legal system with the EU public policies and the EU acquis in the given negotiation chapter</p> <ul style="list-style-type: none"> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<p>- Evaluation of the fulfilment of the opening benchmarks</p> <ul style="list-style-type: none"> <li>- Factsheets on the achieved results in meeting the opening benchmarks</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Working Party on Enlargement and Countries Negotiating Accession to the EU</li> <li>- COELA</li> <li>- Diplomatic missions of the EU Member States in the candidate country</li> <li>- EU Delegation in the candidate country</li> </ul>
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<p>8. The candidate country prepares and submits the Negotiating Position</p>	<ul style="list-style-type: none"> <li>- Contribution to drawing up the content of the Negotiating Position</li> <li>- Advocating solutions with regard to the proposed transitional periods, exemptions or technical adaptations of the EU acquis</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Contributions to the drawing up of the Negotiating Position</li> <li>- Studies and proposals of practical policies</li> <li>- Factsheets and Position Papers</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/networks/platform and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/networks/platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> <li>- Chamber of Commerce and Industry</li> <li>- European Integration Committee and/or line parliament committees/ representative body of the candidate country</li> </ul>
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9.	Based on the candidate country's Negotiating Position, the EC prepares the Draft EU Common Position and proposes closing benchmarks, if necessary	<ul style="list-style-type: none"> <li>- Contributions for the EC which prepares to draw up the EU Common Position for the given chapter</li> <li>- Proposing the necessary closing benchmarks (if necessary)</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Factsheets and Position Papers on the Negotiating Position of the candidate country for the given chapter</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- The Council of the EU</li> </ul>
10.	The Council of the EU adopts the EU Common Position and closing benchmarks and organises the Intergovernmental Conference	<ul style="list-style-type: none"> <li>- Limited possibility of contributions (advocating amendments to the Negotiating Position)</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Factsheets and Position Papers on the Negotiating Position of the candidate country for the given chapter</li> <li>- Factsheets and Position Papers on the on the content of the EU Common Position</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- The Council of the EU</li> <li>- The European Parliament</li> <li>- International non-governmental organisations and think-tanks</li> </ul>



11.	At the IGC, the chapter is opened and closing benchmarks are noted	<ul style="list-style-type: none"> <li>- Limited possibility of contributions (advocating amendments to the Negotiating Position)</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Factsheets and Position Papers on the on the content of the EU Common Position and the Negotiating Position of the candidate country</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- The Council of the EU</li> <li>- The European Parliament</li> <li>- International non-governmental organisations and think-tanks</li> </ul>
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<p>12. Negotiations on the opened chapter (IGC and technical consultations)</p>	<ul style="list-style-type: none"> <li>- Drawing up of contributions during the negotiations (e.g. advocating final transitional periods, exemptions or technical adaptation of the EU acquis for the given chapter)</li> <li>- Reporting during the negotiations</li> <li>- Drawing up reports on the effects of the application of specific transitional periods, exemptions or technical adaptation of the EU acquis for the given chapter</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Contributions to the drawing up of the Negotiating Position</li> <li>- Studies and proposals of practical policies</li> <li>- Factsheets and Position Papers</li> <li>- Gathering relevant information from the representatives of public authorities competent for a certain negotiation chapter</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> <li>- Chamber of Commerce and Industry</li> <li>- European Integration Committee and/or line parliament committees/ representative body of the candidate country</li> <li>- The European Commission</li> <li>- The Council of the EU</li> <li>- The European Parliament</li> <li>- European Economic and Social Committee</li> <li>- Committee of the Regions</li> <li>- Diplomatic missions of the Member States in Brussels</li> <li>- The EU Member States</li> <li>- International non- governmental organisations</li> <li>- Mission of the candidate country to the EU</li> </ul>
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<p>13.</p> <p>The candidate country undertakes appropriate steps in order to meet the closing benchmarks</p>	<ul style="list-style-type: none"> <li>- Contribution to the drawing up of plans and defining measures for meeting the closing benchmarks</li> <li>- Drawing up the alternative plan for meeting the closing benchmarks</li> <li>- Drawing up the alternative report on the fulfilment of the closing benchmarks</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative plan for meeting the closing benchmarks</li> <li>- Analysis of the effects of proposed measures and activities which have been implemented (e.g. capacities of competent authorities, timeframes for their fulfilment, proposed financial resources and the quality of set indicators of the execution of measures)</li> <li>- Alternative reports on the implementation of the plan for meeting the closing benchmarks</li> <li>- Non- Papers on the ways for a more efficient implementation of the measures necessary for meeting the closing benchmarks</li> <li>- Communication with the representatives of public authorities competent for the given chapter</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Establishing CSO coalitions/ networks/ platform and starting initiatives</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> <li>- Relevant government bodies and agencies</li> <li>- Chamber of Commerce and Industry</li> <li>- European Integration Committee and/or line parliament committees/ representative body of the candidate country</li> </ul>
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<p>14. The EC follows the development and, when the closing benchmarks are met, prepares the report thereon and proposes provisional closing of the chapter to the Council</p>	<ul style="list-style-type: none"> <li>- Monitoring the application of plans and measures for meeting the closing benchmarks</li> <li>- Contribution to the drawing up of the EC report on meeting the benchmarks for provisional closing of the chapter</li> <li>- Drawing up the alternative report on the fulfilment of the closing benchmarks</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Alternative reports on the implementation of the plan for meeting the closing benchmarks</li> <li>- Analysis of the effects of proposed measures and activities which have been implemented</li> <li>- Report on the implementation of the plan for meeting the closing benchmarks</li> <li>- Gathering relevant information through media, websites, web portals, mailing lists</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> <li>- Factsheets on the achieved results in meeting the opening benchmarks</li> </ul>	<ul style="list-style-type: none"> <li>- Meetings, letters, emails, requests for access to information of public importance etc.</li> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The European Commission</li> <li>- Working Party on Enlargement and Countries Negotiating Accession to the EU</li> <li>- COELA</li> <li>- Diplomatic missions of the Member States in Brussels</li> <li>- Diplomatic missions of the EU Member States in the candidate country</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> </ul>
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<p>15. The Council accepts the EC's report and provisionally closes the chapter at the next Intergovernmental Conference</p>	<ul style="list-style-type: none"> <li>- Limited possibility of contributions (advocating amendments to the Negotiating Position)</li> <li>- Informing and notifying the civil society, stakeholders and the public</li> </ul>	<ul style="list-style-type: none"> <li>- Factsheets and Position Papers on the results of the negotiation process on a given chapter</li> <li>- Press releases, newspaper articles, blog posts, infographics etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Press conferences, fora, public events</li> <li>- Media (printed, radio and television)</li> <li>- Social networks (Facebook, Twitter, Youtube, blogs etc.)</li> <li>- CSO coalitions/ networks/ platforms</li> <li>- International conferences and events</li> </ul>	<ul style="list-style-type: none"> <li>- The Council of the EU</li> <li>- Diplomatic missions of the Members States in Brussels</li> <li>- Institutions/ authorities/ bodies within the structure for conducting the EU accession negotiations</li> <li>- Line ministry</li> <li>- Institution/ authority/ body in charge of cooperation with the civil society</li> </ul>
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**TRANSPARENCY AND  
ACCESS TO DOCUMENTS  
IN THE EU ACCESSION  
NEGOTIATIONS PROCESS**

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This section of the Guide deals with the issue of transparency of the EU accession negotiations process, with special reference to the legal framework for access to documents created through the work of the EU institutions (the European Parliament, the European Council and the European Commission). Specific goal of this chapter is to enable the readers to understand and use the legal instruments for access to documents in the EU accession negotiations process.

Transparency, which primarily manifests through free access to public documents and information held by public authorities, represents one of the fundamental principles of democracy. Free access to information is a civil right and legacy of European civilisation. Right of access to documents held by public authorities stems from the very nature of democratic institutions which serve the citizens.

According to the Recommendation of the Committee of Ministers of the Council of Europe on access to official documents<sup>11</sup>, restrictions to the right of access to documents should clearly be defined by law and necessary for the functioning of a democratic society. Although this document is non-binding, it both testifies to the achievements of European democratic civilisation and establishes the lower limit below which no restrictions should be imposed on the right of access to public documents. Therefore, any restriction to the right of access to information must clearly be justified in the context of the protection of another legitimate interest stipulated by law.

Right of access to information is inseparable from the freedom of thought and expression, as a fundamental human right. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>12</sup> defines the right to freedom of expression as *freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*. This right may be restricted in a democratic society in the interests of *national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*. Any derogation from the obligation of transparency in the work of public authorities must be founded in law, i.e. previously stipulated by law.

<sup>11</sup> Council of Europe, Access to Official Documents. Recommendation Rec (2002) 2 adopted by the Committee of Ministers of the Council of Europe on February 2002 and explanatory memorandum, [http://www.coe.int/t/dghl/standardsetting/media/doc/H-Inf\(2003\)003\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/H-Inf(2003)003_en.pdf) (last accessed on 16/11/2015).

About the development of the right of access to public documents, also see: Hins, Wouter; Voorhoof, Dirk, "Access to State-Held Information as a Fundamental Right under the European Convention on Human Rights", *European Constitutional Law Review*, 3, 2007, pp 114–126, doi:10.1017/S1574019607001149.

<sup>12</sup> European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_SRP.pdf](http://www.echr.coe.int/Documents/Convention_SRP.pdf) (last accessed on 16/11/2015).

Simply making documents available to the public is not sufficient to exercise the respect of principles of transparency. Transparency implies that public authorities predictively conduct their regular activities before the public, in a way that their work is understandable and clear to the citizens, encouraging participation of the public and responsibility of public office holders through their work.

Right of access to documents held by public authorities containing information of public importance is primarily guaranteed by the national legislation of the Member states of the Council of Europe. In 2009, the Council of Europe adopted the Convention on Access to Official Documents<sup>13</sup>, but this Convention has only been confirmed by seven member states so far, therefore it was not in force at the moment of writing this Guide.

The Opinion of the European Economic and Social Committee on Enhancing the transparency and inclusiveness of the EU accession process emphasises the need for greater transparency in the process of negotiations.<sup>14</sup> In recommendations directed to the EU institutions, the need for the EP, the Council of the EU and the EC to make all key documents publicly available and publish them at the official website is particularly emphasised (Screening Reports, translation of the EU *acquis*, opening and closing benchmarks).<sup>15</sup> In addition, it is suggested to the EU institutions to ensure that access to information and participation of the public constitute an integral part of the programme of monitoring the progress in the EU accession process. Recommendation to the countries in the accession process refers to the establishment of clear and written rules for access to information related to the negotiation process.

## 5.1. Right of Access to Documents held by the European Union Institutions

Right of access to documents held by the EU institutions is set out in the founding Treaties. The Treaty of Amsterdam (1997), which amended the EU Treaty and the Treaties establishing the European Communities, ensures the right of access to documents of the EP, the Council and the EC to any natural

<sup>13</sup> Council of Europe Convention on Access to Official Documents (CETS No: 205) <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CL=ENG> (last accessed on 16/11/2015).

<sup>14</sup> Opinion of the European Economic and Social Committee on Enhancing the transparency and inclusiveness of the EU accession process REX/401, 2014 <http://www.eesc.europa.eu/?i=portal.en.rex-opinions.30766> (last accessed on 16/11/2015).

<sup>15</sup> Part of the documents related to the process of negotiations with the Republic of Serbia may be found on the page of the European Commission's website related to neighbourhood policy and enlargement negotiations, [http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index\\_en.htm](http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm) (last accessed on 16/11/2015).

person residing in the EU<sup>16</sup> territory and any legal person having their registered office in the EU territory.<sup>17</sup> After the Lisbon Treaty entered into force, the Charter of Fundamental Rights of the European Union, adopted as a political document at the Nice Summit in 2000, became the source of the EU law. Chapter V of the Charter (“Citizens’ Rights”) lays down *the right of access to documents*, i.e. affirms the right of access to documents of the EP, the Council and the EC.<sup>18</sup> In the EU system, prior to the entry into force of the Lisbon Treaty, the principle of administrative transparency, in a broader sense, formally applied to the Council, the EC and the EP<sup>19</sup>, but not to other institutions and bodies. After the entry into force of the Lisbon Treaty (2009), access to information became a fundamental right in the EU law. On one hand, Article 15 of the Treaty on the Functioning of the European Union prescribes that “in order to promote good governance and ensure the participation of civil society, the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible”, and reiterates that “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium.”<sup>20</sup> On the other, the Charter of Fundamental Rights of the European Union, explicitly guarantees “the right of every person to have access to his or her file”(Article 41) and the right of access to the documents of the EU institutions (Article 42). The public’s right to know has become a fundamental right in the EU law; therefore the Member States are expected to ensure administrative transparency in a broader sense.

The application of the right of access to documents held by the EU institutions is more closely defined by Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.<sup>21</sup> The Regulation was adopted on 30 May 2001, and applies from 3 December 2001.<sup>22</sup> The first judgement of the European Court of Justice based on the provisions of Regulation (EC) No 1049/2001 was rendered in 2003 in case *Messina v. Commission* T-76/02.

16 To make the matter in question more understandable, the phrase European Communities or Communities is replaced in practice by the phrase European Union or Union, where applicable and appropriate. By entry into force of the Lisbon Treaty, the European Union succeeded the legal personality from the European Communities.

17 Article 255 of the Amsterdam Treaty.

18 Article 42 of the Charter of Fundamental Rights of the European Union.

19 REGULATION (EC) No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, [http://www.europarl.europa.eu/RegData/PDF/r1049\\_en.pdf](http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf) (last accessed on 16/11/2015).

20 Article 11(2) of TEU: „The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society“.

21 REGULATION (EC) No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, [http://www.europarl.europa.eu/RegData/PDF/r1049\\_en.pdf](http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf). (last accessed on 16/11/2015).

22 COMMISSION OF THE EUROPEAN COMMUNITIES, GREEN PAPER Public Access to Documents held by institutions of the European Community, A review, COM(2007) 185 final, Brussels, 2007.

<sup>23</sup> Already in 2005, “European Transparency Initiative” was launched and included the proposal to amend Regulation (EC) No 1049/2001.<sup>24</sup> Given that Regulation (EC) No 1049/2001 still represents the legal basis for access to public documents held by the EP, the Council and the EC, what follows is the procedure laid down in this Regulation, as well as the restrictions to the access to documents. Knowing the procedure for access to documents held by the EU institutions may have multiple significance for the civil society and other stakeholders who monitor the negotiation process and strive to contribute to better public information and compliance with the principles of the rule of law and good governance.

### 5.1.1. Public Right of Access to Documents of the European Parliament, Council and Commission – Regulation (EC) No 1049/2001

Regulation (EC) No 1049/2001 enables direct legal effect of the provision of Article 255 of the Treaty of Amsterdam. In the introductory part of the Regulation, the right of access to documents held by the EU institutions is clearly brought into connection with the principle of openness and commitment of the Member States to *take decisions as openly as possible and as closely as possible to the citizen, marking a new stage in the process of creating an ever closer union among the peoples of Europe*.<sup>25</sup> The purpose of the Regulation is to enable full application of the public’s right of access to documents, to establish general principles for the application of that right and restrictions to the access to documents with regard to public or private interest, in accordance with Article 255 of the Treaty of Amsterdam. The scope of the application of this Regulation encompasses the EU foreign policy as well, i.e. the documents created through the work of or held by the EU institution concerning foreign policy.<sup>26</sup> In order to ensure full application of this Regulation to all EU activities, all agencies established by the EU institutions are obliged to apply the principles defined in this Regulation. Regulation (EC) No 1049/2001 represents an *umbrella document* and all other rules regulating the right of access to documents of the EU institutions must be in accordance with it.

In general, according to the provisions of this legal act, all documents of the EU institutions should be available to the public. However, certain public and private interests must be protected through exemptions from rules. Protection of personal data, i.e. the use and publishing of those data by the

<sup>23</sup> <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-76-02>. (last accessed on 16/11/2015).

<sup>24</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, GREEN PAPER Public Access to Documents held by institutions of the European Community, A review, COM(2007) 185 final, Brussels, 2007.

<sup>25</sup> Article 1 of TEU.

<sup>26</sup> At the time of the adoption of Regulation (EC) No 1049/2001, the European Union functioned through the so called three pillars – the European Communities, common foreign and security policy and cooperation in judicial and criminal matters. This Regulation clearly lays down that the rights of access to documents apply to common foreign and security policy and cooperation in judicial and criminal matters as well.

EU institutions is regulated by Regulation (EC) NO 45/2001<sup>27</sup>, but the protection of personal data is not a subject of this Guide. Furthermore, due to the need to freely conduct their regular activities, the institutions are authorised to restrict the access to documents related to internal consultation and arrangements. In their assessment of the level of restriction on access to documents, the institutions are obliged to comply with the principles of Community law on the protection of personal data. This Regulation does not contradict the rights of access to documents set out in the Member States, as well as the right of access to documents held by the institutions, which stem from the instruments of international law or acts of the institutions implementing them.

In the preamble of the Regulation, it is defined that access to documents is not limited only to documents created through the work of the EU institutions or adopted by the EP, the Council of the EU or the EC, but also to documents held by these institutions and documents received by the institutions in their work. This is particularly important in the context of the EU accession negotiations. In accordance with Declaration No. 35, amending the Treaty of Amsterdam, this Regulation ensures the Member States the right to request that documents originating from the Member States are not communicated to third parties without their prior agreement.<sup>28</sup>

## WHO HAS THE RIGHT OF ACCESS TO DOCUMENTS UNDER THE REGULATION?

### Article 2(1)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

### Article 2(2)

The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

<sup>27</sup> REGULATION (EC) NO 45/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:008:0001:0022:en:PDF> (last accessed on 16/11/2015).

<sup>28</sup> Declaration on Article 191a(l) of the Treaty establishing the European Community, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Amsterdam, 2 October 1997, OJ 97/C 340 /01, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1997:340:FULL&from=EN> (last accessed on 16/11/2015).

This Regulation applies to all documents held by an institution, i.e. to documents composed, received or held by an EU institution, related to all EU's fields of activity.

**“documents” means any content, whatever its medium (either written on paper or stored in electronic form, or as an audio, visual or audio-visual file) related to policies, action and decisions within the responsibility of the institutions.**

Sensitive documents, in accordance with the Regulation (Article 9), have a special treatment. The Regulation (Article 12) regulates access to documents created or received during a legislative procedure.

Documents shall be made available for public inspection after a written application has been submitted or in electronic form or through a register.

A clear distinction should be made between the documents available via electronic registry of EU documents and the documents which must be requested by submitting a written request. The EU developed very efficient web services for access to documents, the richest one being the electronic archive of the EU legislation – Eur-Lex.<sup>29</sup> The first step in accessing the EU documents should imply checking whether the required document can be found in the electronic base of one of the EU institutions.

The analysis of the application of Regulation (EC) No 1049/2001 is not a subject of this Guide, but it is worth pointing out that the transparency of the EU institutions is still a great challenge with which not only the institutions face, but also those who enjoy the right of access to documents, i.e. the EU citizens.

In addition to defining who has the right of access to documents, as well as the meaning of the term *document*, Regulation (EC) No 1049/2001 also gives the definition of the term “third party”, which is necessary for appropriate application, i.e. exercising the right of access to documents. “Third party” means *any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries*. Having regard to this definition, the candidate country is the so-called third party under the provisions of the Regulation.

<sup>29</sup> Electronic archive of the EU legislation: <http://eur-lex.europa.eu/homepage.html> (last accessed on 16/11/2015).

### 5.1.1.1. Restrictions on Access to Documents

The Regulation (Article 4) defines the restrictions, i.e. the situations in which the EU institutions may deny the right of access to documents. The institutions deny the right of access to documents in cases where its disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, or if the disclosure of a given document would affect the conduct of judicial proceedings, legal advice, investigative actions, inspection or revision. These restrictions are applied if there is no overriding public interest for documents do be made available to the public. Therefore, the protection of public interest is the basic criterion upon which the restrictions on access to documents of the EU institutions are decided on. Detailed insight into the given Article of the Regulation leads to the conclusion that numerous restrictions are imposed on access to EU documents, which is why it is important for the information seeker to pay attention when submitting a request for access to information. Thus, the access to a document containing opinions for internal use, as a part of discussions and preliminary consultations within an institution, is restricted even after the decision has been made, if its disclosure could seriously undermine the decision making process within the institution, unless an overriding public interest for its disclosure exists.

#### ARTICLE 4(1) AND (2)

The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

As regards third-party documents (Article 4(4)), the institution shall consult the third party with a view to assessing whether an exception specified is applicable, unless it is clear that the document shall or shall not be disclosed.

A Member State may request that the institution does not communicate a document originating from that Member State to third parties without its prior agreement, in accordance with the abovementioned Declaration No. 35 to the Treaty of Amsterdam.



If there are justified reasons for restriction, that does not imply that the entire document should be protected. If the exemptions include only parts of the requested document, the remaining parts shall be disclosed. In addition, specified restrictions shall apply only for the period during which the reasons for restrictions on access exist, given the content of the document. An exemption may be applied for the maximum period of 30 years. In case when a document contains information related to private or business interest, or in case of sensitive documents, the exemption may be applied even after the period of 30 years.

Article 5 regulates access to documents of the EU institutions held by the Member States. Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

### 5.1.1.2. Submission and Processing of the Application for Access to Documents

#### ARTICLE 6(1)

Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so by providing information on the use of the public registers of documents. The Regulation (Article 14) stipulates that each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation. The institutions shall, inter alia, provide information and assistance to citizens on how and where applications for access to documents can be made. Furthermore, the Member States shall cooperate with the institutions in providing information to the citizens. The Regulation also stipulates informal consultations of institutions with the applicant in order to reach a favourable solution in case of a very large document or a larger number of documents.

The form for an online request for access to documents is available on [the official website of the EC \(https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=fmb&language=en\)](https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=fmb&language=en), along with the instruc-

tions on how to fill in the form. The application form for access to documents is also available on [the website of the European Union Agency for Fundamental Rights \(http://fra.europa.eu/en/about-fra/register-of-documents/access-to-documents\)](http://fra.europa.eu/en/about-fra/register-of-documents/access-to-documents).

Under the provisions of the Regulation (Article 7), an application for access to a document shall be handled promptly by a competent institution and an acknowledgement of receipt shall be sent to the applicant. Within 15 working days from the registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days. In that case, the applicant shall be notified in advance and detailed reasons for the extension of the time-limit shall be given. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application. The processing of a confirmatory application does not differ from the processing of the initial application, except for the fact that, in the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her. The applicant may institute court proceedings against the institution which refused access and/or make a complaint to the European Ombudsman. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to use all available legal remedies.

### 5.1.1.3. Treatment of Sensitive Documents

#### ARTICLE 9(1)

Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

It is important to mention that sensitive documents are those classified as such prior to the applicant's request for access to a certain document, i.e. arbitrariness in deciding on the access to classified documents is not allowed. This obligation stems from the principles of legal security, predictability and ban on retroactivity, as well as from fundamental legal principles upon which the work of all EU institutions is based. Any institution which decides to refuse access to a sensitive document shall give the reasons for its decision. It is the only way to confirm whether the decision on refusal of access to a document was legal. The rules of institutions related to sensitive documents shall be publically available.

Reasons for restricting access to documents are decided on for each individual case, and the competent institution shall, in a written reply to the applicant, state detailed reasons for the restriction of access. Therefore, a potential applicant should not be discouraged by restrictions specified in Regulation (EC) No 1049/2001. In some cases, the very information that an EU institution holds a certain document and cannot disclose it to the public for one of the reasons specified in the Regulation is sufficient for the applicants to better understand the processes in which they participate as stakeholders.

What is especially important is the treatment of documents created through the work with third parties, in this specific case, with a candidate country in the negotiation process. The public's right to inform on the negotiation process, as well as to access the documents created in this process, is clearly set out in the European and national legal framework. It is clear that any derogation must be justified, while in the case of the EU, it must be in accordance with Regulation (EC) No 1049/2001. Despite being a political process, it should not be forgotten that this process is defined by a strict legal framework. In simple terms, restriction of access to documents created in the negotiation process is acceptable only if it complies with the applicable law regulating this area. Application of the principles of the rule of law and respect of guaranteed civil rights are the only source of mutual trust between public authorities and citizens.

# APPENDIX 1 Course of Negotiations – Five Possible Scenarios

<b>1<sup>ST</sup> SCENARIO : SHORT PROCEDURE – NO SPECIAL BENCHMARKS</b>	
1	Explanatory Screening
2	Bilateral Screening
3	The EC prepares the Screening Report
4	The Council accepts the Report and invites the candidate country to present its Negotiating Position
5	The candidate country submits the Negotiating Position
6	Based on the Negotiating Position of the candidate country, the EC prepares Draft EU Common Position
7	The Council adopts the EU Common Position and organises the Intergovernmental Conference
8	At the IGC, the given negotiation chapter is opened and provisionally closed.

<b>2<sup>ND</sup> SCENARIO: PROCEDURE WITH OPENING BENCHMARKS FOR A CHAPTER</b>	
1	Explanatory Screening
2	Bilateral Screening
3	The EC prepares the Screening Report and proposes opening benchmarks to the Council
4	The Council accepts the Report and the opening benchmarks and invites the candidate country to meet them
5	The candidate country undertakes appropriate steps to meet the opening benchmarks for the given chapter
6	The EC monitors and, when the candidate country meets the benchmarks, composes the Opening Benchmark Assessment Report – OBAR and submits it to the Council
7	The Council of the EU accepts the OBAR and asks the candidate country to submit its Negotiating Position
8	The candidate country submits the Negotiating Position
9	Based on the Negotiating Position of the candidate country, the EC prepares Draft EU Common Position
10	The Council adopts the EU Common Position and organises the Intergovernmental Conference
11	At the IGC, the negotiations on the given negotiation chapter are opened
12	The negotiations are conducted within the existing structure in the given chapter
13	At the IGC, the given negotiation chapter is provisionally closed

<b>3<sup>RD</sup> SCENARIO: PROCEDURE WITH CLOSING BENCHMARKS FOR A CHAPTER</b>	
1	Explanatory Screening
2	Bilateral Screening
3	The EC prepares the Screening Report
4	The Council accepts the Report and invites the candidate country to present its Negotiating Position
5	The candidate country submits the Negotiating Position
6	Based on the Negotiating Position of the candidate country, the EC prepares Draft EU Common Position and proposes closing benchmarks
7	The Council adopts the EU Common Position and the closing benchmarks, and organises the Intergovernmental Conference
8	At the IGC, the chapter is opened and the closing benchmarks are noted
9	Negotiating conferences and technical consultations follow
10	The EC monitors and, when the closing benchmarks are met, prepares a report therein and proposes provisional closing of the chapter to the Council
11	The Council accepts and provisionally closes the chapter at the first IGC

<b>4<sup>TH</sup> SCENARIO: PROCEDURE WITH BOTH OPENING AND CLOSING BENCHMARKS FOR A CHAPTER</b>	
1	Explanatory Screening
2	Bilateral Screening
3	The EC prepares the Screening Report and proposes opening benchmarks to the Council
4	The Council accepts the Report and the opening benchmarks and invites the candidate country to meet them
5	The candidate country undertakes appropriate steps to meet the opening benchmarks for the given chapter
6	The EC monitors and, when the candidate country meets the benchmarks, composes the Opening Benchmark Assessment Report – OBAR and submits it to the Council
7	The Council of the EU accepts the OBAR and asks the candidate country to submit its Negotiating Position
8	The candidate country submits the Negotiating Position
9	Based on the Negotiating Position of the candidate country, the EC prepares Draft EU Common Position and proposes closing benchmarks
10	The Council adopts the EU Common Position and the closing benchmarks, and organises the Intergovernmental Conference
11	At the IGC, the chapter is opened and the closing benchmarks are noted
12	Negotiations on the opened chapter (IGC and technical consultations)
13	The candidate country undertakes appropriate steps to meet the closing benchmarks
14	The EC monitors the development and, when the closing benchmarks are met, prepares the report thereon and proposes provisional closing of the chapter to the Council
15	The Council accepts and provisionally closes the chapter at the first IGC

<b>5<sup>TH</sup> SCENARIO: THE LONGEST PROCEDURE (BOTH OPENING AND CLOSING BENCHMARKS, AS WELL INTERIM BENCHMARKS)</b>	
<b>1</b>	Explanatory Screening
<b>2</b>	Bilateral Screening
<b>3</b>	The EC prepares the Screening Report and proposes opening benchmarks to the Council
<b>4</b>	The EC monitors and, when the candidate country meets the benchmarks, composes the Opening Benchmark Assessment Report – OBAR and submits it to the Council
<b>5</b>	The Council notes that the opening benchmarks have been met and asks the candidate country to submit its Negotiating Position
<b>6</b>	The candidate country submits the Negotiating Position, based on which the EC prepares Draft EU Common Position and proposes interim benchmarks
<b>7</b>	The Council adopts the EU Common Position and the interim benchmarks and organises the Intergovernmental Conference
<b>8</b>	At the IGC, the chapter is opened and the interim benchmarks are noted
<b>9</b>	Negotiating conferences and technical consultations follow
<b>10</b>	The EC monitors the development and, when the interim benchmarks are met, prepares the report thereon and proposes the Council to invite the candidate country to submit its Interim Negotiating Position
<b>11</b>	The Council accepts the EC proposal and invites the candidate country to submit its Interim Negotiating Position
<b>12</b>	Based on the Interim Negotiating Position of the candidate country, the EC prepares Interim Draft EU Common Position and proposes closing benchmarks
<b>13</b>	The Council accepts the prepares Interim Draft EU Common Position
<b>14</b>	The EC monitors the development and, when the interim benchmarks are met, composes and submits to the Council the Draft Final EU Common Position and proposes provisional closing of the chapter
<b>15</b>	The Council adopts the EU Common Position and organises the Intergovernmental Conference
<b>16</b>	At the IGC, the chapter is (provisionally) closed
<b>17</b>	The EC monitors and submits six-month reports to the Council
<b>18</b>	Before the accession itself, the EC submits the final report on negotiations

## APPENDIX 2 Overview of the Documents of the EU and the Western Balkan Countries Important for Monitoring the European Integration Process

When we talk about the European integration process, we mostly talk about the process of alignment of the national legislation with the EU legislation, which implies adoption of the EU *acquis* and its application. This is a coherent process which includes multiple interactions: interaction between public authorities and the EU institutions, interaction among the public authorities themselves, interaction between the existing national legislation and the “new” legislation adopted in the process of alignment, as well as interaction between national regulations with international obligations of the country. In this context, the most prominent issue is the issue of knowing the legal framework, i.e. the entire set of documents which regulate this process, define the content of relations, delegate powers and responsibilities, and define roles of institutions and actors which manage this process.

Appendix 2 is dedicated to the overview of documents important for monitoring the European integration process. This Appendix presents the most important documents created as a result of monitoring the progress of the Western Balkan countries in the EU integration process, as well as international agreements which affect the process or contain provisions which regulate the rights and obligations between the EU and a candidate country, as well as between the European Union Member States and a candidate country.

Knowing the content of these documents is a precondition for active involvement of the representatives of the civil society and stakeholders in the European integration process, their monitoring of the process and their contribution. By knowing these documents, the representatives of the civil society, as well as other stakeholders, may monitor the process more easily and (a) pin point the issues concerning problems of (non)implementation of undertaken obligations related to European integration or problems of the manner of their fulfilments; (b) establish clear and objective criteria for monitoring the implementation of the “European agenda” of the candidate country / potential candidate, and establish specific recommendations for the improvement of the process; (c) recognise their role and place in the process, give their contribution and organise their action towards the actors in the process; (d) inform the general public.

Table with the overview of the most important EU documents represents a useful instrument for the civil society and other stakeholders to monitor the process of European integration, because each of the presented documents in the table contains the following categories:

- a) **description of the documents** (what the document represents, why it is important and how it was created);
- b) **content of the document** (what is regulated by the provisions of the document);
- c) **structure of the document** (how the document looks like and what its constituent parts are);
- d) **holder of the document** (which institution/organisation adopted the documents);
- e) **adoption date** (when the document was adopted).

DOCUMENTS OF THE EUROPEAN UNION	
Name	EU Enlargement Strategy
<b>Description</b>	<p>Each year, the EC adopts a certain number of documents (“enlargement package”) through which the EU enlargement policy is explained and the achieved progress of each country aspiring to become an EU Member State is reported on. The Enlargement Strategy is one of the documents which lays down the orientation for the next year and identifies the progress made during the previous twelve months in each candidate country and potential candidate country. In addition to this strategic document, the package contains Progress Reports, where the EC gives its assessment on what each candidate country / potential candidate country achieved in the process of European integration in the previous year.</p> <p>The EC publishes the Enlargements Strategy in the last quarter of every year as part of the “enlargement package”.</p>
<b>Content</b>	<p>The EU Enlargement Strategy gives the overall state of play, specifies key elements, i.e. key challenges for the following year, sets strategic orientation regarding enlargement policy, gives a very brief overview of the progress candidate countries and potential candidate countries made, specifies the manner in which the EU will continue to provide support (technical and financial) and eventually gives general recommendations, i.e. strategic orientation essential for maintaining the enlargement policy, and conclusions on each candidate country or potential candidate country. The Strategy is accompanied by an appendix which provides more detailed assessments and findings of the European Commission on the progress in the accession process for all countries, along with key statistical data.</p>
<b>Structure</b>	<p>Strategy contains four chapters and one annex:</p> <ul style="list-style-type: none"> <li>I The Enlargement Agenda – Achievements and Challenges;</li> <li>II Reaffirming the Focus on Fundamentals;</li> <li>III Regional Cooperation;</li> <li>IV Conclusions and Recommendations;</li> </ul> <p>Annexes: 1) Summaries of the findings of the country reports; 2) Changes to the annual country reports and 3) Key statistics.</p>
<b>Holder</b>	The European Commission



Name	Annual Progress Reports of the European Commission
<p><b>Description</b></p>	<p>Progress Report is a document in which the EC provides information on the progress a candidate country / potential candidate country has made in fulfilling requirements and objectives the EU determined, as well as the summary of operational measures necessary to undertake based on the defined plans of action. Progress Report is grounded on submitted data of the given candidate country / potential candidate country, the EU Member States, the EP's report, and data submitted by international organisation and civil society organisations.</p> <p>The European Commission has made a number of changes in the Enlargement Package for 2015 compared to the previous years. The objective is to additionally increase the quality of assessments in reports, as well as the reliability of the package as a source of information for all stakeholders. These changes will increase the transparency of the process and enable all stakeholders, including the civil society, a better and more detailed review of the reforms. Accordingly, the reports: 1) expand focus on the current state of play in order to show, as clearly as possible, at which level the countries are with regard to their preparedness for fulfilling the criteria for membership; 2) give broader guidelines on what the countries should focus on in the upcoming year and 3) include more conformed reports and assessment scales, which will enable the countries to directly compare to one another in key areas.</p> <p>The changes in the Progress Reports take into account the need for the appropriate order of reforms: 1) the rule of law and fundamental rights (judiciary, fight against corruption, fight against organised crime, freedom of expression); 2) economic developments and 3) public administration reform – three negotiation chapters (public procurement, statistics, financial control).</p> <p>One mark is given for the current state of play, and the other for the progress made in each observed area. Those marks are based on careful analysis of the situation, with special emphasis on implementation and track record of specific results in each area. Thus, implementation and achievements have greater significance than legal alignment and institutional framework in the overall assessment. Both the current state of play and the level of progress are assessed according to the five-level standard assessment scale.</p> <p>The scale used for the assessment of the state of play is the following:  <b>Very early stage – early stage – moderately prepared – good level of preparation – well advanced</b></p> <p>The scale used for progress made during the previous twelve months is the following:  <b>Backsliding – no progress – some progress – good progress – very good progress</b></p> <p>The EC publishes the Progress Report in the last quarter of every year and submits it to the Council of the EU and the European Parliament, as well as to the given candidate country or potential candidate country. The report includes the period between October of the previous year and September of the current year.</p>
<p><b>Content</b></p>	<p>The Progress Report in the European integration process briefly describes the relations between a candidate country / potential candidate country and the EU; analyses the candidate country / potential candidate country's state of play with regard to political and economic criteria for membership, and reviews the capacity of the candidate country / potential candidate country to undertake the obligations of membership, i.e. the <i>acquis</i> expressed in the Treaties, secondary legislation and EU policies through negotiation chapters.</p>

<b>Structure</b>	<p>The structure of the Progress Report contains, apart from the introduction which gives the context and summary of the Report, three basic parts and one annex:</p> <ol style="list-style-type: none"> <li>1) Political criteria (Democracy; Public administration reform; Rule of law; Human rights and the protection of minorities, Regional issues and international obligations);</li> <li>2) Economic criteria (The existence of a functional market economy, Capacity to cope with competitive pressure and market forces within the Union);</li> <li>3) Ability to undertake obligations of membership (33 negotiation chapters);</li> </ol> <p>Annex for the candidate country / potential candidate country (Relations between the EU and the candidate country / potential candidate country; Statistical Annex)</p>
<b>Holder</b>	The European Commission
<b>Name</b>	<b>European Parliament Resolution on Annual EC Progress reports</b>
<b>Description</b>	<p>Resolutions is the European Parliament, therefore the Resolutions on Annual EC Progress reports are the so-called non-legislative acts. The Resolution is an EP document which points to the political will to act in a given area. The Resolution enables the Parliament to propose guidelines in a completely non-binding way, i.e. without any legal obligation for the addressees, which in this case the authorities of the candidate country / potential candidate country.</p> <p>The main actor with regard to the Resolution is the European Parliament Committee on Foreign Affairs. Within its scope of action, according to the EP Rules of Procedure, the Committee is responsible for opening, monitoring and conclusion of the EU accession negotiations. Therefore, the Committee is also responsible for monitoring the progress of the candidate country / potential candidate country in European Integration.</p> <p>In case when a non-legislative act is drawn up, it is necessary that any Committee, therefore the European Parliament Committee on Foreign Affairs as well, appoints its rapporteur. The rapporteur is responsible for the preparation of the resolution and its submission to the EP on behalf of the Committee. The Annual EC Progress Report is the basis, according to which the rapporteur composes a draft resolution on this document. Therefore, the name of the rapporteur's document is "Resolution on Annual EC Progress Report".</p> <p>Resolution adoption period is the first quarter of the year, depending on the plan of the European Parliament Committee on Foreign Affairs.</p>
<b>Content</b>	Resolution on Annual EC Progress Report gives the general assessment of the state of play in the candidate country / potential candidate country. It then refers to the political criteria and their implementation in the reporting period. The Resolution also deals with economic issues and regional cooperation.
<b>Holder</b>	The European Parliament
<b>Name</b>	<b>Commission Opinion on application for membership of the European Union</b>
<b>Description</b>	Based on received answers to the Questionnaire, the European Commission draws up the opinion (fr. avis) on whether the country is ready for the status of the EU candidate, as well as on whether it is ready for the next stage – defining the approximate date of the EU accession negotiations, on which the EU Member States decide by consensus. The EC Opinion on a candidate country's application for membership of the European Union is accompanied by the analytical report and conclusions and recommendations. The European Commission submits the Opinion to the Council, based on which the Council adopts the opinion on candidacy (avis).

<b>Content</b>	In its Avis on candidacy, the EC gives the assessment of the progress in fulfilling the political and economic criteria defined by the European Council in Copenhagen and requirements of the stabilisation and association process. At the end of the Opinion, the conclusion is given, as well as the recommendation on whether to grant a potential candidate country the status of the candidate country or not.
<b>Structure</b>	Commission Opinion on application for membership of the European Union consist of three parts: A) Introduction (Application for membership; Relations between the EU and the potential candidate country); B) Criteria for membership (Political criteria; Economic criteria; Ability to assume the obligations of membership); C) Conclusion and recommendation.
<b>Holder</b>	Prepared by the European Commission, adopted by the Council.

## AGREEMENTS BETWEEN THE WESTERN BALKAN COUNTRIES AND THE EUROPEAN UNION

<b>Name</b>	<b>Treaty establishing the Energy Community</b>
<b>Description</b>	<p>The Energy Community was established based on the international agreement between the European Community and the Eastern European countries, determined to establish a common gas and electricity market, with the possibility of this market later including other energy products as well. The Energy Community is based on the common interest and solidarity of its members. In 2009, Ukraine and Moldova joined the Community. Norway, Turkey and Armenia have the status of observer. Georgia had the status of observer since 2006, but on 20 February 2014 the European Commission initiated official negotiations with Georgia on the membership in the Energy Community.</p> <p>With regard to energy supply, the Western Balkan region represents a fragmentary market, primarily dependent on imported fossil fuels. Apart from coal (mostly low-calorie lignite), there are no significant fossil fuel reserves in this region.<sup>1</sup> Given the recent history of the region, the Energy Community is promoted as a peace project as well. The Energy Community represents the first joint institutional project of the Eastern European countries which are non-Member States.<sup>2</sup></p> <p>The mission of the Energy Community is to expand the EU market towards Eastern Europe and further, through accepting a legally-binding framework between the signatories of the Treaty establishing the Energy Community. The establishment of the Energy Community is based on the decisions of the European Council Summit in Copenhagen in 2002, where support was confirmed to the Western Balkan countries on their way towards the EU membership. The integration of the Western Balkan region into the EU energy market was confirmed in Thessaloniki in 2003, when the European Council adopted the Thessaloniki Agenda for the Western Balkans.<sup>3</sup> The objectives of the Energy Community are expressed in the Preamble of the Treaty.<sup>4</sup></p>

1 Energy Community, Energy Strategy of the Energy Community.

2 Aleksandar Macura, Jedanaesto zasjedanje Ministarskog saveta Energetske zajednice – Kratak prikaz najvažnijih odluka, Beogradska otvorena škola (the 11th Meeting of the of the Energy Community Ministerial Council – Brief overview of the most important decisions), Beograd 2014, p. 3, [http://www.bos.rs/cei/uploaded/Odluke\\_11\\_Ministarskog\\_Saveta\\_Odluke\\_EC\\_1.pdf](http://www.bos.rs/cei/uploaded/Odluke_11_Ministarskog_Saveta_Odluke_EC_1.pdf) (last accessed on 16/11/2015).

3 Preamble of the Treaty establishing the Energy Community, [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/ENERGY\\_COMMUNITY/Legal/Treaty#Preamble](https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Legal/Treaty#Preamble); also see [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/gena/76201.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/76201.pdf) (last accessed on 16/11/2015).

4 Objectives are specified in the Preamble of the Treaty. Translation of the provisions of the Treaty does not completely coincide with the official text of the Law on Ratification of the Treaty (Official Gazette of the RS, No. 62 of 19 July 2006).

<p><b>Content</b></p>	<p>The Treaty establishing the Energy Community represents the legal framework for establishing a common energy market, which is based on transposition and application of the EU acquis on energy, competition policy and environmental protection, as well as based on improving energy infrastructure in accordance with the provisions of the appropriate EU acquis. Having accessed the Energy Community, the parties undertook the obligation to accept and apply the EU acquis subject to the Treaty. Besides having accepted the EU acquis, in accordance with a clearly defined timeframe, the Parties expressed their commitment to the establishment of adequate regulatory framework and liberalisation of energy markets. In addition, the Treaty sets grounds for the development of investments, and also of a responsible energy policy which does not neglect social dimension of the energy sector reform. The Treaty defines the decision-making procedure, establishes the Energy Community institutions and defines the procedures of dispute settlement. The Ministerial Council is the highest instance of the Community for making and implementing decisions. The decisions of the Ministerial Council amend the Treaty establishing the Energy Community.</p> <p>It is important to take account of the nature of the Treaty in the context of the EU accession process of the Western Balkan countries. The Treaty establishing the Energy Community sets rights and obligations for the parties. Although the Treaty provides for the adoption of the EU acquis on energy, environmental protection and competition, fulfilment of obligations under the Energy Community cannot be identified with the process and the results of the EU accession negotiations. Therefore, it is impossible to relate the obligations under the Treaty establishing the Energy Community, clearly expressed and with defined timeframe, to the obligations which have not yet been undertaken. On the other hand, the Treaty establishing the Energy Community clearly defines which part of the EU acquis is to be transposed into the national legal framework and applied, while the subject of a candidate country's negotiations with the EU is the adoption and application of the entire EU acquis, within the timeframe set in the course of the negotiations. Finally, the Treaty establishing the Energy Community provides for the decision-making procedures and bodies. The scope of their work and influence may not be expanded beyond the Community or reduced regarding the obligations arising from the Treaty. With regard to the mechanism for operation of network energy markets (Title III, art. 26 and 27), the geographical scope of application of the provisions of the Treaty is clearly defined, and does not include all the EU Member States, while including Austria, Greece, Hungary, Italy, Slovenia, as well as all future EU Member States which are also the signatories of the Treaty establishing the Energy Community. The Energy Community is a regional integration which is directed towards the energy market of Southeastern Europe, a fact which should be taken into account when analysing the negotiation process of the future members with the European Union and other EU Member States.</p>
<p><b>Structure</b></p>	<p>The Treaty establishing the Energy Community consists of the preamble, titles and annexes:</p> <p>1) Preamble contains bases for the establishment of the Community, the definitions of its values and objectives.</p>

<b>Structure</b>	<p>2) Titles are divided into chapters which define the principles on which the Community is established and regulate individual areas significant for the Community: Title II – the EU acquis the Parties are to accept and apply, alignment with generally applicable EU standards, measures for the adaptation of the EU acquis and alignment with the future EU acquis; Title III – mechanism for operation of network energy markets, i.e. market harmonisation, security of supply, security and measures in case of supply crisis; Title IV – the creation of a single energy market; Titles V and VI – scope of work the Energy Community institutions, budget, and decision making process and Title VII – implementation of decisions and dispute settlement within the Energy Community.</p> <p>3) Annexes contain the overview of binding EU acquis on energy, environmental protection and competition, timetable for their implementation and structure of contribution of the Parties to the Energy Community budget.</p>
<b>Parties to the agreement</b>	European Community (European Union since 2009), the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia, the United Nations Interim Administration Mission in Kosovo in accordance with Resolution 1244 of the United Nations Security Council, Moldova and Ukraine.
<b>Adoption date</b>	The Treaty was signed in Athens on 25 October 2005.
<b>Name</b>	<b>The Agreement on Common Aviation Area of Europe (The Open Skies Agreement)</b>
<b>Description</b>	<p>The European Union initiated the Common Aviation Area of Europe project in 2004, with the essential idea that the European air space should erase national borders, because the division of air space had a negative effect on the efficiency of air traffic, since airline companies spend more fuel and time having to pass a number of controls.</p> <p>The aim of this Agreement is the establishment of the European Common Aviation Area (ECAA). The ECAA is based on free access to market, freedom of establishment of companies, equal conditions of competition and common rules on safety, security, air traffic management, social issues and environmental protection.</p>
<b>Content</b>	The Agreement consists of Articles which explain the general functioning of the European Common Aviation Area and comprise the “Principal Agreement”. Through additional annexes, the Agreement defines the measures, either general or individual, necessary for the parties to undertake in order to ensure the fulfilment of obligations arising from this Agreement, while refraining from the measures which could jeopardise the achievement of the objectives of this Agreement.
<b>Structure</b>	<p>The Agreement consists of the Articles of the “Principal Agreement” and five annexes: Principal Agreement</p> <p>Annex I – Rules applying to civil aviation  Annex II – Horizontally aligned and defines procedural rules  Annex III – Rules on competition and state aid  Annex IV – Submissions to the Court of Justice of the European Communities  Annex V – Protocols for transitional arrangements</p>

<b>Parties to the agreement</b>	The European Communities and their Member States on the one side, and the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo <sup>5</sup> , on the other.
<b>Adoption date</b>	Multilateral agreement on European Common Aviation Area was adopted on 9 June 2006.
<b>Name</b>	<b>The Central European Free Trade Agreement (CEFTA)</b>
<b>Description</b>	<p>In 2006, all Balkan countries, including Moldova, signed the Central European Free Trade Agreement (CEFTA), which substituted a network of bilateral free trade agreements. After their accession to the EU in 2007, Romania and Bulgaria left CEFTA, followed by Croatia in 2013. The countries remaining in the Agreement are: Serbia, Albania, Bosnia and Herzegovina, Macedonia, Montenegro UNMIK – Kosovo and Moldova. They currently comprise a joint market of around 25 million consumers.</p> <p>CEFTA is a multilateral agreement on free trade in the region. Creating a free trade zone, the Western Balkan countries commit to economic development, showing they are capable of conducting common economic policy and undertaking obligations and responsibility for the future of the entire region, which further emphasises the European perspective of this region and the wish to join the EU. CEFTA also ensures simplification and harmonisation of trade requirements in the region, applying to all signatories, and creates a respectable, relatively stable, predictable and attractive business environment for potential foreign investors.</p>
<b>Content</b>	<p>CEFTA Agreement defines general obligations related to trade in all goods. The general rule of this agreement is the abolition of quantitative restrictions, customs duties and other charges on export and import of goods in trade among countries in the region, as well as prevention of introduction of new (additional) restrictions. By entry into force of the Agreement, quantitative restrictions, customs duties and other charges of a fiscal nature shall not be increased, i.e. the level of liberalisation stipulated by bilateral agreements shall apply. The Agreement deals with technical obstacles to trade, as well as with new areas not included in bilateral free trade agreements: trade in services, investments, public procurement, protection of intellectual property rights and arbitration in case of disputes.</p> <p>Main objectives of the Agreement are: substitution and improvement of the existing bilateral agreements; improvement and creation of conditions for further promotion of investment; expansion of trade in goods and services, and improvement of investment through fair, clear, stable and predictable rules; abolition of barriers and trade distortions, and facilitation of movement of goods in transit and cross-border movement of goods and services among signatories; ensurance of fair competitive conditions and gradual opening of the public procurement market; ensurance of appropriate protection of intellectual property rights in accordance with international standards; ensurance of efficient procedure for the implementation and application of the Agreement; improvement of trade relations with third countries.</p>

<sup>5</sup> In accordance with Resolution of the United Nations Security Council UN1244 of 10 June 1999.

<b>Structure</b>	In addition to the basic provisions of the Agreement, CEFTA has nine annexes, which actually represent the Free Trade Agreement in the Balkans. They include general provisions related to trade in all goods (operational rules, rules of competition and rules of protection – Annex IV and V), industrial products (Annex I and II), agricultural products (Annex I and III), technical barriers to trade; new trade issues (services, investments, public procurement, intellectual property – Annex VI and VII) and rules of operation (Annex VIII and IX).
<b>Parties to the agreement</b>	The European Communities and their Member States, on the one side, and the Republic of Albania, Bosnia and Herzegovina, Bulgaria, the former Yugoslav Republic of Macedonia, Moldova, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo <sup>6</sup> , on the other.
<b>Adoption date</b>	CEFTA 2006 Agreement was signed in Bucharest in 2006 by: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Romania, Montenegro, Serbia and the United Nations Interim Administration Mission in Kosovo in accordance with Resolution of the United Nations Security Council UN1244. By the end of 2007, the Agreement entered into force in all signatory parties.

6 In accordance with Resolution of the United Nations Security Council UN1244 of 10 June 1999.

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