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Serbia's EU accession negotiations on Chapter 32

Three years of negotiations out of the public eye

Chapter 32: more than meets the eye

Five years have passed since Serbia began its accession negotiations with the European Union. Since then, the country has opened 16 out of the 35 negotiation chapters of the EU *acquis* and has temporarily closed two. Chapter 32, on financial control in the public sector, was among the first chapters to be opened, in December 2015. While Serbia has been in the process of negotiating with the EU in this area for more than three years now, it is difficult to assess the country's progress since there has been hardly any communication to the public on developments in this field. This lack of transparency about the state of play on Chapter 32 suggests that Serbia could be struggling to achieve sufficient and speedy progress. Moreover, the absence of information about the measures Serbia has taken in this negotiation undermines democratic principles of accountability and weakens the public's support for, and confidence in, the EU accession process.

Chapter 32 was opened at the beginning of Serbia's EU accession negotiations and was declared as an easily-addressed chapter. Starting with this chapter made sense at that time and the reason is twofold. Firstly, the European Commission's (EC) 2014-15 enlargement strategy proposed a "new approach" to EU enlargement, with a strong focus on fundamental reforms – that is, in the rule of law, economic governance, and public administration (PAR) – from early on in the accession process. This approach sought to ensure that acceding countries gave precedence to key areas of reform for which the member states were particularly keen, and which could potentially take a long time to sort out. The expectation was that this approach would leave acceding states more space to build a strong track record of results on reforms. The EC foresaw that work in these fundamental areas would accompany negotiations on all other individual chapters and progress on fundamentals would determine whether states could advance towards and eventually join the EU.¹ The 2015 European Commission Report on Serbia

noted that the country was demonstrating "good progress" and was moderately prepared to start negotiations on financial control.² Since Chapter 32 includes at least two explicitly PAR-relevant subareas, it emerged as a natural point of departure for Serbia to continue building its record on PAR.³

There is another apparent reason for paying close attention to financial control, however. Many policies and procedures detailed in this chapter delve into the very essence of how an administration operates and spends taxpayers' money. Furthermore, the application of these policies and procedures should ensure that there are results for the money spent. Thus, financial control has a great deal of importance for both Serbia's administration and citizens. In this regard, keeping the public regularly apprised of the status of accession negotiations, including on Chapter 32, should be, and has been identified as, a guiding principle in Serbia's conduct in accession negotiations.⁴ The EU has similarly recognised the importance of transparency, in order to inform citizens in member states and to ensure public confidence in enlargement.⁵

Chapter 32 has a great deal of importance for both Serbia's administration and citizens, as many policies and procedures detailed in this chapter delve into the very essence of how an administration operates, spends taxpayers' money, and if there are results for the money spent.

1. European Commission, Enlargement Strategy and Main Challenges 2014-15, p.1, available at: <https://bit.ly/2DYRiPb>.

2. European Commission, Serbia 2015 Report, p. 71, available at: <https://bit.ly/2nRE7oU>.

3. The two being public internal financial control (PIFC), and external audit. Other subareas under this chapter are protection of the EU's financial interests, and the euro against counterfeiting.

4. National Assembly of the Republic of Serbia, Resolution on the role of the National Assembly and the principles of the EU accession negotiations of the Republic of Serbia, 2013, p. 5, available at: <https://bit.ly/2H6DVNm>.

5. Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union, General EU Position, 2014, p. 13, available at: <https://bit.ly/1jsRwKD>.

Initially, Serbian politicians seemed confident that the country would make prompt progress on Chapter 32, allowing Serbia to advance in one of the crucial areas of PAR.⁶ This early self-assurance that a quick resolution of the chapter was possible thanks to the country's purported effective functioning of financial control proved to be short-lived.

Between expectations and reality: three signs of slowdown in negotiations

In hindsight, Serbia has not managed to make swift progress on Chapter 32. Three interconnected areas of underachievement are presented below, including: (1) the practice of information sharing by Serbian public authorities; (2) the involvement of civil society in the monitoring of accession negotiations; and (3) the EC's assessments of Serbia's progress.

Lack of public information

The lack of proactive communication with the public about the Chapter 32 negotiations immediately stands out as a major limitation. Apart from occasional media reports on policy developments in sub-areas of financial control, little fresh information has emerged on Serbia's progress in accession talks. The Serbian Ministry of Finance, the leading institution in the Chapter 32 negotiations, has no dedicated space on its website to share updates. Nor do any of the other key actors in negotiations, for that matter: the websites of the Serbian Government, the Core Negotiating Team, and the Ministry of European Integration merely note that the country is in the process of negotiating with the EU. In the absence of regular and substantial communication it is unlikely that the public's confidence in the accession negotiations will increase. Moreover, without knowing how well the government performs, the public cannot push it to deliver results and therefore struggles to hold it to account. This lack of accessible information stands to reinforce the impression that, with little to be said by the government, little is being done.

Other institutions, such as the State Audit Institution, the National Bank of Serbia, and the Ministry of Interior, are responsible for specific commitments and defined financial control benchmarks. These institutions should inform the public at least about their respective roles in the process. However, it is ultimately the responsibility of key institutions, in this case the Ministry of Finance, to systematically communicate the overall progress in the negotiations to the wider public including the civil society in Serbia.

To be sure, better examples of publishing information do exist in other policy fields, such as environmental policy, where the Ministry for Environmental Protection runs an

online portal to inform the public about its activities under Chapter 27 (Environment).⁷ The Ministry of Justice also publishes key documents and reports that track progress on judiciary and fundamental rights reforms in Chapter 23.⁸ Irrespective of the quality of information disclosed by these ministries, such examples show that there are ways to keep citizens up to date to a certain extent about developments in Serbia's negotiations with the EU. Assuming that the Ministry of Finance would normally want to showcase what it has achieved in its field, the current silence could conceal a scarcity of accomplishments.

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Few opportunities for civil society monitoring

It is thanks to the National Convention to the EU (NCEU) – a large Serbian civil society platform – that the public is regularly informed about the state of play in negotiations, and that civil society manages to engage in the monitoring of accession talks. With more than 700 civil society members, the NCEU represents the most developed and ambitious mechanism for the continuous involvement of non-state stakeholders in the negotiation process. The fact that Serbia's Negotiating team and National Assembly⁹ recognise the NCEU¹⁰ as a mandatory interlocutor in negotiations further fortifies the NCEU's position as the voice of civil society and the wider public.

Still, public insight into negotiations on financial control is limited. The NCEU working group that monitors Chapter 32 negotiations meets at most annually to discuss topics of financial control in specific, and a quick look at the NCEU calendar of past events is enough to reveal that topics of financial control have been the focus of relatively few meetings as compared to other chapters monitored by the NCEU.¹¹ Out of four such meetings, the first two on financial control were held in September 2014 and October 2015 before the chapter was officially opened in December 2015. In other words, since the opening of Chapter 32 the NCEU had only two opportunities to be officially informed on the state of play – in October 2017, and at the end of 2018.

6. Prime minister's statement that "financial control in Serbia is very good," 2015, Beta news agency (online), available at: <https://bit.ly/2BwQtdo>.

7. Ministry for Environmental Protection, negotiating group for Chapter 27: <https://bit.ly/2X9aeRp>.

8. Ministry of Justice, EU accession negotiations - Chapter 23: <https://bit.ly/2SWKl8k>.

9. The Negotiating team for accession negotiations of the Republic of Serbia to the European Union, Guidelines for cooperation of the Negotiating team for accession negotiations on the accession of the Republic of Serbia to the European Union and the negotiating groups with representatives of civil society organisations, the National Convention on the European Union and the Serbian Chamber of Commerce (SCC) after delivery screening results, 2016, available at: <https://bit.ly/2GwyXcu>.

10. National Assembly of the Republic of Serbia, Decision on the procedure for consideration of a proposal of the negotiating position in the process of negotiations in accession of Serbia to the European Union, 2014, available at: <https://bit.ly/2DofwiL>.

11. At first, the NCEU working group covered two chapters - Chapter 32 on financial control and Chapter 5 on public procurement. The period indicated in the text considers only the NCEU working group meetings that covered subjects under Chapter 32, and not meetings on public procurement.

The work of a large civil society network such as the NCEU tends to depend on the capacities and resources of the working groups, and their coordinators, to function effectively. Greater resources are likely to stimulate more initiatives throughout the year and to result in better engagement of membership. Yet, as a rule of thumb, meetings are scheduled according to the agenda of the responsible ministry, when the institution in question has any news to report on to the NCEU about the negotiations. From this perspective the only possible conclusion is that fewer meetings are a direct consequence of little progress to share, possibly also reflected in the government's lack of communication with the wider public on its progress as well.

Nevertheless, according to the Ministry of Finance at the last two NCEU working group meetings on Chapter 32, national institutions do regularly communicate with the EC. On these occasions, this Ministry noted its participation in events dedicated to discussing ongoing reforms and the fulfilment of benchmarks with the Commission. The Ministry also noted receiving generally positive feedback from the EU with regards to the implementation of financial control policies.¹² Nevertheless, outside of these messages conveyed in infrequent NCEU meetings, very little written information on what work is being done is made available to the public. Due to this lack of information, not even the NCEU can properly monitor the government's work on Chapter 32 of the negotiations.

Challenges as seen by the Commission

The Serbian authorities' efforts to meet EU-related requirements are assessed by the EC's annual reports, which are seen by the public as the most credible source of information about the state's performance in the accession process. Nevertheless, comparing annual reports for the past couple of years suggests that progress is slowing down – a trend that should put Serbian negotiators on alert.

For the past three years of negotiations, the EC has repeatedly remarked about Serbia's insufficient effort in implementing Chapter 32 reforms, especially in one of the most demanding sub-areas of this chapter, public internal financial control (PIFC). In the 2015 annual report, for example, just before negotiations on financial control started, the EC confirmed Serbia's "good progress" and "moderate preparedness" to assume the obligations of EU membership. In addition, the EC was direct about the large volume of work necessary in PAR, to apply the managerial accountability principle and PIFC at all levels of administration.¹³ Subsequent reports in 2016 and 2018 reiterated Serbia's moderate level of preparedness but also indicated, according to the Commission's methodology, a lower level of progress ("some progress") compared to when negotiations began. The EC also reiterated the lingering PAR issues in Serbia, including the

lack of managerial accountability, the implementation of PIFC throughout the administration, and the need of political support to carry these out, to name a few. Consequently, judging from the Commission's assessment, Serbia's progress has slowed down since the 2015 report.

Financial control is not the only example of a chapter on which Serbia's reforms are lagging. Serbia's performance on Chapter 5, which addresses public procurement, illustrates a similar regressive trend, from "good" progress in 2015 to "some progress" in 2016, and finally to "no progress" at all in the latest EC report. While this is not to say that every annual assessment has to reveal a higher level of a progress and preparedness, such examples of decreasing progress serve as stark reminders that the opening of negotiations only marks the beginning of hard work.

In addition, the Commission's benchmarks for closing the chapter on financial control have proven challenging despite Serbia's initial confidence that it would be able to sail through the talks in this area. The benchmarks require the administration to ensure that financial control policies are purposeful and effective, which the Commission verifies based on demonstration of a track record of results and policy implementation. Without greater precision, or perhaps interim benchmarks to further delineate the steps to be taken in fulfilling requirements, demonstrating such a track record could prove a demanding task. This is clearly the case for Serbia, where even the adoption of the PIFC strategic document and its coordination and monitoring mechanism took longer than expected: initially planned for 2015, the PIFC strategy was adopted only in 2017. The EC's annual reports confirm modest achievements over the years in what was originally thought to be an easy chapter.

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12. The NCEU meeting on Chapter 32 held in October 2017.

13. European Commission, Serbia 2015 Report, p. 71, available at: <https://bit.ly/2nRE7oU>.

14. European Commission, Serbia 2016 Report, p. 81, available at: <https://bit.ly/2iltPAG>, and European Commission, Serbia 2018 Report, p. 86, available at: <https://bit.ly/2HcTrEz>.

Looking ahead: with greater transparency come better results

Being part of the PAR fundamental pillar of the enlargement strategy, Chapter 32 was addressed early in Serbia's accession talks with the EU. The initial expectation was that the state's good standing in the area of financial control would bode well for its progress in such negotiations. Also, continuing progress in financial control was in the public interest, given that at the core of Chapter 32, and PIFC in specific, lies the proper functioning of the Serbian administration that effectively spends the budget for the benefit of the whole society. However, reality has contradicted expectations: the state of play in these negotiations is largely unknown, feeding speculation that little progress has been made.

There is hardly any publicly available information on where Serbia stands in its negotiations on this chapter, as the institutions responsible for this process do not engage in proactive communication. Moreover, while the NCEU actively monitors negotiations, updates on financial control are unnoticed for the most part because the Ministry of Finance fails to sufficiently communicate progress (likely as a result of being empty-handed). Finally, the EC underscores the fact that progress is insufficient by noting lags in Serbia's efforts in the two consecutive annual reports since the chapter was opened.

That said, Serbia's experience with Chapter 32 is illustrative of how misleading it can be to base evaluations of success on simply opening chapters rather than on the quality and transparency of the negotiations. Such a strategy is risky not only because it can lead to reduced progress in specific chapters, but because it can lead to a departure from substance in negotiations after the chapters have been opened and institutions commended, in the false belief that the rest of the job will be easier.¹⁵

In addition, the strong emphasis placed by the EC and the Serbian public on highly sensitive issues, such as Chapter 35 (the Belgrade-Pristina dialogue), Chapter 23 (fundamental rights and judiciary), and Chapter 24 (justice, freedom, and security), could offer another possible explanation for the poor level of publicly-disclosed information and the under-performance of Serbia on Chapter 32 and other such chapters. However, as an integral part of the PAR fundamental pillar, financial control should be given more attention. After all, even if other chapters may enjoy priority at present, other policies – such as financial control – are necessary to address in accession negotiations, and may, if unaddressed, take Serbian authorities by surprise and result in delays and barriers later in the negotiation process. In turn, such stumbling can result in a dissipation of domestic support for, and confidence in, Serbia's accession to the EU.

For these reasons, stakeholders (like civil society actors and other members of the interested public) should be better informed about developments in the field of financial control, to push for more public pressure to maintain focus in this area. If the transparency of accession negotiations is truly a guiding principle for Serbia and the EU alike, negotiators on Chapter 32 should lead by example, by meticulously informing the public and regularly publishing reports.

To this end, the Ministry of Finance should in any case devise a timeframe and format for regularly informing the public of important developments. Existing examples show that informing the public on the status of negotiations is possible through a single online location, specifically designed for this purpose. The Ministry of Finance should dedicate such a location on its website, and regularly upload reports and other information on the status of negotiations on Chapter 32. Of course, this should be done along with the Ministry's cooperation with the NCEU as the platform for direct dialogue with civil society on the EU accession negotiations.

15. European Policy Centre (CEP), The 2016 Serbia Report: No Surprises? Country Analysis Serbia, 2017, p. 13, available at: <https://ten.europeanpolicy.org/wp-content/uploads/2016/12/C.A-Serbia.pdf>.

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