

## **Analysis**

### **Republic of Macedonia: ADOPTION OF EU NORMS – INERTIA IN LIMBO**

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## Summary

*The subject of the analysis is this year's revision of the National Programme for Adoption of the Acquis as an indicator for Macedonia's approach in the adoption of EU norms.*

*The results show that lacking a clear membership perspective, especially after the Greek blockade for accession negotiations, the leverage of the EU is low and the transfer of its norms slowed down significantly. Convergence with EU norms is achieved only on issues identified as government political preferences.*

*The Accession dialogue – a “new” tool of the European Commission to maintain the recommendation for membership, relates to political and economic criteria. Focus is expected on key issues of democracy and the rule of law - judicial reform, public administration reform, fight against corruption, elections, media freedom, and a functioning market economy.*

*The existing instrument of the Government for adoption of EU norms, - the NPAA - does not provide sufficient basis for the Accession dialogue, because an appropriate response is missing precisely regarding the key issues of democracy and the rule of law.*

*The analysis shows that norms are transferred by inertia, without qualitative changes, with decreasing transparency and inclusiveness, and even lower technical quality.*

*It is recommended to change the approach to adoption of EU norms.*

*Since there is no time pressure for legislative alignment and taking into account the achieved level of legislative alignment, it is an imperative to stop further technicization of the process.*

*Instead, focus on legitimacy of the adoption of EU norms is needed, through increased transparency, involvement of stakeholders, assessment of the impact of needed adjustments, analysis and evaluation of policies, as well as of practical implementation.*

*The central EU policy coordination function in the Government should be strengthened.*

## On norms, instruments and documents

*The Analysis is published upon the adoption of the fifth revision of the National Programme for the Adoption of the Acquis – NPAA 2012.*

Adoption of European norms in the Republic of Macedonia is a process as long as its transition. The dynamics and the focus of the process have been changing during the two decades, starting with the establishment of diplomatic relations in 1995, followed by the Cooperation Agreement with the European Communities in 1998. The normative frame of the 1995 EU Regional

approach towards the Western Balkans, the 1999 Stabilisation and Association process and the 2003 Thessaloniki Agenda have had key impact on the dynamics of the adoption of the acquis.

The national instruments of the Macedonian integration process have been modelled after the previous experience of Central and Eastern Europe (CEE) countries. The transfer of norms was initiated by the PHARE programme, in which Macedonia participated from 1996 to 2000. Approximation with EU legislation was programmed since 2000, when the first Programme for approximation of the national legislation was adopted, while in 2002 the first Action plan on the implementation of the obligations under the Stabilisation and Association Agreement was enacted. The Action Plan for implementation of the recommendations was a political response to the first EC SAP Report 2003, followed by the Action plan for the implementation of the European partnership 2004-2006, as a political response to the first European Partnership from 2004. The Programme for approximation of the national legislation with the acquis remained, primarily for legislative transfer of EU norms.

Following the application for EU membership and the granted candidate status, the target for assessment of the level of harmonisation changed. The new target was the entire acquis, and not only the EU norms included in the Stabilisation and Association Agreement (SAA) - mainly referred as “European standards” in the progress reports. The logic of association is partial externalisation of the EU acquis, or approximation with the Community legislation. The association country is obliged to gradually adopt certain priority areas of the acquis. The logic of accession is the adoption of the entire acquis, appropriate for a candidate country negotiating accession.

The National Programme for the adoption of the Acquis (NPAA), drafted after the candidate status in 2006 and adopted by the Government in 2007, reflected the new reality of

the accession process. Its adoption marked a conceptual change – a shift of the target from approximation of legislation as required by the SAA to the adoption of the entire *acquis*.

The first NPAA ambitiously set 2010 as a target date for adoption of the *acquis* – consequently to the Declaration submitted with the application for Membership in 2004.

The NPAA, as the other integration instruments, is modelled after the experiences of the CEE countries. Candidate countries, encouraged by the European Commission applied the same instrument for adoption of the *acquis*, as the NPAA was a requirement by the Accession Partnership.<sup>1</sup> Therefore, as a response to the Partnership, NPAA is not solely an act for legal harmonisation, but a strategic document for policy-making. A comparative view of first NPAA's shows that Macedonia faces similar problems as CEE countries faced, but over a prolonged period of time. For instance, the implementation of the NPAA in Lithuania was more guided by the Commission than the Lithuanian Government. At the same time, the management of the NPAA by the Committee for European integration was burdened by a high level of formalistic approach and rigidity, with a small impact in the policy creation by simply collecting materials from the ministries<sup>2</sup>. In Estonia, the beginning of the process is characterised by a low level of quality of the proposed acts, insufficient analysis of the expenses and costs on the policy creation, absence of inter-sectoral strategic approach on the regulatory impact assessment.<sup>3</sup> The Programme lost its significance with the beginning of the accession negotiations.<sup>4</sup>

According to mainstream academic research on the last wave of enlargement, *the main driver for adoption of EU norms by the candidate countries is the membership perspective*. The decline of this perspective leads to slower pace of reforms and to some reversible processes.<sup>5</sup> The credibility of the membership perspective has a decisive influence in the transposition process, *which means more intensive transfer of the norms prior to the opening of the negotiations*. In an absence of the accession conditionality, the 'export of the EU norms is limited, uneven and slow'.<sup>6</sup> Research has shown that even the legitimacy of the EU norms does not have an influence on the candidate countries when the perspective for membership is unclear.<sup>7</sup> Due to the fact that they are moving towards membership, the candidate countries are

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<sup>1</sup> E.g. Accession partnership with the Czech Republic. 98/267/EC: Council Decision of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Czech Republic, Official Journal L 121 , 23/04/1998 P. 0041 – 0045, 1999/858/EC: Council Decision of 6 December 1999 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Czech Republic, Official Journal L 335 , 28/12/1999 P. 0055 - 0060

<sup>2</sup> Vitalis Nakrošis, "Assessing governmental capabilities to manage European Affairs", The case of Lithuania *vo The Road to the European Union*, ed. by Vello Pettai and Jan Zielonka, Vol. 2 Estonia, Latvia and Lithuania, Manchester University Press, 2003.

<sup>3</sup> Külli Viks and Tiina Randma Liiv, "Facing the Challenges of EU Accession, Development of Accession Structures in Estonia, *International Journal of Organization Theory and Behaviour*, Vol. 8. Issue 1, 2005, pg. 28.

<sup>4</sup> Radoslaw Zubek, "Complying with Transposition Commitments in Poland: Collective Dilemmas, Core Executive and Legislative Outcomes", *West European Politics*, Vol 28, No. 3, 2005, pg. 604.

<sup>5</sup> Walter Mattli and Thomas Plümper, The Internal Value of External Options: How the EU Shapes the Scope of Regulatory Reforms in Central and Eastern Europe, *European Union Politics*, Vol. 5, No. 3, 2004, стр. 325.

<sup>6</sup> Frank Schimmelfenning and Ulrich Sedelmeir (eds.), *The Europeanization of Central and Eastern Europe*, Cornell University Press, 2005, pg. 221.

<sup>7</sup> *Ibid.*

willing to transpose norms which legitimacy is not recognised.<sup>8</sup> This approach has a direct impact on the sustainability of the process and results with a formal transfer of the norms which in practice are being ignored or inadequately implemented.<sup>9</sup>

The transfer of norms to Western Balkan countries takes place in a different context, set by the 2006 Enlargement strategy. Among other factors, the differentiation of the statuses “potential candidate”, “candidate” and “acceding country” leads to uncertainty and ambiguity regarding the adoption of the acquis, having in mind the uncertain membership perspective..

Unlike the Accession partnerships for CEE countries, the European/Accession partnership for the Stabilisation and Association Process (SAP) countries does not demand an NPAA as a national response to the Partnership. Instead it requires an Action plan with a focus on political criteria, which are substantially more emphasised in the European/Accession partnerships for the Western Balkan countries than for CEE countries.<sup>10</sup> Furthermore, in addition to introducing benchmarks during accession negotiations with Croatia, benchmarks are now employed to the other countries in the region before accession negotiations. The ‘key priorities’, a novelty in the European/Accession partnerships since 2008, were soon after publication interpreted as benchmarks for opening of the accession negotiations with Macedonia. In addition, membership conditions which had previously been subject to negotiation are now set as pre-conditions in the earlier phases of the process or as benchmarks for accession negotiations.

The European/Accession Partnership 2008 was the last published partnership by the EU for the Western Balkans countries. Having in mind that the implementation deadline for the short-term priorities was set at 1-2 years and for the medium-term - to 3-4 years, it was logical to expect a new partnership in 2012. The fact that no partnership was adopted by the Council can be interpreted as an indicator of the low level of encouragement by the European institutions, or as a result of the unfinished priorities from 2008. The most realistic assessment is that both factors contributed to ‘skipping’ the publication of a new partnership this year.

An additional political response to the Accession Partnership 2008 in Macedonia was the Action plan for implementation of the benchmarks for opening of accession negotiation in March 2008. In 2009, the Government adopted the Blueprint on the implementation of the recommendations from the EC Progress Report, thus reiterating the political commitment. The implementation of the benchmarks to a “satisfactory” level resulted in the EC recommendation for launching accession negotiations in 2009 (after an additional benchmark on democratic and free conduct of the elections was added in 2008).

The brief review of the instruments for adoption of European norms in the Republic of Macedonia demonstrates a continuous shift of focus between the political criteria and the

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<sup>8</sup> Ibid, p. 220.

<sup>9</sup> Karen E. Smith, “EU Membership Conditionality” во Marise Cremona (ed.) *The Enlargement of the European Union*, Academy of European Law, European University Institute, Oxford University Press, 2003, стр. 119.

<sup>10</sup> From current candidate and PSA countries, Turkey and Croatia adopt an NPAA, Serbia – a National Programme for Integration, from which the legislative part is revised each year, Montenegro – an Action plan for implementation of the Recommendations from the EC *Avis*.

adoption of the *acquis*, viewed as legal approximation. The NPAA is predominantly considered as a technical instrument for legal harmonisation; thus other instruments are expected or required by the EU to stimulate compliance with the political criteria. This approach and the fragmentation of the different aspects and instruments of the process is contradictory to the tendencies for consolidation of the EU *acquis*, which in the meantime has been evolving into a unique corpus, including the fundamental rights and actually incorporating the Copenhagen political criteria.<sup>11</sup>

The legal basis of the obligation to adopt EU norms in the Republic of Macedonia is the Stabilisation and Association Agreement. Considering the current blockage on the passage to the second phase of the Agreement, it can be argued that the strict legal basis of the mutual obligations between Macedonia and the Union are the provisions from the first phase of the SAA. However, this interpretation ignores the substance of the SAA in which political conditionality is embedded as a ‘substantial element’.<sup>12</sup>

### **Adopting EU norms in interregnum**

The basic question remains – which is the function of the NPAA in the current interregnum, between the first phase of the Stabilisation and Association Agreement and accession negotiations?

The logical answer would be that the document expresses the strategic priority of the Government – membership of the EU. In other words, despite the prolonged perspective for membership of at least another decade, the Republic of Macedonia, because of its own reform commitment and identification of the Government Programme with the reforms deriving from the European Agenda, will move forward with the adoption of the European norms. Finally, as a country that has submitted an application for a membership and has a status of a candidate country, the Republic of Macedonia expressed its readiness to accept the entire *acquis*. Thus, the adoption of the *acquis* remains the final target, which has a direct conceptual implication on the overall accession process.

However, the EU will significantly influence the transfer of EU norms through two major tools, which are at its disposal: the time factor and the setting of the agenda.<sup>13</sup>

Confirming its recommendation for opening accession negotiations for the third time in the 2011 Progress Report, the European Commission stated that the country “significantly continues to fulfil political criteria” for EU membership.<sup>14</sup> However, the message was sent that

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<sup>11</sup> It is a fact that jurisprudence of the European Court of Justice had previously promoted the human rights and freedoms as a basic principle of EU Law.

<sup>12</sup> Noutcheva, Gergana and Michael Emerson. “Europeanisation as a Gravity Model of Democratisation” “Promoting Democracy and the Rule of Law: EU and US Strategies and Instruments”, conference of the Center for Democracy, Development and the Rule of Law, Stanford University, 4-5 October 2004.

<sup>13</sup> Heather Grabbe, “How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity”, *Journal of European Public Policy*, Vol. 8, Issue 6, 2001.

<sup>14</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/mk\\_conclusions\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_conclusions_en.pdf)

the “recommendation is not engraved in stone”.<sup>15</sup> The warning statement of the Commission on the slow pace of reforms and the possibility of withdrawing the recommendation for negotiations further strengthen the focus on political criteria.

The upcoming Accession dialogue, announced in April 2011, focuses on some of the key accession priorities from 2008, however including an additional one – freedom of expression and media freedom. In the absence of the main tool – perspective for membership and blocked launching of accession negotiations, the Accession dialogue, in our opinion, should be considered as an instrument to maintain the recommendation for negotiations and to increase the (currently low) leverage of EU institutions on the political processes in the country.

The Accession dialogue will focus on five priority areas:

1. Freedom of expression and media freedom;
2. Progress in the area of rule of law and detailed analysis of the achieved results within Chapter 23 – Judiciary and Fundamental rights, and Chapter 24 – Justice, Freedom and Security;
3. Reform of the public administration;
4. Implementation of the OSCE/ODHIR recommendations on the improvement of the electoral process.

The European Commission set the upcoming local elections in 2013 as a benchmark date for making progress in this area;

5. Granting of a status “a functional market economy”.

The EC announced that the responsible Directorate General (DG EcoFin) will prepare a basic analysis on the fulfilment of economic criteria as grounds for negotiations within the Accession dialogue.

Furthermore, a high level of political dialogue between the parliamentary political parties regarding the strategic interests of the country, adoption of an electoral legislation which secures fair and democratic elections, independent judicial system and depoliticised public administration, including the reform of the police is expected. As the European Union stated in 2005 when it granted candidate status to Macedonia, the implementation of the Ohrid Framework Agreement and maintaining good inter-ethnic relations based on mutual understanding and trust remains to be of crucial importance to the integration process of Macedonia.

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<sup>15</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/fule\\_speech\\_12\\_oct\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/fule_speech_12_oct_2011_en.pdf)

## Where are we now (analysis of NPAA revision 2012)

The main presumption of this analysis is that the document National Programme for the Adoption of the Acquis indicates the approach and the capacity of the Republic of Macedonia to adopt EU norms.

Both quantitative and qualitative methods were applied. Content analysis was the employed quantitative method, while additional qualitative analysis was performed at the level of sub-criteria in political and economic criteria and at the level of sub-chapters of the acquis (126 areas). The basic parameters were: correspondence with the recommendations from the EC Progress Report, convergence with the political preferences (Government Programme), mode of adopting EU norms, type of envisaged activities and internal consistency of the document (narrative part, legislative annex and matrix of activities).

The goal of the Analysis was to establish the level of convergence of the envisaged actions with the EU accession requirements, the level of convergence between the EU agenda and the Government Programme 2011-2015, as well as the appropriateness of the planned actions vis-à-vis the requirements of the accession process.

The Analysis of the different criteria was performed with specific procedures, to accommodate differences in structure and content.

The results presented in this paper are mainly focused on identified gaps, in order to provide constructive criticism.

### *Conceptual issues*

**The national program does not contain key assumptions – the basic political premises and the time frame. Even less clear is which resources will be employed for the adoption of the EU norms.**

The NPAA lacks key political statements. They are contained in the Government Programme, which sets EU and NATO integration as strategic goals and one of the five key priorities of the Government for the 2011-2015 period. This is not only a declarative and rhetorical issue when in practice the political will for EU-related reform is questioned, especially having in mind the EC statements on the 'worrying trends' related to the key issues of democratization and transition.

Unlike previous NPAA revisions, this edition does not contain an annex on institutional capacity, nor on needed/planned financial resources (or such documents are not publicly available).

### **Action plan?**

The NPAA does not contain the key messages and premises related to the issues covered by the Accession dialogue. Therefore, the question remains open whether the NPAA 2012 revision is the only answer to the requirement of the Accession Partnership for an Action

Plan. Is an adoption of other documents planned, as was the previously announced Action Plan? It is not questionable that the NPAA would be a sufficient and appropriate instrument, as long as its content matches the expectations. The public needs to know, though, whether additional measures for adoption of the EU norms are planned, particularly in respect to the priority areas of political and economic criteria.

### **Short-term, medium-term**

What is short-term and what medium-term priority? In the Opinion on the application for membership the European Commission set the short term as one to two years, and medium term to four to five years. According to the Accession Partnership the short-term priorities are determined as one to two, and the medium term three to four years.<sup>16</sup> Given that the NPAA is a response to the Accession Partnership, it is logical for the short term period to be 2012-2013 and the medium term at least 2014-2015. However, this is not the case. In the text of the document, it is clearly stated that short term refers to 2012, and medium term covers the period 2013-2014. The title of the Legislative Annex also indicates that it includes acts which will be adopted in the period 2012-2014. Thus, we can implicitly conclude that a short term period is considered one year - 2012, and medium term - 2013 or 2014.<sup>17</sup> Does this mean a more ambitious approach? In our opinion – it does not. Rather, it appears that this approach suggest a lack of vision and capacity for further guidance of the process of adoption of EU norms.

In addition, there is no precise information which national laws, transposing relevant *acquis* will be applied after accession to the EU. This is an important aspect, since it has become a frequent practice to pass laws implementing EU law, however to postpone their application after accession.<sup>18</sup> The legitimacy of such practice is not questioned, but rather its transparency, and even rationality, especially in cases when EU regulations are transposed, which are anyway directly applied upon accession.

In some chapters or sub-chapters the terms are completely confused. In Chapter 28. Consumer protection (p. 461, p. 462), 2011 is determined as short term and 2012 as medium term, while in Chapter 32. Financial control, in the area protecting the financial interests of the EU, 2012 - 2013 is established as a medium-term.

### **Reference to the Stabilisation and Association Agreement**

The Stabilisation and Association Agreement is not appropriately addressed in the NPAA. The main political statement is contained in Chapter 4 – Free movement of capital:

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<sup>16</sup> It was assessed that the Republic of Macedonia can adopt the *acquis* mid-term, except in Chapter 27. Environment.

<sup>17</sup> 2013 is explicitly noted on pages 89, 90, 91, 98, 133, 159, 228, 422, 433, 442, 486, while 2013-2014 are explicitly quoted on pgs. 130, 144, 150, 169, 180, 197, 230, 232, 234, 293, 400, 431, 512, 514.

<sup>18</sup> E.g., 4The Law on European Economic Interest Grouping transposing the Regulation 31985R2137 on the European Economic Interest Grouping; statements regarding freedom of establishment and services – that with the adoption of the Law on Services and the implementation of the Action Plan „freedom of establishment and providing services will be granted after accession to the EU“; regarding transport services: „The Directorate for rail system security will apply the procedure for licencing engine drivers after the accession of the Republic of Macedonia to the EU“, etc.

“the Republic of Macedonia expects entrance to the second phase of the SAA during 2012”.<sup>19</sup> It would be of outstanding importance if this expectation were based on realistic assumptions that Greece stops blocking the second phase of the Agreement. However, it is more likely that NPAA refers to the SAA by inertia. Instead of this “modest expectation”, it would be highly legitimate to express a clear political statement that the Republic of Macedonia insists on entrance to the second phase of the Agreement, calling upon the political and legal credibility of the Stabilisation and Association Process/Agreement. Finally, even though NPAA is primarily a document for “domestic use”, it should not be forgotten that the obligation for adoption of NPAA is a responsibility under the Accession partnership, which is monitored by EU institutions and Member States, and to whom, the NPAA also sends “a message”. The position on the second phase of the SAA consisted in the NPAA makes the Macedonian message rather inconsistent.

In addition to Chapter 4 – Free movement of capital in which obligations are directly connected to the SAA, the SAA is mentioned only in two other NPAA chapters related to obligations deriving from protocols to the Agreement: Chapter 20 – Enterprises and industrial policy – regarding the Programme for restructuring of the steel industry, and in Chapter 29 – Customs union.

Concerning negotiations for concluding a Protocol/Agreement on Conformity Assessment and Acceptance of Industrial Products (Chapter 1: Free movement of goods), it is stated that the Commission communicated the text of the Protocol to the Republic of Macedonia in February 2010. As a short-term priority, an expectation on finalisation of the negotiations by the end of 2012 is expressed. The negotiations have been ongoing for several years now and their conclusion is constantly procrastinated. It is of interest for Macedonia to finalise the negotiations in order to secure easier access of products from several industrial sectors to the EU Common Market. Numerous legislative interventions have been made to ensure compliance with conditions set for concluding the Protocol/Agreement. Therefore, it is important to know whether the reasons for the delay of the Protocol are technical or political.

## Transparency

The document does not include information on the consultation process during drafting the NPAA, nor on involvement of relevant stakeholders in the NPAA working groups for NPAA.

The data base NPAA-legislation (N-lex) does provide access to lists of national acts which are adopted or planned to be adopted in order to align the EU acquis. However, there is no access to information on EU acts transposed into the Macedonian legislation - the approach applied in the accession process, according to which the EC progress reports are structured.<sup>20</sup> In addition, the data base does not provide an option to extract reports, thus it is not possible to assess the level of compliance with EU law.

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<sup>19</sup> NPAA Revision 2012, p.96.

<sup>20</sup> <http://npaa.sep.gov.mk/npaa/home.aspx>

## ***Political Criteria***

The focus of this analysis is on priority areas included in the Accession dialogue between the Republic of Macedonia and the European Union.

The analysis shows that in the section Democracy and rule of law, out of 45 envisaged activities, 30 are directly correlated with EC recommendations, 13 partially, whereby 2 do not refer to EC recommendations. The numbers demonstrate a high level of correspondence in terms of the issues identified in the progress report. However, the content analysis showed that NPAA in this section does not envisage substantive measures to overcome the present situation: 24 are aimed at ensuring continuity, 8 are declarative, and 2 measures are purely descriptive, whereby only 7 consist substantive activities. In terms of correlation with the Government Programme 2011-2015, 26 measures are not connected with the Programme, 11 are similar to Government priorities, and 8 are directly connected to the Programme. **Thus, the level of convergence between the NPAA and the Government Programme is low.** Regarding the legislative annex, 41 measures are not connected with legislative activity. In principle, the measures within political criteria do not have to be necessarily connected with legislative activities, thus this should not be considered as a negative indicator. Out of 45 measures, 31 are consistent in the NPAA Matrix, 8 are partially connected and 6 measures are not consistent with the matrix.<sup>21</sup>

Similar are the results of the content analysis of the sub-criterion Human rights and minorities' protection. Out of 30 activities envisaged in NPAA, 15 are aimed at ensuring continuity of on-going activities, 5 are declarative, whereby 4 are descriptive. Only 6 measures offer substance. Regarding the recommendations from the EC Progress Report, 20 directly correspond to the Report, 6 partially and 4 are not connected with the Report. 17 measures are not connected with the Government Programme, 13 are either directly or partially included in the Programme. Out of 30 activities, only one is included in the legislative annex. 26 measures are incorporated in the NPAA Matrix.

Regarding regional issues and international obligations, NPAA envisaged 16 measures, out of which 14 secure continuity and 2 are of declarative character. 11 are directly referring to the EC progress report recommendations, whereby 5 measures derive from the Programme of the Ministry of Foreign Affairs regarding bilateral relations. Out of 16, 14 measures are directly or partially related to the Government Programme. 14 measures are incorporated in the NPAA Matrix.

The legislative annex includes some acts which are not reflected in the narrative section of the NPAA.

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<sup>21</sup> The term *rule of law* is only twice mentioned in the NPAA – in the title of the Sub-criterion “Democracy and rule of law” and in the title VI. Communicating the public - Campaign “Rule of law in the RM” – promotional and debate activities on the topics: rule of law, EU standards, challenges and expected results.

## *Democracy and Rule of Law*

### *Elections*

In terms of the electoral process reform, the NPAA partially envisages activities which are in line with the recommendations of the EC 2011 Progress Report. The largest portion of the text in the narrative part of the NPAA is purely informative and reports on past activities of the responsible institutions for implementation of the OSCE/ODIHR recommendations regarding the 2009 local and presidential elections. The last EC Report 2011 calls for full implementation of OSCE/ODIHR recommendations.

Particularly, a revision of the electoral list is expected, as it is still considered to be inappropriate compared to the size of the population of the Republic of Macedonia. The European Commission considers that the latest amendments to the Electoral Code were not adopted in a procedure that is in line with the EU's best practices. However, NPAA avoids this statement declaring that the Electoral Code is in line with the international standards and the recommendation by the Venice Commission. Furthermore, the issue of intimidation during the electoral process was considered crucial after the local and presidential elections in 2009. The EC 2011 Report refers to ODIHR reports on "credible allegations of insufficient separation between state and party" and "pressure on civil servants". The NPAA does not include measures to address these concerns. Furthermore, there is no analysis of the concrete recommendations which should be reflected in the Electoral Code and in practice. NPAA states that the responsible institutions will analyse the recommendations by OSCE/ODIHR regarding the 2011 elections, and that a Steering Board will be established. The Steering Board has already been established and has been attended by representatives from the international community, which indicates to mistrust in the capacity of the national institutions to guarantee one of the basic principle of democracy.

The reform of the electoral process is one of the five priorities of the Accession dialogue between the EU and the Republic of Macedonia.

### *Assembly*

The section of the NPAA on the functioning of the Assembly, as well as maintaining inclusive political dialogue between the relevant political parties - a key priority under the Accession partnership - has not been revised since 2009, apart from the activities on the establishment and the functioning of the Parliamentary Institute. NPAA 2012 envisages actions that are aimed at securing continuity in the functioning of the Assembly, however fails to address issues on the improvement of the political dialogue and the mechanisms for control and scrutiny of the Assembly over the work of the executive. The scrutiny role of the Assembly's committees is still subject of criticism by the Commission. NPAA includes the adoption of an Ethical Code for the members of the Assembly, but does not state which objectives would be accomplished with this action.

NPAA does not include a declaration on further promotion of the political dialogue as a response to the expressed criticism by the Commission on the adoption of the amendments of

the Constitution, the Electoral Code and the Lustration Law just before the early elections in 2011, in the absence of the parliamentary opposition. This practice in the Assembly in 2007 “contributed” to setting the political dialogue as one of the key priorities of the 2008 Accession Partnership. The EC positively assessed the work of the National Council on Euro-integration on the organised discussions and public debates on issues related to the European agenda of the country, as well as the increased work-load of the Committee on inter-ethnic relations. Still, NPAA fails to propose mechanisms for securing more inclusive debate on issues which have direct impact on further advancement of interethnic relations.

The NPAA Matrix is consistent with the narrative section. Still, if this year’s revision is compared to the past three revisions, the question remains whether this section has been revised at all, vis-a-vis the EC recommendations.

### ***Government***

The 2012 revision of the NPAA does not include annexes on administrative and budgetary implications, which has been criticized in last year’s EC report – “lack of budgetary implications and a plan for strengthening of the administrative capacities of the institutions”.

The NPAA does not include mechanisms for securing a regular follow up on the implementation of the Decentralisation Programme. Adoption of an Annual Report on the monitoring of the Programme, as planned in the NPAA, cannot achieve the objective to improve coordination between institutions, which is still not on a satisfactory level. In addition, the document does not include activities for monitoring of the implementation of the Law on transferring of state-owned construction land to the municipalities. Nonetheless, this measure has addressed a long-standing recommendation of the EC on the need to transfer state-owned construction land from central government to the municipalities. The activities regarding the process of decentralisation correspond to those in the Government Programme.

In view of reforms for increasing administrative and fiscal capacities, as well as access to block subsidies for implementation of competences of municipalities in the areas of education, social care and culture, the NPAA corresponds to the Government’s project consisted in its Programme for strengthening capacities of the local government, which are still not in the second phase of the fiscal decentralization. The NPAA envisages more liberal and transparent conditions for municipal borrowing in order to secure financing of investment project through the government’s project “municipal bonds”, as a mode to secure funds for capital projects.

The statement for continuous reforms and improvement of administrative and financial capacities of the municipalities remains declarative. Additional activities to address the principle of more equitable and transparent distribution of public finances, including to address the recommendations of the State Audit Office on the reported malpractices by the Ministry of Local Self-government in the implementation of the rules on financial control and the public procurement rules are lacking.

### *Public administration reform*<sup>22</sup>

**The measures envisaged for public administration reform in the NPAA do not provide an appropriate response to the key concerns of the European Commission regarding the politicisation of the civil service and to implement the recommendations for ensuring transparency, professionalization and impartiality of public administration.**

The significant institutional reshaping in the responsibility for public administration reform in the last years did not yield credible results, particularly in terms of a visible political leadership of the reform. NPAA does not offer a clear picture on how the Ministry of Information Society and Administration will deal with the major challenges, particularly after it assumed new responsibilities for regulatory impact assessment, in addition to the comments of the EC on the lack of administrative capacity of the Ministry for the existing responsibilities. Concerning the other involved institutions – the General Secretariat and the Agency for Administration - NPAA only foresees continuation in performing their responsibilities.

EC states that the legal amendments in this area lacked ‘strategic approach’. The only response of the NPAA is that analysis of the legislation on civil and public servants is planned. We do agree that an analysis is necessary after a decade of reform of the public administration and numerous legislative interventions. The question: *Why the final result of public administration reform – professional public administration fully capable to function as part of the European administrative space – is not achieved?* does deserve an answer. The proposed analyses should be subject of a public debate involving decision-makers, civil sector, academia, experts and the wider public.

The NPAA fails to address the remarks from the EC Progress Report on the cumbersome procedures for implementation of the principle ‘silence of the administration is consent.’ Furthermore, no measures are planned to address the concerns on the general administrative procedures, as well as on the feasibility to revise (or to draft a new) Law on Administrative Procedure.

The section on the public administration reform in the NPAA includes several other projects (national or supported by other foreign donors) – citizen’s charter, one-stop-shop system in the administration, as well as the project ‘Creation of an administration which will be managed on the bases of competencies and will be service-oriented.’ These projects should be included in the strategic approach to the public administration reform in order to yield concrete results.

The NPAA does not include measures to address recommendations on improvement of strategic planning and financial control (according to the State Audit Office report), in addition to the unsystematical use of regulatory impact assessment.<sup>23</sup> NPAA fails to address the criticism on quality of legislation and on access to information, particularly the information connected with the public expenditure.

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<sup>22</sup> The remarks are on Chapter IV from NPAA – Administrative capacities.

<sup>23</sup> The measures on regulatory impact assessment are xontained in the part on Economic criteria.

The MIOA finally committed to make the public servants registry operational in 2012.

As part of the Accession dialogue and subject of interest of the special group on public administration reform within the Stabilisation and Association Committee (SAC), the public administration reform will be one of the key issues in the accession process of Macedonia. The assumptions provided in NPAA will not serve as a solid base for the upcoming dialogue.

### ***Police Reform***

Police reform, a key priority of the Accession Partnership, is again subject to detailed monitoring by the European Commission, particularly after the increased number of complaints for misuse of force by the police. The NPAA does not foresee establishment of independent supervision over the Sector for Internal Control of the Ministry of the Interior. The Government declaration on creating professional and citizen oriented police remains to be implemented in practice. NPAA does not envisage activities for implementation of the recommendations for control of the misuse of power by the police, particularly against juveniles and members of the Roma community.

In terms of training of police force members, which is a key segment in the professionalization of the police force, NPAA should include activities on revision of the current strategy in order to identify areas, which need further improvement and include them in the new training system of the Ministry.

Overall, the NPAA section referring to police reform partially corresponds to the recommendations of the EC Progress Report for 2011.

### ***Judiciary***

After serious criticism by the European Commission on judiciary reform in the last two progress report, this year progress will be monitored within the Accession dialogue. NPAA only partially offers a frame for addressing the EC recommendations.

Even though the adoption of the new Law on Judicial Budget makes a step forward in the creation of a solid financial frame for functioning of the judicial system, still the target of 0.8% of the GDP will be reached in 4 years, thus raising the question of functioning of the judiciary institutions in the interim period. Having in mind that numerous activities in the judiciary were and are still financed through foreign donations, the question remains on the sustainability and the functioning of some judicial institutions. For example, the Academy for Judges and Public Prosecutors already faces lack of space as a result of the increased number of trainings and attendance by participants. In this context, the commitment of the Government could be seen through additional co-financing or increasing the financial resources for unimpeded functioning of the judicial institutions. The NPAA does not offer a strategic framework on how the Government is planning to address this challenge medium- term.

The NPAA foresees reporting by the Judicial Council and the Council of Public Prosecutors on selection and dismissal of judges and public prosecutors, public hearing on the complaints by citizens and legal entities on the work of judges and public prosecutors, as well

as reporting on procedures of unprofessional conduct and disciplinary responsibilities of the judges and the public prosecutors. We find these procedures inappropriate to be included in the NPAA, as they refer to constitutional responsibilities of these two independent bodies. The question remains to whom these bodies would report.

A revision of criteria for assessment of the work of judges in order to decrease the risk of negative influence over the work of the judges, particularly on their impartiality when making decisions is not envisaged in the NPAA, despite EC remarks. The criteria through which the work of judges and public prosecutors are assessed will continue to be of an interest for the EC.

The NPAA describes the current status of employment of graduates from the Academy of Judges and Public Prosecutors, without offering a strategic frame for employment of the remaining 20 candidates from the previous three generations.

Overall, regarding judiciary reform, the NPAA 2012 revision does not provide an inclusive frame for addressing the existing issues.

The NPAA matrix is divided in political criteria and in Chapter 23 – Judiciary and Fundamental rights, but ensures monitoring of the activities stipulated in the narrative section of the NPAA.

### ***Fight against corruption***

The question remains whether the latest and the planned amendments to the Law on Financing of Political Parties are implementing all GRECO recommendations from the third round of evaluation, particularly on the incrimination and transparency of financing, and whether they will give rise to any changes in the current practices. Our scepticism is grounded on fact that the law was already amended several times with the same objective, but its implementation still remains a problem.

Nonetheless, this NPAA activity is included in the Government Programme (“all GRECO recommendations from the third round of evaluation will be implemented”), followed with additional activities. It is interesting to note that the Government Programme is more elaborated in terms of the fight against corruption than the NPAA.

The expectations have increased regarding one of the most significant institutions – the State Audit Office, which according to the latest amendments to the Law on Financing Political Parties has the authority to perform monitoring of financial matters of the political parties, and has the right to initiate a misdemeanour or criminal procedure. It also should monitor the political parties regarding implementation of SAO recommendations.

Despite the fact that NPAA includes measures for systematic review of the conflict of interest statements, an analysis is needed on the deficiencies of the current legislation, especially on conflict of interest declarations and the questionnaires. The system is still not

aligned with the best EU practices and the need for advancement is more than evident. The NPAA fails to address the matter medium term.

The NPAA foresees amendments to the Law on Interception of Communications on the authorization of the Minister of the Interior, but does not provide details on the substance of the changes. The role of the minister in the approval of interception of communication has been subject of interest for a few years now, with the aim to eliminate political interference.

Actions are lacking in several crucial areas of the fight against corruption:

- Insufficient transparency of the public expenditures and amendments to the Law on access to public information in line with the EU best practices. This recommendation is based on the fact that the criminal claims for misuse of public funds from 2009 and 2010 are still pending before the courts.
- Strengthening of mechanisms for internal control in the public administration.
- Further improvement of the institutional, financial and human resources in the State Commission for Prevention of Corruption, the Anticorruption Unit in the Sector for fight against organised crime in the Ministry for the Interior and the Basic Public Prosecutor’s Office for fight against organised crime and corruption; strengthening of inter-institutional cooperation and swift implementation of the Government’s policy in the area.
- There is a need for inclusive analysis on the typology of corruption, as well as strengthening of the capacities to fight corruption on local level, particularly the small corruption.

*In political criteria, the NPAA mainly envisages continuity of the current activities. What is needed is discontinuity of the current practices.*

The fight against corruption will be monitored within the Accession dialogue between the EU and the Republic of Macedonia.

The 2012 NPAA revision partially addresses the recommendations from the 2011 EC progress report on fight against corruption. The NPAA matrix corresponds to the narrative part.

**In general, the content of the sub-criterion on Democracy and the rule of law fails to address crucial recommendations of vital importance for progress in political criteria. The Democracy and the rule of law section focuses on describing the current situation and fails to address relevant issues both short and medium-term.** Furthermore, ‘recycled’ text from previous NPAA revision with replaced year 2012 is frequent. **An analysis is missing on the reasons for not implementing activities envisaged by the previous revisions. Most of the activities are due by 31.12.2012, which indicates avoiding commitment for swift implementation of already due activities, thus also diminishing the responsibility of the institutions in implementing the NPAA.**

**Overall, in terms of Democracy and the rule of law the NPAA does not offer a strategic frame for moving forward with reform processes; instead it focuses on continuity of the current activities.**

### ***Respect for human rights and minority rights***

#### ***Civil and political rights***

The actions included in the NPAA aiming to address the EC recommendation on ill-treatment by the police cannot lead to overcoming the problem, because only by administrative strengthening of the Sector for Internal Control of the Ministry of the Interior understanding and practicing international and European standards will not be achieved among the police force. The failure to sanction the perpetrators for ill-treatment is an issue which is not appropriately dealt with in the NPAA. Thus, planned actions to address torture and ill-treatment fail to offer an inclusive frame for addressing the EC concerns in this area.

No substantial change can be expected in the penitentiary system reform, as continuity with previous activities in planned. Criticism produced internally, voiced by the EC and other relevant actors in the international system for human right is not only reiterated, but harsher. The latest report by the Committee for prevention of torture stresses pending weaknesses in the training system of prison staff and continuation of the inhumane treatment. Furthermore, there is a need for increased transparency on the functioning of the penitentiary system, as well as inclusion of the NGO sector in monitoring of prisons.

In addition to planned investments for improving conditions in penitentiary facilities, the responsible authorities should seriously consider implementation of the recommendations issued by the EC and the Council of Europe's Committee for prevention of torture, as well as the recommendations from the Peer-Review Missions by the EC in the area of justice, freedom and security. As noted by the reports, the jails are still overcrowded, the inhumane behaviour of the employees in the jails is still persistent, and educational and re-creative programmes for inmates are scarce. NPAA does not offer a strategic frame for overcoming those issues.

In terms of the most voiced criticism by the European Union on the **freedom of expression**, the NPAA states that “in terms of the freedom of expression, in September 2011 the Government and the Association of Journalists of Macedonia commenced a dialogue on the issues concerning the work of the media. A working group has been established to prepare an Action plan with measures including the necessary legal amendments, decriminalisation of defamation and all other relevant issues concerning the work of the media.” **Due to the fact that the expectations in this area are very high, additional political will is needed to pursue a wide range of activities which will implement the recommendations in practice.** The recommendations refer to numerous issues: the advertising of the Government in media, intimidation of journalists and self-censorship, independence of regulatory bodies, amendments to the Law on broadcasting without consultation with the relevant stakeholders and with a public debate, defamation charges which are not in line with the jurisprudence of the European court on human rights, media concentration, effective scrutiny over the media market,

transparency of the owner structure, independence of the public broadcaster, etc. The issue of freedom of expression will be on the top of the agenda between the Union and the Republic of Macedonia within the Accession dialogue.

As recommended in the Progress Report, the NPAA should have encompassed a broader framework for involvement of the civil society in the policy creation process and drafting of legislation, especially having in mind that the new Enlargement Strategy 2011-2012 strongly encourages an active civil society in the accession process.

### ***Social and economic rights***

Along activities aimed at strengthening of coordination in the implementation of the Strategy for gender equality, a particular focus should be provided to promotion of gender equality on local level. The inclusion of local authorities and civil organisations active in the gender equality area could be a value added in the realisation of the goals set by the National Strategy, particularly in raising public awareness. Regarding the implementation of the National Action Plan for promotion of the social status of the Roma woman, it should be taken into account that the incorporated actions have so far achieved only limited progress; therefore mechanisms for prevention of discrimination against the Roma woman should be strengthened.

The NPAA should include activities for strengthening the capacities of the centres for protection of family violence victims, as well as further efforts for strengthening of the local centres.

Despite inclusion of activities on the implementation of the Law on juvenile justice, the NPAA does not include measures for strengthening of technical and financial capacities for the implementation of the law. A particular focus should be placed on employment of professional staff. The assessment that conditions in correctional facilities do not satisfy key standards for administration of juvenile justice and are not in line with EU best practices has been repeated for years.

Planned activities on persons with disabilities are insufficient and do not ensure their integration the society. Due to the weak institutional coordination there is still limited progress in the implementation of the Strategy for equal opportunities for people with disabilities. NPAA should also propose further activities for improvement of coordination on central/local level for implementation of the strategy.

The NPAA does not plan further strengthening of the capacity of the Commission for prevention of discrimination, nor for effective coordination of the relevant stakeholders in the implementation of the policy in practice. Full harmonization of the national legislation with the EU law in the area of prevention from discrimination, particularly regarding sexual orientation as a ground for discrimination, is not foreseen.

### ***Respect for and protection of minorities and cultural rights***

NPAA partially addresses the EU recommendations in this area. There is a certain effort to address the lack of a strategic frame for employments within the public administration

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on the basis of equitable representation by proposing a “plan for convergence of the supply and the demand for employments”. However, the document lacks the basic premises of the plan and does not refer to the principle of professionalism of the public service. NPAA 2012 does not offer a strategic frame for equal representation of the Roma and Turkish community.

According to the NPAA, the Secretariat for Implementation of the Framework Agreement takes over the responsibility to overcome current misunderstandings in the implementation of the Strategy for Integral Education through establishing a working group. There is no further explanation of additional activities for the implementation of the Strategy, nor on the role of municipalities. However, in Chapter 26 – Education and Science (responsible institution: Ministry of Education and Science), the matrix envisages implementation of the strategy and lists projects that are currently implemented. The question remains whether the activities of the two institutions are co-ordinated.

The status of the Roma community is an accented issue in the NPAA. Besides some progress in the functioning of the national mechanisms for promotion of the social status of Roma, the document does not envisage tools for assessment and monitoring of the strategic documents, which should provide medium term policy directions.

Similar to the Democracy and rule of law section, the text of the NPAA on respect of human rights is mostly declarative. NPAA envisages adoption of documents and strategies; however does not include their basic policy directions.

### ***Regional questions and international obligations***

The NPAA in this section reiterates the known national positions on regional cooperation and bilateral relations. There has not been any change in the position on the name dispute with Greece. It is stated that “the Republic of Macedonia is fully committed to intensifying the political contacts and the dialogue with Greece in order to reach a mutually acceptable solution to the imposed conflict by Greece, under the auspices of the UN.” The NPAA does not include the more explicit positions contained in the Programme of the Government 2011-2015. The judgment of the International Court of Justice is not mentioned in the NPAA. Such an approach can be interpreted as refraining in a document that is considered predominantly technical; however, the practical relevance of this approach is questionable.

### ***Economic criteria***

The content of NPAA on economic criteria is mainly consistent with the recommendations from Progress Report. Consistency with the Government programme, in which the economic growth is a priority, is high. The narrative text is a solid, albeit too broad a presentation of the economic situation in Macedonia, projections and anticipated measures, given that a separate document is drafted on economic policies – the Pre-Accession Economic Programme (PEP), for which a dialogue is already taking place with the EC. In the matrix only three planned activities are listed. However, much of the content of economic criteria, logically, is repeated in the chapters (although from a different aspect), so in this section it is not necessary to repeat the detailed activities.

The optimistic projections for growth and investment, as expected, are also present in the NPAA. Also, the projections for reducing unemployment and reducing the trade deficit are quite optimistic.

The crisis in the Euro-zone is regarded as a fundamental challenge for the monetary policy, but other than “monitoring of movements in the domestic economy and international environment” and “taking measures, aimed at maintaining macroeconomic stability, if necessary”, no concrete measures are mentioned.

Nevertheless, some important recommendations from the Report are not addressed. This section, too, fails to address criticism on inefficient public administration, its politicisation and the weakness in the Rule of law.

It is stated that Regulatory Impact Assessment (RIA) was conducted on 451 acts. The establishment of a new - central body for regulatory reform in the Ministry for Information Society and Administration is planned, but also “an expansion of the scope of the impact assessment, support through its implementation in Parliament, and in performing ex-post analysis.” The planned changes in the system are of a wide scope. Therefore, we believe that they should be based on previous evaluation of the quality of implementation of RIA, including a conduct of a functional analysis.

The remarks regarding efficiency and quality of public spending in education are only partially addressed. The same applies to the assessment that the division of responsibilities at central and local government remains an obstacle to foreign direct investment.

The remark that “the quality of public spending suffers from still weak planning capacities and short-term oriented spending decisions, which delay the accumulation of productive investment” is entirely ignored. Investments are foreseen in road and rail infrastructure, energy, water-supply and sewerage systems, sport facilities, construction of social housing, education, health system and culture.

No substantial measures are foreseen to address the major remarks on the independence, capacity and effectiveness of regulatory and supervisory bodies, and on the insufficient definition of institutional responsibilities of some of the bodies. Moreover, the EC assessment on limited competition in the network industries remains unaddressed.

Taking into consideration that foreseen measures are mainly continuation of previous ones, an evaluation of their implementation is missing in most areas. This is particularly valid

*After the favourable assessments of progress in economic criteria for several years, it is legitimate for the Government of the Republic of Macedonia to expect and insist that the European Commission finally concludes that the first economic criterion - a functioning market economy is met.*

*However, in the pre-accession dialogue, in which this issue is included, it will be impossible to avoid the questions for which no answer is given in the national documents.*

for employment measures, especially those to overcome the low level of education and training and the mismatch of skills with the market needs, the effectiveness of measures taken to raise the quality of education, etc.

After the favourable assessments of progress in economic criteria for several years, it is legitimate for the Government of the Republic of Macedonia to expect and insist that the European Commission finally concludes that the first economic criterion - a functioning market economy is met. However, in the Accession dialogue, which includes this issue, it will be impossible to avoid the questions for which no answer is given in the national documents.

### ***Ability to assume the obligations of membership***

All 126 areas within the chapters have been analysed.<sup>24</sup>

The analysis of *consistency of the planned activities with the recommendations from the EC report and the Accession Partnership showed partial consistence in 33 areas*. In most of the areas (73) planned activities are generally consistent with the EC recommendations.

Partial compliance is noted in the areas prioritised in the second phase of the Stabilisation and Association Agreement – 3. Free movement of services and 4. Free movement of capital, where in medium term projects are planned to support implementation of EU legislation. In Chapter 1. Free movement of goods, the need for harmonization of the Law on Product Safety with the new approach directives (the new legislative framework from 2008) is not taken into account. In Chapter 3. Right of establishment and freedom to provide services, the requirements for establishing a subsidiary or representative offices/branches that are contrary to the *acquis* are not addressed, and there are no planned activities for compliance with the directives on lawyers, commercial agents and toxic products as recommended in the Report. In Chapter 5. Public Procurement (which otherwise has a high level of compliance and is technically sound compared to most of the chapters) the remarks on the amendment of the contracts under the project "Skopje 2014" are not treated, neither is the conclusion of the State Audit Office that "State funds were often misused for public awareness campaigns". In Chapter 8. Competition policy, the area of market liberalization is completely left out, for which the Report notes progress in the energy market, but shortcomings in "separation of lignite excavation operations and operation of the thermal power plants", and the fact that "gas and electricity markets are dominated by single suppliers who undermine effective competition".<sup>25</sup>

Partial compliance with EC recommendations is noted in Chapter 10. Information Society and Media. In this chapter major remarks from the Report are not considered: "high fees charged by the regulator to the operators exceeding the level necessary to cover the administrative costs called into question the non-profit nature of the regulator and may

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<sup>24</sup> In Chapter 1. Free movement of goods, standardization, accreditation, and metrology were treated as an area, although they are actually part of the area "horizontal measures". The field "liberalization" in Chapter 8: Competition is not contained in the NPAA, but is partially treated in other chapters; thus it was not analysed as a separate area in this paper.

<sup>25</sup> The Government Programme does contain commitment to liberalization of the electricity market, natural gas and heating.

constitute a barrier to market entry, in contradiction to the *acquis*. ", and "a new 'threshold' on internet trading with a high customs tariff is not in line with the current strategy to promote the digital economy." There is no response to the serious remarks in the area of audio-visual services, including those for political interference, and the role of public service. On the other hand, an adoption of a Law on Media Services is foreseen, to implement the Directive on audio-visual media services; however it is not mentioned whether this Law shall derogate the Law on Broadcasting Activity, in which the earlier Directive from 1989 was implemented. In Chapter 16. Taxation there is no response to the concerns regarding the potential discrimination between non-resident legal entities for payment of tax on dividends and future application of the Directive on "mother-daughter" companies, or to the assessment that the agreements on avoiding double taxation do not contain provisions on recovering debt and on automatic exchange of data.

*In the short-term priorities, in 73 out of 126 areas no national implementing acts are listed, and in the medium-term – in even 89 areas.*

In Chapter 14. Transport policy, amendments to the Law on the railway system are envisaged providing the "exercise of public rail transport of private domestic or foreign legal person after the entry of Macedonia into the EU", which is in collision with existing commitments in the strategic documents for liberalisation in this sector. The remark in the EC Report that compensation for infrastructure has a negative effect on competition between the types of traffic and discouraging effect on entry of new companies is not addressed. Furthermore, the recommendations regarding the need for implementation of the regulations for interoperability and airspace are not well addressed. Unlike NPAA - revision 2011, which had developed priorities in the area of "combined traffic", there is no such thing in the current version. The need to improve the content of the Pre-Accession Economic Programme in Chapter 17. Economic and Monetary Union as noted in the EC Progress Report is not addressed in the NPAA.

The explanations of the *current situation*, quite unnecessarily, covers the bulk of the document, and the reporting descriptive texts are much more extensive than those referring to planned policies and activities. However, reports are usually only quoted, without any analytical value in terms of policy-making.

Despite its sheer volume, the NPAA lacks an assessment on the level of compliance with the *acquis*. Compliance is assessed in 27 areas; partially it is assessed in 7 areas, while 90 areas lack any assessment of the level of compliance. The European Commission gives an overall assessment of compliance in its reports; however it is necessary that Republic of Macedonia declares precisely which parts of the *acquis* have so far been adopted. The tendency to avoid repetition of previous programmes is understandable, but even with a cumulative processing of NPAA revisions a clear picture of the adopted *acquis* cannot be established. In more than half of the areas (66) not even one transposed or implemented EU measure is mentioned. In 22 areas the current situation is repeated from the previous revisions of the NPAA, in 57 partially repeated and in 46 is not repeated. The description of the current

situation in the present form does not provide understanding of what exactly are the requirements of the *acquis* in the relevant area, and the level of compliance which has been achieved.

Furthermore, there are instances when it is stated in the NPAA that a law has been enacted or amended in order to comply with the NPPA, but the EC accurately indicates the degree of alignment and needed adjustment. E.g., in the NPAA Chapter "Company law" it is stated that with amendments to the Law on Companies "a further precision" is made with the Directive 32005L0056 on cross-border mergers of limited liability companies, while the EC Progress Report states that compliance with Article 16 of the Directive concerning the participation of employees is not achieved. Such adjustment is not foreseen in the NPAA.

Establishing the degree of alignment with the *acquis* is also hampered as the Commission often states that "*the level of compliance with the *acquis* remains to be established*" (in the last Progress Report for 2011 such a statement is used 14 times - mostly in the Chapters 1. Free movement of goods, 9. Financial services and 13. Food safety). Despite the fact that time constraints may contribute to this situation, it is evident that improvement of the technical dialogue with the EC is necessary, as well as the use of its expertise.

In the short term priorities referring to legislative alignment there is no reference to specific EU measures that will be transposed in 73 areas. Adoption of 29 laws and other acts is planned without quoting which EU measures they implement. In 71 areas adoption of other acts/documents is foreseen. This in itself is not necessarily a negative indicator, but usually these acts are only stated without giving any explanation in which way they will contribute to the implementation of the *acquis*. Additionally, a key problem is not the adoption of the acts, but rather their implementation.<sup>26</sup>

Short term priorities are repeated from the previous NPAA in 28 areas, partially repeated – in 72 areas. This is a clear indicator of the low level of realization of the previously set priorities. Trainings are most frequently planned as institutional activities (in 76 areas). Continuity is foreseen for 162 existing activities, and general implementation of current laws and documents is planned in 90 areas. Precise needs for necessary administrative resources are listed in only 20 areas. In this revision of the NPAA reporting is much more frequent as an activity. But it certainly is illogical that the most common are the reports of the organs of the independent judiciary (in the area of Judiciary Chapter 23. Judiciary and fundamental rights), even if they are interpreted in the context of a reformed judicial accountability to citizens, not to the Government.

The Medium-term priorities are the most critical part of the document. They are usually general and undeveloped, and in some areas are completely missing. Frequent is the wording "will follow the *acquis*" or the *acquis* will "be analysed". Medium-term harmonization with EU

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<sup>26</sup> For example, the EC Report notes delay in the implementation of the Action Plan for compliance with the Articles 34-36 from the Treaty on the functioning of the European Union (Chapter 1. Free movement of goods). In the NPAA it is only foreseen that the Action Plan will be continuously implemented, and the "adopted report will be translated into English and submitted to the EC for their information".

measures is foreseen in only 37 areas, and only in 23 areas they are specifically listed. Most of them refer to Chapters 12. Food safety and veterinary policy and 27. Environment - chapters in which harmonization of national legislation is implemented by a methodology agreed with the EC and with continued extensive technical assistance. Medium-term plan is developed also for chapter 12. Agriculture and Rural Development, and Chapter 18. Statistics. In these chapters a higher level of integration of projects is noticeable. Otherwise, 68 areas (over half) are covered by foreign aid, mainly IPA Transition Assistance and Institution Building. If the content of these projects were integrated into medium-term priorities in all of the areas to which they refer to, we would have a much clearer picture of the activities that will be undertaken for adoption of the EU norms and their expected results.<sup>27</sup>

*In the NPAA Chapter 22. Regional policy and coordination of structural instruments, otherwise extremely important for the use of IPA, for description of the current situation 7349 words are "spent", for short-term priorities – 372 words, and for medium-term 322 words.*

A striking example of inappropriate treatment of priorities is Chapter 22. Regional policy and coordination of structural instruments. The quantitative analysis showed that in this chapter 7.349 words are "spent" on describing the current situation, on short-term priorities – 372 words, and on medium-term - 322 words. However, the qualitative analysis leads to even harsher critique, because despite the numerous activities listed - reports, evaluations, analyses, etc. no actual analysis is presented of the existing gaps and needs for interventions, while the priorities come down to a list of documents. The result is similar for Chapter 32. Financial control. It is surprising that these chapters, extremely important for the use of pre-accession funds, and moreover the use of IPA funds is declared as a priority in the Government Programme in the European integration process, receive such inadequate treatment in the NPAA. Additionally, in this area there is continuous support of EU and other international assistance, producing numerous relevant findings and recommendations that had to be included in the NPAA.

In Chapter 21. Trans-European Networks a linkage is missing between the listed infrastructure projects with the strategic objectives of the Republic of Macedonia for connecting with the trans-European transport networks, there is no reference to the new White Paper on transport and new rules of TEN-T which for the first time, show the network in the Western Balkans (SEETO comprehensive network) as an integral indicator of the TEN network. More accurate data necessary for building capacities for design and implementation of large projects is also missing.

Certain chapters, such as the Chapter 26. Education and Culture contain more activities mainly of national importance, thus the relevance in terms of harmonization with EU policies

<sup>27</sup> For example, in the Chapter Free Movement for Workers, a project was designed - IPA 2010 strengthening the capacity for effective implementation of EU law in the area of free movement of workers, but it is only mentioned in the medium term priorities, which are otherwise very poor.

has to be "detected", that a number of activities relevant to other chapters are included - Right of establishment and freedom to provide services, Social policy and employment, and others.<sup>28</sup>

Furthermore, despite the detailed elaboration of activities in Chapter 29. Customs Union, parts of other chapters within the competence of the responsible institution for this chapter (Customs Administration), such as, for example, the area Customs Cooperation Chapter 24. Justice, Freedom and Security is very poor and does not correspond with the Report, nor with the previous revision of the NPAA 2011.

The conducted analysis of consistency with EC recommendations and consistency with the Government Programme leads to a conclusion that ***where political preferences are perceived as identical with the reforms required to join the EU - they are embedded in the process; where no such identification exists – there is no convergence.***

If we take into consideration that the medium-term priorities are not actually medium-term, since they are usually planned for 2013 and sometimes for 2014, it becomes clear that there is a lack of vision and plan on how the adoption of EU norms will proceed.

Consistent with the approach in the "current situation" section, the short-term and medium-term priorities do not give an explanation of the essential adjustments that will be necessary to adopt and fully implement the relevant acquis (with the exception of several chapters already mentioned). Although it would be illusory to expect the NPAA to be a simple and easily readable document - the document by its nature is complex, its "readability" should be ensured at least for expert circles, and especially for stakeholders.

What are the costs and investments that are necessary for adjustments required by the acquis is even less clear. Although it is stated in the economic criteria that 451 impact assessments of the laws have been made, the results of these assessments are not visible in the NPAA.<sup>29</sup> An illustrative example is that the Investment Strategy for Environment 2009-2013, otherwise included as a priority of the Accession Partnership, has completely "disappeared" from the NPAA and the level of its implementation is completely unknown. For certain activities in the matrix the required resources are listed, however it is not clear according to which criteria resources are planned only for some activities, and are missing for most of the activities – particularly for those which require larger amount of resources.<sup>30</sup>

<sup>28</sup> Such are the activities related to accreditation of curricula in the higher educational institutions, which are not recognized in the context of Chapter 3. Mutual recognition of professional qualifications, as well as the activities for social inclusion.

<sup>29</sup> In the national regulations registry (ener.gov.mk) it is very difficult to find information for which regulations RIA is available, since it is not possible to search using this criterion, and the application does not enable update on new regulations.

<sup>30</sup> For example, in Chapter 1. Free movement of goods, resources are envisaged for "promotion of granting of accreditation certificates", but no resources are envisaged for "further equipping the laboratories for meteorological equipment".

Regarding the level of convergence with the Government Programme, the content analysis shows convergence in 56 of 127 areas. The highest degree of convergence is established in the following chapters: 11.Common agricultural policy, 12.Food safety, 15. Energy, 16.Taxation, 20.Enterprise and industrial policy and 27.Environment. It is surprising that the Government Programme does not recognize the importance of chapters 1.Free movement of goods. 5.Procurement, 6.Company law and the 7.Intellectual property (in which actually EC notes progress). Transport policy in the Government Programme is recognised through projects, not through adoption of European standards (except for air traffic). In Chapter 19. Social policy, convergence regarding employment policies is noted; however in the Government Programme the continuously criticized area of social dialogue is completely missing. Furthermore, it is illogical that Amendments to the Constitution to be foreseen in the NPAA for the introduction of the State Audit Office as a constitutional category, and such a commitment not to be a part of the Government Programme. On the other hand, for example, the envisaged codification of civil law in the Government Programme is not recognised in the NPAA in the context of EU endeavours for a Common frame of reference for civil law.

The question arises though, whether this degree of convergence evolves from the high degree of identification with the requirements for EU membership? The conducted analysis of consistency with EC recommendations and consistency with the Government Programme, it can be concluded that *where political preferences are perceived as identical with the reforms required to join the EU - they are embedded in the process; where no such identification exists – there is no convergence.*

In terms of technical consistency, full or partial inconsistency of the narrative part with the activities matrix in the "short-time priorities" is noted in 43 areas in terms of implementing activities and in 23 areas in terms of legislative activity. Even in the poorly elaborated medium-term priorities, partial or complete inconsistency is noted in 34 areas.<sup>31</sup> Such inconsistencies should be overcome in the already complex and cumbersome document.<sup>32</sup>

*In the new reality of the integration process, development of a new communication strategy is*

### ***Information and communication with the public***

The section on information and communication with the public does not correspond to existing challenges. In a period when the integration processes is facing new challenges and changes of the Macedonian public opinion towards EU integration, it is an imperative to create a new communication strategy.

<sup>31</sup> Detailed description of priorities from the narrative part in the matrix was not treated as inconsistency, as this is expected and desirable.

<sup>32</sup> The purpose of this document was not to register technical inconsistencies, which is why they are not stated in details.

It is a paradox that more projects for communication of the EU integration process are envisaged in the Government Programme, than in the NPAA.<sup>33</sup>

## Conclusions and recommendations

### *Conclusions*

The Macedonian example proves the thesis that without the prospect of membership "adopting European norms is a patchy and slow process." It is obvious that with delayed and uncertain prospects for membership, not only the pace of the process is slowed down, but space for selective acceptance and implementation of EU norms is created, depending on the level of convergence with political preferences. The absence of "positive pressure" results in a lower level of convergence, especially in political criteria and slowing down of the process of liberalization towards the EU internal market. In such circumstances, the domestic factor has greater leverage in adoption of EU norms.

Despite the valid parallels and "lessons learned" with the policies and instruments of EU norms transfer in the last wave of enlargement, the lack of critical approach in adopting past practices carries certain risks. The EU enlargement strategy has been significantly changed so that the pressure for higher level of compliance with EU norms before the negotiations is stronger; setting benchmarks at every step of the process has been established, especially from the point of the horizontal focus of the Strategy - the rule of law. Therefore, this fact has to be taken into account in the national approach to the adoption of EU norms.

The claim that the political criteria are met "once and for all" is wrong. It will be very present throughout the accession process and even after accession because the EU political acquis is a reality.

The key issues of Democracy and rule of law, specifically issues which will be subject of the Accession dialogue are not properly addressed in the NPAA. Hence, NPAA does not constitute a sufficient basis for conducting the Accession dialogue.

There is no time pressure. There is enough time for the process of adoption of EU norms to be well prepared, designed, inclusive and transparent. The excuse that a law is urgent because it is required by EU cannot be an alibi for violating the legitimacy of the rule adoption.

The technical complexity of the accession and the negotiation processes largely derives from the different institutional structure than the classical division of portfolios among national institutions. Therefore, central coordination and precise determination of responsibilities of

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<sup>33</sup> The Government Programme contains projects "Learning about IPARD", "Hello Europe", "Learning about Europe without borders", "Macedonian lobby in the EU" that are not included in the NPAA. From these projects only "Hello Europe" is included in the NPAA, along with three additional campaigns: "EU and the business", "Social inclusion in Macedonia and the needs for its synchronization with the open method of coordination for the social inclusion of the EU" and "EU rule of law".

institutions are key technical prerequisites for a successful process of the transposition of the EU norms. The visible tendency to focus on national programmes and separate institutions, rather than on enhanced coordination and strategic leadership in the overall process, should be reversed.

The transparency of the process is low, and the involvement of stakeholders is insufficient. Traceability of the degree of compliance with EU norms is not provided.

The adoption of the acquis and the Stabilisation and Association Agreement are not perceived consistently and complementary.

The strong pre-accession and other foreign assistance is not visibly effectuated in the adoption of EU norms, which reflects the low level of ownership over the use of foreign aid.

The institutional capacity for evaluation of the level of compliance with EU law and policies is insufficient, and even less sufficient concerning best practices of the EU, as well as for making and coordination of EU convergent policies.

The analysis leads to the conclusion that adoption of EU norms is done by inertia, lacking a developed strategy and consistent methodological approach, which would correspond to new realities. There is no long-term vision, and the approach is highly technicized.

### **Recommendations**

In circumstances when accession prospects are not certain even in the next decade, it is necessary to develop a new strategic approach for compliance with EU norms, which will also take into account the premises of the Enlargement Strategy.

NPAA should include concrete measures for the key recommendations of the European Commission regarding democracy and the rule of law, which will be subject of the Accession dialogue. If these are not included, another document should be prepared and publicly discussed.

The focus of the process of adoption of EU norms should be redirected towards strengthening its legitimacy, which implies transparency and inclusion. The fast adoption of "legal texts" should be replaced with a process of comprehension of the EU law and policies

*Key issues of Democracy and the rule of law, which will be subject of the Accession dialogue are not adequately addressed in the NPAA*

*A tendency of primary focus towards national programmes and institution-centered approach is visible, instead of increased coordination and strategic leadership of the process.*

*EU norms are adopted by inertia, lacking a developed strategy and methodological approach, also reflecting the new realities of the process.*

*A major change in the approach to adoption of EU norms is needed.*

and their well-planned implementation, after careful examination of the consequences of their adoption (through transparent regulatory impact assessment), including assessment of options which the EU law provides, with full involvement of the stakeholders.

It is necessary that clear and accurate assessment is provided on the degree of compliance with the *acquis*, which is primarily necessary for the domestic agents, but also for potential foreign investors. Departing from such an assessment, the priorities should be set on short, medium and even long term.

The process should not only be transparent, but also communicated in a way that involves stakeholders, experts and citizens in general. The existing databases should be open to the public, upgraded and updated in a manner that will ensure accuracy and availability of information to the general public.

Strengthening of coordination and the strategic function of the central government to guide the process is necessary, which is impossible without strengthening and the inclusion of capacities outside the administration.

Concretely for the document itself, it is our opinion that the National Programme for Adoption of the *Acquis* should not be abandoned because this would imply a risk to destroy an institutional system for policy coordination and monitoring developed for years. However, in order for the NPAA to be relevant, it is necessary to incorporate the basic political and strategic premises in the document, to significantly change its content, to ensure consistency and technical purity. This means to replace declarative and reporting content with analytical findings on current status, to focus on objectives and priorities and accordingly developed actions. Furthermore, the *acquis* should be the starting point for the document, and all unnecessary content and activities that are not relevant for adoption of EU norms should be removed.

Despite the Accession dialogue, the regular dialogue on political and technical level should be further developed through the institutional framework of the Stabilisation and Association Agreement.

The document should include the obligations under the Stabilisation and Association Agreement and their implementation.

Another complex, but unavoidable task is to effectively plan and incorporate projects into previously well-developed, long-term priorities.

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