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From:	Working Party on Enlargement and Countries Negotiating Accession to the EU
To:	Permanent Representatives Committee/Council
No. prev. doc.:	7002/20
Subject:	Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia

1. In light of the Council conclusions on Enlargement and Stabilisation and Association Process of 25 March 2020, the Working Party on Enlargement and Countries Negotiating Accession to the EU following its meeting on 16 April 2021 reached agreement on the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia as set out in the Annex, outlining the specific elements to be accommodated within the current negotiating frameworks and to be reflected in the relevant EU common positions.

2. The Permanent Representatives Committee is invited to agree to the document set out in the Annex, with a view to its approval by the Council.

ANNEX

Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia

1. The European Union and its Member States have consistently expressed their unequivocal support for the European perspective of the Western Balkans. This firm, merit-based prospect of full EU membership for the Western Balkans is in the Union's very own political, security and economic interest. In times of increasing global challenges and divisions, it remains more than ever a geostrategic investment in a stable, strong and united Europe. A credible accession perspective is the key incentive and driver of transformation in the region and thus enhances our collective security and prosperity. It is a key tool to promote democracy, rule of law and the respect for fundamental rights, which are also the main engines of economic integration and the essential anchor for fostering regional reconciliation and stability. Maintaining and enhancing this policy is thus indispensable for the EU's credibility, for the EU' success and for the EU's influence in the region and beyond.

2. The Council endorsed, on 25 March 2020, the Commission Communication on "*Enhancing the accession process - A credible EU perspective for the Western Balkans*" of 5 February 2020, aiming to reinvigorate the accession process by making it more predictable, more credible, more dynamic and subject to stronger political steering, based on objective criteria and rigorous positive and negative conditionality, and reversibility. On the same occasion, it reiterated that the fundamental democratic, rule of law and economic reforms represent the core objective of the accession process.

3. The Council also confirmed that the proposed changes could be accommodated within the existing negotiating frameworks with Montenegro and Serbia with the agreement of the respective countries.

4. Montenegro and Serbia subsequently expressed their acceptance of the enhanced enlargement methodology.

5. The negotiating framework with Montenegro was presented at the first meeting of the Accession Conference at Ministerial level, on 29 June 2012, as agreed by the Council on 26 June 2012[1]. This negotiating framework incorporates the new approach to negotiations on the chapters on judiciary and fundamental rights, and on justice, freedom and security.

6. The negotiating framework with Serbia was presented at the first meeting of the Accession Conference at Ministerial level, on 21 January 2014, as agreed by the Council on 17 December 2013[2]. This negotiating framework incorporates the new approach to negotiations on the chapters on judiciary and fundamental rights, and on justice, freedom and security, as well as the issue of the normalisation of relations between Serbia and Kosovo*.

7. This document sets out how the enhanced enlargement methodology will be applied to Montenegro and Serbia in the mutual interest of both the EU and the two candidate countries[3].

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8. **The enhancement of the accession process of Montenegro and Serbia should focus on the following elements**: a stronger focus on the fundamental reforms; a stronger political steer; an increased dynamism; and the predictability of the process, based on objective criteria and rigorous positive and negative conditionality. It should also take into account the current stage of negotiations with each of the two candidate countries. These elements should be presented to the next meeting of the Intergovernmental Accession Conference with each of the candidate countries at Ministerial level.

9. The enhanced enlargement methodology provides for an even **stronger focus on reforms in the fundamental areas** of the accession process. It is essential and in their own interest that candidate countries keep delivering on their reform commitments and produce tangible results in their implementation. This is key to realising their European perspective. This requires a stronger focus throughout the accession process on the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform, as well as economic criteria.

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1 AD 23/12 CONF-ME 2.

2 AD 1/14 CONF-RS 1.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

3 This document does not prejudge the content of any other candidate-countries' Negotiating Frameworks.

10. The negotiating frameworks with Montenegro and Serbia already foresee for chapters 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security) to be tackled early in the negotiations to allow for sufficient time for the necessary reforms before the negotiations are closed. They also envisage that where problems arise in the course of negotiations under these chapters, the Commission may propose updated benchmarks throughout the process, including new and amended action plans, or other corrective measures, as appropriate.

In line with the revised methodology:

– *No further chapters will be closed before the interim benchmarks for chapters 23 and 24 are met;*

– *Once the interim benchmarks for chapters 23 and 24 have been met and closing benchmarks set, the rule of law action plans will need to be updated. Specific key issues identified as regards the functioning of democratic institutions and public administration reform will be phased in and included in the rule of law action plans. This will help better steer the reforms in this area;*

– *The two rule of law chapters should be closed last;*

– *The Intergovernmental Conferences will focus on all relevant aspects of the fundamentals cluster to provide political attention and visibility on key reforms, whether rule of law, public administration reform, functioning of democratic institutions or the economic criteria, as well as chapters 5 (Public procurement), 18 (Statistics) and 32 (Financial control);*

– *Anti-corruption work will be mainstreamed through a strong focus in relevant chapters. A chapter will not be provisionally closed before sufficient anti-corruption policies in that specific chapter are being implemented;*

– *Corrective measures will be considered in case of problems occurring in the course of negotiations, also in line with the principle of the reversibility of the process foreseen by the enhanced methodology.*

11. The Commission should keep the Council duly informed and report to the Council twice yearly on the state of play under the fundamentals cluster, in particular the chapters 23 and 24. This should be done through the annual enlargement package and the rule of law non-papers which will be expanded beyond the chapters 23 and 24 in line with the revised action plans.

12. Providing the accession process with a **stronger political steer** is a key element for the revised enlargement methodology and can significantly contribute to the process for Montenegro and Serbia, in particular at the level of the Intergovernmental Conferences. Political IGCs, together with the Stabilisation and Association Councils, will allow strengthening the dialogue between Member States and the negotiating countries and help focus efforts on key reforms that should allow for progress in the accession process.

In line with the revised methodology:

– *The Intergovernmental Conferences at Ministerial level will provide a stronger political steer and a forum for political dialogue on the reform process. They will also take stock of the overall accession process and set out the planning for the year ahead, including opening and closing of clusters / chapters and possible corrective measures.*

– *Intergovernmental Conferences will allow the political dialogue to take place on a regular basis and, therefore, should not depend only on cluster / chapters being ready to be opened or closed;*

– *Intergovernmental Conferences at Ministerial level will, in principle, take place at least once a year, after the adoption of the Commission's annual enlargement package and the subsequent Council conclusions, and whenever deemed appropriate. All sides should ensure representation in the Intergovernmental Conferences at the appropriate level, to allow for a productive political dialogue.*

13. Member States will continue to be able to contribute more systematically to the accession process, including via monitoring on the ground through their experts, direct contributions to the annual enlargement package and sectoral expertise.

14. Stronger political steer should include creating new opportunities for political and policy dialogue and intensified high level contacts with the candidate countries. Political stocktaking will continue and can be deepened at key moments and at the highest political level, including at meetings of the Stabilisation and Association Council. The timing of political Intergovernmental Conferences and the Stabilisation and Association Councils should be planned to allow the political dialogue to take place on a regular basis. CFSP alignment should also continue to be regularly monitored throughout the negotiation process, and promoted through regular political engagement, including CFSP dialogues, and during political Intergovernmental Conferences. Furthermore, for the accession process to be more effective, strategic communication will be instrumental. In accordance with their pro-European strategic choice, Serbia and Montenegro should accurately and strategically communicate the benefits and obligations of the accession process to their societies, including addressing disinformation. Finally, the advancement of the negotiations should continue to be guided by both candidate countries' progress in preparing for accession, as established in each negotiation framework.

15. In order to inject **more dynamism** in the negotiations, these should be organised around clusters of chapters. The clustering should accelerate candidate countries preparations by cross fertilisation of efforts beyond individual chapters and by putting a stronger focus on core sectors and the most important and urgent reforms. It should also help identify accelerated integration measures. A list of the chapters and clusters is provided in Annex I.

16. As regards Montenegro, 33 out of 35 chapters (meaning all screened chapters) have already been opened and 3 have been provisionally closed. After the opening of the last chapter in June 2020, the priority for further overall progress in the accession negotiations, and before moving towards the provisional closure of other chapters, remains the fulfilment of the rule of law interim benchmarks set under chapters 23 and 24. Therefore, the clustering is only applicable to the negotiations with Montenegro in relation to the possible identification of accelerated integration measures.

17. Regarding Serbia, 18 out of 35 chapters have been opened and 2 chapters provisionally closed. Hence, the opening of the remaining chapters following the cluster approach could be considered. At the current stage of negotiations, all chapters related to the fundamentals cluster have been opened, while for the others either none or only some chapters have been opened. Clustering should also facilitate the identification of accelerated integration measures.

For the purposes of negotiations with **Montenegro**, and in line with the revised methodology:

– *The chapters will be grouped into six thematic clusters[3];*

– *Clustering should allow for the possible identification of accelerated integration measures.*

[3] Clusters: 1 – Fundamentals; 2 – Internal market; 3 – Competitiveness and inclusive growth; 4 – Green agenda and sustainable connectivity; 5 – Resources, agriculture, and cohesion; 6 – External relations.

For the purposes of negotiations with **Serbia**, and in line with the revised methodology:

– *The chapters will be grouped into six thematic clusters[3];*

– *Clustering should accelerate Serbia's preparations, the meeting of conditions and the opening of all chapters in a specific cluster, provided that the necessary conditions have been met; it should also allow for the possible identification of accelerated integration measures;*

– *The opening of chapters following the cluster approach is particularly relevant for Serbia, where only the chapters related to the fundamentals cluster have all been opened, while for the other clusters some or no chapters have been opened. As the overall pace of accession negotiations depends on progress in preparing for accession, including on rule of law, any acceleration in negotiations through this cluster opening will be subject to a concrete acceleration of reforms under the fundamentals cluster, in particular the rule of law.*

18. The Commission will continue to support Montenegro in meeting the rule of law interim benchmarks set under chapters 23 and 24.

19. The Commission will assess each cluster in order to identify the main shortcomings for opening clusters as a whole, and to provide guidance and support to Serbia in its reforms to allow for a timely opening of all clusters. It will also review at the same time the situation on the progress in the fundamentals cluster given the need for continued substantial progress in this area. A first round of assessments on the most advanced clusters should be presented to the Council as soon as possible. This should be followed, without delay, by the benchmark assessment reports as soon as the conditions have been met, and then the draft EU Common Positions for opening clusters / chapters at the next Intergovernmental Conference. The assessment of the remaining clusters will be conducted in parallel with a view to opening them as soon as possible thereafter, subject to the necessary progress by Serbia. These cluster assessments by the Commission will be accompanied by parallel reports in line with paragraph 10. Depending on the timing, this will be either a dedicated report or part of the Commission's annual reports, which will remain the key political tool to analyse the state of reforms and provide guidance to the countries. This parallel approach shall thus ensure coherence between clusters, in line with the overall balance clause of the process.

In line with the revised methodology, and taking into account their advanced stage in the accession process, if Montenegro and Serbia make further and sufficient progress on reform priorities agreed in the negotiations, this should lead, as appropriate, to:

– *Closer integration with the European Union, through accelerated integration and "phasing-in" to individual EU policies, the EU market and EU programmes, while ensuring a level playing field;*

– *Increased funding and investments, including through the Instrument for Pre-accession support and a closer cooperation with relevant International Financial Institutions to leverage support.*

20. The potential accelerated integration measures and their related conditionality should be discussed in the relevant Stabilisation and Association Agreement sectoral Sub-Committees and, in line with the applicable decision-making procedures, agreed and followed up under the Stabilisation and Association Process. These measures should allow the two countries to progress faster with the implementation of the acquis in the respective cluster. They would need to take into account the interests of both the partner country and the EU, as well as the potential impact on regional economic integration. Finally, these opportunities should be performance-based and in full coherence with the agreed objective of full membership of the European Union whilst guaranteeing a level playing field. The use of EU funding should create a strong European preference and a strong local economy by projects being implemented, as much as possible, by EU and local businesses, in full compliance with the EU acquis, including the legal framework of the respective financial instruments, and also in line with the international commitments of the EU.

21. The **predictability of the accession process** requires the EU to be clearer on what it expects from the candidate countries at any stage of the negotiations, as well as decisive and proportionate corrective measures in case of any serious or prolonged stagnation or backsliding in reform implementation and meeting the requirements of the accession process.

In line with the revised methodology:

– *The negotiating frameworks with Montenegro and Serbia spell out possible corrective measures (e.g. the overall balance clause) that should be applied, also in line with the principle of reversibility of the process foreseen by the enhanced methodology.*

– *Decisions on corrective measures should be informed by the annual assessment by the Commission, in its enlargement package, of the overall balance in the accession negotiations;*

– *Member States should be able to contribute to this process by requesting the Commission to react in case of any stagnation or serious backsliding in the reform process.*

22. The Commission in its 2020 Enlargement package has already assessed the candidate countries' preparations for the application of the *acquis* and provided guidance on specific reform priorities and *acquis* alignment in line with the enhanced enlargement methodology, as well as expectations for next steps and the conditions to be met in order for candidates to progress. The Commission should continue to apply the revised methodology and provide clearer guidance, allowing Montenegro and Serbia to focus on the most relevant reforms and make real and sustainable progress on their respective accession paths.

ANNEX I

Clusters of negotiating chapters:

Clusters	Chapters	State of play in EU-Montenegro*	State of play in EU-Serbia*
1. Fundamentals	23 - Judiciary and fundamental rights	23 - *Opened*	23 - *Opened*
	24 - Justice, Freedom and Security	24 - *Opened*	24 - *Opened*
	Economic criteria	---	---
	Functioning of democratic institutions	---	---
	Public administration reform	---	---
	5 - Public procurement	5 - *Opened*	5 - *Opened*
	18 - Statistics	18 - *Opened*	18 - *Opened*
	32 - Financial control	32 - *Opened*	32 - *Opened*
2. Internal Market	1 - Free movement of goods	1 - *Opened*	1 – *OBM*** *to be implemented*
	2 - Freedom of movement for workers	2 - *Opened*	2 - *Under examination in the Council*
	3 - Right of establishment and freedom to provide services	3 - *Opened*	3 - *Under examination in the Council*
	4 - Free movement of capital	4 - *Opened*	4 - *Opened*
	6 - Company law	6 - *Opened*	6 - *Opened*
	7 - Intellectual property law	7 - *Opened*	7 - *Opened*
	8 - Competition policy	8 - *Opened*	8 - *OBM to be implemented*
	9 - Financial services	9 - *Opened*	9 - *Opened*
	28 - Consumer and health protection	28 - *Opened*	28 - *RS to submit its position*

* *As of 31 March 2021*

** *OBMs - Opening benchmarks*

3. Competitiveness and inclusive growth	10 - Information society and media 16 - Taxation 17 - Economic and monetary policy 19 - Social policy and employment 20 - Enterprise and industrial policy 25 - Science and research 26 - Education and culture 29 - Customs union	10 - *Opened* 16 - *Opened* 17 - *Opened* 19 - *Opened* 20 - *Opened* 25 - *Closed* 26 - *Closed* 29 - *Opened*	10 - *RS to submit its position* 16 - *OBM to be implemented* 17 - *Opened* 19 – *OBAR* *** *under examination in the Council* 20 - *Opened* 25 - *Closed* 26 - *Closed* 29 - *Opened*
4. Green agenda and sustainable connectivity	14 - Transport policy 15 - Energy 21 - Trans-European networks 27 - Environment and climate change	14 - *Opened* 15 - *Opened* 21 - *Opened* 27 - *Opened*	14 - *Under examination in the Council* 15 - *OBM to be implemented* 21 - *Under examination in the Council* 27 - *Under examination in the Council*
5. Resources, agriculture and cohesion	11 - Agriculture and rural development 12 - Food safety, veterinary and phytosanitary policy 13 - Fisheries 22 - Regional policy & coordination of structural instruments 33 - Financial & budgetary provisions	11 - *Opened* 12 - *Opened* 13 - *Opened* 22 - *Opened* 33 - *Opened*	11 - *OBAR under examination in the Council* 12 - *OBM to be implemented* 13 - *Opened* 22 - *OBAR under examination in the Council* 33 - *Opened*
6. External relations	30 - External relations 31 - Foreign, security & defence policy	30 - *Closed* 31 - *Opened*	30 - *Opened* 31 - *Screening report under examination in the Council*
	34 – Institutions (*Chapter without screening*) 35 - Other issues	--- ---	--- 35 - *Opened*

*** *OBAR - Opening benchmark assessment report*