

**Analyzing the EC Serbia Progress Reports –
Useful tool or tactical whitewash?**

DPC Policy Note

New Series # 09

by Bodo Weber and Kurt Bassuener

Berlin - Sarajevo

June 2015

<http://democratizationpolicy.org>



A report from
Democratization Policy Council

Authors: Bodo Weber and Kurt Bassuener

Editing: DPC Editorial Board

Berlin - Sarajevo

June 2015

 **HEINRICH
BÖLL
STIFTUNG
JUGOISTOČNA
EVROPA**

This report was made possible with support from the Heinrich Böll Foundation in Serbia. The opinions and views of the authors do not necessarily state or reflect those of the Foundation.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	I
INTRODUCTION.....	1
FUNCTION, STRUCTURE AND METHODOLOGY OF THE PROGRESS REPORTS.....	3
THE PROGRESS REPORT(S) – ANALYSIS OF SELECTED POLICY AREAS.....	5
<i>Political Criteria</i>	5
1. Democracy	5
2. Rule of law	10
3. Media	14
4. Foreign policy	15
5. Kosovo.....	16
6. Economy	17
7. Energy	19
CONCLUSION AND RECOMMENDATIONS	20

EXECUTIVE SUMMARY

The European Commission's annual Progress Reports serve as a major instrument and guide to European Union enlargement policy. Assembled by the Directorate General for Neighbourhood and Enlargement Negotiations (DG NEAR), the Progress Reports include input from EU Delegations and other Directorates General and serve as a regular reference point for the Commission, other EU institutions, member state governments and beyond in relations with potential candidate and candidate countries.

Serbia became a candidate for membership in early 2012. Soon afterward, a government composed of two parties rooted in the 1990s nationalist authoritarian regime came to power. The government is led by Aleksandar Vučić of the Serbian Progressive Party (SNS), an offshoot of the wartime Serbian Radical Party led by war crimes indictee Vojislav Šešelj. To the surprise of many, the Vučić government pursued policies which were more assertively pro-EU than the preceding government, effectively led by then-President Boris Tadić – particularly in terms of the flagship policy of the Serbia-Kosovo Dialogue. External pressures created the incentives for this policy shift. Yet as the government enters its third year, its increasing concentration of power and authoritarian methods have become apparent.

DPC has endeavored to assess the content of the EC Progress Reports on Serbia since 2012 – and where necessary, prior reports – to determine how the reports reflect on the ground reality and actual adherence to EU commitments and values. As the authors expected, the reports have systematically downplayed negative developments in key reform areas – including democracy, rule of law, media, foreign policy, and Kosovo – in this period. The reports sometimes contradict each other over time, and even ignore significant problems *altogether*. Responsibility is infrequently laid on institutions, and almost never on individuals, which in a situation of such concentrated political power, is highly disingenuous. The frequency of these distortions and avoidance of unpleasant truths is most concentrated on the political criteria (Copenhagen Criteria), as opposed to the economic commitments undertaken by Serbia. This is particularly worrisome, given the fact that according to the EU's legal documents, the very opening of negotiations signifies the sufficient fulfillment of political criteria – in which case monitoring of political criteria would logically cease in the Progress Reports. In practice, the EU has long ago moved beyond this outdated approach. Instead, in Serbia, the policy seems to be to soft pedal the criteria to avoid conflict with the government in Belgrade – and presumably to avoid embarrassment. The result is a government which can claim *de facto* support from EU institutions for its deepening concentration of power and rollback of civic freedoms.

Several simple techniques and methodological tools could help to substantially improve the quality and consistency of future EC Progress Reports – and not only for Serbia:

- State things as they are without obfuscating the truth. If no progress has been made in particular areas or if reforms have been rolled back, clearly spell that out.
- End the practice of refraining from citing certain developments or incidents for the sake of avoiding potential conflict with the candidate country's government.
- Identify the actors and institutions which are known to be responsible for negative developments.

- Extend the useful provision of conclusions & recommendations – as were included in the 2014 Progress Report in the chapter on economic criteria – to the entire Progress Report, but in particular to the political criteria section.
- Document the status as well as the success or failure of IPA reform projects in the relevant chapters and paragraphs of the Progress Report.
- Provide a list, as an annex, of contributions (whether oral or written) to the Progress Report from external sources – international institutions, national governments, domestic interest groups, NGOs etc. – for the sake of transparency.

Even with the adoption of such changes in future Progress Reports, it is far from guaranteed that the reports will drive Serbia's integration into the Union as a fully compliant and contributing member state. The question facing Serbia's government is whether it is willing to pursue the democratic and economic reforms required to make its candidacy viable to the existing 28 members of the Union. If it is, it would require a fundamental transformation of its governing model, which is based on a personal monopoly on power.

The question for the EU is whether it is willing to honestly present Serbia with that choice. To do so would mean recalibrating a policy which has been focused heavily on the formal continuation of the Serbia-Kosovo Dialogue, to the neglect of other membership criteria – particularly the political criteria. The new geopolitical situation, and Serbia's attempt to straddle the growing East-West divide, of course will remain a factor. But does the EU really want another member state which is unwilling to fully commit to all the requirements necessary for membership? Until EU member states make that choice, the institutional default will remain one of balancing and accentuating the positive and allowing Belgrade maximum room for maneuver – and misbehavior.

Introduction

On October 8, 2014 the Head of the Delegation of the European Union to the Republic of Serbia, Michael Davenport, presented the Commission's new *Serbia 2014 Progress Report* to Prime Minister Aleksandar Vučić. They held a tense joint press conference in Belgrade. Vučić generally welcomed the report, but disagreed with its critical assessment of pressures on freedom of expression in Serbia. When confronted by domestic journalists with questions relating to accusations of pressure exerted by his government and himself on media in Serbia, Prime Minister Vučić dropped all statesmanlike demeanor for a brief performance full of unintended irony. Vehemently denying the accusations, Vučić launched into an *ad hominem* attack on a respected senior journalist, Tamara Spaić of the Serbian daily *Blic*, while Ambassador Davenport looked on silently with evident unease. Vučić accused Spaić of having a “deeply negative attitude” towards his government and himself personally; whatever answer he gave would not satisfy her. He insisted that *Blic* had been “lying” by writing that the Serbian government had engaged in direct censorship of certain online media reporting on the government's performance during the May 2014 floods.¹

Vučić's performance drew criticism from the Independent Association of Journalists of Serbia (NUNS), which noted that the journalist had only done her job by asking questions, while through his behavior Vučić had “sent the message that questions [by journalists to the executive] are not welcome” – thereby demonstrating an approach to the media diametrically opposite to what he claimed.²

The European Commission's annual Progress Reports represent an important tool of the EU's enlargement policy. The Commission's institutions, first and foremost the DG NEAR,³ but also EU Delegations to the target countries and other Directorates General invest substantial time, efforts and manpower every year into preparing and drafting the reports. The Commission's reports, a “communication to the European Parliament and the Council”, serve as an important reference point for all EU institutions and member states in assessing a potential candidate country's progress on the path to EU membership. This is no less true after candidacy. The reports can, and in fact have often become the subject of disputes and tensions between the Commission and the recipient governments. Progressive administration representatives, opposition political actors and civil society organizations use the reports as tools to demand stronger reform efforts from their governments. In some countries, such as Serbia, governments established working groups and began drafting action plans to implement Progress Report recommendations. However, up until recently, the Commission did not deliver explicit policy recommendations within the reports' framework.

Yet at the same time the Progress Reports have been frequently criticized over the years for not reflect-

¹ “Šta je Vučić rekao o autocenzuri i pritiscima na medije,” *Blic*, October 8, 2014, available at: <http://www.blic.rs/Vesti/Politika/500940/VIDEO-Sta-je-Vucic-rekao-o-autocenzuri-i-pritiscima-na-medije>.

² “NUNS: Vlast šalje poruku da pitanja nisu dobrodošla,” *Blic*, October 9, 2014, available at:

<http://www.blic.rs/Vesti/Politika/501170/NUNS-Vlast-salje-poruku-da-pitanja-nisu-dobrodosla>. A couple of weeks after the incident, *Blic* ended its long-term cooperation with journalist Tamara Spaić. Interviews with Serbian journalists and media experts, Belgrade, November 2014.

³ Directorate General for Neighbourhood and Enlargement Negotiations. Formerly DG Enlargement (ENL).

ing the actual – and often more negative – situation in the target countries. The EC has been frequently accused of filling its reports with window-dressing to avoid harsh criticism of candidate countries' governments. “Who reads the progress reports?,” is a frequent retort from EU member state officials in background talks. In its written analyses on the Western Balkans, DPC has highlighted numerous cases of the EU sugar-coating the truth. In a paper that compared the EC’s Bosnia and Herzegovina Progress Reports over almost a decade with actual political development in selected policy fields, DPC identified a substantial gap between the “progress” described and the actual political situation, which was almost always characterized by long-term stagnation and regression in key reform areas.⁴ In these reports, the EU’s Bosnia policy demonstrated a consistent and pronounced lack of political will to deal with the structural political crisis on its own terms. Instead, the Union maintained an obviously failing policy of lowering conditionality in the hope of generating reform momentum and in obscuring the worsening political situation on the ground. Another DPC analysis of Progress Reports found blatant omissions of important political events which, if cited, would have led to a far more negative picture of developments in candidate countries.⁵

Building on this background, this report analyzes the EC's 2012-2014 Serbia Progress Reports,⁶ taking into account Serbia's specific political context and the country’s relationship with the EU.

In 2012, the EU lost its long-perceived “natural,” “democratic” partners for integration policy in Serbia, President Boris Tadić and the Democratic Party (DS)-led government in the parliamentary and presidential elections. For the first time since Milošević in 2000, power went to forces that comprised the backbone of his regime in the 1990s: the Socialist Party of Serbia (SPS) and the leading party of the new coalition government – the Serbian Progressive Party (SNS), headed by new party leader Aleksandar Vučić. Faced with new policy resolve from the EU and US, these parties transformed their declaratively pro-EU course into something more substantial.

This political change was closely linked to a previous shift in the EU's policy from inconsistency to tougher conditionality on one of the most sensitive issues – Kosovo. Serbia’s government demonstrated substantially more willingness, at least by implication, to accept the reality of the loss of Kosovo as the primary condition to move forward on the path to EU membership. At the same time,

⁴ Patrick Dick, *Requirements and Reforms, Cause and Effect: A Review of the European Union Progress Reports for Bosnia and Herzegovina for the Fulfillment of the Copenhagen Criteria*, DPC Policy Note, November 2012, available at: http://democratizationpolicy.org/uiimages/pdf/dpc_policy_note_new_series_final.pdf. The authors wish to thank Mr. Dick for developing DPC's method – analyzing the ECPR's imperative language. His analysis of the BiH 2014 Progress Report is forthcoming.

⁵ Kurt Bassuener/ Bodo Weber, *Croatian and Serbian policy in Bosnia-Herzegovina: Help or hindrance? How to effectively employ Western leverage*, DPC Policy Study, October 2012, p. 32, available at: http://democratizationpolicy.org/uiimages/pdf/dpc_neighbors_study_final.pdf.

⁶ Serbia 2014 Progress Report, European Commission Staff Working Document, October 8, 2014, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf; Serbia 2013 Progress Report, October 16, 2013, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf; Serbia 2012 Progress Report, October 10, 2010, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf.

Vučić's rise as a charismatic leader formed the centerpiece of a political system that assumed increasingly authoritarian traits. The juxtaposition of a pragmatic pro-EU policy and deepening authoritarianism presented an unwelcome contradiction and created major challenges for EU integration policy and the EU's policy towards the country. The following analysis rests on the hypothesis that that juxtaposition is reflected in the consistency – or lack thereof – of accounts of politics and the economy in Serbia as presented in the EC Progress Reports.

Methodology

This report analyzes the 2012, 2013 and 2014 Serbia Progress Reports, covering the entire period of SNS rule. Because the reports follow the same basic structure and methodology from year to year, they enable a comparative approach that permits the reports to be read as a single narrative and analyzed for consistency. Where necessary for comparative purposes, reports from earlier periods are taken into account. Analysis is restricted to policy areas that either present specific challenges, or create controversy in the EU-Serbia relationship. These areas are: democracy, rule of law (judiciary and anti-corruption), the media, Kosovo, foreign policy, the economy and energy. Three primarily qualitative methodological tools are applied. First, use of imperative language is analyzed. Second, the gradation used in connection with one of the key terms of the report – “progress” – is analyzed (“modest progress,” “limited progress,” “substantial progress,” etc.). Finally, the reports' descriptions of the situation in certain policy areas are compared with the actual events as assessed by the authors. These assessments are based on available sources – reports by other international organizations and Serbian civil society organizations, including written contributions to the drafting of the Progress Reports compiled by the latter – as well as on the authors' own long-time policy analyses. Such comparisons are made to determine whether the reports match the situation on the ground, and also whether important developments, events or aspects have been omitted.

Function, structure and methodology of the Progress Reports

Almost everything that is known about the methodology applied by the Commission to the Progress Reports is listed in a short paragraph located at the beginning of each report, with the wording remaining (almost) identical throughout the years.⁷ Thus, the 2014 Serbia Progress Reports, like all previous reports, deals with “progress made by Serbia in preparing for EU membership.”⁸ Published each October, it covers the period from the previous October to September of that year.

The reports largely follow the same structure, based on the Copenhagen Criteria for EU membership. The first part describes relations between Serbia and the EU. The second part “analyses the situation in Serbia in terms of political criteria for membership.” The third part of the Progress Report analyzes the

⁷ Serbia Progress Reports and country conclusion, that are part of the annual communication from the European Commission to the Council and the European Parliament, are available at: http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm. For the following analysis Progress Reports from 2012-2014 and 2006-2010 plus the 2011 *Analytical Report* were used.

⁸ *Serbia 2014 Progress Report*, Brussels October 8, 2014, p. 3.

situation regarding the economic criteria, and the fourth and final part “reviews Serbia’s capacity to take on the obligations of membership, i.e., the *acquis*.” This is done along the lines of the 35 accession negotiation chapters. Reports have followed this format since Serbia was granted candidate status in 2012, and are around 65 pages in length (plus annexes). Before 2012, this fourth part of the reports had been structured according to reform priorities defined in the Stabilization and Association Agreement (SAA) and the European partnership document and were somewhat shorter (around 55 pages). Only in 2011 did the report deviate substantially from the established structure and approach. The EC Serbia “Analytical Report”⁹ to the Commission opinion on application for membership already followed the structure generally applied to reports of candidate countries. But instead of measuring progress, it presented a detailed analytical description of the situation in all policy fields covered. Consequently, the 2011 report was much longer, with 130 pages of narrative.

According to the methodological explanation given in the introduction of all Progress Reports’ introduction, “progress is measured on the basis of decisions taken, legislation adopted and measures implemented,” an approach that “ensures equal treatment across all reports and enables objective assessment.” Commission staff working on the reports are reportedly given written guidelines, which are not made publicly available.

The production of the Progress Report starts in March each year with the EU Delegation to Serbia collecting material, both written and oral contributions from other international organizations, the Serbian government, interest groups and civil society organizations. A first draft compiled by the EUD is reviewed in Brussels in May. Within the Commission, DG NEAR is in charge of the drafting and coordination process. On certain chapters, other DGs participate or even take a leading role. For example, the Directorate General for Economic and Financial Affairs (DG ECFIN) takes the lead on economic sections of the report, and the European Union External Action Service (EEAS) on the chapter dealing with foreign and security policy. Throughout June and July, DG NEAR is almost fully consumed with the preparation of the Progress Reports. At the end of a long drafting and review process the reports go to the College of the EU, the 28 commissioners, for final approval.¹⁰

Based on the report's findings, the Commission draws “detailed conclusions regarding Serbia” in a separate annual communication on enlargement (“enlargement strategy”) that covers all enlargement countries, while the character of the very report is described as a “technical analysis.” Yet those conclusions do not differ much from what is already concluded in the reports. The only substantial additions contained in the enlargement strategies are regional assessments on policy areas that lag behind in reform and that are defined as priorities for the future enlargement strategy.¹¹

⁹ *EC Analytical Report*, Brussels October 12, 2011, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf.

¹⁰ Interviews with EC officials, Brussels October 2014.

¹¹ For example: *Enlargement Strategy and Main Challenges 2014-15*, Brussels October 8, 2014, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-strategy-paper_en.pdf.

The 2014 Progress Reports contains certain novelties, according to Commission officials. Reports are now “less descriptive and more prescriptive.” In addition, for the first time they contain concrete policy recommendations. These changes, explained officials, had been introduced in response to requests coming from the Western Balkan countries. Public administration officials, policymakers and civil society representatives sought them as additional leverage to push their governments for further and deeper reform.¹²

The Progress Report(s) – analysis of selected policy areas

Political Criteria

Some of the policy areas analyzed in this paper (judiciary, anti-corruption, media) are covered twice in the Progress Reports, within the section on political criteria and again within the major section on Serbia's legal alignment with the *acquis*, while others (democracy) appear only as a political criterion without any link to the *acquis*. The so-called Copenhagen Criteria, the criteria still informing the formal framework conditions for EU membership, define political criteria as “stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities.”¹³ According to the document, the “political criterion is considered fulfilled” with the decision to open membership negotiations, which, if taken seriously, meant that Serbia and other candidate countries that opened accession talks should no longer find chapters on political criteria in their Progress Reports. However, as the EU's integration policy and toolbox has evolved over time, bars for reforms have been set higher, and conditionality has been strengthened. It is now generally recognized that expectations to have the political criterion fulfilled with the opening of negotiations are simply unrealistic – even counterproductive. For many EU member states political criteria play a key role, if not *the* key role in assessing a candidate country's suitability for Union membership.

1. Democracy

The state of a country's democracy is a political criterion analyzed under the respective chapter within the Progress Reports. It regularly covers a large number of aspects – constitution, government, parliament, elections, public administration, ombudsman, civilian oversight of the security forces and civil society. Analysis in this paper will concentrate on three core aspects – constitution, government, and parliament.

Constitution: The 2014 report deals with Serbia's constitutional order in a very short paragraph:

“The Constitution is largely in line with European standards. Some provisions remain to be put in line with the recommendations of the Venice Commission, in particular concerning the role of parliament in judicial appointments, the political parties' control over parliamentary office, the independence of key institutions and the protection of fundamental rights, including data

¹² Interviews with EC officials, Brussels October 2014.

¹³ http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en.

protection.”¹⁴

This paragraph is almost a copy of the ones from the previous two reports, with wording being very similar to identical. The recommendations referred to come from two opinions of the Council of Europe’s Venice Commission (VC) - from 2007 and 2013. Imperative language in the reports is stated as “remain to be put,” “need to be put,” and “still need to be put in line.” This is an indirect recognition that there has been no progress in that area for several years.¹⁵

The only novelty in 2014 is a carefully phrased concluding recommendation that “*overall*, constitutional changes should be considered early on in the new legislature, to address issues of importance for the accession negotiations from the outset.”¹⁶ This is particularly cryptic, employing imperative language, though phrased softly (“should”). Since the March 2014 early elections, the current government has held a solid parliamentary majority far above the two-thirds threshold required to pass constitutional amendments, which are generally required in the accession process prior to membership. Yet, the exact scope and content of the constitutional changes the European Commission recommends or demands remain unclear.

The wording, however, hints at the cautious approach the Commission is taking regarding Serbia’s constitutional order, which is only revealed in full when one analyzes the EC Progress Reports following the adoption of the Serbian Constitution in 2006.¹⁷ In its 2006 Progress Report, the Commission noted that “the new Constitution was adopted by the Serbian Parliament on 30 September and approved by referendum in late October. The adoption of a new Constitution is a welcome development...”, and continues with what at first sight looks like a sound critique:

“However, the final stage of the drafting process before parliamentary adoption took place without adequate public consultation. Moreover, the new Constitution presents some areas of concern, notably the lack of objective mechanisms free of political influence to appoint, promote and dismiss judges and prosecutors; the political parties’ control over parliamentary mandates; the scope of territorial decentralization; and the ambiguous relationship between domestic law and international law. *Overall*, there has been progress in setting the constitutional framework after the end of the State Union. This constitutional framework needs to be soundly developed and implemented to strengthen democracy and rule of law, and to ensure its future compatibility with EU membership.”¹⁸

However, this seemingly open critique reflected less than half the truth and was worded to avoid a

¹⁴ Serbia 2014 Progress Report, p. 7.

¹⁵ Serbia 2012-2014 Progress Reports.

¹⁶ Italics as in original document. Serbia 2014 Progress Report, p. 7.

¹⁷ For the political background of the adoption of the 2006 constitution, see: *Serbia’s New Constitution: Democracy Going Backwards*, International Crisis Group Euro Briefing No. 44, November 8, 2006, available at: [http://www.crisisgroup.org/~media/Files/europe/b44_serbias_new_constitution_democracy_going_backwards.pdf](http://www.crisisgroup.org/~/media/Files/europe/b44_serbias_new_constitution_democracy_going_backwards.pdf).

¹⁸ Italics in original document. Serbia 2006 Progress Report, pp. 5-6.

serious political clash between the EU and Serbia by reducing a serious problem affecting the foundations of Serbia's democracy to an issue that was manageable for the EC's bureaucracy. The agreement by all parliamentary parties to what had previously proven impossible – compromise on a post-Milosevic era constitution – was forced by the collapse of the state union with Montenegro that year, as noted in the EC Progress Report. But the real reason, completely omitted in the report, was the impending expected declaration of independence of Kosovo. The function of the new constitution as an anti-Kosovo independence tool degraded the role of parliament and citizens to an extent that questioned both the legitimacy and the legality of the new founding document of the state. The constitution was drafted *in camera* by party leaders and associated law experts over two weeks. MPs voted on a constitution that they had received only two hours before the vote took place. Ahead of the referendum, citizens were not seriously informed about the content of the constitution, but were instead exposed to strong pressure through an orchestrated media campaign that included the Orthodox Church as a campaigner to vote for the constitution. The voting lasted an unusual two days, during which various irregularities in the voting procedure and the quality of the voters lists occurred. Perhaps most damningly, the government excluded from the voting 900,000 Albanians from the very same Kosovo it insisted forms a part of the state of Serbia in the preamble of the new constitution.¹⁹

While the EC downplayed the drafting and adoption process, from 2007 on it outsourced its criticism on the content of the new constitution to the VC, which delivered an opinion that year.²⁰ The VC however, took a traditionally conservative, narrow approach in its critique. It mentions the questionable legitimacy, but ignored the facts that raised doubt as to the legality of the adoption process. The opinion analyzed key areas of concern, mentioned the bad quality of the hastily compiled constitutional text, and the contradictory nature of certain provisions. The VC expressed hope that many problems of the new Serbian Constitution would be remedied in its implementation. Unlike the VC, civil society organizations and critical constitutional experts in Serbia have articulated a far broader critique of the constitution and the developing order. *Inter alia*, they negatively assessed that the type of political system is not defined, that the division of competencies between the two institutions with executive power, the President and the government, is not clear-cut and that one of the main civil institutions overseeing the security forces, the National Security Council, is not grounded in the constitution. They concluded that the instrumental nature of the constitution makes it a basis for political manipulation with the constitutional order and cannot be amended *post hoc*; a new constitution is necessary.²¹ Yet the EC has used the VC opinion to further narrow down its critique in its reports to 3-4 key areas of concern that demand constitutional changes. These reports have assessed the implementation of the new constitution largely in a technical fashion. Consequently, in its lengthy 2011 Analytical Report, the question of the constitutional order was reduced to a minor problem:

“A new Constitution was adopted by an overwhelming majority in parliament and in a subsequent

¹⁹ *Ustav na Prekretnici*, YUCOM, Belgrade 2011, pp. 8-10, available at: http://mojustav.rs/wp-content/uploads/2013/03/YUCOM_Ustav-na-prekretnici_pdf.pdf.

²⁰ 2007 Progress Report, p. 6; Venice Commission, Opinion No. 405/2006, Strasbourg March 17, 2007, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2007\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2007)005-e).

²¹ *Ustav na prekretnici*, p. 10.

referendum, and entered into force in November 2006... The process of aligning the legal framework with the new Constitution has been almost completed... The Constitution is largely in line with European standards. However, some provisions would still need to fully reflect the recommendations of the Venice Commission...²²

Government: The 2014 Progress Report stresses that the Serbian government is “fully committed to EU integration and to continuing the EU-facilitated dialogue with Pristina,” just as the previous report did, but this year adds that it also “aims as a priority to conduct an ambitious economic reform program and to further intensify the reforms relating to the rule of law.” No explanation is given as to what forms the basis of such an assessment. In the 2013 report, the Commission also notes the increasing “consistence in practice, in terms of policy priorities, decision-making and the public conduct of its members, with all crucial policy decisions being adopted unanimously,” as something that is assessed as positive. Other aspects covered in the reports are more of a formal procedural-technical nature. For example, the 2013 report notes that the amendment of the rules of parliamentary procedure included a “significant extension of the holding of public consultations.” Yet the 2014 report notes critically that such consultations in the legislative process “remain to be conducted more extensively and under more realistic timelines.” A critique in the 2014 report, that is found in almost all previous reports analyzed – that “effective monitoring of the implementation of enacted legislation and strategic documents needs to be strengthened” – seems to signal that no progress has occurred in this field under the current government. Regarding the work of independent regulatory agencies, the 2013 report states that “the government needs to follow up the findings and recommendations.” That there has been little (or no?) progress was signaled in 2014 with a more diplomatically phrased insistence that “the government still needs to develop its understanding of the role of independent regulatory bodies.”²³

More interesting is what is missing in the reports that cover the period of the SNS-led government (2012-14) – which marks the establishment of increasingly authoritarian rule by Prime Minister Aleksandar Vučić, whose charismatic leadership is only partially grounded in his formal functions. That was especially true for the period up until the March 2014 elections, when he merely occupied the post of deputy Prime Minister. Then, as now, his power originated in semi-formal structures of power – his role as president of the largest coalition party, his ability to manipulate the fight against corruption from the post of the government coordinator, as well as his control over security agencies as Secretary of the National Security Council and the Council's Office for the Coordination of Security Forces. Not only were these posts questionable from a legal and democratic standpoint,²⁴ but they also substantially degraded the power delegated by law to then Prime Minister Ivica Dačić. Both the 2013 and 2014 Progress Reports remain silent on this.

Indeed, the failure of the Progress Reports to discuss the widely recognized semi-authoritarian, semi-formal concentration of power within Serbia’s executive in return for a declarative pro-EU integration

²² EC 2011 Analytical Report, pp. 8-9.

²³ Serbia 2014 Progress Report, pp. 8-9 and Serbia 2013 Progress Report, pp. 7-8.

²⁴ OSCE Mission in Serbia, *Kontrola Službi Bezbednosti*, Belgrade 2011, pp. 61-69, available at: http://www.cnp.rs/resources/files/kontrola_sluzbi_bezbednosti.pdf.

policy by Serbia's government has a long tradition. During Boris Tadić's presidency, his office substantially expanded its formal authority by legal and informal means. Concentrating power far beyond the constitutional framework, the president dominated the government, especially during Prime Minister Mirko Cvetković's term, degrading that office to a mere executor of presidential policy. Nevertheless, in a three-page description of the executive, the EC in its 2011 Analytical Report concluded:

“Overall, Serbia has a well-established functioning system of executive power.”²⁵

This was true, if one ignored the deviation from democratic norms.

Parliament: In the 2012 Progress Report the EC was able to register a couple of key institutional changes that were pushed by the EU and that seemed to clear the way for parliament to fulfill its constitutional functions under the SNS-led coalition:

“In line with the 2011 electoral reform, MPs were for the first time appointed in the order in which they appeared on the electoral lists and the practice of ‘blank resignations,’ by which MPs tendered resignation letters to their parties at the beginning of their term of office, is now prohibited... In line with the 2010 rules of procedure, working bodies were streamlined, with the aim of making the parliament more effective.”

At the same time, the report also listed existing key problematic areas by which the new ruling parties' future performance could be judged, observing that “parliamentary oversight of the work of the executive remained weak. The work in committees remained reactive.”²⁶ On that basis, the 2013 report noted substantial progress insofar as “parliament's work has been made more transparent” and “parliamentary oversight over the executive has improved” with government members now regularly reporting to the assembly. In addition, “parliamentary committees have developed a more proactive approach.” On the other side, the EC criticizes parliament's handling of the work of independent regulatory agencies, remarking that it “has still given only limited consideration and follow-up to their findings and recommendations.” This mixed assessment is by and large repeated in the 2014 report, which lists another point of critique that is found in most previous reports concerning the “extensive use of urgent procedures, which limit the time for scrutiny of draft legislation.”²⁷ When supplemented by issues that didn't make it into the report, the picture is substantially different. Despite the listed legal improvements, the independence of individual MPs is fictive. The general lack of intra-party democracy is one factor. While this may be beyond the impact of the EU's integration policy, another influencing factor is not – the lack of offices and staff for Members of Parliament that heavily prevents the professionalization and policy specialization of MPs, and which is an important precondition for their independence of office. Against this background the question arises as to whether the documented improvement in government representatives' reporting to parliament and the work of the committees is

²⁵ EC 2011 Analytical Report, p. 13.

²⁶ Serbia 2012 Progress Report, pp. 6-7.

²⁷ Serbia 2013 Progress Report, pp. 5-6, Serbia 2014 Progress Report, pp. 7-8.

one of substance, or merely of form. The report gives no real answer. Another crucial issue not reflected in the report is the breakdown of the opposition following the SNS' 2012 election success, which became even more pronounced after the 2014 elections which brought the ruling coalition an “unprecedented wide majority of close to 80 % of seats in parliament,” as the Progress Report notes. The impact of the opposition’s extreme weakness on Serbia's parliamentary democracy, and whether the ruling coalition undertakes safeguards to guarantee the opposition's rights or arrogantly exploits its own almost unlimited power, remains unaddressed in the EC's writing.

2. Rule of law

Rule of law has become one of the key reform areas within the accession process. Chapters 23 and 24 are today the first to be opened, only to be closed at the end of the accession process. Two of the most important aspects are the judiciary and the fight against corruption, which are dealt with in the framework of the Progress Report chapters on political criteria, and in greater detail in the one on Chapter 23.

Judiciary: The 2014 Progress Report notes that “first steps were taken in the implementation of the 2013-2018 strategy on judicial reform” and lists a number of measures undertaken, but also highlights delays, warning of an “urgent need for effective implementation of the reforms.” The assessment of the judiciary, as in all previous reports, takes a comprehensive and detailed look at all crucial aspects, such as independence, impartiality, accountability, efficiency and access to justice. The report generally looks with a critical eye on the state of the judiciary. In 2014, it stated bluntly that “some judges from higher and appellate courts were confronted with direct attempts to exert political influence... The practice of publicly commenting on trials and announcing arrests and detentions in the media ahead of court decisions risks being detrimental to the independence of the judiciary and raises serious concern.”²⁸ At first glance, the assessment seems to be clear. Yet again, it is crucial to also analyze what is *missing* in the report(s). In the case of the judicial system, the failure of the 2009-2011 judicial reform and how it was and is reflected in the Progress Reports sheds light on the issue. In 2009-2010, the Serbian authorities implemented a wide-ranging judicial reform that included a complete re-appointment process of all judges and prosecutors and a reorganization of the court and prosecutors' offices network. The reform was planned as a means of undertaking transitional justice aimed to overcome the 1990s heritage of a politicized, de-professionalized and corrupt judiciary.²⁹ It was heavily supported by the EU and the US and largely followed a model developed elsewhere in the region (BiH and Kosovo). The 2006 constitution formed the legal basis for the overhaul of the judiciary. Yet from the very outset, judicial reform ran into serious problems, as the whole process became politicized. In relation to the re-appointment process, the 2010 Progress Report correctly warns that “major aspects of the recent reforms are a matter of serious concern,” and lists the most problematic features: the process was conducted in a non-transparent way; the bodies in charge of the process, the High Judicial Council (HJC)

²⁸ Serbia 2014 Progress Report, pp. 11 and 39-42. Still, this clear critique avoids naming the actors and institutions it criticizes for their performance.

²⁹ Vodinelić/ Knežević/Bojović/ Reljanović, *Judicial Reform in Serbia 2008-2012*, Belgrade 2012, available at: <http://cups.rs/wp-content/uploads/2013/04/Judicial-Reform-in-Serbia-2008-2012.pdf>.

and the State Prosecutorial Council (SPC) established by the 2006 constitution, acted in a transitory composition; objective criteria for re-appointment developed in cooperation with the Venice Commission were not applied; and judges and prosecutors were neither heard nor received adequate explanations for the decisions. While over 800 judges and 160 prosecutors and deputy-prosecutors were removed, at the same time “first-time candidates (876 judges and 88 deputy prosecutors) were appointed without conducting interviews or applying merit-based criteria.” The EC also strongly criticized the reorganization of the courts and prosecutors' offices, which was aimed at enhancing efficiency and reduced the number of 138 municipal courts to a new network of 34 basic courts. The 2010 Progress Report noted sharply that “the recent reforms impacted negatively on the overall efficiency of the judicial system.” It further observed “the reduction of the number of judges and prosecutors was not based on a proper needs assessment” and listed various aspects that document how the badly planned reorganization failed its aims.³⁰

Based on the sharp critique by the EC (and from within Serbia) and faced with 1,500 appeals filed at the Constitutional Court, the Serbian government returned the appointment decisions back to the HJC and the SPC for a review that started at the end of 2010. This review process was quickly undermined by political forces. Despite this deliberate evasion of reform and compliance, the 2011 Analytical Report, which paved the way for Serbia to receive candidate status, portrayed the whole process in a surprisingly *positive* way:

“Given the initial shortcomings, the Serbian authorities launched a review... Respective guidelines for the review procedure... were adopted... by the High Judicial Council and the State Prosecutorial Council in their permanent form. Broad consultation of all stakeholders was conducted on the guidelines. These guidelines include clear and transparent criteria and provided a sound basis... While written justifications have yet to be issued for most cases, the review on judges has been so far conducted in a satisfactory manner. Despite some procedural shortcomings, the majority of decisions were generally taken in line with the guidelines. As regards prosecutors, certain procedural shortcomings occurred and remaining doubts on the observance of the guidelines will have to be dispelled by the written decisions.”

This was a clear and blatant whitewash of the fraudulent review process. The EC willfully neglected facts related to numerous shortcomings of the review process, which became obvious only two months after the 2011 Progress Report appeared when several Green members of the European Parliament made public an internal monitoring report on the review process produced by the EU Delegation to Serbia. In the monitoring report to the EC-funded “Support to the Judicial Review Process in Serbia” project, the monitors concluded that for the SPC “the entire decision review process was conducted only in order to satisfy form and is a schoolbook example of travesty of justice.” For the process led by the HJC they painted a more mixed picture, but also identified a number of evident procedural shortcomings. In a special comment, the monitors expressed their impression that “undue influence on the part of the executive has been acutely present in the course of the entire review process... this is

³⁰ Serbia 2010 Progress Report, p. 10.

particularly visible in the process before the HJC Commission.”³¹

In another seemingly schizophrenic U-turn from the 2010 Progress Report, in 2011 the EC praised the restructuring of the court network as an “appropriate step for increasing the efficiency of the judiciary.”

After the Constitutional Court completely overturned the re-appointment process and ordered the reinstatement of all non-appointed judges and prosecutors in June 2012, the EC was forced to admit the failure of the re-appointment process in its 2012 Progress Report – contradicting the 2011 report. It did so, however, only by merely reporting the decision of the Constitutional Court without any reference to its own erroneous 2011 account or taking any further responsibility. Instead, it indirectly pointed to the breakdown of the entire judicial reform process by noting that “in order to restore the confidence of the citizens, the authorities will need to consider additional measures to strengthen the independence, impartiality, competence, accountability and efficiency of the judiciary” and listed a number of key measures that among others include “court rationalisation.” The Commission concluded that “to meet these challenges, a new strategy on judicial reform is needed, together with an action plan to implement the strategy, based on a functional review of the judiciary.” As a final chapter to the whole judicial reform disaster, the 2013 Progress Report merely notes that “some 900 magistrates recruited in 2009 on a probationary basis were granted permanent tenure” – without any reference to the 2010 Progress Report critique of the lack of any merit-based criteria applied for these original appointments.³²

The EC’s opaque account of the judicial reform failure in the Progress Reports is an attempt to cover up its own responsibility. This bureaucratic self-exculpation has several negative consequences. First, the full impact of the failed judicial reform is not enumerated in the reports. With the return of all the judges and prosecutors who had been dismissed, along with the granting of permanent tenure to the 900 magistrates additionally appointed in 2009, the Serbian judiciary now has hundreds of surplus magistrates for decades to come, instead of the targeted rationalisation.³³ More importantly, the presence in the judiciary of underqualified and corrupt judges and prosecutors with a 1990s track record of openness to political influence remains unresolved, aggravated by the arrival of the additional 900 magistrates with unclear qualifications - many appointed for political loyalty. Even more worrying, the reluctance to articulate the effect of the subversion of judicial reform prevents the EU from asking the key question related to the future of Serbia's judiciary: How can the tremendous damage done to the judicial system be repaired? This in turn risks making all ongoing and future efforts to reform the Serbian judiciary into mere travesties of reform.

Anti-corruption policy: The fight against corruption has been a top declarative priority at the heart of Aleksandar Vučić’s charismatic leadership since his party came to power in the 2012 elections. The 2013 Progress Report observed favorably that “anti-corruption policy has been underpinned by a strong 'zero

³¹ 2011 Analytical Report, pp. 17-19, *Interim Report*, (unpublished document), Belgrade 2011, pp. 30-32.

³² Serbia 2012 Progress Report, p. 10, Serbia 2013 Progress Report, pp. 9 and 38.

³³ For the negative effects on the efficiency of the reorganized network of courts and prosecutors' offices see: *PrEUgovor Report on Progress of Serbia in Chapters 23 and 24*, Belgrade May 2014, pp. 23-24, available at: http://www.bezbednost.org/upload/document/preugovor_report_on_progress_of_serbia_in_chapters.pdf.

tolerance' message from the government,” and the 2014 report repeats that “there is a strong political impetus to fight corruption.” Nevertheless, the EC in that report covers a long list of shortcomings. It warns that the national anti-corruption strategy and action plan for 2013-2018 “have yet to mirror the strong political impetus to fight corruption.” The report notes that the Anti-Corruption Agency continues to underperform in areas such as dealing with requests to investigate conflicts of interest and also “needs to carry out in-depth verification of political parties’ financing.” The report observed that “almost half of the relevant authorities did not fulfil their obligation to report to the Anti-Corruption Agency on the implementation of the national strategy.” While it praised the role of the Anti-Corruption Council in exposing and analyzing cases of systemic corruption, it notes that “its recommendations are insufficiently dealt with and followed up by the government.” Concerning the work of the prosecution and law enforcement bodies, the 2014 report remarks that “final convictions remained rare and high-profile cases remained at risk of political interference and “repeated leaks to the media about ongoing investigations, in breach of the assumption of innocence, are an issue of concern.” Consequently, the EC demands that “law enforcement bodies and prosecution need to become more proactive.”³⁴

With this detailed and critical analysis, the reports still only indirectly touch on the *fundamental* question related to the successful development of Serbia's anti-corruption policy. A Serbian civil society coalition that monitors progress on Chapters 23 & 24 reforms, PrEUgovor (Serb. = pre-contract), noted in its 2014 report:

“In the fight against corruption the main focus is on repressive action of the state – arrests... That repressive action is considered as a consequence of ‘political will,’ which according to the law, should not be anyhow relevant for the actions of police and public prosecutors. However, it is obvious that investigation of several cases of abuse of power would not have been initiated if there had not been such political priority.”³⁵

The civil society report further notes that “some corruption cases are investigated by special ‘task forces’ whose relation with the Bureau for Coordination of the Security Agencies remains unclear,” a critique that refers to the semi-formal authority gained by Vučić. In contrast, the EC only once – and briefly – in its 2012 Progress Report states that “specific responsibility in this area [anti-corruption] was entrusted to the [then] First Deputy Prime Minister.”³⁶ In the absence of an independent judiciary and reformed law enforcement, a personalized, partly para-institutional anti-corruption campaign apparently can be considered acceptable in the interest of facilitating revolutionary transitional justice - not unlike the situation with respect to the (failed) 2009 judicial reform. Viewed from such a perspective, the civil society report raises the decisive question:

“Even though investigation of cases where abuse and corruption was suspected in previous years is necessary, **its sustainability is a matter of concern, because of being based in 'political will' and**

³⁴ Serbia 2014 Progress Report, pp. 12 and 42-44, Serbia 2013 Progress Report, pp. 10 and 41-42.

³⁵ PrEUgovor Report on Progress of Serbia in Chapters 23 and 24, Belgrade May 2014, p. 18.

³⁶ Serbia 2012 Progress Report, p. 12.

not on institutional arrangements.”³⁷

Reform of law enforcement agencies is traditionally partially neglected in the EU integration process with the dogmatic argument that “it is not in the *acquis*.” Since the failure of judicial reform is also largely a non-topic for EC Progress Reports, there are legitimate doubts that such a transition to an institutions-based anti-corruption fight will succeed. Thus far, this discussion remains outside the framework of the Progress Reports.

3. Media

In the Progress Reports, the media sector appears twice – “freedom of expression” forms part of Chapter 23 on “Judiciary and fundamental rights;” and under the header “information society and media” progress in alignment with the *acquis* is analyzed (Chapter 10).

In the 2014 Progress Report, a number of impediments to media pluralism and freedom of expression are listed. Many of these predate the SNS-led government and are consistently referenced from year to year. Most important among them is the pervasive role of the state in media ownership and state influence on public and private media through various forms of budget subsidies by state authorities and public companies. This power of the executive is also reflected in the lack of independence of the Republican Broadcasting Agency by way of appointment of its members, threats and attacks against journalists, and a tendency of media to self-censor. Implementation of the media strategy adopted back in 2011 serves as an important reference point in assessing the level of media freedom and alignment with EU legislation and norms.

However, the 2014 Progress Report deviates from its predecessors, merely noting basically little or no progress as it reports both positive changes and negative developments. In an example of the former:

“a package of three laws — the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasting was adopted in August, following an inclusive consultation process with the active participation of media associations during the preparatory phase albeit under urgent procedure. The laws’ adoption represents a significant positive development. Their implementation will be crucial for achieving the goals of the 2011 Serbian media strategy.”

However, the report notes strongly negative developments:

“However, there are concerns about deteriorating conditions for the full exercise of freedom of expression in Serbia... there is a growing trend of self-censorship which, combined with undue influence on editorial policies, and a series of cases of intervention against websites, are detrimental to freedom of the media and adversely affect the development of professional and investigative journalism. In this respect, efforts are expected to identify and prosecute suspects of violations of internet freedoms... *Media campaigns* based on anonymous or leaked sources,

³⁷ *PrEUgovor Report*, p. 18.

detailing investigations, announcing arrests and quoting investigation documents undermine trust in judicial institutions, violate personal data laws and challenge the presumption of innocence...More generally, media owners and top editorial staff should pay more attention to abiding by professional standards, with support from the Press Council.”³⁸

This is an unusually blunt critique, considering the language traditionally used in the Progress Reports. It therefore provoked a strongly negative reaction by Prime Minister Vučić. Yet it is still a half-hearted critique as it makes no reference to the actors that limit freedom of expression and media pluralism or to the political background. As media experts and civil society representatives in Serbia have warned, the media together with the anti-corruption fight form one of the core pillars of Prime Minister Vučić's charismatic leadership. Analysis has confirmed the Prime Minister's omnipresence in the media.³⁹ Media seem to have accepted a kind of tacit non-aggression pact when it comes to reporting on the head of the government. Apart from the direct influence state institutions have in the media sector, a regrouping of advertising agencies after the change in government in 2012 (and not mentioned in either the 2013 or 2014 Progress Reports) reportedly plays a key role in this aspect of media self-censorship. Based on a permanent public spin and the noted (clearly intentional) leakage of information from anti-corruption investigations in which tabloids play a key role, the public image of the invincible, strong leader and determined fighter against corruption is created and maintained.⁴⁰

4. Foreign policy

Foreign policy is contained in Chapter 31 of the accession process that covers the EU's Common Foreign and Security Policy (CFSP). As the *acquis* remains extremely limited in this area, foreign policy traditionally plays a marginal role in accession negotiations, and is also only briefly covered in the Progress Reports. In the case of Serbia, this changed in 2014 with the Russian annexation of Crimea, the resulting tensions between the EU (and US) and Russia, and the introduction of EU sanctions. The Vučić government has tried to navigate between its commitment to EU integration and its avowed traditional ties with Russia and subsequently refused to join the EU in its sanctions. This policy has generated tensions with the EU.

The 2014 Progress Report includes a brief paragraph on these developments:

”Regarding the common foreign and security policy (CFSP), Serbia aligned itself, when invited, with 28 out of 45 EU declarations and Council decisions (62 % alignment compared to 89 % during the reference period of the 2013 Progress Report). Serbia supported the sovereignty and territorial integrity of Ukraine in general terms but was absent at the vote of the UN General Assembly

³⁸ Serbia 2014 Progress Report, p. 45.

³⁹ An analysis of 10 daily papers in Serbia has shown that in 2014 Prime Minister Vučić appeared 877 times on the front pages, of which only 6 were in a negative context. See: “Godina ljubavi,” available at: <https://www.cenzolovka.rs/dokumenti/godina-ljubavi/>.

⁴⁰ Interviews with media experts and journalists, Belgrade November 2014. „Tabloidi – Vučićeva politička batina“, *Radio Slobodna Evropa*, December 12, 2014, available at: <http://www.slobodnaevropa.org/content/most-rse-tabloidi-vuciceva-politicka-batina/26754357.html>.

Resolution on the territorial integrity of Ukraine. Serbia did not align itself, when invited, with Council decisions introducing restrictive measures in the context of Russia's illegal annexation of Crimea and events in eastern Ukraine. The Serbian government gave reassurances that Serbia would not actively seek to take undue advantage of the situation arising from the introduction of the Russian embargo on imports of EU agricultural products in answer to the restrictive measures against Russia."⁴¹

This neutral phrasing obviously aimed to avoid any friction with Belgrade. Thus, the reference to the agricultural products' embargo avoids mentioning that such assurances were only given after the Serbian agricultural minister, during a visit to Moscow in 2014, had indicated the opposite to his Russian counterparts and the European Commission had sent a clear warning to Belgrade.⁴²

Based on the neutral description given, the EC concludes in the report that "the country's alignment with EU declarations and Council decisions in the field of foreign and security policy significantly declined compared to previous years and needs to be improved." This demand is obviously kept very general; it neither clarifies how Serbia should align its foreign policy (presumably by joining EU sanctions against Russia) nor indicates when it is expected to harmonize its policy with that of the EU.

5. Kosovo

The status dispute over Kosovo traditionally formed a key obstacle to Serbia's EU perspective. Yet due to the Union's own disunity over Kosovo – five member states do not recognize Kosovo independence⁴³ -- this was de-emphasized. This changed with the outbreak of violence in summer 2011 in Serb-majority northern Kosovo. During a state visit to Belgrade in August 2011, German Chancellor Angela Merkel turned EU conditionality into a tool to pressure Serbia to normalize relations with Kosovo by at least *de facto* recognizing the independence of Kosovo. German leadership, supported by the UK and the US, led to progress in the technical dialogue between Belgrade and Pristina, for which Serbia was rewarded with candidate status. Following the 2012 election and the assembly of an SNS-led coalition, a high-level political dialogue in 2013 resulted in the so-called April Agreement. Elections in both Serbia and Kosovo in 2014 meant that implementing the Agreement, which already lagged behind the agreed (unrealistic) timeline, slowed to an almost complete standstill.

This dynamic is also reflected in the Progress Reports that since 2013 include a separate chapter on "normalization of relations between Serbia and Kosovo." The report that year spoke of a "landmark agreement." It praised Serbia for having taken "significant steps towards visible and sustainable improvement of relations with Kosovo, which have already led to a number of irreversible changes on the ground." Progress in implementation is listed in detail and in a generally positive tone. In contrast, the 2014 report notes that "Serbia and Kosovo have remained engaged in the EU-facilitated dialogue, but progress has markedly slowed down since March 2014. Early general elections were held in Serbia in

⁴¹ Serbia 2014 Progress Report, p. 61.

⁴² EU opominje: Nesolidarnost može Srbiju skupo koštati," *Radio Slobodna Evropa*, August 21, 2014, available at: <http://www.slobodnaevropa.org/content/eu-opominje-nesolidarnost-moze-srbiju-skupo-kostati/26543287.html>.

⁴³ These are Cyprus, Greece, Romania, Slovakia and Spain.

March and in Kosovo in June,” adding that since March that year only meetings at the technical level took place. Besides declaring progress in certain areas, lack of implementation of dialogue agreements is reported to a greater extent than the year before. For example, the EC notes that the establishment of the Association of Serb Municipalities is pending and that “illegal crossing roads/by-passes, in particular in the north of Kosovo, continue to be regularly used to smuggle substantial amounts of goods. Additional measures need to be taken by Serbia.” In relation to the representation of Kosovo in regional forums, the report mentions a somewhat constructive role of Serbia, but in a slightly more critical tone than the year before insists that “the implementation of the agreement continued to be problematic” – albeit without explaining the origin of the problem and the concrete role Serbia plays. The 2014 report concludes that “new momentum needs to be generated to tackle key outstanding issues and open a new phase in the normalization of relations. Progress in this area remains essential for advancing the European future of both Serbia and Kosovo.”⁴⁴

From these quotes it becomes clear that the EC is trying to limit the negative assessment of the almost complete freeze of the implementation of the April Agreement in 2014 by characterizing it as “slowed down” progress. Neither of the two most recent Progress Reports gave a full account of the performance of the Serbian Government (nor of the Kosovo Government) in the implementation of the Agreement. There is no word about the tactical maneuvers Serbian representatives undertook in the second half of 2013 in the Brussels working groups in line with Belgrade's insistence on the “status neutral” character of the April Agreement. These included attempts to re-open the framework issues which were defined by the Agreement as well as constantly holding up negotiations by insisting they had to check back with the Prime Minister (and frequently his deputy) for approval. Nor is there any mention of the markedly constructive (and tactical) U-turn of Serbian working group members after the summer break in 2014 – and in the run-up to the drafting and publication of the 2014 Progress Report.⁴⁵ Negative effects of the implementation of the April Agreement – like the disappearance of Western-backed, Kosovo-based Serb party SLS and the nearly total control of Belgrade over the Serb political party scene in Kosovo after local and parliamentary elections in 2013/14 – remain unmentioned.

6. Economy

The economy represents the largest portion of each Progress Report. It includes the chapter on economic criteria with its sub-chapters on “existence of a functioning market economy” and “capacity to cope with competitive pressure and market forces within the Union” and also deals with the majority of segments that cover the 35 accession negotiation chapters. This analysis concentrates only on the segments of the Progress Report that deal with the existence of a functioning market economy. Monitoring of the economic criteria since 2014 takes place within the context of the increased role of economic governance in the enlargement process. The closer coordination of fiscal and structural economic policies among EU member states under the so-called European semester has been extended to candidate countries in 2014. This includes the submission of National Economic Reform Programmes in January each year that are then assessed by the EC and followed up by DG ECFIN conclusions and

⁴⁴ Serbia 2013 Progress Report, pp. 5-6, Serbia 2014 Progress Report, pp. 5-6.

⁴⁵ Interviews with EU officials, Belgrade, Pristina, Brussels 2013-14.

guidance.⁴⁶

The reform of the economic system has long been and still represents one of the major – if not the major – reform challenge for Serbia. This system is characterized by a nexus of semi-formal networks between state institutions, the ruling parties, tycoons and the economy. Market economy relations are hampered by formal and informal monopolies, opaque regulations and procedures, prohibitive regulatory burdens, administratively fixed prices, public subsidies to loss-making state-owned companies, high levels of corruption, hidden barriers to investment and the weakness of the rule of law. Tremendous overemployment continues in public administration and the substantial public sector, with jobs often used as political rewards via ingrained patronage networks employing white and blue collar workers who produce little added value. This last segment represents a stable electoral base for ruling parties and is a major destimulating factor for structural reform. After two years of reluctance and delays, and with its hand forced by impending state bankruptcy, in 2014 the SNS-led government finally undertook some initial steps to reduce some of these costs.

This context and the unclear fate of the started reforms as well as the political will behind them is clearly reflected in the 2014 Progress Report. The Commission conclusions to the report assert:

“Serbia has made limited progress towards establishing a functioning market economy. A wide range of structural reforms needs to be implemented so as to cope in the medium-term with the competitive pressures and market forces within the Union... The government has made a serious start on its ambitious programme of economic and structural reforms with the adoption of a first set of important laws on labour, privatisation, and bankruptcy. Significant efforts to reduce government expenditure and implement the adopted structural reforms are required.”⁴⁷

In the report's chapter on market economy, the new 2014 approach to Progress Reports is realized through 1-2 sentence-long conclusions and recommendations (in italics and bolded) at the end of each paragraph that deals with a separate aspect of the economy. Taken together, they deliver a sharp, critical analysis of the economy and economic policy in Serbia:

“commitment to economic reforms exists, but significant efforts are needed to strengthen fiscal consolidation and accelerate the implementation of the announced structural reform measures...”

deep-seated structural problems and a weak economy keep unemployment very high...

despite a series of new measures, fiscal imbalances remain very high. Significant further efforts are required to reduce government expenditure and implement the announced structural reforms in order to restore fiscal sustainability and improve the credibility of the consolidation programme...

the slow process of restructuring of the big state-owned companies is having a negative impact

⁴⁶ On the new approach see: Enlargement Strategy and Main Challenges 2013-14, pp. 5-6.

⁴⁷ Serbia 2014 Progress Report, pp. 3-4.

on public finances and the rest of the economy and needs to be urgently addressed...the state presence in the economy is significant and the privatisation process was revived only in summer 2014. Companies in restructuring remain a heavy drain on the budget and the economy...

legal predictability and enforcement of court decisions remain weak. Significant efforts are needed to strengthen the legal system and ensure even implementation of laws, as a crucial part of the business environment.⁴⁸

These findings are mostly consistent with those of previous reports. They also mostly coincide with the assessments of the IFIs (IMF, World Bank) and domestic economic analysts though some Serbian economists demanded an even stronger critique and wording.⁴⁹ The fact that influential international institutions like the IFIs also directly contribute to the Progress Reports and that the sections on economy are drafted not by the DG NEAR, but DG ECFIN, which is focused on its narrow field of competence, seems to insulate the economy-related parts of the report from the other parts of the Progress Reports, especially those dealing with political criteria, where the wider political picture and respective considerations come into play. It is noteworthy that the assessment of the legal system in the commercial-economic segment contains much clearer and more critical wording than in the Progress Report segments that deal with the rule of law more generally.

7. Energy

The energy sector is covered in the Progress Reports under Chapter 15 of the accession negotiations. Yet this sector falls under a specific regime when it comes to harmonizing legislation with the *acquis*. As a member of the so-called Energy Community, Serbia is already obliged to harmonize its legislation with that of the EU, far in advance of accession and the opening of Chapter 15. The EU's third Energy Package aims at creating market conditions in the energy sector by, *inter alia*, breaking-up existing monopolies.

These obligations are clearly reflected in the 2014 Progress Report:

“On the internal energy market, Serbia has yet to transpose the third Energy Package. Regulated tariffs for households and small commercial customers do not reflect costs. Further efforts are needed to strengthen the independence of the Energy Regulatory Agency (AERS)... The electricity market was liberalised as of January for all consumers connected to the distribution network except households and small commercial customers. In the gas sector... Yugorosgaz-Transport has been

⁴⁸ Serbia 2014 Progress Report, pp. 17-22.

⁴⁹ IMF Country Report No. 15/50, IMF, Washington February 2015, available at: <http://www.imf.org/external/pubs/ft/scr/2015/cr1550.pdf>; International Bank for Reconstruction and Development and International Finance Corporation Country Partnership Progress Report for the Republic of Serbia for the Period FY12-FY15, World Bank, July 30, 2014, available at: http://siteresources.worldbank.org/SERBIAEXTN/Resources/300903-1323362004179/SERBIA_CPS_FINAL_Nov16_2011.pdf; „Ovogodišnji izvještaj EK nije dovoljno oštar,“ *Blic*, October 14, 2014, available at: <http://www.blic.rs/Vesti/Politika/502496/Ovogodisnji-izvestaj-EK-nije-dovoljno-ostar>; interviews with economists and economic analysts, Belgrade November 2014.

legally but not yet operationally unbundled from Yugorosgaz. The state-owned gas company, Srbijagas, has still not been unbundled. The Ministerial Council of the Energy Community condemned Serbia for failure to comply with obligations under the Treaty as a result of this failure.”⁵⁰

The 2014 Progress Report thus contains a clear account and critique of the Serbian government's reluctance to end the practice of setting energy prices and to end monopolies through the separation of energy supply and transmission, as is the case with the joint Russian-Serbian company Yugorosgaz. This already reflects Serbia's dependency on Russian energy supplies. This source of friction with the EU is more visible in the report's reference to the South Stream gas pipeline project:

“The Intergovernmental Agreement (IGA) signed by Serbia and Russia to build the South Stream pipeline is not compatible with the *acquis*. Serbia should not commence work in constructing South Stream until the IGA is aligned with the *acquis*.”⁵¹

This sharpening of terminology follows on the more critical stance the EC took in 2014 on South Stream following Russia's seizure of Crimea and initiation of war in eastern Ukraine. In the 2013 Progress Report, the Commission diplomatically noted that the South Stream project and the IGA “raises concern regarding its compatibility with the Energy Community obligations,” while the 2012 Progress Report refrained from any criticism of South Stream at all.⁵² Nevertheless, even in the 2014 report the EC appears reluctant to criticize the Serbian government, avoiding any mention of an important development in relation to South Stream. During Prime Minister Vučić's state visit to Moscow in July 2014, the two companies involved in the Serbian segment of South Stream, Gazprom and Srbijagas, signed contracts on the construction of the pipeline. Thus, despite then already clearly expressed positions of the EC, the Serbian Government moved towards entering into legally binding contractual relations related to the pipeline project.⁵³

Conclusion and recommendations

Serbia's contradictory policy of a pragmatic approach towards EU membership and an authoritarian concentration of power is reflected in contradictions within the EC Progress Reports. Various techniques are applied to downplay negative developments – such as the quantification of “progress;” soft, diplomatic language; or forms of indirect critique. Some developments are cast negatively after having been previously characterized as positive, without any explanation offered for the turnaround. Negative events and developments are sometimes *completely omitted*. Naming and shaming regarding responsibility for negative developments occurs sometimes with reference to institutions but individuals

⁵⁰ Serbia 2014 Progress Report, pp. 33-34.

⁵¹ *Ibid.*, p. 33.

⁵² Serbia 2013 Progress Report, p. 31, Serbia 2012 Progress Report, p. 42.

⁵³ Kurt Bassuener/Bodo Weber, *The Western Balkans and the Ukraine Crisis – a Changed Game for EU and US Policies?*, DPC Policy Paper, September 2014, pp. 14-15, available at:

<http://democratizationpolicy.org/pdf/briefs/DPC%20Policy%20Paper%20Western%20Balkans%20&%20Ukraine%20Crisis.pdf>.

are almost never named. Perhaps most worrisome is the evident reluctance of the EC to admit the failure of its individual reform efforts, thus avoiding the crucial questions of how to fix them. There are potentially far-reaching consequences for Serbia from the failure of these reforms, as is the case with the 2009-2011 judicial reform fiasco.

The overall extent of distortion occurring in the Progress Reports is hard to assess. The 2014 report deviates from the reality on the ground in Serbia. Many specialized civic actors and analysts have – in the aggregate – cast considerable doubt on the candor of the EC Progress Reports. As has been shown, such deviations vary from section to section and report to report.

Several simple techniques and methodological tools could help to substantially improve the quality and consistency of future EC Progress Reports – and not only for Serbia:

- State things as they are without obfuscating the truth. If no progress has been made in particular areas or if reforms have been rolled back, clearly spell that out.
- End the practice of refraining from citing certain developments or incidents for the sake of avoiding potential conflict with the candidate country's government.
- Identify the actors and institutions which are known to be responsible for negative developments.
- Extend the useful provision of conclusions & recommendations – as were included in the 2014 Progress Report in the chapter on economic criteria – to the entire Progress Report, but in particular to the political criteria section.
- Document the status as well as the success or failure of IPA reform projects in the relevant chapters and paragraphs of the Progress Report.
- Provide a list, as an annex, of contributions (whether oral or written) to the Progress Report from external sources – international institutions, national governments, domestic interest groups, NGOs etc. – for the sake of transparency.

However, even with these and other technical-methodological improvements and the erasure of any elements of euphemism and avoidance in future reports, there is no guarantee that the Progress Reports will serve as a useful tool in helping to secure Serbia's EU integration. In the end, the crucial question is one of political strategies and strategic capacities: Does the increasingly authoritarian Vučić regime have the strategic wisdom, capacity and will to conduct EU-conditioned democratic and market economic reforms within the scope of a process that will necessitate the transformation of its own power base in order to secure the sustainability of reforms? This would mean distancing itself from authoritarian foundations and instilling democratic practices and the rule of law. Does the EU have the political will and the strategic capacities to balance the various priorities – democratic and market reforms, Serbia-Kosovo dialogue, the impact of the geopolitical situation – in a way that propels the Serbian regime towards meeting these strategic challenges, thus becoming acceptable as a future EU member? Those questions, for the time being, remain open.