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TOWARDS AN UNCONDITIONAL
RECOMMENDATION?**

Monitoring the implementation of the
second three months of the 3-6-9 Plan

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HURDLING ON 3, 6 AND 9. TOWARDS AN UNCONDITIONAL RECOMMENDATION?

Monitoring the implementation of the second three months of the 3-6-9 Plan

Zoran Nechev in cooperation with Ivan Nikolovski

Continuous push for reforms and their implementation

Following the publishing of the credible European enlargement perspective for the Western Balkans, the Commissioner for Enlargement and European Neighborhood Policy pointed out the intent of the European Commission to provide a positive assessment for the progress of Macedonia and to reinstate the unconditional recommendation for the start of accession negotiations.¹ Consequently, one of the key objectives of the Macedonian Government was achieved through the enactment and the implementation of the 3-6-9 Plan.

Whether the recommendation is endorsed by the European Council will also depend on the way Macedonia acts internationally, as well as whether certain skeptical member

1 Svetlana Jovanovska, “Han for NOVA: We will extend a clean recommendation to Macedonia,” Nova TV, February 6, 2018, <http://novatv.mk/han-za-nova-ke-i-dademe-chista-preporaka-na-makedonija/>.

states, above all the Netherlands, Germany and France, are convinced that the country has the capacity and the will to implement the enacted reform acts and strategies within the Plan comprehensively and impartially.

The review of the implementation of part 6 of the 3-6-9 Plan, carried out by the Institute for Democracy ‘Societas Civilis’², reveals that out of the total of 31 activities that were foreseen, 16 activities (or 52%) have been implemented, 5 activities (or 16%) have been partially implemented, 6 activities (or 19%) have not been implemented, while 4 activities (or 13%) are unquantifiable. Part 6 spans the period between the local elections and the end of 2017. In comparison to Part 3,³ both, the percentage of activities that were carried out has increased from 41% to 52%, and the percentage of activities that were not carried out has also increased from 14% to 19%. While the percentage of partially implemented activities remains the same, i.e. 16%, we can note a drop in unquantifiable activities from 29% to 13%.

We can observe progress in the Plan in terms of increased quantifiability and predictability. Another breakthrough is the fact that the Government, on this occasion, published the Plan in its entirety, i.e. it published the activities that shall be carried out during the course of the entire 3-6-9 Plan. Yet another positive breakthrough is the prioritization of the priority areas requiring reforms. Unlike in the previous plan, there is focus on reforms in the judiciary, the security and intelligence services, and in the public administration.

2 The methodology used for monitoring of the implementation of the measures is available in the annex to this report.

3 Zoran Nechev and Ivan Nikolovski, “Hurdling on 3, 6 and 9: Monitoring of the implementation of the first three months from the 3-6-9 Plan”, Institute for Democracy Societas Civilis - Skopje, November 2017.

Despite these breakthroughs, the Plan is beset by certain anomalies that were evident in its previous version, as well. Namely, there are activities that, in their essence, represent continuous activities of the institutions or their line competence. They are not and cannot be considered reform activities. An example like this is the activity in the sphere of the Parliament that foresees active support of the multi-party interest groups of MPs. It makes sense that this activity spans a longer period, not a 3-month timeframe, and it is beyond doubt that this is not a reform activity. The same remarks are valid for the activity entitled 'publication and continuous updating of the civic society organisation registry in line with the Law on Associations and Foundations' in the civic society priority area. This activity does not foresee any steps beyond the implementation of the Law, which cannot be considered a reform measure by any stretch of the imagination. Furthermore, until the moment of writing of this report, no outline report (overview of the state of play on the implementation of Plan 3-6-9) on Part 6 was published, which directly influences the transparency of the process and affects how timely the public will receive information about the activities that were carried out within the 3-6-9 Plan.

As regards the percentage of recommendations stemming from the 2015 Priebe report that were addressed and the Urgent Reform Priorities of the European Commission, the activities in Part 6 have the same scope as Part 3. Thus, 8 out of the total of 31 activities planned for this period can be related to these two reports. We find a similar situation in terms of the harmonization of measures in Part 6 to the National programme for the adoption of the EU acquis (NPAA 2016 - 2018 and its annex 2017 - 2020) (NPAA - National Programme for Adoption of the Acquis Communautaire, translator's note). While in the part 3 of the Plan, 8 of the 73 measures (11%) stem from and are harmonized to the NPAA and/or its annex, in part 6 merely 3 out of the 31 measures (10%) are harmonized in this way. A

small, insignificant improvement from 25% to 29% was recorded in terms of addressing the recommendations from the second Priebe report of 2017.

Political context

In this context, it is important to note that the EU delegation has shared a list of priorities with the Macedonian Government that will enable the European Commission to recommend reinstatement of the unconditional recommendation.⁴ The matter at hand is a document that is more concise than the 3-6-9 Plan and comprises activities related to the high-priority areas of the judiciary, the security and intelligence services and the public administration. The deadline for implementing the activities foreseen in this list of priorities virtually overlaps with part 6 of the 3-6-9 Plan. Thus, part of the activities have been incorporated in the plan and, as far as we know, most of these activities have already been implemented. The area on the judiciary covers the topic of drafting the report on the misuse of the ACCMIS system (Automated Court Case Management Information System, translator's note), which was submitted to the authorities. Then the Strategy for judicial reforms was drafted, and the Law on the Judicial Council was amended in order for it to take over the competences of the Council for Determination of the Facts, which was abolished. In this sphere, the enactment of the amendments and supplements to the Law on Witness Protection is delayed. In the sphere of public administration, the Council for Public Administration Reform was established, but there is a delay in the adoption of the Strategy for Public Administration Reform. Finally, in the area

4 360 Degrees, "2018 - Macedonia is important, but the potential success of Macedonia is equally important to Brussels, as well," 360 Degrees, December 26, 2017, https://www.youtube.com/watch?v=_XOIsyc0Rds.

of security and intelligence, somewhat at odds with the Priebe recommendations,⁵ the bundle of laws on reforms in the security and intelligence systems was enacted, that is the legislation regulating the communications interception system.

The largest opposition party boycotted Parliament partially through the period covered by Plan 6. Namely, since they left Parliament on December 12, certain priority legislation has been enacted, including the Law on Abolishment of the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Accountability of a Judge and the Law on Amendments and Supplements to the Law on the Judicial Council of the Republic of Macedonia; as well as the bundle of security and intelligence-related legislation that has either entered parliamentary procedure or that has been passed (the Law on Interception of Communications; the Law on the Operative-technical agency (OTA); the Law on Amendments and Supplements to the Law on Electronic Communications (enacted); Law on Amendments and Supplements to the Law on Criminal Procedure; and Law on Amendments and Supplements to the Law on Classified Information). These circumstances severely curb the democratic capacity of the country and, at the same time, they bring to light the ‘maturity’ of the political actors and demonstrate how well they comprehend this key political issue in the EU integration process.

5 For example, in his first report, Priebe recommends that the telecom operators take custody of the communication interception mediation devices. On the other hand, the bundle of reform legislation that covers security and intelligence, or to be more specific, the draft-law on the Operative-technical Agency (OTA), foresees that the mediation devices are transferred to this new, independent state body. Cf. Experts’ group “Recommendations of the experts’ group on the systemic rule of law issues in relation to communications interception published in spring 2015,” European Commission, June 8, 2015, p. 8.

Continuity of the published plans

Unlike the first version of the Plan, Part 6 was published simultaneously with Part 9⁶ in the so-called 3-6-9+ Plan, which covers the whole duration of the plan from October 2017 until March 2018 and beyond (hence the ‘plus’ in its title). This new format encompasses 59 activities, 31 of which enter the timeframe of part 6, while 26 activities encompass part 9. 2 activities are continuous and are outside the timeframe of the plan.

Thus, in comparison to the previous one, part 6 has fewer activities than part 3, i.e. 31 in the former and 73 in the latter. The reduction of the number of activities can be attributed to the fact that greater focus was placed on essential activities rather than weighing down the plan with so-called unnecessary activities, such as the establishment of working groups. Also, it is interesting to note that part 6 differs from part 3 in terms of the priority areas and the activities it covers. Despite the relative continuity in this sense, we can still observe considerable changes in regards to the priority areas. In certain cases, some activities that had begun in part 3 have been disregarded at the expense of new activities in part 6. Examples of this are the activities in the ‘election’ priority area. Thus, the outcome of the OSCE/ODIHR report remains vague in the part about the (im)balanced media reports of the election process, which was foreseen as a precondition for dismissal of the director of the public broadcast service, or the drafting of the report the State Electoral Commission (SEC) for the complaints lodged during the election process as a foundation for evaluation of the system for lodging complaints. This is especially interesting having in mind that in January there was a public competition announced for the positions of director and deputy director of the MRT

6 Part 9 covers the first three months of 2018, that is, January, February and March.

(Macedonian Radio Television, translator's note), as well as a competition for members of the supervisory board. A similar example is the adoption of the necessary bylaws in line with the OSCE/ODIHR recommendations and the expert of the Venice Commission.

In addition, there are activities, such as the one related to the assessment of the functioning of the ACCMIS system with determined findings regarding possible misuses with recommendations,⁷ which have an outcome that is vague and not revealed completely. Namely, despite the fact that this activity continues from the previous report, it is unclear how the recommendations and the findings of the report, which, parenthetically, is classified for reasons unknown to the public, will be put into practice. The plan does not reveal at all how the competent institutions will follow up on the report findings. This is especially important since it penetrates to the essence of the issue of 'the captured state' and the process of its dismantling. It is thus even more indicative that the Judicial Council, the institution that ensures and guarantees the independence of the judicial government, points out that the report on the misuse of the ACCMIS system does not contain anything 'dramatic' or 'pompous'⁸ while hiding behind the veil of its confidentiality. Thus, another issue that has not been revealed completely is how the findings of this report are related to and how they will reflect the judicial sector reforms as a whole, especially in terms of providing future protection and mechanisms that will be used to protect the judiciary from such misuse.

7 Ministry of Justice, "Address of the Minister of Justice, Bilen Saljiji, at today's press conference on the report on the revision of the IT system performance," Ministry of Justice, December 7, 2017, http://www.pravda.gov.mk/novost_detail.asp?lang=mak&tid=1416.

8 Elena Mukoska-Ivanovska, "In Karadzovski's view, the ACCMIS report contains nothing dramatic," Telma | national TV, February 15, 2018, <http://telma.com.mk/za-karadzovski-nema-nishto-strashno-vo-izveshtajot-za-akmisot/>.

Moreover, the priority area that covers the Ohrid Framework Agreement does not foresee any activities in part 6 and it is presented merely as a declarative effort to further the implementation of the laws that were enacted, which is an introduction to the activity entitled ‘Government adoption of a draft-law on language use, to be submitted for consultation to the Venice Commission’, as foreseen in part 3. Despite the fact that there is obvious continuity in terms of content, this activity is still unquantifiable, especially since it does not contain any activities that would materialize the declarative effort. It is important to note that after the draft-law on language use was enacted by the Government, it was not submitted for consultation to the Venice Commission. Instead, it was submitted to Parliament for further adoption (in a situation when the parliamentary opposition was absent from Parliament). At the same time, the legislation was marked with a European flag. If the Government believed that the law is to be used to harmonize the Macedonian legislation to the European regulations, they should have submitted it to Parliament with all supplementary documents: the statement that the draft-law has been harmonized to the EU acquis and the correspondence table. These documents have not been submitted to Parliament. If the Parliament wishes to carry out its supervisory role exhaustively, it must return it to the Government for additional revision and refuse to review it until all required documents have been submitted.

The cohabitation between the Government and the President of the country does not exist as a priority area any longer. Just one of the activities in plan 3 in this sphere has been transferred to the new plan format and it has the same deadline as part 9 in the sphere entitled ‘appointments’. It has not been elaborated. The cohabitation with the President of the country is of key importance, especially in the forthcoming period, which is not related only to filling the vacant positions in the embassies and consular offices, but also to ironing out the differences related

to the Law on Languages, which was vetoed by the President and returned for re-vote, after which the opposition submitted a plethora of amendments and thus paralyzed the Parliament.

In terms of the continuity related to the priority areas, we can see that certain activities that were part of one priority area in the first plan have been reallocated to another area in the new format. Taking into account the fact that the activities are the same, or very similar, such a reallocation without an appropriate explanation points to the lack of an appropriate classification and vision in regards to the measures and how they can be administered in practice. An example of this is the measure entitled 'material and technical upgrades to the National Coordinative Center for Combating Organized Crime'. The same measure, entitled 'Activating the National Coordinative Center for Combating Organized Crime', in part 3, is foreseen in the area of security and intelligence services' reforms, while in part 6 it appears in the area that covers combating organized crime and corruption.

Prioritisation of measures and their future arrangement

Plan 6 features progress in prioritization, presentation, and phrasing of the priority areas and activities. Namely, in terms of the priority areas encompassed in the plan, they are ordered in a way that very much corresponds to the major reform steps that the country needs to take in order to dismantle the 'state capture', and which stem from and are listed as top priority in Priebe's reports; moreover, they are also among the Urgent Reform Priorities. So, the plan begins with the following areas: 'judiciary', 'reform of the security and intelligence services' and 'public administration reform' - spheres which are of key

importance to the EU. The prioritisation is improved in terms of the activities within the priority areas as well, which are ordered logically and which refer to each other, something that was lacking in the first version. In addition, the measures in part 6 are better phrased and, as a result, it was considerably easier to detect indicators for their assessment. Another improvement is the fact that the new layout of the plan foresees a timeframe for administering the measures. This novelty complements the decision to publish part 6 concurrently with part 9, which in turn renders its implementation considerably more reliable and predictable because of the lucid delineation.

Thus, we can conclude that the Government of the Republic of Macedonia, through the Secretariat for European Affairs, has accepted the positive remarks and the criticism in terms of prioritisation of the areas and measures in the plan that were outlined in the report on part 3. As the deadline for the conclusion of this extraordinary reform plan approaches, the institutions need to start preparing for its restructuring, especially following the announcement for receiving an unconditional recommendation for the start of accession negotiations and the publication of the new Western Balkans Strategy.

A negative remark in terms of the prioritisation of the areas and activities is the fact that the Law on Languages was adopted even though it is on the bottom of the list of priorities in the Plan. Even though the EC and its key officials, such as the Commissioner for Enlargement and European Neighborhood Policy⁹ indicated that this law is not a European priority, the Government still passed it. The President of the country refused to sign the decree for its promulgation, and its enactment caused

9 Sanja Seizova-Mrmova, "Hahn: the Law on the use of Albanian is not an EU priority," Sital TV, November 21, 2017, <http://sital.com.mk/han-zakonot-zapotreba-na-albanskiot-jazik-ne-e-evropski-priortet>.

a fierce reaction by the opposition, which in effect paralyzed the Parliament. This event was counterproductive in a situation where great effort was being invested in achieving a national, political, institutional and societal consensus for resolving the name issue; as well as because of the need to enact laws that require 2/3 majority associated with the EU integration process.

Stakeholder inclusion

The evident improvement in the implementation of activities foreseen in the 3-6-9 Plan has been afflicted by a number of shortcomings, such as: a systemic inclusion of civic organisations in the decision-making process, which in turn resulted in poor transparency, lack of informed public (societal) debate and a failure to reach an essential political consensus when taking the key reform steps.

In terms of the involvement of civil society organisations, we can conclude that the Government has officially continued its practice of consulting stakeholders not only through the ENER internet-platform (Unique National Electronic Register of Regulations, translator's note) but also by means of various types of meetings. Still, there has been no public debate on the essential reforms, like the one on the selection of the model for communications interception realized through the OTA (Operational-Technical Agency, translator's note). Namely, the model was selected by the decision of the Government without any previous fundamental discussion on the selection and justifiability of the model, as well as on the degree of harmonisation with Priebe's reports and with the Urgent Reform Priorities. Upon the initiative of the Ministry of Interior, a debate on this model, as well as the bundle of reform legislation pertaining to security and intelligence, was organized even after

it was selected. The main focus of the debate was, above all, improving the Government proposals in line with this model, but they were not brought into question per se. This was made worse by the fact that the discussion was attended by only a handful of civil society organisations, which again undermined its transparency.¹⁰

Additionally, there is no uniform approach in terms of getting civil society organisations involved in the decision-making process. So, unlike the case of the reforms in the security-intelligence system, where civic organizations were involved in public debate post factum, the public debates on the media reforms were organized in their initial phase, i.e. before the Government adopted any decisions or policies. An example of this phenomenon is the public debates on the potential amendments to the Law on Free Access to Public Information and the Law on Media, which was aimed at consulting stakeholders in order to determine whether any amendments were required. Even though we applaud the fact that the Government got the civil society organisations involved, what is lacking from the onset of the implementation of the plan is a systemic stakeholder inclusion in the monitoring, improving, and promoting the reform plan that would significantly reduce the chances of similar situations in the future. Therefore, it is unclear why the Government does not start including the stakeholders in this way and thus help itself in the process of implementing the Plan and the European agenda. Since the publication of the first report on the monitoring of the implementation of the 3-6-9 Plan, the Institute for Democracy has adhered to the proposal that civil society organisations should get involved in the process by means of regular briefings (at least once a month) that would be hosted by this ad-hoc

10 On the other hand, in the period between October and December 2018, the public was able to get acquainted with the security reforms via a number of public discussions on the reforms in the security-intelligence system organized by civic organizations and high education institutions.

experts' group. This will contribute towards better cooperation and it will bring about better conditions for monitoring and commenting on the reform steps in a timely manner.

Towards a successful fulfillment of the Plan

Finally, in comparison to part 3, we can conclude that there is improvement in part 6 in terms of the way the activities are phrased, but also in terms of the prioritisation and structuring of the priority areas and activities, so as a result there is considerable improvement in the quantifiability of the activities in the plan, but also the plan's reliability and predictability. Another breakthrough is the fact that part 6 has a higher completion rate than part 3 - 52% of the measures have been administered in part 6, while 41% in part 3.

On the other hand, it is still evident that, despite these improvements, the plan still contains activities that are not reform steps, that is, they are line competences of the institutions encompassed by the plan. In addition, what was lacking in the implementation of part 6 was Government transparency as the public was not timely informed about the progress of the implementation of the measures. Furthermore, despite the fact that most of the activities in part 3 continue in part 6, it is still unclear how the continuity of certain spheres (e.g. Elections, Cohabitation with the President, as well as the Ohrid Framework Agreement) and measures (cf. the chapter 'Continuity of the plans that were published') is maintained, since part 6 foresees the relevant areas vaguely or not at all. This was worsened by the fact that during the implementation of some of the activities in part 6 there was no fundamental involvement of civil society organizations (especially in the sphere of security and

intelligence reforms), and part of the key reform laws (above all in the judiciary and the security and intelligence) were enacted or entered parliamentary procedure in a period when the opposition boycotted the work of the Parliament.

Thus, the Government of the Republic of Macedonia and the Secretariat for European Affairs have yet to ascertain that part 9 will boast an even higher completion rate of the measures. In terms of the part 6 shortcomings outlined above, and since part 9 is already published, the Government and the Secretariat must continue working on informing the public about the progress of part 9 in a timely manner and on fundamental involvement of stakeholders in the process of creating and implementing the reforms, in order to have the unconditional recommendation for the start of the EU accession negotiations reinstated.

Annex to the report

The methodology used for monitoring the implementation of the 3-6-9 Plan

The fulfillment of activities is monitored by determining specific indicators and, in certain cases, sub-indicators. Measuring the status of fulfillment of the activities will take place according to the following logic: 1) Implemented; 2) Partially implemented (ongoing); 3. Not implemented; 4) Not measurable/cannot be determined. This method of monitoring stems from the very nature and the way in which the activities in the plan are determined.

Implemented: The activities that are considered as fulfilled indicate that the envisaged activity is fulfilled within the anticipated time frame of 3 months, i.e., with the local elections.

Partially implemented (on-going): Partially fulfilled are those activities whose indicator and sub-indicators are partially fulfilled; only one of the indicators is met (in the case of multiple indicators); or the indicators are met, but not the sub-indicators.

Not implemented: Those activities whose indicators and sub-indicators indicate that the envisaged activity is not fulfilled within the foreseen time-frame will be considered as unfulfilled.

Not measurable/cannot be determined: The activities whose status of fulfillment cannot be determined are those activities for which there is no credible source that they are implemented, that are not implemented, or that they are

partially implemented; activities that need to be reformulated in order to determine indicators; activities that by their nature are responsible for the competence of the competent institution, as well as activities that are not measurable by nature.

When determining the status of fulfillment for each of the activities, there is a source that serves as evidence and supports that its encoding has been done in accordance with the methodological guidelines provided.

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