

The Basis for Negotiations and Conclusion of the Treaty of Accession of the Republic of Serbia to the European Union, with the Proposal of the Conclusion

September 2013

Pursuant to Article 5 of the Law on Conclusion and Implementation of International Treaties (*Official Gazette of RS*, 32/2013) and Article 43 paragraph 3 of the Law on Government (*Official Gazette of RS*, 55/05, 71/05 – corrigendum, 101/07, 65/08, 16/11, 68/12 – CC and 72/12), on the proposal of the Serbian European Integration Office

the Government has adopted

CONCLUSION

1. To establish the basis for negotiations and conclusion of the Treaty of Accession of the Republic of Serbia to the European Union, which make an integral part of this Conclusion;

2. For its implementation, this Conclusion is to be submitted to all ministries, special organisations and agencies of the Government and to the National Assembly and the National Bank of Serbia for information.

05 Number

Belgrade,

Government

Prime Minister,

THE BASIS FOR NEGOTIATIONS AND CONCLUSION OF THE TREATY OF ACCESSION OF THE REPUBLIC OF SERBIA TO THE EUROPEAN UNION

I Constitutional Grounds

The constitutional grounds for the conclusion of the Treaty of Accession of the Republic of Serbia to the European Union are contained in the provisions of Article 97 point 1 of the Constitution of the Republic of Serbia prescribing that the Republic of Serbia shall govern and ensure its international status and relations with other states and international organisations.

II Assessment of Relations between the Republic of Serbia and the European Union

Serbia, as a part of the Federal Republic Yugoslavia, became a part of the Stabilisation and Association Process (SAP) in November 2000. Since 2001 all measures and instruments of this process have become available to it, including the placement of Serbia on the list of states with an option of duty free export of the largest number of products to the EU market within the framework of so-called Autonomous Trade Measures even before the signing of the Stabilisation and Association Agreement.

Nevertheless, the decision on opening of the negotiations for the conclusion of the Stabilisation and Association Agreement (hereinafter referred to as: "the SAA") was only adopted in April 2005, after the acceptance of the principle of *twin-track* for the negotiations with the State Union of Serbia and Montenegro, when the EU accepted separate negotiations with Montenegro and Serbia on trade relations in accordance with the competences of the member republics pursuant to the Constitutional Charter of the State Union of Serbia and Montenegro. The negotiations officially started on 10 October 2005, and the first official round was held on 7 November 2005. In May 2006, the negotiations on the SAA were cancelled based on the decision of the European Commission, to be renewed on 10 June 2007 and successfully completed by initialling of the Stabilisation and Association Agreement on 7 November 2007. The Stabilisation and Association Agreement and the Interim Agreement on Trade and Trade-Related Issues (hereinafter referred to as: "the ITA") were signed on 29 April 2008 at the meeting of the EU General and Foreign Affairs Council in Luxembourg. However, the EU has adopted the decision not to implement the ITA until Serbia reached a satisfactory level of cooperation with the International Criminal Tribunal in the Hague.

On 9 September 2008 the National Assembly of the Republic of Serbia ratified the SAA and the ITA (the Law on Ratification of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one hand, and the Republic of Serbia, of the other and the Law on Ratification of the Interim Trade and Trade-related Issues between the European Community, on one hand, and the Republic of Serbia, on the other (*Official Gazette of RS*, No 83/08). The ITA entered into force on 1 February 2010 after it had been confirmed by the EU institutions in December 2009. The European Union completed the process of ratification of the SAA in July 2013 after it had been ratified by all Member States and confirmed by the Council on behalf of the EU. The SAA entered into force on 1 September 2013. The ITA ceased to be valid the same day.

Intending to accelerate the integration process and show its commitment to the process, as well as to strengthen the scheduled application to be admitted to the membership in the EU, Serbia started implementing the ITA and fulfilling its obligations in accordance with it on 1 January 2009. The EU started applying the ITA on 8 December 2009 after it assessed Serbia had achieved a satisfactory level of cooperation with the International Criminal Tribunal in the Hague. Serbia and the EU entered the fifth year of the implementation of the ITA on 1 January 2013.

The process of the European integration of the Republic of Serbia has been in progress along with the negotiations on this Agreement. In October 2004 the National Assembly adopted the Resolution on Association with the European Union (*Official Gazette of RS*, No 112/04) stressing it was a strategic commitment of Serbia to be a member of the European Union. In June 2005 the

Government adopted the National Strategy of Serbia for the Accession of Serbia and Montenegro to the European Union, as the umbrella document of the entire process of European integration. This Strategy prescribed the activities to be undertaken by the Republic of Serbia until 2012 in all sectors of the society, politics and law, in order to be ready to take over the obligations arising from membership in the European Union, i.e. to conduct the accession negotiations.

Since 2004 the Republic of Serbia has been preparing annual Action Plans for the implementation of the European Partnership. Although with no legal obligations, for the SAA had not been signed yet, in 2004 the Republic of Serbia started the process of harmonisation of its legislation with *acquis communautaire* of the EU adopting the annual Harmonisation Action Plans each year until 2008.

By signing the SAA in 2008, the Republic of Serbia started a new phase of relations with the EU. The relations with the EU are based on the agreements for the first time. By signing the SAA, Serbia undertook an obligation to gradually harmonise the national legislation with what was formerly *acquis communautaire* of the European Communities and now is *acquis communautaire* of the EU, as well as to implement it consistently. Pursuant to Article 72 of the SAA, Serbia undertook an obligation to prepare, in agreement with the European Commission, a special Programme for implementation of obligations from the SAA. The EU has been monitoring harmonisation of legislation and implementation of laws referred to in this Programme. In accordance with Article 72, harmonisation started on the day of signing the SAA, pursuant to the arranged transitional terms.

In order to fulfil the obligations prescribed by the SAA, and establish in a comprehensive and systemic manner a multiannual programme of harmonisation of its legislation with the EU law, also proving that the necessary administrative capacities exist, on 9 October 2008, Serbia adopted the National Programme of Integration of the Republic of Serbia to the EU for the period from 2008 to 2012 (NPI). In the earlier practice of the EU enlargement process it was common that the document concerned had been prepared by the states which have the status of candidate states for membership in the EU, which were preparing themselves for the commencement of the accession negotiations. However, although it did not have the status of a candidate state at the given time, aiming to express its commitment to comply with its treaty obligations and demonstrate actual administrative capacities, Serbia adopted a decision to prepare such a programme. This document prescribed legislative activities within the next 4 years with the aim of further harmonisation with the EU law. The NPI presents the first multiannual programme of harmonisation with the EU law. The implementation of the NPI was at an enviable level of 88% (1030/1172) within the period of 1 July 2008 to 31 December 2012, for out of 1,172 planned activities 1,030 of them were adopted. It was also planned to adopt 243 laws, whereas 201 of them were adopted in fact, which means that the plan has been implemented for the level of 83%.

The integration process continued in parallel with the implementation of the ITA and the NPI. Accordingly, visas were cancelled for Serbian citizens for their travels to the states of the Schengen Treaty on 30 November 2009. Serbia officially submitted an application for the admission to the membership in the EU on 22 December 2009. The submission of the application for admission to the membership in the EU represents a clear message of the intention and willingness of the Republic of Serbia to meet all political, economic, institutional and legal criteria for the membership of the EU. On 14 June 2010 the EU Council of Ministers of Foreign Affairs adopted the decision on the commencement of ratification of the SAA with Serbia, which meant an approval to the European Commission for starting the procedure of assessment of the Serbian application for the membership of the EU. On 25 November 2011 Serbia received the EC Questionnaire containing 2,563 questions based on which the EC made its assessment of the possibilities to admit Serbia to the EU. Serbia submitted its answers within 45 working days, i.e. on 31 January 2011.

Based on the answers to the Questionnaire submitted by Serbia, on 12 October 2011 the EC published the Opinion on the application of Serbia for admission to the membership (so-called *avis*) and recommended that Serbia was to be granted the status of a candidate state and that the accession negotiations were to be opened including a list of conditions related to the issue of Kosovo and Metohija. Based on the Opinion of the EC and the progress of the dialogue with the interim

institutions in Priština, on 1 March 2012 the European Council adopted a conclusion to grant the status of a candidate state to the Republic of Serbia. Thus, Serbia was officially granted the status of a candidate state for the membership in the EU.

In the annual Progress Report on Serbia, which was published in 2012, the European Commission reiterated the criteria for opening the accession negotiations mentioned in the Opinion from 2011 and confirmed it was going to present the Report as soon as it has assessed that Serbia has achieved an adequate level of fulfilment of the membership criteria and, in particular, the key priority within the meaning of concrete steps towards visible and sustainable improvement of relations with Kosovo.

On 13–14 December 2012 the European Council welcomed and accepted the conclusions of the Council of 11 December on enlargement and the stabilisation and association process, by which the European Commission and the High Representative were invited to present the report in the course of spring of 2013, based on it would be decided on the commencement of the negotiations concerning the accession of Serbia to the EU.

Under the circumstances of expected opening of the accession negotiations, a series of comprehensive internal reforms and intensive preparations for the opening of the accession negotiations have been undertaken. On 28 February 2013 the Government of the Republic of Serbia adopted a new multiannual programme of harmonisation of national legislation with the EU *acquis communautaire*, under the title of the *National Programme for the Adoption of the Acquis – NPAA – 2013-2016*. The NPAA includes plans for implementation of priorities contained in the SAA, the ITA, as well as of the Annual Report by the European Commission on Progress of the Republic of Serbia in the process of European integration in 2012 and the Analytical Report monitoring the Opinion of the European Commission about the application of the Republic of Serbia for membership in the European Union, as well as the measures necessary for the implementation of the abovementioned priorities.

It will be implemented from 1 March 2013 to 31 December 2016. The document contains a detailed overview of priorities for 2013 in regard to the harmonisation of legislation, as well as **a projection of the NPAA implementation in the following 3 years**, proceeding from the fact that the plan would be worked out for each year of the implementation of the document concerned and made concrete during the annual review of the NPAA, taking into account the achieved progress in the process of the accession negotiations.

The process of ratification of the Stabilisation and Association Agreement between the European Communities and their member states, on one hand, and the Republic of Serbia, on the other, ended on 18 June 2013, when it was ratified by Lithuania, and by the European Parliament and 26 member states of the EU before it. The SAA shall enter into force on 1 September 2013 after the Council of the European Union informed Serbia on the completion of the Agreement verification process, in accordance with the Article 138 of the Agreement, by which Serbia received the status of a state associated to the European Union. After the SAA enters into force, Serbia has been planning to use its mechanisms to the greatest possible extent in preparations for the membership in the EU. In this way the framework of the SAA will be complementary to the fulfilment of obligations undertaken during the accession negotiations.

On 28 June 2013 the European Council welcomed and accepted the conclusions of the Council of 25 June on enlargement and the stabilisation process and adopted the decision on opening of the accession negotiations with Serbia, inviting the European Commission to make the negotiating framework for conducting the negotiations on accession of the Republic of Serbia to the European Union and scheduling the first intergovernmental conference for January 2014 at the latest.

III Reasons for Conclusion of the Treaty of Accession of the Republic of Serbia to the European Union

The membership in the European Union represents a strategic goal of the Republic of Serbia, which follows from the strong dedication to core ideas, achievements and values of the European Union.

The Republic of Serbia has based its decision to submit an application for admission to the membership on several essential postulates. The first and primary postulate implies sincere dedication of Serbia to fully participate in half century long tendencies of European peoples to build the Europe of peace, justice, freedom, solidarity and security. Like other member states of the Union, the Republic of Serbia strives to build a society in which the most significant values are pluralism, tolerance, solidarity and prevention of discrimination.

The national and cultural identity of Serbia is part of the common cultural pattern of the EU rooted in the slogan of *united in diversity*. At the same time, Serbia belongs to the heritage of the common European values reflected in the core democratic principles. As a state striving to become a member of the European Union, Serbia fully encourages the culture of respect for the diversities, solidarity, equality, and partnerships among states and pledges for preservation of cultural identity, language and tradition among nations.

By meeting the requirements necessary for the membership in the EU, Serbia wishes to contribute to building a functional, sustainable and efficient system of the EU. In this sense the accession process gives a strong stimulus to the completion of political and economic reforms in Serbia. Bearing in mind that the internal market is the cornerstone of the European Union, Serbia shall continue to harmonise its legislation with the EU *acquis communautaire*, in order to eliminate all obstacles to free movement of people, goods, services and capital.

At the same time, the admission of the Republic of Serbia to the membership in the European Union would contribute to the stability of the region and rounding up of the peace and security zone in Europe. Serbia has been developing good relations with the neighbouring countries on both the bilateral grounds and participation in multilateral regional initiatives, remaining firmly committed to the peaceful solution of all open issues based on dialogue, mutual understanding, respect for European values and principles of international law.

Simultaneously, with the aim to comply with European standards in the area of justice, freedom and security, Serbia has been making efforts to suppress organised crime, trade in narcotics, illegal immigrations and illegal employment.

From the economic aspect the reasons for accession to the European Union are also reflected in the interrelatedness of economies of the Republic of Serbia and the European Union. The European Union is the most significant foreign trade partner of Serbia with which it has been making 60% of foreign trade exchange and in which it has achieved 61% of its export.¹ The EU is also the largest investment partner of the Republic of Serbia. From 2001 to 2013 it invested about 19 billion Euros of direct foreign investments in Serbia. Out of this amount about 60% are investments from countries of the European Union, which confirms a high level of economic links between Serbia and the EU². Within the last two years almost 90% of total foreign investments came from the EU.

The membership in the European Union would create an environment for faster and more stable development, it would contribute to macroeconomic stability and a higher investment inflow, enabling an increase in the living standard and social security of citizens and encouraging the development of competitive economy founded on knowledge. The admission to the membership in the European Union would also have positive effects on credit rating of Serbia.

Within the accession process, one of the most important objectives of the economic policy of the Republic of Serbia has been, *inter alia*, strengthening competitiveness of the Serbian economy in order to improve its capacity to withstand the pressure from competition and market forces in the

¹Source: The Ministry of Foreign and Internal Trade and Telecommunications and the Statistical Office of the Republic of Serbia, June 2013.

² Source: The National Bank of Serbia, 2012

European Union. In this respect the outcome of the negotiations should provide conditions for a stable financial and microeconomic environment, competitive market economy, strengthened industrial and agricultural sectors, as well as educated and adjustable labour force.

IV Basic issues to be negotiated, essential elements to be included in the Treaty and proposal of attitudes of the Delegation of the Republic of Serbia in respect to the above issues

Serbia entirely complies with the fact that the EU *acquis communautaire* in force represents the basis for the negotiations and at the same time undertakes the rights and obligations arising from EU *acquis communautaire* expressing its intention to establish adequate conditions to take over all obligations and gain the rights, including the effective application of *acquis communautaire* of the EU.

Accepting all the rights and obligations the EU is based on and the institutional framework it is made of has been the condition for admission to the membership of the EU. *Acquis communautaire* of the EU (primary legislation- founding treaties, secondary legislation - regulations, directives, decisions, recommendations and opinions), other acts (resolutions, statements, guidelines, common actions, etc.) and other sources of law (i.e. the principles defined in rulings of the EU Court of Justice, general legal principles, and international treaties) are classified into 35 negotiating chapters. Since the negotiations shall not be carried out in the very sense of this expression, namely the essence of *acquis communautaire* of the EU shall not be negotiated, it must be underlined that the candidate state accepts *acquis communautaire* of the EU in the existing form making adjustments in accordance with the legal, economic and social system of the EU, whereas the conditions and modalities of accession of the candidate state to the system concerned shall be negotiated.

Within the framework of the negotiations certain areas will be of exceptional importance taking into account the scope of legislation of the EU as well as specifics of the existing national legislation. **Transitional terms or exemptions from the implementation** will be requested during the negotiations for those areas in which, at the time of accession to the European Union, there will be no sufficient level of readiness for their full harmonisation and implementation. The above mentioned transitional terms or exemptions from application will be limited in respect of duration and scope and followed by a plan including precisely defined steps for their complete application, as well as allocated funds necessary to achieve full application of *acquis communautaire* of the EU.

The transitional periods represent additional time periods for full harmonisation of national legislation with the EU *acquis communautaire* in a certain area even after the accession to the European Union. The required transitional periods must be limited in respect of time and content and must not impair the free market or affect the activities of the internal market of the Union. Transitional periods for the application of *acquis communautaire* may also be agreed upon in the interest of the European Union, as for example: transitional periods for free movement of workers who are citizens of a new member state within the period of a few years after its admission to the membership (the principle of 2+3+2 years).

The issues to be negotiated have been classified into 35 negotiating chapters:

1. FREE MOVEMENT OF GOODS
2. FREEDOM OF MOVEMENT FOR WORKERS
3. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES
4. FREE MOVEMENT OF CAPITAL
5. PUBLIC PROCUREMENT
6. COMPANY LAW
7. INTELLECTUAL PROPERTY LAW
8. COMPETITION POLICY
9. FINANCIAL SERVICES
10. INFORMATION SOCIETY AND MEDIA
11. AGRICULTURE AND RURAL DEVELOPMENT

12. FOOD SAFETY, VETERINARY AND PHYTOSANITARY POLICY
13. FISHERIES
14. TRANSPORT POLICY
15. ENERGY
16. TAXATION
17. ECONOMIC AND MONETARY POLICY
18. STATISTICS
19. SOCIAL POLICY AND EMPLOYMENT
20. ENTERPRISE AND INDUSTRIAL POLICY
21. TRANS-EUROPEAN NETWORKS
22. REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS
23. JUDICIARY AND FUNDAMENTAL RIGHTS
24. JUSTICE, FREEDOM AND SECURITY
25. SCIENCE AND RESEARCH
26. EDUCATION AND CULTURE
27. ENVIRONMENT
28. CONSUMER AND HEALTH PROTECTION
29. CUSTOMS UNION
30. EXTERNAL RELATIONS
31. FOREIGN, SECURITY AND DEFENSE POLICY
32. FINANCIAL CONTROL
33. FINANCIAL AND BUDGETARY PROVISIONS
34. INSTITUTIONS
35. OTHER ISSUES

The time period for the negotiations shall to a great extent depend on the time period in which the candidate state will be ready to fully comply with the obligations arising from the membership in the EU. The mentioned time period will also depend on the readiness of the European Union to accept the new member state. Possible transitional periods will be defined depending on the time period in which the candidate state will be internally ready to comply with the obligations arising from the membership. In the Opinion of the European Commission it is noted that Serbia achieved considerable progress in respect of fulfilling the political criteria related to the stability of institutions guaranteeing democracy, rule of law, human rights and respect and protection of rights of minorities as well as in respect of the conditions of Stabilisation and Association Process, assessing that its constitutional, legislative and institutional frameworks are generally harmonised with the European and international standards. The Commission assessed that Serbia would be in a position to take over the obligations arising from the membership within a medium term (i.e. within the period of 5 years) in almost all areas of *acquis communautaire* of the European Union, if the process of harmonisation is to be continued along with further efforts directed towards ensuring the implementation of the legislation.

The Republic of Serbia will have to set a target date when it will be internally ready, according to its own assessment, to transpose the major part of *acquis communautaire* of the European Union and its implementation and application. Possible requirements for transitional periods for the transposition of certain parts of *acquis communautaire* of the EU and its implementation will be set in relation to date set in such a manner, which will also be the subject to the negotiations.

The process of the negotiations concerning the accession of the Republic of Serbia to the European Union will be the subject of regular public debates, whereas economy and civil society will have a special role, thus making the process of the European integration the common ownership of all citizens. After signing, the Accession Treaty must undergo the process of ratification by member states while in the state accessing the EU a referendum on the membership may be arranged in accordance with the national constitutional and legal solutions when citizens could adopt a final decision on the accession to the EU, although there were examples of states that did not hold referendums on the membership in the EU (Bulgaria, Romania, Cyprus.)

Phases of Negotiating Process

After the political decision by the European Council that a candidate state may start the negotiations regarding its entry to the EU, the EU shall adopt the negotiating framework. It is a document of the EU prescribing principles, essence and procedures for the negotiations. The first intergovernmental conference shall be summoned on the basis of this document, which represents a formal commencement of the negotiations. At this meeting both the EU and a candidate state shall present their expectations regarding the forthcoming negotiations. The negotiations will be formally held in the form of meetings of the above mentioned intergovernmental conference, whereas as a rule, at least one meeting at the ministerial level shall be held semi-annually and one meeting at the level of deputies (the Head of the Negotiating Team). The frequency of such meetings may be adjusted to the dynamics of actual negotiating needs.

After the formal opening of the negotiations, the phase of analytical review of legislation shall begin (i.e. **screening**), which represents the phase of check-up and assessment of the scope of harmonisation of legislation of the candidate state with the EU *acquis communautaire*. The screening process shall be performed for each negotiating chapter. As in case of Montenegro, Serbia shall start the negotiations by screening of the chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), even before the first meeting of the intergovernmental conference.

In the first phase of the screening process the European Commission shall present *acquis communautaire* of the EU classified into negotiating chapters (*explanatory screening*). In the next phase (*bilateral screening*) the candidate state shall present its legislation, give its assessments of harmonisation of its regulations with *acquis communautaire* of the EU, as well as the plans how to achieve full harmonisation. The length of screening meetings for certain chapters shall be different and last from at least one day to a whole week for a certain phase in some chapters. **The entire screening process shall last for about year and a half.**

The objective of the screening is to identify differences between the regulations of the candidate state and *acquis communautaire* of the EU. The screening shall serve to both the European Union and the candidate state as grounds for the establishment of time period necessary to harmonise the national legislation with the EU *acquis communautaire*. The screening is also a good base for the candidate state to develop negotiating positions, especially in cases it is necessary to define transitional terms for harmonisation and implementation of a certain number of regulations of the EU, while for the European Commission it is an indicator of readiness of the candidate state to open certain negotiating chapters.

After the performance of the screening the European Commission shall prepare **the report on screening** for each negotiating chapter. The documents and the information provided by the candidate state shall be used to prepare this report both during the very screening and after it.. The report shall contain an assessment by the European Commission of the achieved level of harmonisation of the legal system of the candidate state with *acquis communautaire* of the EU and the level of implementation, as well as an assessment to which extent the plans for future harmonisation are realistic.

The document called *Outcome of Screening* shall be adopted based on the Council's report in which the EU assessed whether the candidate state achieved a sufficient level of harmonisation with the EU *acquis communautaire*, so that the negotiations on some concrete chapter may start. In case the EU assessed the candidate state has not yet achieved the required level, it will determine opening benchmarks, which the candidate state should meet as a prerequisite for opening of the negotiations on the chapter concerned. The criteria for opening of the negotiations in respect of some chapters may have different forms, such as the requirements to adopt strategies and action plans, requirements to fulfil contractual obligations with the EU, primarily the implementation of the Stabilisation and Association Agreement, and the requirements to adopt laws and by-laws. The opening of the negotiations about a chapter for which opening benchmarks were established may only commence after the adoption of the Council's decision that the candidate state met these benchmarks.

If the Council reached an agreement that the candidate state achieved a satisfactory level of harmonisation with the EU *acquis communautaire* for a certain chapter, the Council will invite the candidate state to propose the negotiating position for the chapter concerned.

At the negotiating position for a certain chapter the candidate state shall present the achieved level of harmonisation with the EU *acquis communautaire*, the programme of remaining harmonisation, and an overview of existing and future administrative capacities for implementation. In addition, at the negotiating position the candidate state shall also define the requirements in respect of transitional terms, or exemptions in those segments where it finds that, due to justified reasons, it would not be able to fully transpose the legal system of the EU to the national framework at the time of foreseen accession to the EU. In the course of the negotiations the candidate state may submit to the EU a supplement or an amendment to negotiating positions.

Based on the negotiating position of the candidate state for a certain chapter, the Council shall adopt the European Union common position in reply to the position of the candidate state. In this document the EU may note that the candidate state reached a sufficient level of harmonisation with the EU *acquis communautaire* in the chapter concerned as well as that further negotiations in respect of the chapter concerned would not be necessary. In such a case the chapter shall be temporarily closed. In the majority of cases the EU shall note that the level of harmonisation is not at the level making it possible to temporarily close the chapter concerned and define the criteria the candidate state must meet before closing a chapter (*closing benchmarks*). In certain significant chapters, especially in chapters 23 and 24, interim benchmarks will be determined in this phase and only after they have been met the closing benchmarks will be defined. In addition, as a rule, by this document the EU will require from the candidate state the additional information and analyses, especially in the areas where transitional periods or exemptions are requested.

The negotiating process, which in essence means the process of harmonisation between the two parties, shall be performed in communication between competent institutions of the EU and the candidate state, while the negotiations about certain chapters shall be formally opened and temporarily closed at the meetings of the intergovernmental conference. Closing of all the chapters temporarily is an important principle of the negotiations, meaning “*nothing has been agreed upon until all has been agreed upon*”.

The negotiations shall end after the candidate state and the EU reach an agreement in respect of all 35 chapters and after it is confirmed by the European Council, which is also an act of formal completion of the negotiations. Before that time, there is always a possibility to open some chapter again in case the candidate state shall not fulfil undertaken obligations, which is continually supervised by the European Commission. The date of accession of the candidate state to the EU will be also determined before the very end of the negotiations because it is necessary, *inter alia*, to close those chapters during the negotiations which have financial implications.

In the course of the negotiations the European Commission shall report to the Council on meeting the criteria for the membership and on fulfilment of undertaken obligations of the candidate state according to the negotiating chapters, and it shall also prepare regular annual reports on the progress of the candidate state in the accession process. The European Parliament shall be also regularly informed about the progress of the negotiations.

Since the compliance with the political criteria is what is monitored during the entire accession process, in case that the severe violations of the rule of law and of democratic principles are to be found in the candidate state, as well as the violations of human rights and freedoms, under the proposal of the European Commission or under the proposal of one third of member states, the Council may decide to temporarily terminate the negotiations and define the conditions for their continuation.

The Treaty of Accession to the European Union shall be prepared upon the formal completion of the negotiations. After its signing, which is about half a year following the formal completion of the negotiations, the ratification process shall start both in the candidate state and in all member states. The ratification process shall last from one year and a half to 2 years. The European Parliament shall also approve the accession of the candidate state.

V Assessment of financial resources required for the implementation of the Treaty and method of their provision

The accession of the candidate state to the EU has considerable financial implications, which may be basically divided into indirect and direct ones.

The first group includes all those implications arising from the better preparation of the state to face competitive pressures on the European market and on the world market, too. As a rule, experiences of previous enlargements of the EU indicate that the countries, which had joined the EU, became more interesting for foreign investments already in the course of the accession process, that their *country risk* index decreased and that the conditions of borrowing were better having a positive impact on the rate of their economic growth.

The second group of financial implications of the accession of the candidate state to the EU is of direct character, and they may be roughly classified into two sub-groups. The first one consists of expenses of adjustment of the candidate state to the EU *acquis communautaire* and is focused on the period before the accession to the EU. It is about all investments necessary to be made in order to make the state and the economic sector more capable to take over the obligations arising from the membership, namely in order to make it capable to fully apply the EU *acquis communautaire*, within the terms agreed upon in the Treaty of Accession to the EU. In this context, considerable expenses may be expected in the areas such as the environment, agriculture, infrastructure, border control, as well as with the regard of building administrative capacities. It should be borne in mind that it is almost impossible to draw a clear line between transition expenses of the economy and the state and the costs of adjustment to the standards of the EU. Precise assessments may only be possible upon the completion of screening process and development of negotiating positions for certain chapters. Nevertheless, the experiences of some countries indicate that it is possible to assess costs related to adjustment to the EU *acquis communautaire* to be at the level of over 1% of GDP in the years before entering the EU.

This sub-group should also contain the costs necessary for the very conduct of the negotiation process. In the sense of quantity, these are relatively low costs compared with the costs of adjustment to the EU *acquis communautaire* and they imply, *inter alia*, the costs of activities of the Negotiating Team and negotiation groups (remunerations to members of the Negotiating Team, expenses of business trips, costs of translations of documentation), the costs of preparation of the National Version of *acquis communautaire* of the European Union and the costs of strengthening the Permanent Mission of the Republic of Serbia to the European Union and the European Integration Office.

The second sub-group of direct financial implications of the accession of the candidate state to the EU results from the financial flows between the EU budget and the concrete state.

In the pre-accession phase it is explicitly about inflows from the EU budget in the form of pre-accession aid, which is used both for the support to the process of transposition of *acquis communautaire* of the EU and for the preparation of the country to use the funds of the EU cohesion policy and common agricultural policy after the accession of the state to the EU.

After the admission to the membership of the EU, the new member state will start paying financial resources into the EU budget, meaning that financial flows between the EU budget and the member state begin reflecting both to the income and expenditure sides of its budget.

Concerning payments into the EU budget, the new member state shall pay them according to the rules prescribed by the EU *acquis communautaire* (based on VAT, based on gross national income (GNI) and on the account of correction for the Great Britain) as well as to allocate certain funds for contributions to the capital and reserves of the European Investment Bank (EIB). Also, after the admission to the membership in the EU the income from customs duties (traditionally the EU's own income) shall become a direct source of the EU budget (the member state shall keep a smaller portion of the funds, about 10%, from the administrative costs). In accordance with the experiences of the states that became the member states of the EU in 2004, it is expected that the Republic of Serbia will be paying about 1% of its GDP into the EU budget.

On the side of inflow of funds from the EU budget to the budget of the Member State, the income from cohesion policy is the most significant one, followed by the income from the common agricultural policy (these two policies only include as much as about 80% of the total expenditures of the EU budget). The funds from both the above mentioned sources are shared among member states on the basis of *state envelopes*, namely based on allocations negotiated in the course of the negotiations on the multiannual financial framework of the EU. To use a major portion of funds from these two sources- applicable for the funds of cohesion policy and the funds of rural development- co-financing with national funds is necessary, which produces additional financial implications for the budget of the member state. Depending on the area, projects may be financed up to 75-85% at maximum from the EU funds, while the rest of funds shall be provided from the budget of the member state, namely from other project users. (In accordance with the experiences up to now, it is expected that the state shall co-finance 35% of the resources from structural funds and funds for rural development on average and about 25% of resources from the Cohesion Fund). It is estimated that the new member states (Enlargement 2004) allocated on average 0.3% of GDP to co-finance projects. According to the reasoning of *state envelopes*, namely allocations, the resources from some internal policies and financial compensations on which the Member State has the right within the first two or three years of its membership in the EU are also shared.

The member state may withdraw funds from the EU budget based on its participation in common policies of the European Union. **Transfers from the budget may be distributed to transfers not related to projects and their amounts automatically become income of the budget of the member state and to transfers depending on projects, so that their inflow shall depend on absorption capacities of the Member State, namely on its capabilities to prepare and implement projects.**

Direct budgetary assistance, allocations for agriculture and transfers based on internal policies belong to the first group. EU programmes, transfers from structural funds, the Cohesion Fund and funds for rural development belong to the second group.

Regarding the transfers related to (development) projects, they shall imply the EU financial contribution to the implementation of EU common policies in various areas (traffic, environment, energy, research and development, employment, education, etc.) and shall be subject to the strict rules of management, financing and to time limitations, i.e. to the periods until which the funds must be utilised. The rules of financing shall imply that projects are co-financed from the EU budget in the amount of up to 85% of their value, while the remaining amount is financed from the state budget. Likewise, the rules of financing require that before the payment from the EU budget is effected the state must pre-finance project activities and after it is confirmed that the activities have been carried out in accordance with the rules of management the payment from the EU budget will be effected. There is no doubt that such a system of financing shall produce additional financial implications for the budget of the member state.

In case of some common policies of the EU a Member State may also withdraw funds from the EU budget based on funds received from tenders issued by the European Commission. Funds for research and development are an example of the distribution of funds based on *bid quality*.

The experiences of states that became member states of the EU in 2004 indicate that the foreseen net financial position, namely the difference between the scope of funds allocated to a certain state and the scope of prescribed payments by the state concerned into the EU budget was considerably positive in all cases. As for the real net financial position, i.e. the difference between actually withdrawn funds from the EU budget and the payments into this budget, it largely depended on absorption capacities of the state, namely on its capacity to prepare projects, provide national co-financing and on efficiency of national structures to use funds.³ As a rule, the new member states had

³“The experience in the implementation of the current budget of the EU indicates that many Member States have been encountering difficulties in absorption of considerable financial resources that must be used within a limited time period. Delays in preparation of projects, contracting and payments are key obstacles not to use the resources. In addition, fiscal policies in many Member States aggravated allocations from the national budgets to finance those projects. In order to improve absorption capacities, in the proposal of the budget for the period

positive real net financial positions in relation to the EU budget, which means they had withdrawn from the budget of the EU more funds than they had paid into it. The positive average real net financial position within the period from 2005 to 2009 amounted to 0.41% of GDP in Slovenia and to even 3.15% in Lithuania.

Although, as a rule, the new member states are net recipients of the funds from the EU budget as a whole, the process of accession to the EU has a negative net financial result for the budgets of the member states in an average annual amount between 1% and 1.5% of GDP, while the highest pressure on the budget is expected within the first years of the membership.

Based on the experience of the member states and the current budget, certain conclusions may be drawn:

- In respect of GDP, net grantors pay from 0.09% (Ireland) to 0.53% (Denmark), while net recipients get from 0.04% (Spain) to 5.33% (Lithuania). It is expected that Serbia will be a net recipient after the accession;
- In certain member states of the EU the limitation of allocations for cohesion policy within the period from 2014 to 2020 in the amount of 2.5% of gross national income will have impact on the decrease of allocations for the states concerned compared with the budget for the period of 2007 to 2013;
- Transfers intended for projects shall depend on absorption capacities of the member state, namely on its capacity to prepare and implement projects and if the funds are not used within a fixed time period, they are to be returned to the EU budget;
- Although, as a rule, new member states are net recipients of funds from the EU budget as a whole, the accession process to the EU has a negative financial result for the budgets of the member states, and the greatest pressure on the budget is expected within the first years of the membership;
- Budget planning, namely availability of financial resources shall effect the fulfilment of certain criteria during the negotiations, thus also effecting possible transitional periods in certain chapters.

VI Draft Treaty and Other Matters Concerning the Negotiations

After all negotiating chapters are temporarily closed the European Council shall decide on the completion of the negotiations and proceed with the final drawing up the Treaty of Accession⁴, which represents an international treaty between the member states of the European Union, on the one hand and the candidate state, on the other. The representatives of the Member States and institutions of the European Union shall participate in the preparation of the text of the draft Treaty of Accession, on one hand (within the Working Group of the Council for Preparation of the Treaty of Accession) and representatives of the candidate state, on the other. The Treaty of Accession shall contain all issues agreed during the negotiations.

Before the Treaty of Accession is signed, the European Commission shall issue an Opinion on the membership and the completion of the negotiations, which must be approved by the European Parliament, and the Council shall unanimously decide on the acceptance of a new candidate state.

After signing, the Treaty of Accession must undergo the ratification process in Member States, and in the state acceding to the EU a referendum on the membership may be arranged in accordance with the national constitutional and legal solutions, although there were examples of states that did not hold referendums on the membership in the EU (Bulgaria, Romania, Cyprus). It is common practice to

from 2014 to 2020 the EC stated: allocations for cohesion policy should be at the level of 2.5% of gross national income; co-financing by the EU should be increased in certain cases from 5 to 10%; precise conditions should be defined concerning improvement of administrative capacities^{3c}, Multiannual Financial Framework 2014-2020, the European Commission.

⁴ According to the experience gained up to now, the drawing up the Treaty of Accession shall start within the period from year and a half to 2 years before the completion of the accession negotiations.

set a date on which the state shall become a member, provided the ratification process would have been completed by then.

The Structure of the Treaty of Accession of the Republic of Serbia to the European Union

The Treaty of Accession to the European Union between member states of the European Union and a candidate state shall consist of the following:

- The Treaty of Accession of the country to the European Union;
- The act on the conditions of state accession to the European Union and harmonisation with the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty Establishing the European Atomic Energy Community;
- Final act.

The act on the conditions of state accession to the European Union and adjustments to the founding treaties represents an essential element of the Treaty and it shall consist of several parts - principles, adjustments of the treaties, permanent provisions, temporary provisions (containing the provisions on transitional terms), provisions concerning the application of the mentioned acts, as well as annexes and protocols.

VII Proposal of the Delegation and a Tentative Assessment of Costs for the Activities of the Delegation

By a specific act the Government shall appoint the members of each individual delegation taking part at the meetings of the intergovernmental conference on accession of the Republic of Serbia to the European Union, as well as at the meetings within the framework of screening.

By the specific act on establishment of the Negotiating Team for negotiations on the accession of the Republic of Serbia to the European Union the Government prescribed that the Negotiating Team was in charge of conducting the negotiations related to all chapters and in all phases of the negotiations.

By the specific act the Government shall appoint the members of the delegation of the Republic of Serbia for each meeting of the intergovernmental conference on the accession of the Republic of Serbia to the European Union.

The jobs of the secretary and the deputy secretary of the intergovernmental conference on the accession of the Republic of Serbia to the European Union shall be performed by the representatives of the Permanent Mission of the Republic of Serbia to the European Union. The secretary and the deputy secretary of the intergovernmental conference on the accession of the Republic of Serbia to the European Union shall be appointed in consultations with the Head of the Negotiating Team.

At the screening meetings (explanatory and bilateral), the delegation of the Republic of Serbia shall be headed by the president of the negotiation group. In addition to the president of the negotiation group, the delegation shall also include the deputy president of the negotiation group, the secretary of the negotiation group, the members of the Negotiating Team to be appointed by the Head of the Negotiating Team, the representatives of the Office, the representatives of the Mission, the representatives of competent bodies of the state administration and agencies of the Government, as well as the representatives of other competent bodies and organisations. A representative of the Permanent Mission of the Republic of Serbia to the European Union shall also be a member of the delegation, performing the jobs of the secretary of the delegation of the Republic of Serbia at the meetings of the intergovernmental conference.