

DEFOCUSING the FOCUS

“Ticking the boxes”
or democratisation via the June/July Agreement?



European
Policy
Institute.
Skopje

February 2016, Skopje

Publisher:

European Policy Institute – Skopje

For the Publisher:

Dr Malinka Ristevska Jordanova

Authors:

Dr. Malinka Ristevska Jordanova

Dr. Simonida Kacarska

Aleksandar Jovanoski. M.A.

Ardita Abazi Imeri, LL.M

Leposava Ognjanoska

Design: Gaia Design

Only electronic version available

The implementation of the June/July Agreement (Przhino Agreement) is in a critical phase.¹

On 18th of January, the Assembly accepted the resignation of the former Prime Minister Gruevski and appointed a new Government. This step is certainly welcome as a crucial part of the implementation of the Przhino Agreement. However, the resignation was tied to the Decision of the Assembly for its dissolution - with delayed application (on the 24th of February), contrary to the parliamentary practice until now. The official position² of the main opposition party is that it would not participate on the upcoming elections if the date is not modified to consider the serious delay in the implementation of the required reforms.

The systematic monitoring of Network 23³ of the implementation of the Przhino Agreement led to a conclusion that the Agreement is being implemented slowly and selectively, with significant delays, in a strongly polarized political climate. The principles and aims of the Agreement are neglected; focus is on hasty preparation of early parliamentary elections on the fixed date of the Agreement. Furthermore, Urgent reform priorities are essentially not implemented.⁴

Opposition to the implementation of the Agreement is strong. In his speech delivered on 24 January 2016, the former Prime Minister directly attacked personalities carrying crucial roles in the implementation of the Przhino agreement, especially the Special Public Prosecutor and the EU mediator.⁵

¹ The Przhino Agreement, or the June/July Agreement, is an agreement signed by the leaders of the four primary Macedonian political parties for resolving the political crisis with international assistance. *The EC 2015 Report describes the crisis in the following wording: This year the Republic of Macedonia has faced its worst political crisis since 2001. The divisive political culture, lack of compromise and breakdown in dialogue took the form of a continuing and protracted political crisis, including a boycott of parliament by the main opposition party³ and further erosion of trust in public institutions. The crisis deepened further with the publication of intercepted conversations including senior government and governing party officials suggesting breaches of fundamental rights, interference with judicial independence, media freedom and elections, and politicisation and corruption in various fields.*

² <http://www.sdsm.org.mk/default.aspx?mld=55&agld=6&articleId=13469>

³ Network 23 is a network of 11 Macedonian civil society organisations, which monitor, evaluate and research issues related to chapter 23 of EU accession; Judiciary and fundamental rights. More info on www.merc.org.mk

⁴ The policy memos of Network 23 on the implementation of the Urgent reform priorities *Implementation of Urgent Reform Priorities slower than the restoration of anti-reformist practices* and the implementation of the Political Agreement from June/July *A Word is a Word: How is the Przhino Agreement Implemented?*, as well as the monitoring briefs are available at: <http://www.epi.org.mk/newsDetail.php?nwsid=89>.

Visualised data on the on the implementation of the Urgent reform priorities, daily updated, is available at: <http://www.merc.org.mk/en/status-on-the-implementation-of-the-urgent-reform-priorities>.

Visualised data and timeline of the implementation of the June/July agreement, daily updated, is available at: <http://www.merc.org.mk/en/level-of-realization-of-the-june-july-political-agreement>.

⁵ Unofficial translation of the speech is available at:

https://www.dropbox.com/sh/f0by3yua5bb2z9w/AAB7f5ZrV88MBqAa_MiovcVla?dl=0

NARROWING DOWN THE FOCUS

The key issue that has been imposed on the agenda is whether credible, free and fair early parliamentary elections are feasible on 24 April 2016, as provided in the Agreement.

The ambassadors of the US and the EU, Baily and Orav, on 29 January 2016 communicated a letter to the newly appointed Prime Minister Emil Dimitriev setting benchmarks, as basis for the assessment to be issued by the EU and US, on whether conditions are in place to hold credible elections.⁶

In this brief we are taking stock of the level of implementation of each benchmark, based on our monitoring. The cut-off date is 17 February 2016. We note that last-minute fixes are possible, as has been the pattern in the implementation of the Agreement, so far. However, these last minute fixes would only demonstrate the level of hastiness and improvisation in a process that is of crucial importance for the citizens of the country.

Elections

In line with the Political agreement, the composition of the State Electoral Committee had to be revised and modified. This was implemented on 15 December 2015, with a *delay of 135 days*. With the amendments to the Electoral Code on 9 November 2015, SEC was given enhanced powers to ensure free and fair elections and a level playing field for all political parties and stronger oversight powers. This activity was implemented with a *delay of 40 days*.

The State Electoral Commission (SEC) must be fully staffed and funded.

Recently relevant national institutions expressed support to SEC in terms of staffing and funding.⁷ However, practical implementation is lacking. On 26th of January, SEC published an open call for employment of ten staff members.⁸ Staff (planned for the IT and the legal sector) has not yet been recruited, as the procedures under applicable laws are complex.⁹ Even if these procedures are finalized soon, it is highly problematic how this recently recruited staff can deal with the complex responsibilities of SEC regarding the voters list according to the Law and new methodologies. The only strengthening of capacity so far are experts hired to support SEC (5) hired with assistance of foreign projects. The funds available now in the SEC budget may only be spent from the day of elections; arrangements have not yet been made for availability of funds for the implementation of the adopted methodologies.

Regarding the voters' registry, it must have completed an initial cross check of all relevant database to afford a good picture of how extensive the clean-up process, including the field checks, will be.

⁶ Available at: goo.gl/5x1bKz

⁷ Press release, Ministry of Finance, <http://www.finance.gov.mk/mk/node/5560>

⁸ Open call is available on http://www.sec.mk/images/oglas1_2016.png. In terms of the deadline for selection, open call refers to Article 23 (2) of the Labor Law, which envisages that minimum period is 45 days after the expiration of deadline for submitting applications.

⁹ In addition, the lack of approval of the Methodology for equitable representation prevented these procedures. According to some sources, the Methodology has recently been approved, but it has not been officially published yet.

The Methodologies for cleaning up the voters list were adopted on 3 February 2016, **with 52 days delay**, thus infringing the relevant provision of the Electoral Code.¹⁰ The SEC published an open call for companies/individuals to perform the cross check with an incredible term of three days to submit applications (5 February 2016),¹¹ following which 5 tenderers were selected. On 12 February 2016 SEC received the required databases, but additional time was needed to provide them in the needed format. There is no information that cross-checks have even started. Initial results of the cross-checks are lacking; consequently at the moment there is no picture of how extensive the clean-up process will be.

It must have a credible program in place, with sufficient time and resources, for investigating and adjudicating the anomalies found during the cross-checks.

So far no such program has been published. In the two remaining days (set as final term in the ambassadors' letter) it is impossible to finalise the cross-check, to comprehensively analyse its results and establish measures to investigate and adjudicate the anomalies.

According to the adopted methodologies, the State Election Commission should publish the Electoral list 10 days following the decision to hold early elections (which would be 6 March). Until then the field checks, (although provided only for certain records, not the whole electoral list) should be finished. The methodologies include precise procedures for field surveys, a public campaign and other actions. This is an impossible endeavor in the remaining three and a half weeks until 6 March, if the date of 24 April is kept.

A clear legal framework must be in place for the timely removal of names that do not belong on the voters' register, and mechanisms established as appropriate for flagging names that cannot be removed but which require extra scrutiny. There must be a robust and fair mechanism for dealing with complaints from the voters' register clean-up process, with the OSCE invited to monitor the procedures.

No legal framework has been established so far. No staff has yet been recruited, although the procedure is on-going.

In conclusion, the benchmarks related to elections have not been implemented. There is absolutely no evidence presented that registers' list will be updated on time for credible elections to be held on 24 April. On the contrary, the whole process has turned into hasty implementation of the methodologies, following party bargaining, resulting in an operation of pure ticking the boxes. This is contrary to the aim of the Przhino Agreement and undermines the credibility of the elections.

¹⁰ According to Article 80 of the Electoral Code, the methodologies were to be adopted in 30 days following entering into force of the Code.

¹¹ <http://www.sec.mk/files/javen-povik-za-izbor-na-IT-kompanii.pdf>

Media

*The term for agreement on reforms on media freedom was end of August. The agreement has still not been reached. **The delay is 169 days.***

Despite the backsliding determined in the EC Report in relation to freedom of expression and the media¹², this topic arrived last on the agenda of the inter-party negotiations. Due to the deadlock in the media negotiations the international mediator Peter Vanhoutte in December 2015 presented a proposal strongly supported by the EU and the US that still underpins partly the discussions on this issue. The SDUM, as was reported by the media supported this proposal.¹³ VMRO-DPMNE did not support the proposal, expressing nevertheless readiness to accept a law of any EU member state.¹⁴

Television broadcasters must demonstrate compliance with the legal requirement under Article 61 of the Law on Audio and Audio-Visual Services to provide “objective and unbiased presentation of events, with equal treatment of diverse views and opinions”, and with other laws requiring fair access to the media

Expert monitoring of the media has shown that the five pro-government oriented TV channels (MTV1, MTV2, Sitel, Kanal 5 and Alfa) in their current-affairs shows "tend to propagate primarily the positions of the ruling political structures, yet either provide no space for the positions and opinions of the Opposition or utterly attack and demonise them"¹⁵. Moreover, the public broadcaster "continuously serves the ruling structures just like some of the commercial television broadcasters". This has been confirmed by two monthly rounds of media monitoring in the course of December and January.

There was only one change noted in the reporting of biggest national broadcasters, Sitel and Kanal5. Namely, unlike in the previous several years (up to 8), they invited representatives of the opposition to interviews in their top news. Although obviously meant and planned to improve the image of these media outlets primarily before foreign audience, these steps did not present a genuine change in the editorial policy, rather a confirmation of state control over them¹⁶. In this respect, the interview by the Editor-in-Chief of Sitel TV, was an example of biased approach.¹⁷ During the interview, the Sitel's Editor-in-Chief showed listings of intercepted viber and mobile phone communications, which was meant to assure the viewers that interception of communications was still ongoing. These interviews illustrated the depth of the problem in relation to media representation and dispelled the illusion of a short term fix.

¹² [Overshadowed Recommendation: Analysis of the European Commission 2014 Progress Report on the Republic of Macedonia, available at: http://epi.org.mk/docs/Overshadowed%20recommendation%20-%20commentary%20PR%202014%20en.pdf](http://epi.org.mk/docs/Overshadowed%20recommendation%20-%20commentary%20PR%202014%20en.pdf)

¹³ Negotiations on media today, 2 February 2016, Vest <http://www.vest.mk/?ItemID=F4345EA3949DDD4DB5E08D6147C8E926>

¹⁴ <http://vmro-dpmne.org.mk/?p=29354>

¹⁵ Second Media Monitoring Report, Institute of Communication studies, February 2016 http://respublica.edu.mk/modem/19-29-januari/Second-Monthly-report-MODEM_mk_opt.pdf

¹⁶ The chief editor of Kanal5 in her interview with the leader of the opposition, Zoran Zaev, noted that she was ordered to make an

¹⁷ interview with him. Available at: <https://youtu.be/F0kTmXz0e34>

Interview of Zoran Zaev for TV Sitel, 10 February 2016 <https://youtu.be/Y9XHmqizqBI>

The latest development in this respect is a step back towards invoking the Electoral Law that according to VMRO DPMNE regulates all aspects of the media representation in relation to the administering the elections.¹⁸ On the other hand, for the SDUM, the media reforms are a sine qua non for the holding of the elections.¹⁹

On a similar note, one must not forget that the media (including the journalists, their associations and owners) are key stakeholders that have their legitimate requests that need to be streamlined in this process.

These benchmarks have not been implemented at all. Even if certain legal amendments would be agreed soon, their enforcement would be impossible in the given time-frame.

Separation of state and party

Measures must be taken to ensure sufficient separation between State and political party activities and to sanction abuses.

The new Prime Minister Emil Dimitriev appointed upon proposal by VMRO-DPMNE on 18 January, in his programme statement before Parliament clearly stated that in addition to ensuring fair elections, the Government will continue to implement projects from the Government programme²⁰. This is explicitly contrary to the June/July agreement, which states that “its government program shall be limited to the organisation of the early parliamentary elections”. In practice, the implementation of the political program of the VMRO-DPMNE and DUI Government remains a priority.

Senior public officials must make clear statements and issue written instructions that no pressure on public employees will be tolerated as and that no employee or citizen should fear for their employment of social services as a result of supporting or not supporting any political party or candidate.

Until now, there is no evidence that such instructions have been issued. However, even if issued, these instructions would not prevail over political messages by party leaders, as was the speech of the former Prime Minister, delivered on 24 January.

Furthermore, our recent research, including a survey confirms that the prevailing attitude of the public sector employees is that the party membership comes before the merit system²¹. They call for departmentisation of the institutions. Party employment arises as the biggest problem; a trend of employment without prior evaluation of the need and profile of employees is observed. The employees call for full implementation of the merit system observing the principles of competence and integrity.²²

¹⁸ VMRO – DPMNE Press Conference 1 February 2016, available at: <http://vmro-dpmne.org.mk/?p=29354>

¹⁹ Press release by SDUM 1 December 2015, available at: <http://sdsd.org.mk/News.aspx?idNews=88&lng=1>

²⁰ Verbatim report from the 88 plenary session of the Assembly, 18 January 2015. Available at <http://sobranie.mk/sessiondetails.nspx?sessionDetailsId=5f7f6f8c-c29e-4ec9-b951-c0d4f58b259d>

²¹ EPI “Equitable ethnic representation in state administration” – Analysis of the findings of the survey with 400 administrative servants and interviews with servants in managerial positions from the central and local government, June- December 2015

²² The employees in the public sector call for establishment of mechanisms to overcome the political manipulation of laws, especially the part concerning the recruitment procedure, consistent implementation of the methodology for planning of employments which according to them should improve the transparency of employment procedures of administrative workers.

Credible allegations of pressure and intimidation must be quickly and thoroughly investigated and (when appropriate) prosecuted by the relevant authorities.

On 12th of February, the Special Public Prosecution (SPP) informed the public of its first case of opened investigation, which is involving crimes related to elections.²³ The SPP demanded detention for a Former Minister of Interior, Former Minister of Transport and Communications, Secretary-General of the Government, and 5 more persons. However, the judge of pre-trial procedure ruled against the proposal of the SPP, which is contrary to the practice so far.²⁴ While civil society has consistently advocated and would welcome a new (definitely more restrictive) approach to detention, concerns over selective justice following the abovementioned decisions are even stronger.²⁵

The obstructions to the work of the Special Public Prosecutor intensified. So far, 19 criminal charges were initiated against members of Janeva's team for *Mistreatment in performing a duty* – a type of case that has never before been experienced in the country.²⁶ Furthermore, the Council for Public Prosecutors has repeatedly requested reports and explanations from the SPP, while the President of the Judicial Council of the Republic of Macedonia reacted to SPP announcement that administrative courts judges were under investigation, qualifying it as “pressure over judges”.²⁷

The benchmarks on separation of state and party have not been implemented. On the contrary, there are indications of further prevailing control of party over the state institutions.

²³ Criminal Association under Article 394 of the Criminal Code; Violation of the voting right (Article 159); Violation of the voter's freedom of choice (Article 160); Bribery at elections and voting (Article 162); Destruction of electoral material (Article 164) and Abuse of election campaign funds (Article 165-a).

²⁴ In the last publically available report of the Public Prosecutor's Office, it is stated that detention was demanded for 278 cases, the court approved prison detention in 275 cases and house detention in the remaining three cases. Available at: <http://tinyurl.com/hduvyk5>

²⁵ Until the finalisation of this brief, the Criminal Council of the Criminal Court Skopje has not yet pronounced its decision upon the SPP's complaint to the decisions not to pronounce detention.

²⁶ Press conference of the Special Public Prosecutor 12 February 2016

Recently opened investigation by the Special Public Prosecution due to reasonable doubt for crimes against the elections, is allegedly

²⁷ involving five judges from this Court for Misuse of official position and authorization under Article 353 of the Criminal Code. Statement by the President of Judicial Council available at: <http://www.mia.mk/mk/Inside/RenderSingleNews/288/133032190>

CONCLUSIONS AND RECOMMENDATIONS

- **The “intermediary benchmarks” for holding early parliamentary elections have not been implemented.**
 - There is no credible evidence that the voters' list will be cleaned-up on time.
 - Media reforms have not even started. On the contrary, state control over media is prevailing.
 - There is no evidence to demonstrate that the process of separation of state and party is taking place. Obstructions to the implementation of the Agreement, especially to the actions of the Special Public Prosecutor indicate quite the contrary.

- **The process of assessment of the implementation of the June/July agreement has turned into an operation of ticking selected boxes. Providing positive assessment on the preparedness for elections at this point would not only legitimise the obstructions of the Agreement, but also instigate internal conflict and divisions on all lines. The current focus on the date of elections is contrary to the principles and aims of the June/July Agreement.**

- **The evaluation of the implementation of the Przhino agreement has to be carried out comprehensively, taking into account its principles and aims.**

- **Civil society should be systematically included in addressing the crisis, as well as in the process of evaluation of the implementation of the Agreement.**

- **The addressing of the Macedonian crisis should be re-focused to its roots, diagnosed in the Priebe report and recommended in the Urgent reform priorities:**
 - Freedom of media,
 - Independence of the judiciary and fight against high level corruption,
 - Functional judicial and parliamentary control of interception of communications,
 - Independent, control and regulatory bodies,
 - Depoliticisation of public administration.

- **If the Przhino Agreement is to be saved**
 - The Government of the transitional period should work effectively and solely on the organization of free and fair elections.
 - Further obstructions to the implementation of the Agreement should be prevented/sanctioned.