

# EU POLICY HUB MONITOR

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## FORWARD

HUB Monitor is one of the four pillars of the EU Policy Hub activities and its scope is to closely monitor EU integration process and the institutions involved, focusing primarily on inter-institutional coordination among domestic governmental institutional bodies and their legal documents and reports. The HUB Monitor issue briefs draws empirical evidence from legal documents and regular reports issued by the relevant institutions and the monitoring indicators abide by methodological guidelines which include but are not limited to the enacted regulatory and/or legislative acts; the activities performed (no. of meetings, action plans, reports, strategies to address EC Report shortcomings, etc.); the evolution stage of draft instruments; and the institutional and public scrutiny over results achieved.

Currently, EU Policy Hub members in cooperation with other experts and the support of the Friedrich-Ebert-Stiftung and the Open Society Foundation Albania, have prepared a series of issue briefs discussing not only the institutional aspects of the process but also different policy sectors; presenting the current shortcomings but also providing recommendations to address the improvement of the structures and the legal acts.

In this Hub Monitor Issue we focus on the Instrument for Pre-accession Assistance and in some policy sectors. The first policy brief provides a critical assessment to the programming and implementation of IPA I funds in Albania, identifying key achievements, challenges and potential discrepancies

experienced during its implementation. The second policy brief focuses on the justice reforms and the changing role of the executive. It portrays the shifts of competence toward the new judicial governance bodies, its expected role towards them and the challenges of inter-institutional cooperation, comparing it with similar regional practices in Serbia and in Montenegro. The third policy brief focuses on the environmental policy sector and the challenges that Albania is facing in the implementation of the acquis for nature and biodiversity conservation providing recommendations in order to avoid every potential drawback to the country's EU integration process. The fourth policy brief analyzes the legal and institutional framework of food safety and its challenges to alignment with EU acquis. We conclude this series of policy briefs, with an overall assessment of Albania's progress toward EU membership, both in terms of institutional relations and the degree of fulfilling the European standards, arguing that Albania's progress towards EU accession is not only lagging but also limited, mainly due to the country's political polarization and its low administrative capacity.

You are kindly invited to read this Hub Monitor Issue Briefs for more detailed information and the concrete recommendations we propose for each specific issue. We hope that you will enjoy reading it and provide us with feedbacks for future Hub Monitor Issue Briefs.

**Hub Monitor Team**

# LESSONS LEARNED FROM IPA I INTERVENTIONS IN ALBANIA

## INTRODUCTION

This policy brief aims to provide a critical assessment to the programming and implementation of IPA I funds in Albania, identifying key achievements, challenges and potential discrepancies experienced during the implementation of IPA programmes in Albania. Also, it will assess the preparation level of Albania's public administration in managing IPA funds, analysing the central and local administration absorption capacity, and provide for feasible alternatives to its enhancement, including here the involvement of the CSOs in the process of programming and implementation of IPA funds.

In this regard, the Albanian administration should go in line with the recommendations of the European Commission evaluators and adapt these recommendations to the specific conditions and structures in place gradually, by developing a standard approach to the preparation of sector strategies including content, scope and time period (with indicative budget and action plan), practicing the consultation process and quality control, to provide a coherent and comprehensive perspective of national priorities that can be used as a basis for IPA programming.

## BACKGROUND

Between 2007 and 2013, EU provided financial assistance to Albania under the Instrument for Pre-Accession Assistance (IPA), which includes five components: (i) transition assistance and institution building (TAIB), (ii) cross-border cooperation, (iii) regional development, (iv) human resource, and (v) regional development. Under the status of the Potential Candidate Country, Albania has benefited from IPA components I and II, with a total allocation of approximately 594 million EUR.

As a result of IPA programming under IPA TAIB component, the Albanian Government has signed the respective Financing Agreements per each programming year with the European Commission (EC), opening the way for implementation of **101 national projects** (see table 1), addressing the political and economic criteria, European standards and regional cooperation.

IPA I support was intended to anticipate and prepare the Potential Candidate and Candidate Countries in the Western Balkans and Turkey for the ultimate management of Structural and Cohesion funds, once they become Member States. It has been provided in the bases of the coherence with the EU policies and in support to the alignment of the EU acquis.

In case of Albania, TAIB projects were selected in line with the priorities identified in the Multi-Annual Indicative Planning Document (MIPD) and other EU and Albanian strategic documents, after the analysis performed by the European Commission in consultation with the Albanian authorities. Elements such as the urgency and sequencing of assistance required, the

support for the priorities identified in strategic documents, the opportunity to build on projects from previous programmes, and the level of preparation and ownership of the proposed projects are considered during the selection of the projects. Eleven forms of pre-accession assistance are used under this component as shown in table 2.

**Table 1: IPA national projects for the period 2007-2013 and indicative total allocations**

IPA I programming year	No. of IPA projects	IPA allocation in EUR Mln	National and others allocations in EUR Mln (co-financing)	Total allocation in Mln EUR
2007	7	49.27 (34 Mln on infrastructure)	1.5	50.77
2008	24	60.92 (26.5 Mln on infrastructure)	6.2	67.17
2009	16	69.8 (37.1 Mln on infrastructure)	80.1	149.9
2010	10	83.20 (68.2 Mln on infrastructure)	129.3	212.51
2011	9	82.00 (60.5 Mln on infrastructure)	97.1	179.15
2012	16	81.64 (37.2 Mln on infrastructure)	15.2	96.84
2013 (centralized)	12	64.23 (22 Mln on infrastructure)	39.4	103.64
2013 (decentralized)	7	17.8 (7Mln on infrastructure)	6.9	24.7
Total	101	508.86	375.7	884.56

Source: Albania - financial assistance under IPA II, European Commission

**Table 2: IPA Component 1 (TAIB) - Forms of assistance**

Forms of assistance	Potential candidate countries	Candidate countries
Twining/twining light	√	√
TAIEX	√	√
Technical assistance	√	√
Investment in Acquis	√	√
Grant schemes	√	√
Project preparation facility	√	√
Finance facilities in cooperation with International Financial Institutions	√	√
Financial contribution for the participation in the community programmes and agencies	√	√
Assistance in form of budgetary support (in exceptional circumstances)	√	√
Technical assistance facility for the reinforcement of the administrative capacity of the public administration and services	√	√
Assistance to cover the costs of Community's contribution to international missions, initiatives or organisations active in the interest of the beneficiary countries	√	√
Support in economic and social cohesion, regional, human resources and rural development (IPA III, IV and V) in forms of investment support and grant schemes		√

Source: IPA Programming Guide Vol. I

In Albania the implementation of IPA I funds, with the exception of IPA 2013 programme, was managed in a centralised mode by the Delegation of the European Union (EUD), which means that the procedures for tendering, contracting and implementation of the projects were monitored and controlled by EUD/EC structures. While the Albanian line ministries and central institutions (beneficiary institutions), IPA National Coordinator and Prime Minister's Office were involved mainly in the programming phase of IPA TAIB, by prioritising the projects and drafting the project proposals in cooperation with the EU Delegation task managers. For IPA 2013 programme, it was decided that part of the projects will be managed in a decentralised mode, giving the possibility to Albanian institutions to manage the implementation of 7 projects, selected out of 19 projects in total under this Programme.

IPA funds, as the previous EU assistance such as CARDS and PHARE programme, were provided to the countries involved in the Stabilisation and Association process in the form of grants, which includes mainly technical assistance and infrastructure projects. At the beginning of the process, the Albanian administration was not prepared to programme by themselves IPA funds, and it is logical that it is required support for raising capacities of the beneficiary institution staff in line ministries. At the time IPA 2007 started programming, the Albanian administration was facing different challenges in terms of implementing EU rules and requests. It was necessary to require technical assistance in

order to prepare project fiches, to create the necessary linkage between line ministries and central institutions, and raise awareness on the importance of ownership of IPA management of funds.

IPA I funds were provided on the bases of institutional needs/priorities, which were included in the strategic documents, such as MIPD and [National Strategy for Development and Integration 2007-2013](#). The programming process usually was very long, at about one year and a half, from the identification of priorities until the approval of the Financing Agreement by the Council of Ministers, and NIPAC (National IPA Coordinator) signature, which opened the way for further procedures of implementation of the projects.

Under IPA TAIB and CBC components, EU funds have addressed the Albanian priorities with the horizontal and other supporting programmes, such as IPA Multi Beneficiary Programmes, including the instrument called [Western Balkans Investment Framework](#) and the support for the participation of Albania in the Community Programmes, for the timeframe 2007-2013. All these instruments supported Albania to reinforce regional cooperation and/or to tackle needs or problems of a cross-border nature.

For the period 2007 – 2013, under IPA Multibeneficiary programmes, Albania together with other potential and candidate countries, benefited from 106 projects, supporting EU integration, regional cooperation, statistics, civil emergencies, culture heritage, etc., and the beneficiary was the central administration of the

countries in the region and Turkey. This kind of instrument was totally managed by the European Commission, and the involvement of the beneficiaries was very low.

### SUCCESSFUL PROJECTS

EU assistance has provided tangible support for the socio-economic development of Albania, in line with the national priorities. From the analytical point of view, investments in the infrastructure are tangible and visible in terms of benefits for the Albanian citizens and their sustainability. IPA funds supported big projects in the field of transport, environment, agriculture, justice system, rural roads, etc. Also many interventions of IPA funds addressed the

skills of the labour force to market expectations and increasing competitiveness of small and medium enterprises.

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For example, the construction of a new road connecting Hani i Hotit with Tamara, or the completion of restoration works at the historical urban centres of Elbasan, Shkodra, Berat e Korca, had a real and immediate effect in improving the lives of people affected by their implementation. Also, 14 water supply installations or constructing 2 important by-passes, the Vlora and Rogozhina ones, and the port of Shengjin have improved the country potential and the direct effect on the economy.

The projects under IPA 2013 programme are still in the implementation phase.

**Table 3: A list of some successful projects of IPA I – Projects in infrastructure**

Programing year	Title of the Project	Total amount Mln EUR (IPA contribution)	Beneficiary institutions	Overall Positive Evaluation (ROM Missions)	Why successful?
IPA 2007	PAMECA III	5,5	Albanian State Police, Ministry of Interior and the Prosecution authorities	Impact (PPF report)	Government priority; Ownership
IPA 2007	Support to the Penitentiary Infrastructure	10	Ministry of Justice of the Republic of Albania	Effectiveness	Government priority
IPA 2007	Improvement of Water Supply and Sewerage (located in Shkoder, Lezhe, Durres and Kavaja)	24	General Directorate of Water Supply and Sewerage	Impact in the community where there are constructed the sewages	Government priority
IPA 2008	Reconstruction of the secondary and local roads.	8	Albanian Development Fund	Impact in the connection of rural areas	Government and regional priority
IPA 2008	Construction of new VET schools, rehabilitation of VET schools	7	Ministry of Education and Science	Efficiency in the Implementation of activities	Government priority
IPA 2009	Support to Sustainable and Integrated Development of Cultural and Historical Heritage – Phase II	5	Ministry of Tourism, Culture, Youth and Sports	Environmental impact	Regional priority

Source: Albania - financial assistance under IPA II, European Commission

Table 4: A list of some successful projects of IPA I – Projects in technical assistance

Programing year	Title of the Project		Total amount Mln Euros	Beneficiary institutions	Overall Positive Evaluation (ROM Missions)	Why successful?
IPA 2008	Strengthening of national metrology infrastructure and achievement of international recognition		3	General Directorate of Metrology (DPM) in the Ministry of Economy, Trade and Energy	Impact in the internal market and free movement of goods standards	Part of Albanian Government priorities
IPA 2008	Support for the Albanian Competition Authority and State Aid Department		1.5	Albanian Competition Authority (ACA) and the State Aid Department (within the Ministry of Economy, Trade and Energy)	Impact	Government priority
IPA 2008	Support to Civil Service Reform		1	Department of Public Administration, Ministry of Interior	Impact	Government priority
IPA 2009	Support to Anti-Money Laundering and Financial Crime Investigations Structures		1.5	General Prosecution Office	Impact in the justice system	Government priority
IPA 2009	Population and Housing Census, Albania 2011		8	INSTAT	Census realized	Producing data on the population and housing Government priority
IPA 2009	Consolidation of the food safety system in Albania		3.5	Ministry of Agriculture, Food and Consumer Protection	Impact on the Legislation	Government priority
IPA 2009	Project Facility	Preparation	1	Ministry of Integration and Line Ministries	Impact in the administration performance as regards IPA programming	Many civil servants trained Priority of the Government due to need for increasing the capacities of the Albanian civil servants facing EU integration challenges

Source: Albania - financial assistance under IPA II, European Commission



## LESSONS LEARNED FROM IPA I INTERVENTIONS

The experience with the so far management of IPA assistance in Albania, as well as findings of evaluations conducted by DG Enlargement and the reports produced by the technical assistance projects, such as PPF ([Project Preparation Facility](#)), highlight that planning, programming and implementation of IPA assistance need to face many challenges/problems and consider the lessons learned from them.

For the 2007-2009 annual programmes (targeted by the above mentioned reports), the main causes of the problems during programming and implementation of IPA projects are mainly: (i) lack of financial resources in beneficiary institutions; (ii) failure to meet project pre-conditions in relation to premises and staff; (iii) poor capacity to prepare technical documentation (technical specifications, etc.); (iv) restructuring of beneficiary institutions; (v) lack of cooperation between line ministries and central institutions, etc. In this context, the lesson learned is related to the ownership:

1. The **ownership** by the beneficiary is essential for the effective targeting of assistance and for achieving expected results.

This means that during the programming and implementation of project activities, the beneficiary should commit themselves ensuring adequate resources during all phases of project management.

Two main elements that are strongly related with the ownership are: (i) existing of strategic documents in a given sector, and (ii) commitment through co-financing from the beneficiary side. It is essential for a project to address any of strategic priorities in a given sector as well as it is important that the beneficiary ensure the ownership through financial commitments (not more than 20%) for a given project. The ownership will be increased if both these elements are in place. In the case of Albania, the main strategic documents considered during the prioritisation process are the National Strategy for Development and Integration 2007 – 2013 and other sectorial strategies. While the co-financing must be foreseen and include during the programming of medium-term budget programme of the beneficiary. Despite the political support of all the governments and other efforts made during years, there is still a lack of ownership from the Albanian beneficiary.

2. The **absorption capacity** of the authorities needs to be ensured.

IPA I assistance has been mainly delivered for the institution building capacities, in terms of enforcement of structures, systems and human resources. Training has been delivered to fewer people than was initially intended, but otherwise only in isolated cases the quality of outputs was disputed. In most cases, technical solutions provided under the IPA projects were considered of an appropriate quality and therefore IPA assistance can be considered effective.

As far as IPA TAIB Projects were written by the civil servants, many factors have threatened the sustainability of the programming process such as:

- Lack of well-trained human resources in line ministries (due to the long procedures of hiring of new civil servants and also staff turnover);
- Lack of communication and coordination within the central administration, especially in cases when a project involves more than one beneficiary;
- Limited information by the higher level of beneficiary institutions for the programming and implementation of IPA funds;
- Changes of government affected people who had been trained with EU support;
- Lack of policies for motivating of the staff. Due to the difficulties of programming of IPA projects and also the requests of the internal market for project programmers, IPA staff in line ministries left public administration;
- Lower involvement of other stakeholders, such as civil society organizations and local government staff;
- Not a clear job description dedicated only to IPA programming. In many cases the experts in the line ministries lack time to dedicate to IPA project writing due to other task they have to fulfil; etc.

As regards the implementation of the activities of IPA projects, many factors have jeopardised the process, including the preconditions to be met before signing the Financial Agreement. In case of infrastructure projects, despite the division in LOT (fragmented contracts), the

beneficiaries had to ensure during the programming phase:

- Not to have overlapping with the other donors intervention for the objective of the project. Synergy among the donor assistance is important;
- For projects containing works contracts, the final approval of Project Fiches will be subject to the prior presentation of supporting feasibility studies;
- Land property law missing, can create problems for having construction permits;
- Local government have to ensure maintenance costs of the object financed by IPA ;
- To ensure the monitoring plan of the project, in cooperation with the implementing agency; etc.

2. Particular attention must be paid to the [projects' readiness and maturity](#), which will ensure the effective use of IPA funds. Having a list of ready projects, which objectives are in line with EU priorities for Albania, will facilitate the process of selection of IPA projects.

Albania is still facing problems during the implementation of IPA I projects, managed under the centralised mode, for the sake of missing some of the preconditions above mentioned. Some of the projects such as “Support for the alignment of Albanian Statistics with EU standards (Census on Agriculture Holdings) - IPA 2007 – 2009”, “Construction of pre-trial detention centre and prison in Shkodra”- IPA 2011, “The Expansion of Waste Water Treatment Plant, Velipoja, phase III - IPA 2011”, and many

others, are facing difficulties due to the lack of commitment by the local government structures. In this context, it is necessary to increase the capacities of the local government units, responsible for project programming/ implementation. One successful project, financed by IPA 2009 and extended until 2016 – Project Preparation Facility, has started the process of training the local government offices on IPA issues, in collaboration with Albanian School for Public Administration.

### CIVIL SOCIETY GRANTS

The aim of IPA I funds was mainly to support the Albanian administration to perform better in the process of integration to EU. The process should have involved central and local administration as well as judiciary, media and civil society organisations. The coordination between all the stakeholders, including CSOs, remains a challenge due to low involvement and lack of communication tools.

Albania's organisational network dedicated to CSOs is triangular, with three main stakeholders participating in the programming and implementation of EU support to civil society, the national Civil Society Support Agency (CSSA, 2009), the EUD and the TACSO country office. The EUD and TACSO collaborate closely. CSO donor dependency is significantly stronger in Albania than in neighbouring countries. CSOs are by law classified as associations, foundations and centres.

EU support to CSOs in Albania is predominantly focused on pilot, networking,

training and dissemination activities, which address basic and justified needs but do not lead to a concrete or visible impact. The presence of TACSO has had a positive effect on CSOs, which are increasingly aware of available EU funding modalities.

CSOs active today in Albania have come a long way. Until a few years ago, civil society was barely evolving, due to lack of funding, restricted level of activity, and increasingly weak profiling of CSOs outside Tirana. CSOs have demonstrated that they can play a small but active role in achieving democratic objectives. The legal and regulatory context is evolving, even if most remains to be done to launch an adequate fiscal regime for CSOs in the country.

With the new rules of the European Commission for IPA II (2014 -2020) allocations, we can mention that a special emphasis is provided to the policy dialogue, at difference from IPA I (e.g. Serbia and Albania).

Intensified policy dialogue is mostly evident within the various national administrations involved in the preparation of the support – as effective cooperation and communication is a requirement already during the planning phase – but also between the EC and the national stakeholders.

Starting from November 2015, the EU is applying the sub-granting scheme for the civil society organizations. In this context, more than 70% of the amount should go to local CSOs in the form of subgrants ranging from 5,000 to 50,000 EUR.

The level of involvement of the Albanian CSOs in the process of programming of IPA II

has increased. In this framework, there are already organised consultation meetings with the CSOs and other donors operating in Albania in the framework of programming of IPA 2016, IPA 2017 and IPA 2018.

## CONCLUSIONS AND RECOMMENDATIONS

The Instrument of Pre-Accession has been the most important tool that EU used to provide financial assistance to accession countries including Albania. Around 510 million EUR are given to support the Albanian institutions in a period of seven years (2007-2013). Despite remarkable progress of the Albanian structures for programming and implementing IPA funds, further efforts need to be addressed in phases such as: programming and budget preparation, as well implementing, monitoring and evaluation. Overall, the intended efficiency gains still have to materialize. Evidence from IPA I shows that the introduction of the indirect management mode with the beneficiary country is a mixed blessing. It offers improved ownership of the programme among beneficiaries but overall efficiency invariably suffers in most cases compared to direct management of the funds.

In this framework, it is necessary to improve the capacities of the structures

dedicated to this process such as Ministry of Finance/Central Financing and Contracting Unit, National fund, National Authorising Officer, Ministry of European Integration/National IPA coordinator and all IPA structures in line ministries. The legal framework for the establishment and functioning of these structures is in place, but further enforcement and better coordination between them is needed.

The **link between EC assistance and sector strategies and action plans** of the Albanian institutions needs to be ensured. The aim is to design assistance in relation to Albanian strategic plans, which in turn should address the requirements of the EU integration process. **Better and realistic strategies** must be in place, in terms of costing and identification of measurable and achievable indicators, aiming at fulfilment of the conditions for better programming the instrument of budget support. The link with medium term budget plan is also essential to ensure ownership over the process.

Better coordination and involvement of all stakeholders, including civil society organisations, is a key factor for success during programming, implementation and monitoring of IPA funds.<sup>1</sup> Clear guidelines and inter-institutional coordination must be in place.

<sup>1</sup> Neritan Totozani (2016): "Challenges of the indirect management of EU funds in Albania", p. 179. "It is very important to keep the administrative capacity trained as a preparation for the next levels and funds toward the EU integration. Europe has to find common solutions to the global challenges in partnership with national, regional and local levels. They impact directly on regional and local communities and they require that public and private partners work together."

*Increase the level of knowledge about IPA and the ways in which the country can benefit from such a financial instrument. IPA rules and procedures are complex and at times difficult to interpret or apply. The insufficiency of information affects parties in both the central and local government circles. Thus, there is a need to disseminate the information among stakeholders of this process".*

**We need to communicate!** The Albanian Government and beneficiary institutions can exchange information on EU integration, including IPA programming with civil societies and municipalities, by introducing,

explaining and discussing the costs and benefits of the process.

Europe is made and it belongs to the people living in it! Do Albanian people want to live better?

# JUSTICE REFORM AND THE SHADOW OF THE EXECUTIVE:

## *THE NEW ROLE OF THE MINISTRY OF JUSTICE IN THE JUDICIAL GOVERNANCE IN ALBANIA*

### INTRODUCTION

The redesign of the judiciary architecture in Albania, conceived by a broad range of actors, was one of the main pillars of the comprehensive justice reform in Albania (hereinafter the Reform), pursued since 2014 and still ongoing. The aim of the Reform is to reinforce the [independence, efficiency and accountability of the judiciary](#) as one of the top priorities for opening Albania's EU accession negotiations. A prerequisite for the implementation of the Reform was the adoption of the Constitutional Amendments that were approved in July 2016, followed by 27 laws.

The Reform was led under the auspices of the Assembly. By means of decision no. 96/2014, the Assembly established [the ad-hoc Parliamentary Committee, which was](#) especially depicted for the purpose of the Reform. The decision provides in point VII that the [high-level Albanian and international experts](#) (EU experts from EURALIUS and US experts through USAID/OPDAT) will perform near this Committee. The activities of the

experts were supported by a [Technical Secretariat](#), composed of specialists/advisors of the Legal Department of the Assembly, Ministry of Justice, and experienced lawyers of other state institutions (point VIII of the decision)<sup>2</sup>. This process has been guided twice by means of opinions of the Venice Commission.<sup>3</sup>

The constitutional amendments were followed by a comprehensive package of organic laws, 7 out of which were considered a priority. Judicial governance was judged to be a matter of absolute priority and belonged to the first package of laws passed, the main ones in this regard being the law [on Governance Institutions of the Justice System](#) and the law [on the organisation of the Judicial Power](#), approved respectively in November 2016 and October 2016. The establishment of the new governing bodies of the judiciary, such as the *High Judicial*

<sup>2</sup> The structure of the actors of the justice reform: [http://reformatdrejtesi.al/sites/default/files/organizamesekretariati\\_teknik.jpg](http://reformatdrejtesi.al/sites/default/files/organizamesekretariati_teknik.jpg).

<sup>3</sup> Two opinions were offered by the Venice Commission during this process, with regards to i) [the](#)

[revised draft constitutional amendments on the Judiciary \(15 January 2016\)](#) and ii) [for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors \(The Vetting Law\) on December 2016](#).

*Council*<sup>4</sup>, the *High Prosecutorial Council*<sup>5</sup>, the *High Justice Inspector*<sup>6</sup>, which were *de jure* provisioned in the Constitution and in the organic laws mentioned above, has started to take shape *de facto* only as of June 2017. Its prolonged set-up process is being monitored by the International Monitoring Operation (IMO). IMO<sup>7</sup> became operational in February 2017 and it engages international judges and prosecutors in the role of observers (European and US experts, from the Department of State and from the Justice Department). This process of designing, deciding on and monitoring of the reform in the judiciary aimed to distance the newly created judicial governing bodies from political influence while being inclusive.

In the midst of all these significant changes, this brief will focus on the Ministry of Justice (MoJ), portraying an overview of the changing role of the executive body, in light of the new structures of the judicial governance institutions. It will describe the shifts of competence toward the new judicial governance bodies, its expected role towards them and the challenges of inter-institutional cooperation. The stagnation of the political situation will be brought to attention as a factor influencing the current situation of stagnation and instability of the justice bodies. The analysis will also provide for a brief comparative analysis of the regional practices, particularly in Serbia and in Montenegro, concerning the same

challenges in matters of governance of the judiciary in relation to the executive.

## LEGAL FRAMEWORK OVERVIEW: SHIFT OF COMPETENCES OF THE MINISTRY OF JUSTICE

*The aim of the institutional part of the reform is to guarantee a three-dimensional independence of the judiciary: structural, financial and substantial.*

**Composition and competence:** *no representative of the executive in the High Judicial Council – (HJC) body.*

The set-up of the new governing bodies of the judiciary, the key one being the HJC that substitutes *the existing High Council of Justice (HCJ)*, introduced comprehensive changes in the composition and competences of the governing body of the judiciary. HJC has gained substantial competences in comparison to the repealed *High Council of Justice*, including in its scrutiny all levels of courts, the High Court as well (a novelty of the reform). Taking into account this fact, the composition of the HJC has been more carefully designed, reducing the bonds of the judiciary with the legislative and the executive. The composition and election procedure of the HJC members indicates a will to create a strong self-regulated, unbiased body. Different from the former structure which was composed only of judges, the new format opts for a balanced composition, including lay members that represent the interests of citizens (civil

<sup>4</sup> Article 147/a of the Constitution of Albania, as approved on 21.06.2016.

<sup>5</sup> Article 149 of the Constitution of Albania, as approved on 21.06.2016.

<sup>6</sup> Article 147/d of the Constitution of Albania, as approved on 21.06.2016.

<sup>7</sup> Article B of the Constitution Annex.

society), and of the legal community (bar association and academia)<sup>8</sup>. For the first time since the creation of the judicial bodies, the Minister of Justice is not an *ex officio* member in the HJC and the executive is not represented in this body, which also means that the executive has no say in matters of appointing, evaluating, promoting, transferring and deciding on the disciplinary proceedings of judges. However, the issue of check and balance between the judicial bodies and the Ministry of Justice remains complex considering that according to the constitution and the approved laws the executive still preserves some competences, given that the Minister of Justice, although without a voting right, still sits in the meetings of the HJC concerning the budget of the judiciary and strategic planning (Article 147/ a of the Constitution).

***Financial independence and management independence: full budgetary independence accorded to HJC.***

Most powers of judicial governance, formerly vested with the Ministry of Justice, were transferred to the High Judicial Council in order to increase efficiency and accountability in the exercise of these powers. The Office of the Administration of the Judicial Budget, an independent body to-date, will fall under the new, encompassing

umbrella of the HJC, responsible not only for the drafting, proposing and implementation of its annual budget (in cooperation with the Ministry of Justice and the Ministry of Finances), but also in charge of managing the fund raising process for the management of the courts (up to the level allowed by the law), as well as assist and monitor the budget proposals of the courts of all levels (Article 96 of the Law on Justice Governance Institutions). Since the budget will also be substantially higher, internal control units and external controls will be introduced, which was not previously the case with the High Council of Justice, due to the low budget and the low level of the assessed risk. The amendments to Law no. 8678, date 14.5.2001 “On the Organization and Functioning of the Ministry of Justice”, adopted on 30 March 2017 and entered into force on 6 May 2017, reflect in Article 6 the changes in the management role of the MoJ. The statistical administration of the judiciary, the relationship of the judiciary to the public and media, the management of the judicial administration, the human resources, the reporting process in front of the public and the Assembly, the administration of the physical infrastructure and safety, as well as the measurement of the performance of courts – all these actual responsibilities of the

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<sup>8</sup> Note: While the members’ number remains 11, out of which 6 are judges, the formula of composition of HJC changes in regards to the lay members: 2 members from academia, 1 from civil society and 2 from the bar associations. The two lay members coming from the academia (pedagogues of the Law Faculties or School of Magistrates) are chosen from the academic bodies with the right to vote, the one lay member of the civil

society is chosen from at least three civil society organizations with the right to vote and in the case of the lawyers, everyone with the required qualifications can apply. The process is administered by the people’s Advocate and the Assembly. The Minister of Justice or persons authorized by him may observe the voting process without prior authorization.



Ministry of Justice have passed to the High Judicial Council. Only the management information technology systems of the courts is to be regulated by means of Decision of the Council of Ministers.

*On the disciplinary proceedings: The Ministry of Justice is not anymore in charge of leading court inspections and at the same time it does not hold the exclusiveness of initiating the disciplinary proceedings towards the alleged misconducts of judges.*

The Venice Commission, in its *amicus curiae* opinion on the draft constitutional amendments specifically addressed the disciplinary proceedings and recommended total independence of the High Justice Inspector from the Ministry of Justice. Parallel inspections were led to-date by the Inspection Unit in the Ministry of Justice and the Inspectorate under the umbrella of the High Council of Justice based on a Memorandum of Understanding between the Ministry of Justice and the High Council of Justice in 2012. The Inspectorate of the High Council of Justice was in charge of leading the investigations on alleged misconducts following the MoJ Inspections. With the new changes in legislation, the overlapping of inspections has been avoided by concentrating these competences in the High Justice Inspector, an independent constitutional and monocratic body, regulated by law that is responsible for the disciplinary liability of judges and prosecutors of all levels (High Court included). As rightfully stated by the MoJ in its [Justice](#)

[System Evaluation in 2015](#), in countries with democratic traditions, such as Italy and Germany, the MoJ is active in initiating disciplinary proceedings and court inspections, and this does not in itself violate the principle of division of powers, but in the practice this always needs to be contextualized. The overlap of competences regarding inspection is not a best practice in the context of an actual problematic judiciary, instead the solution of an external independent monitoring body is more appropriate.

*Many challenges to the foreseen establishment of the new Councils: HJC and HPC.*

Their setup was provided in the Constitution (Article 179 par. 5) to happen no later than 8 months after the entry into force of the Constitution, i.e. no later than 12 April 2017. Until mid- June 2017 the process was still blocked by the stagnation of the vetting process and the lack of political will to settle it as a priority. Furthermore, the decision of 1/5<sup>th</sup> of the Members of the National Assembly to address the Constitutional Court on the constitutionality of several articles of the law “On the status of judges” and the law “On the governing bodies of the judiciary” has resulted in the delay of the normal implementation of this law. Following their claims, on 14 April 2017 the Constitutional Court has abrogated certain articles of the law no. 115/2016 “On governance institutions of the justice system” creating a legal vacuum.<sup>9</sup> The missing provisions will be

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<sup>9</sup> Articles repealed: 5, 61, 103, 159, 169 of the Law “On the governing bodies of the judiciary”.

addressed when the new Parliament approves the respective changes of the above-mentioned laws, which is expected to happen in September 2017. A second claim was deposited in the Constitutional Court on 1 June 2017 by the Union of Judges on the unconstitutionality of certain provisions of the vetting law and the law on justice governance, the last one regarding the criteria of professional experience of the members-to-be of the HJC and HPC, as well as the role of the lay members in choosing the heads of these institutions. This is a second challenge in the establishment of the Councils as originally foreseen.

Meanwhile, the administrative staff of the institutions that are to be merged and transformed are in a period of stagnation, with no clear perspective on the working procedure, on the organizational structure and on the survival of the unit they belong to. The situation has contributed to an uncertain environment and the paralysis of the justice institutions.

### EXPERIENCES FROM THE REGION

The Balkan countries share a turbulent past of totalitarian regimes, a present made of fragile transition democracies, the perspective of EU membership promised in Thessaloniki and the pressure of conditionality to improve their systems in order to reach the European standards. The example of two Balkan states that already opened the accession negotiations with chapter 23, on the Judiciary and

Fundamental rights, namely Serbia and Montenegro, will presumably help compare and understand the position of Albania at present with regards to common challenges on the rule of law.

**Serbia** did not undergo a comprehensive reform of the judiciary, even though the accession negotiations were launched in January 2014, opening chapter 23 (Judiciary and Human Rights). The country is still in the process of consolidating the reforms aiming to tackle the independence, accountability and the efficiency of the judiciary by means of law amendments, since the Constitution has not been changed during this process. Challenges concerning undue political influence in the governance of the judiciary continue to exist. The High Judicial Council and the State Prosecutorial Council are going through transitional periods towards the consolidation of their independence, while still keeping the Ministry of Justice as a key player in judicial governance. The composition of the 11 members of the HJC includes the President of the Cassation Court, the Minister of Justice, one representative of the Parliament as ex officio members, and the 8 remaining members, 6 judges and two lawyers elected by the National Assembly.<sup>10</sup> This body holds all competences regarding the proposals (to the Assembly), appointment, promotion and release of judges and Presidents of Courts.

On the other hand, there are many other competencies which have remained exclusively under the power of the Ministry

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<sup>10</sup> Article 153 of the Constitution of Serbia.

of Justice, such as court security, proposals on the amount and structure of budgetary funding and its distribution to courts. Nevertheless, *the [Councils do share some responsibility for court and prosecution budgets with the Ministry of Justice, the latter being responsible for court staff, expert assistants, infrastructure and investments.](#)*

The specific circumstances of the judicial reform process in Serbia have also contributed to the empowerment of the role of the Minister of Justice in driving forward these reforms. After a process of dismissal of most of the judges from the High Council of Justice in an attempt to save the image of the widely perceived corrupt judiciary, the dismissed judges appealed to the Constitutional Court, although most of their claims were to be reconsidered by the same organ that dismissed them: the HJC. In its 2013 Opinion on the draft amendments to laws on the judiciary of Serbia, the Venice Commission urged the Ministry of Justice of Serbia to take stock of the situation in the country and take an active role in developing a clear concept on what the courts' network of Serbia should look like, since this task could not be carried out by the HJC on its own, due to the problems resulting from the unsuccessful reappointment procedure. At the time, the Venice Commission already stated that the [reform process should be measured and well prepared so as to be successful in achieving a right balance between speed and quality.](#) The executive was too much of a key player to be left aside.

[The full administration of the judicial budget was to be transferred from the MoJ](#)

[to the Councils in January 2017.](#) Based on the [report on the implementation of the Action Plan on Chapter 23](#) (Judiciary and Fundamental Rights) for the first quarter of 2017, the implementation of the provisions of the law on the organization of the courts, covering the transfer of jurisdiction on: supervision of courts' work, supervision over the results of the work of courts, collecting of statistical data and analysis of statistical data from the Ministry of Justice to the High Judicial Council is still in progress.

Constitutional amendments have been recommended by the Venice Commission in order to separate the Councils from political influence (mainly from the Assembly). This same request came from the European Commission in the frame of Chapter 23 of the *acquis* (Judiciary and Human Rights) to bring the recruitment and judicial career management procedures in line with European Standards with the advancement of the accession negotiations.

The general impression, also because of scandals involving the judiciary and the executive, remains that [political influence on the judiciary remains high, that judges are still widely scared and corrupt, and that the executive aims to limit judicial independence.](#) A comprehensive constitutional-based reform would be one side of the coin, the other one would be a general will to fight against self-serving elites in the judiciary and in the executive itself.

**Montenegro.** The Constitutional amendments in July 2013 followed the opening of EU accession negotiations, granted in 2012 by the European Council. The

[amendments were preceded by a Government determined to pursue the integration road by reviewing the Action Plan for the Reform of the Judiciary](#), introducing new deadlines and implementing the unfinished measures. The changes intervened across the entire justice system and also targeted judicial independence by reshaping the Judicial Council, [considered by the European Commission broadly in line with European standards](#). The continuously adopted package of laws, especially the Law on Courts and the Law on the Judicial Council aimed to reduce political influence from the legislative and executive by adding transparency elements, thresholds and specified criteria for the appointment of judges and prosecutors. According to the Constitutional amendments of 2013, even if the Minister in charge of Judicial Affairs is part of the composition of this body (balanced 5:5 between judges and other members, seen as a good formula for inclusion)<sup>11</sup> he/she shall not vote in the disciplinary proceedings related to the accountability of judges<sup>12</sup>. Besides the appointment, career, evaluation, disciplinary liability and release of judges, the Judicial Council is also responsible for the management of the judicial system, of the information system, data records, etc.<sup>13</sup>

The concerns regarding political influence in the judiciary still persist because the comprehensive judiciary reform has still

not been fully implemented, but in general Montenegro has been perceived from the EU as a country willing to drive on reforms and to strike an independence-accountability balance between the executive and the judiciary that allows for a democracy to work.

## REFLECTIONS

It is clear now to the EU, that with regards to the judicial reforms as a basis for the rule of law establishment in Western Balkans countries, they should be done comprehensively, fully, and led not only under the pressure of conditionality and the desire to enter the EU club, but also by means of technical assistance, peer-to-peer guide and a real political will to advance quickly.

*The set-up of a whole comprehensive legal framework*, starting with the Constitution and continuing with packages of organic laws is an approach that results to be more efficient and less time-consuming than several prolonged by-passes that address an issue without improving the system as a whole (the case of the independence of the judiciary in Serbia). A various composition of the governing bodies of the judiciary is crucial in balancing various interests and perspectives within this body. The question is always about striking the right balance between the de-politicization of the judiciary and the trend of judicializing politics, the latter being the over-influence that the

<sup>11</sup> Amendment VIII of the Constitution of Montenegro.

<sup>12</sup> Amendment IX of the Constitution of Montenegro.

<sup>13</sup> For more see: Judicial system in Montenegro (historical development, basic principles and

organization), Prof. Dr. Mladen Vukčević, Miloš – Bošković, *Law & Justice Review*, Vol. 7, no. 13, December 2016.

judiciary might exercise if it is way too independent and not accountable. Financial and management independence of the judiciary is a crucial pre-condition as well for a substantial independence, otherwise the structural independence would be void of substance.

*The involvement of many actors is a must,* including the executive, as well as the will of the parties to move forward. Transitions through substantial reforms, especially in fragile democracies, under the pressure of conditionality, always tend to unbalance the system, even if the latter is compromised, until a new institutional balance is established through practice. In the best case, the establishment of a good practice is the final aim of a reform. In the case of Albania, the process has technically and procedurally been correct, involving every possible actor but it is the political will and the individuals that have the choice to bridge the gaps which are still potentially able to compromise the process. On the issue of the will of the involved parties, it is precisely this element that makes the difference between Serbia and Montenegro, the first one lacking it, while the second one being on the right track to achieving this successfully.

*The impetus always defines the reform.* During all judicial reforms, in the Western Balkan countries the role of the Ministry of Justice has been expected to shrink. Strong self-regulated judicial governing bodies were created in countries with a past of a strong, influential executive in the judiciary, as a counter-action to their past, as is the case in continental Europe. The reform of the judicial governing bodies was made in the shadow of a past with an interfering executive and between the institutions there is an atmosphere of mistrust. But, if the challenge of an independent judiciary will be overcome as foreseen in the best scenarios in Albania, what will matter the most is the inter-institutional relationships. The quality of justice and of the judiciary relies very much on common draft strategies, on legal acts concerning the judiciary, on the budget, management issues and on the sharing of information. When the MoJ will be perceived by the newly established bodies as not only a structure from which to separate from but rather as a crucial partner for common challenges, then the judicial reform will have completed its aim in the institutional level.

# THE IMPORTANCE OF NATURE CONSERVATION IN THE EU INTEGRATION PROCESS

## INTRODUCTION

Albania holds an important part of Europe's natural heritage and represents one of the first countries in the continent with the highest portion of key biodiversity areas compared to the total surface of the country. Nature conservation, despite not receiving the required attention among the overall integration priorities, represents an important condition and obligation for the country to fulfil within the frame of the EU integration process. In the field of nature and biodiversity, Albania is obliged to identify and protect its natural heritage with high conservation interest for the European Union, through identifying the potential Natura 2000 sites, based on the strict implementation of the two European directives, respectively [Birds Directive](#) and [Habitats Directive](#). The accomplishment of such obligation includes two main aspects, namely the approximation of the national legislation for nature and biodiversity conservation with the European Union legislation and related enforcement.

This policy brief aims to emphasise the importance of conservation and sustainable management of the natural heritage of Albania, based on the standards and the directives of the European Union, as an obligation within the integration process. In addition, the aim is to highlight the existing

problems in the implementation of the *acquis* for nature and biodiversity conservation in Albania and to emphasize the respective recommendations, in order to avoid every potential drawback to the country's integration process in the European Union.

## NATURAL HERITAGE OF ALBANIA AND ITS IMPORTANCE FOR THE EUROPEAN UNION

Albania represents a very rich country in terms of biodiversity, considering its small surface. This is due to diverse relief, natural landscapes and habitats. It is reported that Albania counts a total number of [7233 plant taxon, representing 32% of the floristic diversity of Europe](#). In addition, Albania holds as well, a very rich fauna diversity with a confirmed number of [over 5450 species of different groups, among which around 110 species](#) are rare and with high conservation interest at global level.

For conservation of country's biodiversity and natural heritage, Albania has established its [National Network of Protected Areas](#), which includes a number of 800 protected areas (including here the monuments of nature), occupying around 16% of the total territory of the country.

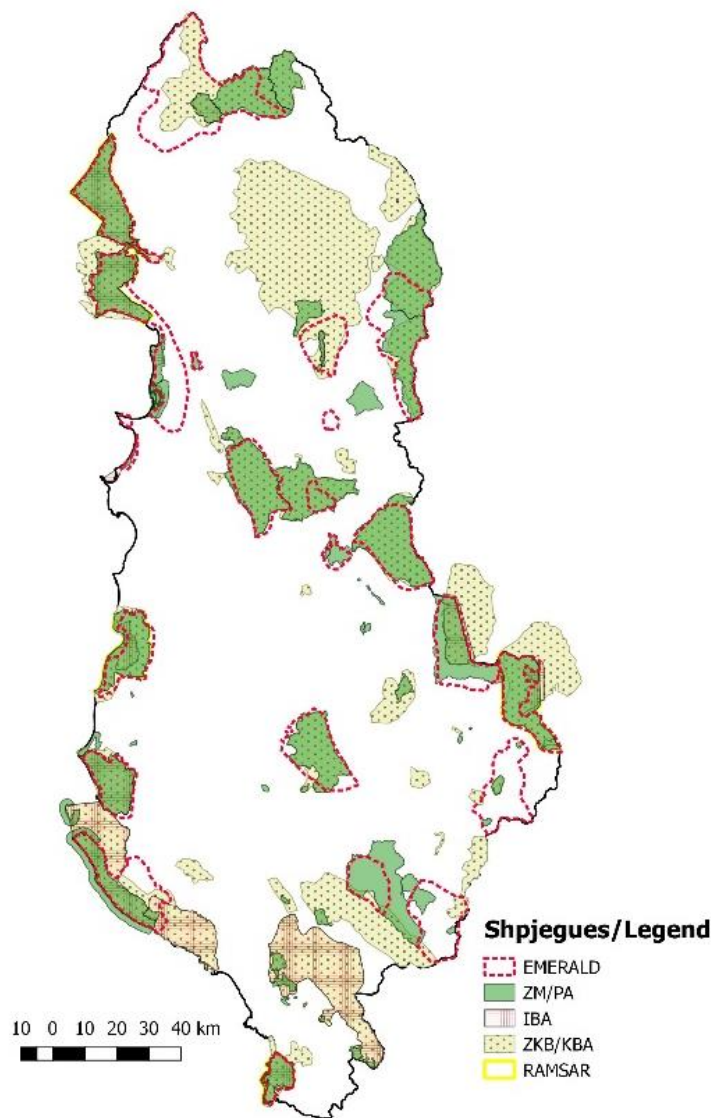
One part of the National Network of Protected Areas and also considerable number of other high nature value

ecosystems, are part of different international ecological networks. Prespa Lakes, Karavasta Lagoon, Butrinti Lake - Çuka Channel - Stillo Cape and Skader Lake – Buna River are the four Albanian wetlands of international importance recognized by the [RAMSAR Convention](#), ratified by Albania in year 1996. The transboundary area of Ohrid Lake and Prespa Lakes has received by UNESCO the status of the [Biosphere Reserve](#). Likewise, the beach forests of Gashi River, in the region of Kukës, and the beach forests of Rajca (central part of Shebenik-Jabllanicë National Park) are inscribed in [UNESCO's World Heritage List](#). Also, the transboundary areas along the ex-iron curtain of the communist times are included into the [European Green Belt Network](#). Moreover, BirdLife International has recognized a number of [16 Important Bird Areas](#) (IBA) in Albania which are recognized by the Albanian government and are lastly included in the new law for Protected Areas of Albania ([Law 81/2017](#)) as “Protected Areas of International Importance”. Furthermore, the [Critical Ecosystem Partnership Fund](#) (CEPF), currently one of the biggest international consortiums for nature conservation, through a scientific based and participatory approach has identified a number of 29 Key Biodiversity Areas (KBA) in Albania.

Last but not least, Albania has an [Emerald Network composed of 25 sites](#), approved by the Bern Convention in December 2012. The [Emerald Network](#), includes areas of Special Conservation Interest (ASCI), identified in the countries which have ratified the Bern Convention, in order to comply the

obligations sourcing from it. Emerald Network is the equivalent network of protected areas Natura 2000, that European Union has established, as well, to fulfil the requirements of the Bern Convention.

**Map 1:** Areas of High Nature Value in Albania recognized at national and international level



Source: Elaborated by the author

In the map above are given all the above-mentioned surfaces or the areas of high nature values recognized at national and/or



international level.<sup>14</sup> From the map, it can be easily noticed that more than half of the country's territory, exactly 53.4% (15,342 km<sup>2</sup>) is recognized as Key Biodiversity Area by the CEPF and if adding to this figure the difference of the remained surface out of the KBAs network, but within the other ecological networks (such as Emerald, RAMSAR, IBA, National Network of Protected Areas etc.) the surface goes to around 60% of the country's total surface<sup>15</sup>. This figure shows clearly that [Albania is one of the top countries in Europe with the highest portion of the key biodiversity areas](#) (recognized by national and international ecological networks), compared to the total surface of the country.

#### STATE OF THE IMPLEMENTATION OF ACQUIS COMMUNITARIAN FOR NATURE AND BIODIVERSITY CONSERVATION IN ALBANIA AND THE RESPECTIVE CONCERNS

In the frame of country's integration process into the European Union, in the field of environment protection and more specifically in the aspect of nature and biodiversity conservation, Albania is obliged to approximate its national legislation with the European Union legislation through the transposition of the EU Directives on Birds and Habitats. The [Birds Directive](#) aims at the conservation of wild species of birds and their habitats in the territory of the European Union through identification and designation

of 'Special Protection Areas' (SPA). On the other hand, the [Habitats Directive](#) aims at the conservation of a high number of wild fauna and flora species which are rare, endangered or endemic. This directive ensures also the preservation of around 200 different habitat types. The implementation of the Habitats Directive requires the identification and designation of Special Areas of Conservation (SAC). Special Protection Areas and Special Areas of Conservation compose the European Union Network of Protected Areas called Natura 2000.

Concerning the approximation of the national legislation on nature and biodiversity conservation, [in the document of strategic policies for biodiversity conservation](#) it is stated that Albania has made a progress estimated at the level of 85%. In addition, in January 2017, the Parliament of Albania approved the new Law on Protected Areas ([No 81/2017](#)), which represents to a wide extent the approximation of the national legislation on nature and biodiversity conservation with EU's acquis. This law dedicates a specific chapter (namely chapter V) to the protected areas of international importance and particularly to Natura 2000 network of protected areas.

Based on the description above, in the field of nature and biodiversity conservation, it is understood that Albania has made significant progress in accomplishing one of

<sup>14</sup> The map is prepared for this policy brief exploiting the shape files of the respective areas. The areas mentioned in the text but not reflected in the legend

of the map are included within the boundaries of the areas which are reflected on the legend of the map.

<sup>15</sup> The figure is calculated through GIS software through the shape files of the respective areas.



the main obligations, the one related with approximation of the national legislation with the legislation of the European Union. However, what is the state of progress for the second obligation: that of the identification of the Natura 2000 sites in Albania?

Referring to the [last report of the European Commission for Albania](#), within 2017, it is expected the finalization of the evaluation of five selected areas based on the criteria of Birds and Habitats Directive. This statement indicates that: firstly, the process of the identification of the sites in Albania complying with the criteria from Birds and Habitats Directives, is at early stages; and secondly, the time of the finalization of the complete list of the potential Natura 2000 sites is far. Why?

The Natura 2000 process requires a careful evaluation of the whole territory of the country based on a solid scientific approach. Actually, through a 3.5-years project there are being assessed only five selected areas. This assessment is being made in the framework of IPA 2013 project entitled “[Natura 2000 Protected Areas in Albania](#)”, which is being implemented since 2015. Even though the title gives the impression that the main aim of this project is the identification of potential Natura 2000 sites in Albania, the real objective is almost completely different. This creates the concern that the process of identifying the Special Protection Areas and Special Areas of Conservation based respectively on the Birds

and Habitats Directives is getting underestimated, causing delay to this process and uncertainty on its successful finalization. The main aim of the mentioned project, differently from what was and it is expected (identification of Natura 2000 sites), is to strengthen the management of the protected areas in Albania through the implementation of the management plans. Within this project, the attention is focused only in one part of the national network of the protected areas.

The implementation of the Natura 2000 process requires the evaluation of the whole territory of the country and not concentrating the efforts only in the network of protected areas. The implementation of the right approach would have had enabled the identification in Albania of the sites of high conservation interest for the European Union based on the Birds and Habitats Directives. For example, as it is the case of Drino valley situated in the region of Gjirokastra and the Munella Mountain situated in the regions of Lezhë, Shkodër and Kukës. In the first area, along the pre-migration season happens a large gathering ([around 2% of the global population](#)) of a high conservation interest species at European level ([listed in Annex I of the Birds Directive](#)) the Lesser Kestrel (*Falco naummani*). On the other hand, the area of Munella Mountain is home for around 15 % of the global population of the Balkan lynx (*Lynx lynx balcanicus*)<sup>16</sup>. None of these areas

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<sup>16</sup> PPNEA (2017) Biodiversity Assessment of the Munella Mountain area and justification for its protection. Survey report. Not yet available online.

are part of the national network of protected areas of Albania, likewise there could be other areas with such biodiversity values which are not yet identified. This is due to the lack of data and the lack of the opportunities to collect data based on scientific methods.

The IPA funds given to a potential candidate country for implementing the Natura 2000 process represent a unique opportunity for the benefiting country collect data on the biodiversity components based on strict scientific methodology in order to identify areas of high conservation interest. The approach followed for the current implementation of the Natura 2000 process does not enables the achievement the respective aim. The identification and preparation of the preliminary list of potential Natura 2000 sites stands as a second objective of this project. The concerns raised up here are: when will the final list be prepared and how is this going to be achieved (namely the identification of the Natura 2000 areas)?

Taking into consideration that the above-mentioned IPA project is focused only in the national network of protected areas and the rest of the territory remains uncovered, related to the second question: one way could be to gather secondary data. Based on reliable secondary data, normally, it could be possible to prepare a preliminary list of potential Natura 2000 sites for the country. However, the questions which raise up here are: (i) are there enough reliable data available for this purpose; and (ii) are these data available for all natural ecosystems in Albania that should be subject of the

evaluation? Definitively the answer for at least the second question is “no”.

A second alternative for achieving the desired objective is to ask for another IPA fund and implement a strict evaluation process. Again, two questions are raised also here: (i) would it be feasible to receive another fund, in a situation when Albania has used once this opportunity; and (ii) if the answer of the first question is “yes”, when this fund could be allocated again? From these two simple questions and from what is described above, the least concern felt is the delay in the implementation of the Natura 2000 process in Albania and in addition the uncertainty that this process is getting done and will be done properly.

The successful implementation of the Natura 2000 process, in terms of quality and time, represents one of the most important achievements for preservation and sustainable management of nature and biodiversity in Albania. The EU integration is one of the first national priorities of the country. Once Albania, identifies and proclaims the list of potential Natura 2000 sites, then it is obliged within the integration process to protect and manage these areas based on the standards and laws of the European Union. In the context of Albania, this would create the strongest “umbrella” for protecting these areas from the numerous and serious threats. In this way, also the obligations sourcing from the [Stabilization-Association Agreement](#) in the field of nature conservation are achieved. The recognition of these areas as potential Natura 2000 sites, directly assures a better

protection and management also based on the benefits (in terms EU funds for nature conservation) that this status provides.

### CONSERVATION AND MANAGEMENT PROBLEMS OF AREAS OF SPECIAL CONSERVATION INTEREST IN ALBANIA

Considering that the process of the identification of potential Natura 2000 sites is under implementation and from what mentioned above, the finalization of this process it is expected to be delayed with at least 3-4 years<sup>17</sup>, then it is reasonable that the Emerald network to be treated with the same attributes as the potential Natura 2000 sites.

The Emerald network includes Areas of Special Conservation Interest (ASCI) identified in the countries which have ratified the “Convention on the Conservation of European Wildlife and Natural Habitats” known differently as the “Bern Convention”. Identification and reporting of the Emerald sites are done from the signing countries to fulfil the obligations sourcing from the Bern Convention. In this line, the Natura 2000 network is the instrument that European Union has established to comply with the requirements of the Bern Convention. In this logic, since the Natura 2000 process it is under development and the list of the potential Natura 2000 sites is not yet prepared, it is the Emerald network where Albania should apply the management rules and standards of the European Union.

The Emerald network, despite being the first from the importance (at least in the frame of the country’s integration process in the EU), unfortunately is the last regarding the attention which receives. The areas of the Emerald network receive a special level of conservation and management actions only when one part or the whole surface of their territory it is overlaid with the national network of protected areas.

The surface of the Emerald network, that is situated outside the boundaries of the national network of the protected areas, does not receive any special conservation or management attention compared to the common (not part of any ecological network) territory of the country. These areas are almost out of the informed management, monitoring and sustainable development approach. In many cases these areas are threatened from different legal and illegal activities such as: (i) hunting; (ii) logging of forest surfaces; (iii) fires; (iv) pollution of water, habitats and landscape; (v) construction of hydropower plants and other objects. These activities have caused habitat degradation and loose of biodiversity in the Emerald areas including species of high conservation interest for the European Union listed in the annexes of Birds and Habitats Directives.

The above mentioned activities might be legal or illegal. In general, for the illegal activities it is reported the good will of the government to control them through proposing and designing concrete measures

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<sup>17</sup> Lifetime of the current IPA 2013 project, currently under implementation in Albania.

and the comparing statistics of the occurrence of the illegal activities from one year to the other. On the other hand, for the legalized activities (in discrepancy with the obligations that source from the Stabilisation and Association Agreement), theoretically and practically the government cannot justify. This represents a direct precedent of the violation of the country's integration process in the European Union.

There are not few the cases when inappropriate investment and development plans are presented in particular sites of the Emerald network and in the meantime these areas happened to be inside the boundaries of the national network of the protected areas. These plans mainly consist in the destruction of considerable surfaces of the natural habitats for the purpose of building massive tourism resorts or infrastructure. The most actual examples are the presentation of such plans for some of the best natural areas, symbols of the Albanian nature and biodiversity, likewise is the National Park Divjakë-Karavasta and the Protected Landscape Vjosë-Nartë.

The National Park Divjakë-Karavasta is the symbol site of the Albanian nature and the most important wetland in the southern Adriatic. This area is habitat for more than [245 species](#) of birds and represents the area with the highest avifauna diversity in Albania. The National Park Divjakë-Karavasta is home for the only colony of the Dalmatian pelican (*Pelecanus crispus*) in Albania, which is a species of high conservation interest at

global level, holding the status "Vulnerable" based on the Red List of the Endangered Species of the International Union for Nature Conservation (IUCN). Dalmatian pelican (*Pelecanus crispus*) is also a species of high conservation interest for the European Union, listed in the Annex 1 of the Birds Directive. Last but not least, this species is part of the [Red List of the Albanian flora and fauna](#) holding the highest conservation status "Critically Endangered". In Divjakë-Karavasta, it is found around [2% of the European population](#) of this species or 52 breeding pairs<sup>18</sup>. Considering only this fact, it can be easily understood the high importance that this area has for the Europe's natural heritage.

In addition, this area is also home for the [only heronry colony in Albania](#), which includes the (i) Pigmy Cormorant (*Phalacrocorax pygmeus*); (ii) the Night Heron (*Nycticorax nycticorax*); (iii) the Squacco Heron (*Ardeola ralloides*), and most likely also the (iv) Little Egret (*Egretta garzetta*); (v) the Great White Egret (*Egretta alba*); (vi) the Grey Heron (*Ardea cinerea*), and the Great Cormorant (*Phalacrocorax carbo*). All these species are of high conservation interest for the European Union as are listed in the annexes of the Birds Directive. Holding such biodiversity values, this area is part of all the ecological networks that Albania participates and without doubt a future Natura 2000 site.

In early 2017, it was introduced the project "[Divjaka Resort Albania](#)", on which

<sup>18</sup> Protection and Preservation of Natural Environment in Albania (PPNEA), unpublished data.

have been organized several public hearings with the participation of different stakeholders, including here, civil society organizations, government organizations and local inhabitants. This project consists in building a massive tourism resort inside the boundaries of the Divjakë-Karavasta National Park, in the meantime an Emerald site. Within this project is foreseen the destruction of natural surface of 3342 ha, where are included 200 ha of beach area, 1050 ha of forestry area, 820 ha of agricultural land and 1270 ha of lagoon area. The project will extend in a coastline of [12 km, where a touristic resort of around 90 ha will be built, including 370 villas, 2400 apartments and hotels with a total capacity of 4300 beds.](#)

It cannot be denied that such a project has a significant impact in the natural ecosystem, landscape and population of the high conservation interest species at national, European and global level. It is now confirmed that [the main reason for the decrease of the population of the Dalmatian pelican](#) to the level of Critically Endangered is the disturbance and the habitat destruction. The conservation work realized only along the last years aiming the alleviation of the mentioned threats, enabled the recovery of the Dalmatian pelican population and the decrease in the global conservation status from [“Endangered” to “Vulnerable”](#). Elimination of these threats also in the Divjake-Karavasta National Park, as well, resulted in almost [doubling the number of breeding pairs](#) in the last colony of this species in Albania only in few years.

Unfortunately, if the mentioned investment will be realized, none of the main threatening factors (habitat destruction and disturbance) can be avoided. Both threats are manifested along the construction and operation phase of this project. The habitat destruction can be illustrated with a very simple example, the one of changing the natural habitat and landscape into an urban area, whereas the disturbance is generated from the presence of workers and heavy machineries in the area particularly along the construction phase. Re-bring these threats in the area can result in vanishing the last colony of the Dalmatian pelican and the last heronry colony in Albania and destruction of a future Natura 2000 site.

Allowing or legalizing investment projects of this kind, which consist in changing considerable surfaces within areas of special conservation interest, threatening the natural habitats and species, constitutes a violation of the rules and standards of the European Union for the preservation and management of these areas. A good part of the EU countries have been penalized because of not implementing the guidelines of the Birds and Habitat Directives. BirdLife International in year 2014 has [compiled a summary report](#) with the cases of violation of the Birds Directive treated by the European Court of Justice. One of the cases closer to Albania in terms of context and geography is the [case of Bulgaria](#). In October 2009, the European Commission sent four warnings to Bulgaria for violation of the European Directives of Birds and Habitats, due to similar projects. One of these projects consisted in the

construction of a skiing centre in the protected area of Pirin Mountains. This project had been partly approved by the Bulgarian government before realizing a strict evaluation on the impact that the project could have on the species and habitats of high conservation interest for the European Union.

In the framework of the integration process, Albania is obliged to progress towards the approximation of the national legislation with the EU and to guarantee its enforcement. Legalizing projects of this kind constitutes real examples of regress to the country's integration process in the European Union.

## CONCLUSIONS AND RECOMMENDATIONS

Albania holds an important part of the Europe's natural heritage and in the framework of the integration process it is obliged to preserve and sustainably manage it based on the guidelines from the Directives of the European Union. The analysis carried out for this policy brief shows problems and delays in complying with the integration obligations in the field of nature and biodiversity conservation. If measures are not properly taken, the country risks facing consequences in the frame of the EU integration process, which is in the meantime the first national priority. In order to avoid such potential consequences, it stands very important for the **Albanian government** to take into consideration at least the following **recommendations**:

- a) Firstly, to accelerate and finalize the process of unification of the national legislation for nature and biodiversity conservation with the legislation of the European Union, through a clear transposition of the European Union Directives on Birds and Habitats.
- b) Secondly, to properly realize in time and quality the process of the identification of potential Natura 2000 sites, through the strict implementation of both the above mentioned directives. Focusing only in the implementation of one of the directives is a totally unjustifiable deficiency in this process which cannot guarantee a complete and reliable result at the end.
- c) Last but not least, until the finalization of the list of potential Natura 2000, it is the Emerald network which should be managed based on the rules and standards of the European Union. The Albanian government (that has proposed to the Bern Convention the list of the Emerald sites in Albania) should pay special attention, in order not to legalize or allow investment projects in these areas which violate the rules and standards of the European Union. If the natural habitats and species with high conservation interest for the European Union are damaged or destructed as a consequence of the investment projects legalised by the Albanian government, then, this constitutes an unjustifiable abuse to the integration criteria and direct violation of the integration process.

# THE ROLE AND IMPORTANCE OF ALBANIAN LEGAL AND INSTITUTIONAL FRAMEWORK IN GUARANTYING CONSUMERS' FOOD SAFETY

## INTRODUCTION

The economy development is a key element in the evolution and development of a state, especially when it has passed from a transition country to a developing country. The economy should be strong, competitive in region and produce safe products ready to sell them in regional markets or European ones.

Everyone has the right to access to food. The [World Food Summit](#) has reaffirmed the right of everyone to have access to safe and nutritious food, and decided that the content of the rights related to food, as contained in Article 11 of the International Convention on Economic, Social and Cultural Rights<sup>19</sup>. The United Nations Committee on Economic, Social, and Cultural Rights (CESCR) has given a definition of the right to adequate food: "The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and

economic access at all times to adequate food or means for its procurement. The core content of the right to adequate food implies (...) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture (and) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights (...) Accessibility encompasses both economic and physical accessibility"<sup>20</sup>.

The World Health Organisation cites: "Food safety, nutrition and food security are inextricably linked. Unsafe food creates a vicious cycle of disease and malnutrition, particularly affecting infants, young children, elderly and the sick. Food borne diseases impede socioeconomic development by straining health care systems, and harming national economies, tourism and trade."<sup>21</sup>

<sup>19</sup> Some states have some provisions on their constitution on the right to food. Albanian Constitution do not have such a provision. The article 59 "On social objectives" provides: "The state, within constitutional competencies and means at its disposal, as well as in complementarily with private initiative and responsibility, aims: c) the potential highest health standard, physical and mental; d) a healthy and ecologically suitable environment for present and future generations."

Albanian constitution do not express literally the right to food, but through an extended interpretation, of the above provision, the legislator implies that right through affirming the health standards and a suitable environment.

<sup>20</sup> Committee on World Food Security (CFS), "Global Strategic Framework for Food Security & Nutrition", (GSF) Fifth Version – 2016, pg. 7

<sup>21</sup> See: <http://www.agrifood.net/position-papers/165-mypow-food-safety-future-cfs-work/file>



Food safety is a sensitive concept. Food safety should guarantee that the food does not cause harmful effects on people's health, if it is prepared and consumed under the conditions of use.

This definition is according to the law no. 9863, dated 28.01.2008 "On food"<sup>22</sup>. It is clear that food safety is a long process which starts in the process of preparing the food till consuming it. Besides this, there is a big process which includes the stages of production, processing and distribution. Committee on World Food Security defines food security, which exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life. The four pillars of food security are: availability, access, utilization and stability<sup>23</sup>.

The first problem of Albanian definition on food safety is the usage of term human instead of consumer. Even though at first moment it seems like the same, in fact do not clearly realize the main aim: the protection of consumers. Consumer, according to the European Union acts and jurisprudence and

our domestic legislation, is any natural person who buys and uses goods and services for personal needs, meanwhile human is a literally term. It is very important to use the same concepts in different legal acts in order not to confuse the parties of consumer relationship: consumer and the trader. The law "On food" defines the last consumer<sup>24</sup>, which is in fact the consumer, according to the law no. 9902, dated 17.04.2008 "On consumer protection" amended<sup>25</sup>. The wrong usage of this definition is part of legal acts in consumer protection in general, which makes a little bit confusion between the actors of this field.

The process of European integration has obliged the Albanian state to fulfil the obligation that derives from Stabilization and Association Agreement. The article no. 76 "On consumer protection"<sup>26</sup> provides clear task for Albanian State, not only in the process of law approximation but also in establishing effective institutions. States should take measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards<sup>27</sup>.

<sup>22</sup> Amended with the law no. 74/2013 "On some amendments on the law no. 9863, datë 28.1.2008 "On food",

<sup>23</sup> Committee on World Food Security (CFS), "Global Strategic Framework for Food Security & Nutrition", (GSF) Fifth Version – 2016, pg. 7

<sup>24</sup> "Last consumer" is the last consumer of food products that does not use food as part of the food business. The law "On consumer protection" gives this definition of the term consumer - any person who buys or uses goods or services for individual needs, for purposes not related to business or practicing a profession. So, first should be clear which are the

condition that person should be considered as a consumer. Then the usage of food products involves the human being in process of food chain. See: Teliti, Ersida "Kontratat konsumatore", Ph.D. thesis, Tirane, 2013, pg. 44 – 48.

<sup>25</sup> Amended with the law no. 10444, dated 14.07.2011 and law 15/2013 "On some amendments of the law no. 9902".

<sup>26</sup> See: [http://www.integrimi.gov.al/files/documents\\_files/16-02-18-12-42-07MSA.pdf](http://www.integrimi.gov.al/files/documents_files/16-02-18-12-42-07MSA.pdf)

<sup>27</sup> FAO Council "Voluntary guidelines to support the progressive realization of the right to adequate food in



The [Albanian Progress Report 2016](#) has not provided any progress in the field of food safety, only technical issues without effective applications. The results of Progress Report clearly states the evolution of Albania towards years in food safety, emphasizing year by year the legal, institutional and practical tools that has been improved or there has been no action, comparing it with the obligation rising from the European Integration process.

Through years, our country has failed on fulfilling the obligations rising from Stabilization and Association Agreement. The complexity of food safety requires not only a sustainable legal framework, but also human resources capable and responsible for their work. Social media and other Medias broadcast very often lots of problems with food, not only informing Albanian consumers, but also referring to public institutions which fail to comply their competencies. Many actions are released and taken by institutions, but they have no major effect. This requires a planned and organized campaigns, not only when the problem is referred by the media, but anytime and moment, in order to offer more security to the consumer and “some pressure” to the trader in producing, distributing, transporting and selling in accordance with the law provisions.

Food safety as a sensitive process involves not only the parties of commercial

activity, but needs the effective role and intervention of institutions. This study will analyze but not exhaustively the main legal acts and institutions with provisions and competencies in the field of food safety.

## THE LEGAL FRAMEWORK<sup>28</sup>

### Law no. 9863, dated 28.01.2008 “On food”, amended<sup>29</sup>

The law “On food” is adopted after the signing of Stabilization and Association Agreement, as a necessity of EU integration process. The first law is the law no. 7941, dated 31.05.1995 “On food”, which had ruled in general, without specific measures the food products. This clearly states that Albanian State had a legal framework in this field even though in embryonic phase. So the system of food safety, its rules weren’t unknown for our institutions. The law had provided sanctions for the traders who violate these rules. Even though there was a legal framework, the food safety had been and it is still a weak point of government power.

The law “On food” aims to ensure a high level of protection of human’s health and consumer’s interests through defining general requirements on hygiene and safety of food, for the quality of it, for the labelling of food, crisis and emergency management,

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the context of national food security”, November 2004, pg.19

<sup>28</sup> There are lots of acts in the field of food safety, but this paper will analyze only some of them, the most

important, without analyzing the acts in the field of veterinary, phytosanitary rules etc.

<sup>29</sup> Amended by the law no. 74/2013, dated 14.02.2013.

the establishment and the responsibilities of the National Food Authority<sup>30</sup>.

The legislator has been careful in defining the concept food or food product, listing what could not be considered as food.

All the activity of food safety is based on precautionary principles, the principle of transparency and consumer protection. National Food Authority is the responsible institution in collaboration with the responsible ministry.

According to the law, the food is safe when it does not cause adverse action on human health when it is produced, prepared and consumed, according to the intended use. The food is considered unsafe when it is: a) harmful to health; b) unsuitable for human consumption. Food should not be used for commercial use if it is unsafe. Besides this provision, lots of food products are traded in internal market and they are unsafe. The problem is not the legal framework but the responsibility and the effectively of responsible institutions, in central and local government.

The law rules the import and export of food products and the roles of different institutions. The custom authorities should control the imported food after the surveillance of food inspectors<sup>31</sup>. The Decision of Council of Ministers no. 1081, dated 21.10.2009 "On the organization and the functioning of National Food Authority"

clearly states that border inspection points are an administrative part of the relevant regional National Food Authority directorates and carry out control of the cargoes of live animals, plants and products which enter, exit or transit in the territory of the Republic of Albania. The collaboration between these institutions, the national Food Authorities and its branches, the local government bodies will affect directly on the prevention of health diseases and as a result on the economic interests of consumers.

It also provides the responsibility of the traders<sup>32</sup> for any damage to human health caused by the consumption of unsafe food in all stages of production, processing and distribution. The spirit of the law is the collaboration of the traders with the public institutions, such as: National Food Authority and the responsible Ministry, especially traceability issues. The Decision of Council of Ministers no. 760, dated 16.9.2015 "On the requirements of traceability on food and feedstuff throughout the food chain" aims to establish the basis for an efficient system of traceability of food and animal feed throughout the chain food, setting minimum mandatory requirements for food tracers and food, for control of food business operators in order to minimize or eliminate any risk of being caused by placing on the market unsafe food and feed. The trader should fulfil all the requirements mentioned

<sup>30</sup> Also, it rules all the requirements of feed pets, feedstuffs pets, animal nutrition etc. This is a key element related to food safety, but we will analyze it only rapidly.

<sup>31</sup> Article 14 -18.

<sup>32</sup> The law uses the term food business operator. Food business operator shall mean any natural or legal person, registered to carry out activities that are related to food business, responsible for ensuring that food law requirements are achieved in the food business controlled by him.

in this act in order to provide the accurate information for the consumer and the competent authorities. This act provides: “Each food business operator or animal feed should establish an internal traceability system.” So, beyond the obligations of the food safety institutions, traders by themselves should manage these data at any time, at least three years after registering them.

Traceability issues are one of the key components of food safety, where our institutions have failed to do it or have just done it formally, based only on the documents.

One of the most important elements of food safety, related to the information of the consumer is the label in Albanian language, which should clearly indicate the name of the product, its ingredients, the quantity of them, the expire date, the name and the address of the trader, the country of origin, the instructions for use etc. The label should be readable and comprehensible. This is a general requirement for information given to the consumer by the trader in any kind of consumer goods or services. The Decision of Council of Ministers no.1344, dated 10.10.2008 “On the adoption of rules for the labelling of food products” has listed all the components and general requirements of food products labelling and some key features on their publicity. This act provides further requirements for the labelling of food products, giving more information to the

consumer, making them aware and preventing health damages.

All the process of official food control, the laboratory tests, the licensed laboratory and the references ones are ruled under this law, and in accordance with the instructions of responsible Minister<sup>33</sup>. The law rules the organization and the functioning of National Food Authority, its bodies and the competencies in food safety. The law provides the administrative sanctions in case of violations of its provisions.

The National Sectorial Strategy “On consumer protection and market surveillance 2020” provides the obligation of the responsible Ministry on drafting and adopting 40 legal acts in compliance of EU acquis, within the framework of short-time objectives. The State Supreme Audit Institution has mentioned on its report that government has failed in fulfilling this obligation. It has recommended: “The Ministry of Agriculture, in close cooperation with the National Food Authority and the stakeholders, should present the necessary improvements to food law, in order to comply with the EU's "acquis", avoiding duplication and lack of partition responsibility and coordination of state institutions in the food security chain. National Food Authority, Legal Sector in cooperation with other sectors, should prepare all draft -laws that compels implement the food law and propose it for approval to the Minister of Agriculture in order to put in complete regulatory

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<sup>33</sup> Article 38 – 46.

framework to improve food safety in the country”<sup>34</sup>.

### Law no. 10433, dated 16.06.2011 “On the inspection in the Republic of Albania”

This law defines the general principles of inspection, the organization of public institutions, performing inspection functions, the status of inspectors, the rules of administrative inspection procedure and the establishment of the Central Inspectorate. It defines "Inspection" as any form of control that the public body carries out to verify compliance with legal requirements by the inspection subject. The inspection is based on some principles such as: the principle of independence of inspection<sup>35</sup>; the principle of proportionality<sup>36</sup>; the principle of inspections programming<sup>37</sup>; the principle of most favourable legal provision<sup>38</sup>; the principle of public information and protection of confidentiality<sup>39</sup>.

Through the inspection the authorities guarantee food safety. The National Food Authority and its regional directorates, through the inspection activity and making the results public, exercise their competences effectively and increase the level of credibility to the public.

The inspection procedure should be transparent and correctively in order to realize the main aim, to secure consumers that the food products that they consume are safe. Also, these inspections should not affect the image and the figure of the traders.

### Law no. 9902, dated 17.04.2008 “On consumer protection”<sup>40</sup>

This law aims to protect consumers’ interests in the market as well as the determination of rules and establishment of relevant institutions to protect consumer rights. The article 2 states that this law doesn’t apply in those consumers relations, which are ruled by other favourable laws for consumers. Even though food safety is regulated by other specific laws and legal acts, the law “On consumer protection” is a framework law, determining the general definitions on consumer protection, listing the consumer rights and offering a clear view on general principles where the consumer protection should be based.

The right of health protection, environment and life safety is one of the most important rights. It is related to food safety, because health damage affects directly consumers’ health and life safety. This violation is related to another important

<sup>34</sup> State Supreme Audit Institution “Food safety”, final report on performance audit, August 2017, pg. 33.

<sup>35</sup> Article 5.

<sup>36</sup> Article 6.

<sup>37</sup> Article 7.

<sup>38</sup> Article 8.

<sup>39</sup> Article 9.

This principle is in a full harmony of the food safety legal framework. The Inspectorate should inform consumer in case that the food products do not fulfill

the general requirements according to applicable laws. Between the principle of confidentiality of the traders’ data and the information of consumers should prevail the last one, as it guarantees the protection of public interest.

<sup>40</sup> Amended by the law no. 10444, dated 14.07.2011 and the law 15/2013 dated 14.02.2013 “On some amendments on the law no. 9902, dated 17.04.2008 “On consumer protection”.

consumer right, the right of protection the economic interests<sup>41</sup>. Provided as positive rights, the state through its institutions should create a legal and institutional framework, so that the trader should offer only safe products. Safe products are safe for consumers' health; this will not cause damage, so the life and economic interests will be protected. This situation will be real if the food chain production and control will function without any barriers and each of the stakeholders would be responsible in this chain.

The article 7-12 of the law “On consumer protection” provides general traders’ obligations, such as: the information obligation, the price, the tax invoice/ coupon, the packaging of goods and the obligation of language. These provisions are also provided in other laws, expressed more explicitly, related to the aim of the law.

It also emphasises the role of consumer protection organizations. The law “On food” is very vague on the role and importance of these non-profit organizations in food safety. The law “On consumer protection” lists the consumer associations as a structure where the consumers could claim in case of their rights violations. There are only few cases in Albania that the consumer organizations have claimed at National Food Authority on food products, mostly for: the expired data, spoiled products, the products composition etc. There has been no response related to

specific analysis, but only on the inspection of the traceability or technical conditions.

So, the two laws have to be integrated in order that the consumer voice is heard directly or through the representation, guaranteeing safe food products.

## THE INSTITUTIONAL FRAMEWORK

Food safety implies not only the process of food chain but also other components mention in this paper. The institutions involved in this process are not only they analyzed as follow, but there also others, such as: Food and veterinary safety institute etc. This paper is based only on the main government institutions on food safety competencies, not exhaustively.

### The responsible Ministry<sup>42</sup>

The National Sectorial Strategy “On consumer protection and market surveillance 2020” states that there are still some challenges in food safety. So, according to the principle from the farm to the table, the responsible institutions should:

- i) guarantee food safety for consumers by improving the system of risk assessment process, management and its communication;
- ii) ensuring the health of consumers from the prevention and elimination of risks food products through the implementation of national waste monitoring programs, microbiological

<sup>41</sup> For further information see: Teliti, Ersida “Një vështrim krahasues mbi të drejtat e konsumatorëve në Shqipëri”, Journal of “Studime Juridike”, Vol. No. 1, 2011, Shtypshkronja Pegi, pg. 117 – 144.

<sup>42</sup> The author has used the term the responsible ministry because it has been lots of time subject of changes, the name and the competencies. Different acts have different name of it. Actually it is the Ministry of Agriculture and Rural Development.

criteria and contaminants in live animals, food products of animal and non-animal origin, and of bivalve molluscs.

The responsible Ministry should establish and coordinate the legal framework and the harmonization of legislation with the European Union legal framework. The competencies of the Ministry are mostly declarative and coordinative. It should collaborate with the other institutions in order to guarantee food safety and it represents our state in all the phases of EU integration process in this field. The highest state policies in the field of food safety are drafted by this institution. This requires a sustainable cooperation with other central and local government institutions.

The National Sectorial Strategy “On consumer protection and market surveillance 2020” lists short terms and long terms legal and institutional objectives, that have not been fulfilled by the responsible Ministry among years.

Viewing the Ministry as a political institution has involved all the categories of civil servants. That means that any time that we have political changes; these changes are reflected to the latest specialist and started works are mostly left in the middle. So the lack of continuously of duties and the specialist have created problems in the system of functioning this Ministry in fulfilling the obligation rising from domestic and international legislation.

### National Food Authority

National Food Authority is a legal person, public one, depending on the responsible

Ministry. It is established under the Decision of Council of Ministers no. 1081, dated 21.10.2009 “On the organization and functioning the National Food Authority”.

It is established as the institution that will guarantee the food safety system in fulfilment of legal, economic and social requirements. It conducts inspection, technical and scientific activities, in accordance with this law and other specific laws for the safety and quality of food and fodder for animals, health and animals welfare, as well as for plant protection.

The article 38 of the law “On food” provides that: “The official food control includes one or more of the following activities:

- a) inspection;
- b) sampling and conducting analyzes;
- c) control of the label and official documents;
- c) reviewing the documentation for traceability;
- d) review of the self-control system.”

So, National Food Authority has lots of competences, but what has always been said in official or unofficial way, through media or other institutions, is the lack of human resources and the lack of licensed laboratories. Besides the National Food Authority is the only consumer protection institution that has his own branches in all counties in the Republic of Albania.

The official food control is done during the stages of production, processing and distribution, through suitable tools and without warning. The law has provided in article 40 two situations of official food

control: a) regularly and in accordance with the priorities indicated in the scheme of risk evaluation; b) when there is reason to believe that the requirements of this law are not met.

Crisis management and emergency is one of the most important competencies of National Food Authority. This Authority, in collaboration of responsible Ministry, drafts a national plan for crisis management in food safety, which is approved by Council of Ministers.

When it is noted that food presents a serious risk to human health or the environment and that such a risk could not be eliminated, National Food Authority proposes to the responsible Minister, based on the difficulty of the situation, taking the following measures.

I. If the food is produced in the country:

- a) temporary prohibition on placing on the market or usage of food;
- b) the definition of specific conditions for specific foods;
- c) elimination of food without causing damage;
- c) other temporary and appropriate measures.

II. If the food is imported:

- a) temporary prohibition on the import of food from exporting countries or from parts of the exporting country or transit countries;
- b) the definition of specific measures for specific foods from exporting countries,

parts of exporting countries or transit countries;

c) elimination of food without causing damage;

c) other temporary and appropriate measures.<sup>43</sup>

So, the National Food Authority has only the obligation to propose and the Minister has the right to act and take the measures. Most of them are declarative and discrete ones, that clearly states that it is in the strong will of the Minister to take the stronger and extreme measures, such as elimination of the food.

The most important competence is the evaluation of risk assessment, where the role of National Food Authority is not only on gathering information about the risk of food safety and analyzing it, but also collaborating with other institutions, not only public ones, such as: Institute of Public Health, Institute on Food Safety and Veterinary and other legal persons, such: the traders or private legal persons. The European Commission's Progress Reports for Albania has reported very small progress in food safety, as in 2012 has defined that the development in food safety is at an early stage<sup>44</sup>, in 2016 has defined that: "There is no progress in risk assessment and the collaboration with other institutions involved in risk assessment is very weak."<sup>45</sup>

The [European Commission's Progress Reports for the Former Yugoslav Republic of Macedonia in 2016](#) affirms some progress in

<sup>43</sup> Article 47 – 48.

<sup>44</sup> European Commission's Progress Report for Albania 2012.

<sup>45</sup> European Commission's Progress Report for Albania 2016.

the level of preparation in the area of food safety. The [European Commission's Progress Reports for Serbia in 2016](#) states that even though Serbia is moderately prepared in the area of food safety, there has been no progress in the past year. None of these reports makes note on risk assessment and in Albanian Progress report, which implies the importance of it in our country.

The State Supreme Audit Institution during the audit and inspection of the National Food Authority has affirmed the lack of a proper activity for risk analysis, reducing the performance of the inspection activity and consequently improving food safety.

In order to realize its functions, the National Food authority should share this information, but the law does not mention consumers or consumer's organizations. Because of lack of information and the weak way of sharing it, Albanian Consumers are less informed in our region. Consumers are not aware on the possibility to claim and the way of claiming, so there is a necessity of updating the website of this institution.

This institution<sup>46</sup> is governed by the Board, which has a diverse and political composition<sup>47</sup>. The numerous changes of its members, conditioned by the election call into question the well-functioning of this body. The Civil Society has no information on the functioning of this body, the representatives of consumers' organizations and the role of it<sup>48</sup>. The State Supreme Audit Institution has emphasized the lack of functioning the Board and its direct effects on the role of National Food Authority on food safety. The [European Commission's Progress Reports for the Former Yugoslav Republic of Macedonia in 2016](#) let implied that even though National Council for Food and Animal Feed is established later than Albanian National Food Authority is more effective and collaborative in order to provide scientific and technical support to the Food and Veterinary Agency. The [European Commission's Progress Reports for Serbia in 2016](#) emphasizes the role and human resources in the National Reference Laboratories Directorate. Through years this institution has done small progress.

<sup>46</sup> The article 63 provides: "Constituent bodies of the National Food Authority are: a) the board; b) the General Director; c) scientific committee and scientific panels; c) respective inspectorates and laboratories; d) regional directorates."

<sup>47</sup>According the article 64: "The board is responsible for ensuring that the National Food Authority performs its mission and fulfils the obligations charged by this law. It consists of 15 members as follows: a) two representatives from the Ministry of Agriculture, Food and Consumer Protection; b) a representative from the Ministry of Health; c) a representative from the Ministry of Finance; c) a representative from the Ministry of Interior; d) a representative from the Ministry of Environment, Forests and Water Administration; dh) a public person in the media field;

e) Chairman of the Association of Mayors; (e) Five professors in the food, feed, veterinary and plant health professions; f) a representative of the consumer association; g) a representative of the agribusiness association." The points a), b), c), d) referee to the responsible ministries as their names have changed. The State Supreme Audit Institution during the audit and inspection of the National Food Authority has evidenced the lack of functioning of the board, scientific committee and panels. See: State Supreme Audit Institution "Food safety", final report on performance audit, August 2017, pg.16

<sup>48</sup> The Center "Konsumatori shqiptar" has sent a request for information on 2016 and there was no response from the Ministry of Agriculture, Food and Consumer Protection.



The State Supreme Audit Institution during the audit and inspection of the National Food Authority has clearly evidenced the weak points of this institution on accomplishing the tasks: starting from its organization and structure, the frequent movements of employees, the inability of conducting the laboratory analyses etc.<sup>49</sup> The National Sectorial Strategy “On consumer protection and market surveillance 2020” identifies as a priority recognition of national and European / international results for at least 20 types of tests performed by Food and Veterinary Institute laboratories<sup>50</sup>.

States should adopt measures to protect consumers from deception and misrepresentation in the packaging, labelling, advertising and sale of food and facilitate consumers’ choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers. Such measures should not be used as unjustified barriers to trade; they should be in conformity with the World Trade Organization agreements<sup>51</sup>.

The food safety is clearly related of process of informing consumer. The National Food Authority has failed in accomplishing this task. The National Sectorial Strategy “On consumer protection and market surveillance 2020” affirms that creating a data management system at each step of the control chain, from central to local level, is

essential to the organization of an efficient food control system. The National Food Authority has set up and keeps updated the database “AKU-net”, which already contains detailed information on the labelling of food and feedstuffs. The opening of these data is going to have a positive impact on consumer perception and coordinated inspection by inspectors.

Also, Albania is trying to be a Candidate State and one key element on food safety is getting and sharing information through Rapid Alert System for Food and Feed, created from European Commission.

### Local Government<sup>52</sup>

The local government has the right and the ability to rule and administer an essential part of public affairs under their own responsibility and in the interest of the community, in accordance with the law provisions. The article 3 provides: “Local self-government in the Republic of Albania ensures effective, efficient governance and at a level closer to citizens through: ... b) respect for the fundamental rights and freedoms of citizens sanctioned in Constitution or other laws;” So, the activity of local government units should respect the consumers rights and establish an environment for food safety. The competencies in this field are a little bit limited. The law emphasizes the collaboration between the local and central

<sup>49</sup>See: State Supreme Audit Institution “Food safety”, final report on performance audit, August 2017, pg. 16; pg. 30.

<sup>50</sup> Pg. 12- 13.

<sup>51</sup> FAO Council “Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security”, November 2004, pg.20

<sup>52</sup> The law no. 139/2015 “For local self-government”.

government in the solution of common problems. The municipalities has lots of competencies in economic development field and one of them is the establishment and function of public markets. The organization of them in accordance of general requirements of hygiene will create a safe environment for consumers.

The Tirana municipality is the only local government unit that has under its responsibility an agency in the field of consumer protection, The [Agency for Consumer Protection](#). This structure has done many activities: inspection ones, awareness or information activities in the field of food safety, raising the consumer voice.

The other local government units just have any specialist which has some vague competences in food safety, without exercising them effectively. The local government is the government near the citizens, is the first confrontation of government with the public. The missing competencies of local government on food safety requires a new restructuring of local government in human resources with first level specialist, who are going to be the connecting bridge with the institutions with competencies on food safety.

## THE LAST REMARKS

### Recommendations for central government

- The Albanian legislator should incorporate the right to food under the economic, social and cultural rights, recognizing it as human right, giving to

the consumer rights a high level of guarantee and protection.

- We strongly recommend a full harmonization and unification of all the acts, definition and concept in consumer protection legal framework and the government should adopt all the legal acts foreseen as soon as possible. The responsible institutions should be coherent, should respect the legal deadlines. In each institution could be appointed a specialist, who has this task and follow the deadlines. He should not be subject of political changes in institution.

- The responsible Ministry should fulfil the objectives provided in the National Sectorial Strategy “On consumer protection and market surveillance 2020”, offering more credibility to the consumers. Some of these products are part of Progress Report and beside the will of the governs, they should be met by any means. The usage of media through the planned actions and the publicity of it make consumers feel safe for the food products they use.

- The central and local government should collaborate and share information in order to guarantee food safety to consumers. This could be achieved through their specialist, but also through the branches of National Food Authority. The lack of counselling centres in local government break this part of information chain.

- The staff members of National Food Authority shouldn't be part of political

changes and should have lots of experience, out of political preferences.

- The National Food Authority should collaborate with other public institutions in order to manage effectively the risk on food safety, in order to inform and protect consumers in time. The agreement between institutions should be effective in giving and sharing the necessary information, so each of these institution will be more effective and responsible.
- The National Food Authority should collaborate and consider the consumer organizations as partners in their activities, in order to fulfil its competencies to protect consumers.

#### Recommendations for local government

- We strongly recommend the local government on establishing specific directorates with competencies in the

field of consumer protection and food safety, as this is the government nearer the consumers than the central one.

- The local government should establish the counselling centres in order to inform consumers and to help them claiming.
- States are encouraged to cooperate with all stakeholders, including regional and international consumer organizations, in addressing food safety issues, and consider their participation in national and international forums where policies with impact on food production, processing, distribution, storage and marketing are discussed.
- The consumer organization should be considered as partners in all these process but the state and should be financed by it in order to fulfil the state duty of informing consumers.

## THE HURDLE RACE' TO EU MEMBERSHIP: *IS ALBANIA A LAGGARD AND WHY?*

### INTRODUCTION: 'THE HURDLE RACE' TO EU MEMBERSHIP

The Zagreb Summit in 2000 laid the ground of the European Union's (EU) enlargement policy towards the Western Balkans (WB). Unlike the 'Big Bang' approach in Central and Eastern Europe (CEE), the enlargement policy towards the Western Balkans has as its core element, the individual membership of each of the Western Balkan countries. '*The Individualized Approach*'<sup>53</sup> intends the achievement of EU membership based on the individual merits of the progress achieved by each candidate country. The aim of this 'regatta approach' is to stimulate constructive competition among the countries in the region and help identify best practices.<sup>54</sup> Almost after 20 years from the European perspective, the enlargement policy has not changed much. It is a continuation of the gradual and slow access to membership, based on enhanced conditionality and a greater focus on the rule of law and the additional monitoring mechanisms. However, creating a variety of complex requirements and focusing on individual states' priorities has made EU membership an elusive moving target where

the most problematic countries will have to overcome greater obstacles for joining the EU. Today, 'racing' for EU membership has been extensively prolonged depending on the progress of each candidate country, a fact which is reflected in the degree and the type of contractual relations of those countries with the EU. All countries in the region are at different stages of European integration. Croatia is the only country in the region, which is an EU member state since July 2013. Meanwhile, Montenegro and Serbia are in accession negotiations, Macedonia and Albania are candidate countries, while Bosnia-Herzegovina and Kosovo are still potential candidate countries. Moreover, even within a modality, the Western Balkan countries represent different speeds of advancement in meeting with the European standards.

Albania is part of the group of the laggard countries to EU membership, since the progress in meeting EU conditions has been limited and delayed compared to most other countries in the region, despite the fact that Albania was not being involved in the violent conflicts of ex-Yugoslavia and there are no fundamental political disputes, such as the

<sup>53</sup> "the Union proposes an individualized approach to each of these countries" (of the Western Balkans). See: European Commission (2000) "Zagreb Summit Final Declaration, Zagreb.

<sup>54</sup> Marciacq, Florent (2015) "EU Enlargement in troubled times? Adapting to new realities and drawing lessons from democratisation failures", ÖGfE Policy Brief 39, Vienna, pg. 4.

case of Macedonia on the name issue, the non-recognition of Kosovo as an independent state from five EU member states, or the deep political and institutional crisis of the state of Bosnia- Herzegovina. Various scenarios have been presented by different scholars and experts about the possible dates of Albania's membership in the EU. 10 years ago, the experts estimated based exclusively on the analysis of internal factors that in the worst possible but most likely scenario, Albania could not become a member state before the year 2020.<sup>55</sup> A recent study analysing the national capacity of candidate countries (adaptation costs and administrative capacities) to fulfilling the membership criteria, finds that Albania will face difficulties in meeting the requirements of aligning legislation with that of the EU, and they foresee that the country, as well as the most problematic countries of the Western Balkans, could not be an EU member states before 2050.<sup>56</sup>

So where does Albania really stand in the membership race to joining the EU, compared to other countries in the region and also in different time-periods? How long it will take for the country to overcome the different stages of the integration process, and what is the level of compliance with the

European standards? What are the main causes that affect the performance of Albania and how we can draw best practices to improve the process? These are the questions that we will address in this occasional policy paper. Despite assessing the situation and the factors influencing it, in addition to the domestic country's conditions, we should also consider the EU's approach to enlargement policy or the developments within EU itself and its member states. Here we will focus mainly on the domestic factors, this is because the analysis and assessment of the current policy of enlargement in the Western Balkans has been carried out by other studies.<sup>57</sup>

### **"AT A SNAIL'S PACE": THE PROGRESS OF THE CONTRACTUAL RELATIONSHIPS IN THE DIFFERENT STAGES OF THE EU ACCESSION PROCESS**

After delays due to Albania's difficulties in guaranteeing political stability and implementing reforms, the negotiations for the Stabilization and Association Agreement (SAA) with Albania were officially launched on 31 January 2003 and concluded in June 2006, making Albania the third country of the Western Balkans to sign an SAA with the EU. The SAA came into force on 1 April 2009, and

<sup>55</sup> Vurno, Gjergji (2008) "Relations of Albania with the EU", Paper prepared in the Framework of the Project: 'Integration Perspectives and Synergic Effects of European Transformation in the Countries Targeted by EU Enlargement and Neighborhood Policies', Center for EU Enlargement Studies, Budapest.

<sup>56</sup> Böhmelt, Tobias and Tina Freyburg (2017) "Forecasting candidate states' compliance with EU accession rules, 2017–2050", *Journal of European Public Policy*. Other analyses are more optimistic with

regard to the time the country will join the EU, however, with regard to the progress achieved, Albania is closer to Bosnia-Herzegovina than countries like Montenegro and Serbia. See: Jay, Tom (2016) The race for EU membership: Enlargement is not high on the EU's agenda, but that isn't stopping its would-be members, *POLITICON*, December.

<sup>57</sup> See e.g. Balkans in Europe Policy Advisory Group (2014) "The Unfulfilled Promise: Completing the Balkan Enlargement", Policy Paper, May.

on the 28 of April 2009, Albania formally submitted its application for EU membership, despite the appeal and persistence from the EU officials, including the Enlargement Commissioner, to Albanian government for not submitting the application before the country's general elections, since further progress towards the European integration process depended on the development of free and fair elections.<sup>58</sup> In his opinion on Albania's application, the European Commission noted that before the membership negotiations were opened, the country still had a lot of work to do in order to achieve a sufficient degree of compliance with the membership criteria. Thus, the Commission recommended that the negotiations will be opened as soon as the country fulfilled the 12 key priorities identified in the Commission's Opinion.<sup>59</sup> Following the two successive 'NOS' in 2010 and 2011, the European Commission recommended in October 2012 the conditional status of the candidate country, if Albania fulfilled key measures in the area of justice, public administration reform, and the completion of the revision of the parliament's rules of procedure. On 16 October 2013, Albania was finally given the green light by the European Commission for candidate country status, because it noticed that the recommendations were mostly fulfilled. The European Council has taken into

account this recommendation of the European Commission and granted the candidate status to Albania in June 2014. Currently, the opening of the accession negotiations depends on Albania's further progress in five key priorities, namely public administration reform; strengthening of the independence, efficiency and accountability of the judiciary; the fight against corruption; the fight against organized crime; and the protection of human rights. In its latest report, in November 2016, the European Commission recommended that EU member states should consider the opening of EU accession negotiations with Albania when credible and tangible progress has been achieved in implementing the justice reform adopted in July 2016, and in particular the re-evaluation of the judges and prosecutors (the vetting process).<sup>60</sup>

From the table 5 on the stages of the EU membership and the status of the EU relations with the WB countries, we note that the avant-garde countries in the EU integration process have had a shorter time, of about one year, to pass from one stage of the process to the other. Meanwhile, in the case of Albania, the transition to different phases of the accession process takes more time. In the case of the negotiations for the Stabilization and Association Agreement, the process lasted three and a half years, almost three times more than in the case of Croatia,

<sup>58</sup> Balkan Insight (2009) 'EU Welcomes Albania's Application: European Commission has welcomed Albania's application for EU membership', April.

<sup>59</sup> European Commission (2010) Commission Opinion on Albania's application for membership of the

European Union, Brussels, 9.11. 2010, COM (2010) 680, pg.11-12.

<sup>60</sup> European Commission (2016) "2016 Enlargement Package: Credible enlargement process key to driving transformation and anchoring stability in Southeast Europe", Press release, Brussel, November.

Macedonia, or Montenegro. For Croatia, Montenegro, Serbia and Macedonia<sup>61</sup> the time from the application until the status of the candidate country and then for the opening of the accession negotiations the time needed was one to two years, whereas in the case of Albania, it took five years from the date of the formal application to the granting of the candidacy status. Today, more than 3 years have passed and the accession negotiations have been postponed with still no date when Albania could start the

negotiations with the EU. If we see the progress in the contractual relations at different stages of the accession process, we notice that Albania is moving at a much slower pace than most of the other countries in the region, although Albania has been in the 'pole position' in the early '90s, as the first country from the region which signed in May 1992 the trade and economic cooperation agreement with then-European Community.

**Table 5: The Stages of EU Membership and the Status of EU- WB Countries Relations**

Status	States	Stages							
		The Opening of negotiations for SAA	Signing SAA	The entry into force of the SAA	Application for EU Membership	Granting the status of EU Candidate Country	Opening of the EU accession Negotiations	Closing of the EU accession Negotiations	Accession
Member State Country	Croatia	April 2000	October 2001	February 2005	February 2003	June 2004	October 2005	June 2011	July 2013
Accession Country	Montenegro	September 2006	October 2007	May 2010	December 2008	November 2010	June 2012	--	--
	Serbia	October 2005	April 2008	September 2013	December 2009	Mars 2012	January 2014	--	--
Candidate Country	Albania	January 2003	June 2006	April 2009	April 2009	June 2014	--	--	--
	Macedonia	Mars 2000	April 2001	April 2004	Mars 2004	December 2005	--	--	--
Potentially Candidate Country	Bosnia-Herzegovina	January 2006	June 2008	June 2015	February 2016	--	--	--	--
	Kosovo	October 2013	October 2015	April 2016	--	--	--	--	--

Source: European Commission

<sup>61</sup> In the case of Macedonia, the start of membership negotiations, is among other things due to the dispute with Greece over the name issue. Dimitrova, Antoaneta L. (2016) The EU's Evolving Enlargement Strategies: Does Tougher Conditionality Open the

Door for Further Enlargement?, No. 30, June, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), pg. 13.

From the above table on the stages of the EU membership and the status of the EU relations with the WB countries, we note that the avant-garde countries in the EU integration process have had a shorter time, of about one year, to pass from one stage of the process to the other. Meanwhile, in the case of Albania, the transition to different phases of the accession process takes more time. In the case of the negotiations for the Stabilization and Association Agreement, the process lasted three and a half years, almost three times more than in the case of Croatia, Macedonia, or Montenegro. For Croatia, Montenegro, Serbia and Macedonia<sup>62</sup> the time from the application until the status of the candidate country and then for the opening of the accession negotiations the time needed was one to two years, whereas in the case of Albania, it took five years from the date of the formal application to the granting of the candidacy status. Today, more than 3 years have passed and the accession negotiations have been postponed with still no date when Albania could start the negotiations with the EU. If we see the progress in the contractual relations at different stages of the accession process, we

notice that Albania is moving at a much slower pace than most of the other countries in the region, although Albania has been in the 'pole position' in the early '90s, as the first country from the region which signed in May 1992 the trade and economic cooperation agreement with then-European Community.

### REASONS FOR TIME DELAYS

Albania should have been in the group of the countries that should have advanced towards EU membership, but due to the extreme domestic political polarization, the country has not given priority to the European agenda.<sup>63</sup> The slow pace of the contractual relations towards EU accession has been and continues to be mainly due to the domestic political polarization and lack of cooperation.

If referring to the Bertelsmann Transformation Index (BTI), the party system in Albania is characterized by a moderate polarization level, which is deepening lately.<sup>64</sup> In Albania, during and after the elections, a tense political polarization has been observed, characterized by conflicting approaches, constant boycotts, mutual accusations, animosity between political

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<sup>62</sup> In the case of Macedonia, the start of membership negotiations, is among other things due to the dispute with Greece over the name issue. Dimitrova, Antoaneta L. (2016) *The EU's Evolving Enlargement Strategies: Does Tougher Conditionality Open the Door for Further Enlargement?*, No. 30, June, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), pg. 13.

<sup>63</sup> "Executive Summary" in Jacques Rupnik ed. *The Western Balkans and the EU: 'the hour of Europe'*, Chaillot Paper, EU Institute for Security Studies, Paris, June 2011, pg. 9

<sup>64</sup> Section 5.1 for the party system assesses whether there is a viable party system capable of articulating and representing social interests, given the level of polarization. A rating of less than 4 indicates high polarization, values 4 to 7 show moderate polarization and a higher rating of up to 10 presents the low polarization of the party system. The Party System in Albania in 2006 is assessed with 7 and afterwards until 2016 with 6, indicating a polarization increase of the party system with 1 point. See: BTI database <https://www.bti-project.org/>.



groups, thus making it difficult or almost impossible to discuss and negotiate on the country's primary European integration issues, and as a consequence the progress towards EU membership has been consistently hampered. This situation is often reflected in the communications and reports of the European Commission, which assess that in Albania "political polarization remained high [...]" and as a result "hindering both political dialogue and technical processes".<sup>65</sup> Moreover, in a letter that the President of the European Commission sent to the Prime Minister of Albania, stresses that "the path of [the] country will indeed require constructive cross-party dialogue and cooperation".<sup>66</sup>

In most cases, the opposition in Albania, from all political wings, has played indirectly a deterrent role in advancing the European integration process and often it has taken drastic measures through boycotting the process. This has been seen as the only way to impose on the arrogant attitudes of the government. EU has been playing a decisive role in mediating and reaching agreement between the parties, this has been the case of the European Parliament's intervention in 2010 to end the boycott of the Socialist Party,

or in 2014 to end the 5-month parliamentary boycott of the Democratic Party.

Both the opposition and the government are careful in their public pronouncements. They accuse each other of not fulfilling the European agenda, because none of them want to be identified in front of the electorate, who mostly is pro-European, as a deterrent force of the country's progress towards European integration. In the rhetoric of the political elite of the ruling parties, always the failure to the country's advancement on European integration has been the brakemen role of the opposition.

In her public speech, the former Minister of European Integration, Bregu, said that 'Albania has lost two years of not receiving the candidate status. We have harmed ourselves. It is enough with the internal fights over the last two years! Though we have made compromises, we have not done enough'<sup>67</sup>. In the same way of thinking, but now with the roles changed, the current Prime Minister of Albania, Rama has emphasised in his public speech that in order to achieve as soon as possible the country's integration objective, it is needed cooperation with the opposition, for which he has not found the proper support.<sup>68</sup>

<sup>65</sup> European Commission (2016) Albania 2016 Report, Brussels, 9.11.2016, SWD (2016) 364 final, pg.7.

<sup>66</sup> The letter that President Juncker sends to Prime Minister Rama, date 03.07.2017, in Oliphant, Vickiie (2017) EU to replace Britain with ALBANIA? Juncker launches big push for full membership, [www.express.co.uk](http://www.express.co.uk), 4 July.

<sup>67</sup> Former Minister of European Integration, Mrs. Majlinda Bregu, cited from: European Policy Center (2012) 'To compromise or not to compromise?

Albanian politicians between outdated dilemmas and European imperatives', report, September.

<sup>68</sup> In four years from now, Albania must be much closer to the European Union than it is today, it is and it will be my responsibility, a responsibility that does not frighten me, but it encourages me ... I have begged our opponents for a pact to work together for this purpose and for some objectives of national interest. See weekly communication of the Prime Minister date 28 October 2017, 17.20.

## CONTINUOUS LIMITED PROGRESS: COMPLIANCE WITH EUROPEAN STANDARDS

In assessing Albania's progress towards EU membership, the issue is not only *when* but also *how* and *to what extent* the European standards have been met. In other words, to what extent Albania has progressed in adopting and implementing EU policies.

In order to provide a systematic and comprehensive assessment of the degree of the country's compliance with the European standards, we will refer to the progress reports of the European Commission, which monitor in detail and on a yearly base the progress in meeting the Copenhagen criteria. Methodologically, the progress reports have a standardized and rigorous form, mostly they follow the same structure as in the previous years. The assessment of the annual progress reports provides a very useful source of analysis as they present comprehensive and systematic data based on a large number of sources. Reports are drafted by the European Commission on the basis of information gathered from many sources, including information and contributions from the EU delegations, the governments of member states and candidate countries, the reports of the European Parliament and the assessments made by various non-governmental organizations and international organizations (in particular the Council of Europe, the OSCE, the International Financial Institutions

etc.). The Commission Reports are a good source of data to assess qualitatively the changes in almost all sectors of public policy, both in legislative terms (the adoption of EU legislation and government policies) and in the aspect of their practical implementation.<sup>69</sup> Progress is measured on the basis of the established or upgrading of the institutions, decisions taken, adopted laws and measures implemented (usually, laws or measures that are under preparation or awaiting parliament's approval are not taken into account as fulfilled). So we can give a qualitative assessment of whether progress has been made or not, or whether the progress achieved is significant or limited, referring to the specific qualitative expressions that the reports use to describe the progress in meeting with the EU requirements. The word 'progress' is the key qualitative expression.

To calculate a compliance performance index, we will consider the *intensity* and *frequency* of the performance (*progress*) achieved in each policy sector of the *acquis* or differently said in the 33 accession negotiation chapters of the European Commission's reports in Albania. In order to decide on the *intensity* of the performance in each of the public policy area (for each negotiating chapter), we will refer to the scale used by the European Commission. In the European Commission progress reports, we can record four major assessments<sup>70</sup> for

<https://www.facebook.com/edirama.al/videos/10155264880831523/>.

<sup>69</sup> Hille, P., and C. Knill. (2006) 'It's the bureaucracy, stupid': the implementation of the *acquis*

communautaire in EU candidate countries, 1999–2003. *European Union Politics*, pg.541.

<sup>70</sup> Recent EU Commission progress reports have changed the methodology, adding a fifth assessment, that of regression.

each of the public policy areas ranked as 'important, good or significant progress' (giving a value 1); simply stating 'progress' (giving a value of 0.67); 'little, limited or somehow progress' (giving a value of 0.33); and the case when there is no 'progress' (we give a value 0) in a given public policy area. Based on the degree of the intensity of the progress we also count the number of public policy areas that fall under each of the above categories. To create an annual performance

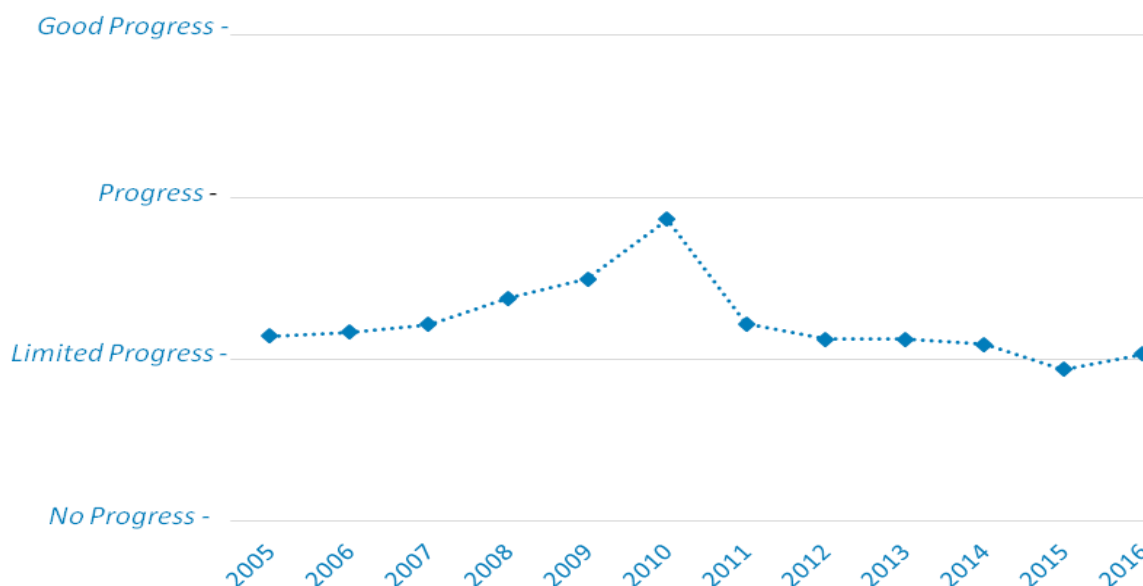
index of compliance with European standards, we calculate an average where the sum of the number of public policy areas multiplied by the coefficient of the intensity of the progress (according to the values given by us) is divided by the total number of public policies (this number in principle is 33, as the negotiating chapters) mentioned for the specific year. The results of this calculation are presented in the table below.

**Table 6: Performance of Albania's Compliance with European Standards (2005 - 2016)**

Year	Number of policy chapters/sectors assessed to have achieved...				Index of Compliance with European Standards
	<i>No Progress</i> 0	<i>Limited Progress</i> 0.33	<i>Progress</i> 0.67	<i>Good Progress</i> 1	
2005	3	14	4	1	0.38
2006	2	17	6	0	0.39
2007	3	14	6	1	0.40
2008	1	17	12	0	0.46
2009	1	23	10	5	0.49
2010	0	13	12	8	0.62
2011	1	24	8	0	0.40
2012	2	26	4	1	0.37
2013	1	28	3	1	0.37
2014	0	30	3	0	0.36
2015	4	28	0	1	0.31
2016	3	28	0	2	0.34

**Source:** Own calculation. Qualitative data on the state of 'progress' on the EU legislation part are extracted from Commission's progress reports. The EU legislation part of the reports is divided into policy areas or chapters, the number of which varies depending on the stage of accession (from 20 for potential candidate countries to 33 for candidate countries). The aggregated compliance index is computed taking into account the frequency (nr of policy areas) and intensity (ordinal four-value assessment) of the stated 'progress'. It is calculated as the sum of the number of policy areas per progress-scale divided by the total number of policy area mentioned in the specific year.

Figure 1: The Index of Complying with European Standards in Albania (2005 - 2016)



The European Commission reports on Albania before 2002, were focused mainly on the development and achievement of the minimum conditions of a functioning democracy and free market economy rather than the approximation of national legislation and policies to European standards. Therefore, the reports did not refer to compliance with the EU acquis. If we refer to Albania's starting point, although the reforms related to the European integration have been far from the level of achievements in the Central and Eastern Europe, the country's performance in 2002 compared to previous years is estimated to have achieved relative but sufficient progress bringing

Albania to the threshold of negotiating SAA with the EU.<sup>71</sup> In spite of this relative formal progress, there was 'considerable lack of implementing capacity' in 'almost every area where Albania would be expected to meet its obligations within the SAA'.<sup>72</sup> During 2003, only 'limited progress was made by Albania' in terms of formal adoption, since the recommendations of the Stabilization and Association Report of 2002 were only partially fulfilled.<sup>73</sup> Moreover, Albania still was lacking the ability to implement the provisions of a future agreement, considering 'the current pace of implementation of the reforms, the negotiations threatened to be prolonged and

<sup>71</sup> European Commission (2002) "The Stabilisation and Association process for South East Europe", First Annual Report Brussels, 03.04.2002, COM (2002) 163 final, pg.15.

<sup>72</sup> *Ibid.*

<sup>73</sup> European Commission (2003) "The Stabilisation and Association process for South East Europe", Second Annual Report, Brussels, 26.3.2003, COM (2003) 139 final, pg.26.

postponed'.<sup>74</sup> Progress has been limited to only a few specific areas in 2004, and many of the recommendations contained in the Stabilization and Association Report of 2003 were not implemented properly.<sup>75</sup> During 2005 and 2006, the country has made some progress towards meeting European standards, both in terms of adopting new legislation and establishing new institutions.<sup>76</sup> Albania during 2007 and 2008 made 'progress in approximating its legislation, policies, and capacities with European standards'.<sup>77</sup> But the outcome of the implementation was positive only for 2007, while for 2008 the report warned Albania on the need to 'increase its efforts in implementing the adopted laws and policies'.<sup>78</sup> In 2009 and 2010, although the results in different fields were uneven, still Albania has generally made progress in aligning legislation and policies to European standards.<sup>79</sup> Despite this formal progress, there is still need to increase its efforts to implement these laws and policies.<sup>80</sup> After 2010, there was a deterioration regarding

the level of compliance with European standards. Regarding the degree of its annual progress, during 2010-2016 Albania has had for most policy areas only some progress, and its efforts towards alignment with EU legislation are limited. Progress has been achieved in 68 cases, while significant progress has been achieved in only 20 cases. In other 21 cases, there is no progress at all. Regarding the level of preparation for the 33 chapters, the European Commission in its opinion in November 2010 assessed that in Albania: 8 chapters were very easy to approximate with EU legislation; 12 chapters were considered easy to approximate; while for the remaining 12 chapters additional efforts were required to approximate as they were considered to be difficult; whereas the chapter on the environment was assessed as too difficult to approximate with EU legislation.<sup>81</sup> While in the last 2016 report, the European Commission estimates that: 5 chapters are at an early stage, for 11 chapters only a certain level of progress has been achieved, while for 16 chapters the

<sup>74</sup> *Ibid.*

<sup>75</sup> European Commission (2004) "The Stabilisation and Association process for South East Europe", Third Annual Report, Brussels, 30.3.2004, COM (2004) 202 final, pg.34.

<sup>76</sup> MEMO/05/410 "Key findings of the 2005 Progress Reports on Albania, Bosnia and Herzegovina, Serbia and Montenegro and Kosovo" Brussels, 9 November 2005, pg.2;

MEMO/06/412 "Key findings of the progress reports on Kosovo and the potential candidate countries: Albania, Bosnia and Herzegovina, Montenegro, Serbia" Brussels, 8 November 2006, pg.2

<sup>77</sup> MEMO/07/446 "Key findings of the progress reports on Kosovo and the potential candidate countries: Albania, Bosnia and Herzegovina, Montenegro, Serbia" Brussels, 6 November 2007, pg.1;

MEMO/08/672 "Key findings of the progress reports on Albania, Montenegro, Bosnia and Herzegovina, Serbia, and Kosovo" Brussels, 5 November 2008, pg.1.

<sup>78</sup> MEMO/08/672 "Key findings of the progress reports on Albania, Montenegro, Bosnia and Herzegovina, Serbia, and Kosovo" Brussels, 5 November 2008, pg.1.

<sup>79</sup> MEMO/09/450 "Key findings of the progress reports on Albania, Montenegro, Bosnia and Herzegovina, Serbia, and Kosovo" Brussels, 14 October 2009, pg.2; MEMO/10/553 "Key findings of the Opinion on Albania", Brussels, 9 November 2010, pg.2.

<sup>80</sup> *Ibid.*

<sup>81</sup> European Commission (2010) Commission Opinion on Albania's application for membership of the European Union, Brussels, 9.11. 2010, COM(2010) 680, pg.9-10.

preparation is moderate and only one chapter has a good level of preparation (the chapter on foreign policy, security and defence).<sup>82</sup>

In the case of Albania, regarding the fulfilment of the European standards, both in terms of adopting policies and laws and in terms of their implementation, based on the data obtained from the progress reports, we notice only a continuous limited progress except for an impetus in 2010 where adoption results improve somewhat, a trend that decline soon after. According to this assessment and based on the data obtained from the Commission's reports, Albania could be assessed as having limited progress in meeting with European standards.

### REASONS FOR THE FLAWED PROGRESS WITH REFORMS

The poor performance of Albania, with the flawed progress, should make us think and explore further what are the main factors explaining Albania's limited performance. In this policy paper, we will propose some of the arguments that are important to understanding why there is a negative trend in Albania's progress with reforms, leaving apart the detailed and methodological analysis, which should be another research topic.

Albania's progress has gained momentum around 2010, the time of the visa liberalization process with the Western

Balkan countries. The dialogue with the EU to lift the visa regime in Western Balkan countries began in the spring of 2008 and at the end of 2010 EU assessed that Albania had successfully fulfilled the conditions for visa liberalization.<sup>83</sup> Most of the criteria for visa liberalization were part of the various sub-sectors of public policies related to security, migration, public order, foreign affairs, and human rights issues. This explains why the entire visa liberalization process is closely linked to the slight progress in meeting European standards at that time. The visa liberalization with Montenegro, Macedonia, and Serbia in 2009 increased the credibility of the process for Albania as well, inducing the expectation that if the EU conditions are met, the 'reward' could be gained.

Whereas, in other cases, limited progress could be explained through internal constraints, such as the non-political cooperation delaying the adoption of the legislation and other most important administrative barriers related to the lack of public administration efficiency and financial resources or the uneven distribution of human capacities, the lack of an established practice of consultation with interest groups on drafting specific legislation, as well as the inability to apply instruments of sound planning and realistic evaluation which reflects especially on the weak implementation of EU policies.<sup>84</sup> Moreover, after 2014 no sector showed progress, and

<sup>82</sup> See the assessment of every chapter: European Commission (2016) Albania 2016 Report, COM(2016) 715 final.

<sup>83</sup> For more see: ESI project on Viza Liberalization <http://www.esiweb.org/index.php?lang=en&id=342>

<sup>84</sup> Hajdini, Bojana and Gentjan Skara (2017) Lost in Implementation: EU Law Application in Albanian Legal System, Journal of Legal Studies, 19 (33).

the general progress has slowed even further. This is also because of sectorial policies that take advantages at a certain period of times. Over the past two years, the justice reform has been the primary and the only governmental priority, which may have adversely affected the progress of other policies.

## CONCLUSIONS

Overall, Albania has achieved substantial transformations since the year 2000 when the European Union launched the enlargement policy for the Western Balkans and recognized Albania and other countries of the region as potential candidate countries. These transformations are more meaningful if we consider the initial stage in which Albania started the process of European integration. After more than 15 years, the country not only has been democratized and achieved economic stability, but it has also increasingly progressed towards EU membership and achieving some European standards. Although Albania, in principle, has the prospect of EU accession, the credibility of membership is far more distant than that of some other countries in the region. Indirectly, this is also evidenced in the recent communication of president Juncker on the

Commission's work program, where only Serbia and Montenegro are mentioned as the favourite countries for a possible membership in 2025.<sup>85</sup> In the case of the group of countries with belated accession, the costs of meeting EU conditions are high, since in some cases they regard sensitive domestic political issues, or the country's administrative and financial capacity is limited. Given this generally unfavourable situation, delays in accession could bring negative side effects on the Europeanization of the country.<sup>86</sup>

From the analysis in this policy paper, we note that Albania's progress towards EU membership is not only slow but also flawed.

If the country continues to procrastinate on the substantial reforms needed for EU membership, Albania will drift away from EU and it will continuously remain at the stagnation zone of the European integration process that already harbours other problematic countries in the region.<sup>87</sup> This situation has caused Albania to remain behind, and not be considered in the group of the forerunning countries in the region that have progressed towards accession, but rather aligning with the most problematic countries such as Bosnia and Kosovo. Stagnation, - or the continuously limited

gradual accession process, the perspectives of the laggard group of countries is seriously threatened for many reasons. See: Balkans in Europe Policy Advisory Group (2014) "The Unfulfilled Promise: Completing the Balkan Enlargement", Policy Paper, Maj, pg. 12.

<sup>87</sup> Stratulat, Corina and Gjergji Vurmo (2012), Opportunity knocks: can the EU help Albania to help itself?, Policy Brief, European Policy Centre, March.

<sup>85</sup> European Commission (2017) State of the Union 2017. Letter of intent to the president of the European Parliament Antonio Tajani and the prime minister of Estonia Jüri Ratas, Brussels, 13 September, pg.10.

<sup>86</sup> Analysts see a potentially silent risk of the Western Balkans integration process dividing countries into groups according to their realistic membership perspective. While a group of countries from the Western Balkans moves forward, adhering to the

progress, - in fulfilling the membership conditions is problematic as there is a risk of deteriorating into complete regression in the long run. Political tensions and conflicts at all the levels of Albanian society, between leadership, political parties, civil society, and media prevent effective cooperation between the parties and consequently any rapid progress towards implementing the necessary reforms for the country's EU accession.<sup>88</sup> Polarization and non-cooperation are a major obstacle to EU membership, which must be overcome since the speed and quality of progress towards EU membership can only be achieved through the political will of the Albanian elites, increasing the administrative capacity and presenting concrete results in the reforms undertaken.

On the other hand, it turns out that Albania is more likely to comply with EU legislation and policies if EU offers intermediate 'rewards' for the country in specific areas of public policy, like for example the visa liberalization in the case of compliance with the conditions in the justice and home affairs sector.<sup>89</sup> Maintaining a pressure on key issues and providing benefits will legitimize the process and outcomes

since it will be perceived as a real scenario to compensate the low credibility of a fast EU membership.<sup>90</sup> The analysis of the current level of Albania's compliance with EU membership conditions and the causes of such performance can help us understand the process and at the same time encourage policymakers to formulate concrete measures aiming to address the real reasons behind this poor performance. Albania should seize the momentum and build upon good practices. In this context, it is essential to encourage a constructive and well-informed public debate on the country's current situation as well as the likelihood of fulfilling the conditions of EU membership, since political ambitions in the country cannot override reality.

<sup>88</sup> Stern, Ulrike and Sarah Wohlfeld (2012), *Albania's Long Road into the European Union: Internal political power struggle blocks central reforms*, DGAP, Berlin.

<sup>89</sup> For more on the argument in all the Western Balkans countries see: Renner, Stephan, and Florian Trauner (2009) "Creeping EU Membership in South-east Europe: The Dynamics of EU Rule Transfer to the

Western Balkans". *Journal of European Integration* 31 (4): 449-465.

<sup>90</sup> Jano, Dorian (2016) "Compliance with EU Legislation in the Pre-Accession Countries of South East Europe (2005–2011): A Fuzzy-set Qualitative Comparative Analysis". *Journal of European Integration*, pg.19.