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EU LAW, ENLARGEMENT PROCESS AND THE BURDEN OF LEGAL HARMONISATION IN ALBANIA

2024

Arbër Gjeta

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With the support of the Erasmus+ Programme of the European Union

Elbasan, 2024

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Assoc. Prof. Dr. Arber Gjeta

University of Elbasan

Chair Jean Monnet in

EU ENLARGEMENT

and

ACQUIS ADOPTION BURDEN:

ALBANIAN CHALLENGES

EEAABAC

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To Hera & Klaudia,
for their patience and support!

Contents

Preface

The present volume comes as a final work of three-year research at the Department of Law, University of Elbasan, Albania. It comes as a result of research carried out with the support of the European Union under the Erasmus+ Program – Jean Monnet Chair in "Eu Enlargement and Acquis Adoption Burden: Albanian Challenges (EEAABAC)", established for the first time at the University of Elbasan.

Through this work, we intend to present the actual and ongoing process of EU integration for Albania and its development so far. This volume intends to offer an analysis of the process in a general view regarding integration, the actual status of the negotiations, and the hardest burden for aspirant countries like Albania during the process, from our point of view, the *acquis* adoption.

The monograph describes the enlargement processes under the EU legislation and the novelties brought by the new methodology issued in 2020. Furthermore, we intend to provide a clear, descriptive and exhaustive analysis of the adhesion processes in the EU in different historical moments up to the last enlargement, that of Croatia. The main aim is to offer a consolidated view of the EU after each enlargement through analysing historical background, institutions, legislative procedures and functioning, also as to document the state of the art of the process of harmonisation of legislation from an EU perspective and the role of the EU institutions in the process.

This monograph comes at a very dynamic point in the integration process for Albania, which has concluded the screening process and is now waiting for the II Intergovernmental Conference in order to open *de facto* negotiations with the EU and Member States. That represents the main difficulty of this work and the burden of researchers, who intend to tackle EU law issues, enlargement process under the EU procedures and *acquis* adoption as the core requirement for membership and the hardest touchable (measurable) objective besides political will and geopolitics.

In this book, we concentrate our focus on the process of enlargement and integration, transversally, under the EU law and institutions, prior models of integration and lessons learned thereof, the path of Albania since its first steps in the process according to the progress reports of the EC, the new enlargement

procedure and in-depth research on some core chapters of integration, that are chosen from different clusters as an example regarding efforts in legal approximation.

Our aim is that our modest work will impact the scientific community in Albania and abroad regarding EU institutions, the enlargement process and novelties thereof, and the Albania's *acquis* adoption efforts. Furthermore, the monograph is intended to constitute a good and well-documented text for professionals who deal with EU law in their everyday work and are involved in the harmonisation process within ministries, other governmental bodies, or the private sector. Also, this work will reach students, postgraduate students or young researchers who are focused on topics of EU enlargement or legislation harmonisation.

In the end, we want to pay acknowledgements to colleagues at the Department of Law, scientific collaborators, speakers at open lectures, contributors to the Chair events, governmental officials and stakeholders interviewed, translators, students, and the EU funding schemes without whom this modest effort would not been completed. A special thanks goes to Artan, Gerta, Teuta and my students for their valuable support.

The Author
Elbasan, December 2023

Chapter I

Morphology of the European Union enlargement from a historical point of view

Introduction

The European Union, since its origin, then the European Economic Community, has been defined as a form of economic integration between member states initially economically privileged from the countries of Western Europe. Lately, with the integration of a large number of new members very little more economically developed and with not fully stabilised democratic institutions, the EU has become the Union of 27. It is the year 1957 that marks the signing by Belgium, France, Germany, Italy, Luxembourg, and the Netherlands of the Treaty of Rome or as it is otherwise known, the Treaty of Coal and Steel, thus laying the foundations for the economic union of European countries in the European Community.

The invitation to join the sixth was also extended to Great Britain, which was initially rejected due to not losing some privileges concerning other European countries in atomic energy and nuclear weapons. The British Government, in order to maintain the privilege of being at the head of the British Commonwealth and not giving up part of its sovereignty in favour of a new international institution like the EEC, did not want to enter into a customs union with a common European tariff that would bring it loss of preferential trade position with Commonwealth countries. Joining a customs union for Britain was read as a high economic, financial, and political cost as it had to be separated from the Commonwealth by a common tariff that would burden the price of supplies of products and raw materials[1]. But, on the other hand, Britain was aware that the creation of the EEC would harm its interests in the European markets, although it made efforts by proposing the creation of a free

[1] D. GOWLAND, A. TURNER, A. WRIGHT, *Britain and European Integration since 1945: On the Sidelines*, 2009.

trade area with the six member countries, these requests were not approved by the latter it was seen as an obstacle to curb European integration[2].

1. The first enlargement of the European Economic Community

In July 1961, the British Government made the first request to join the ECE, which was accompanied by several conditions for negotiations, aiming to protect the interests of the Commonwealth, the partners of the European Free Trade Association, and British agriculture and have a long transition period of up to 12 years to join the common agricultural policy of the six founding member states. She sought membership simultaneously as an EFTA member state, modification of institutions, etc.[3] But French President De Gaulle vetoed Britain's request for membership, referring to incompatibility between European and British continental economic interests. He demanded that the UK accept all the terms the six member states set and revoke its commitments to countries within its free trade zone[4].

In 1966, the ruling Labor party, from being an opponent to the integration of Britain, changed its approach and expressed its readiness to present the second request for its membership in the Community. Even at this stage, Britain's positions were the same as the first request, but there were also new elements that reinforced the idea of Britain's inclusion in the family of the community, such as these arguments: the weakening of the Commonwealth and the reduction of Britain's foreign trade, industrial tariff restrictions with the EFTA countries were to be removed in late 1966 as EFTA lacked the homogeneity of a common policy. British trade with the EEC had increased despite all the external tariffs of the six member countries determined. Also, Britain's request expressed a weakness of dependency relations with the USA due to the latter's involvement in the war in Vietnam, choosing the path that led to a developing Europe.

In early 1967, British Prime Minister Harold Wilson and his Foreign Secretary, George Brown, visited the heads of the Six. Reactions in the capitals mainly were positive due to the fact that London had declared its willingness to accept the terms of the treaties and fulfil the same obligations as its future

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[2] M. T. BITSCH, *History of European construction*, 2003, f. 158.

[3] K. STEINNES, *The European Challenge: "Britain`s EEC Application in 1961" Contemporary European History*, 7, 1998, pp. 61-79.

[4] British Prime Minister Harold Macmillani's speech on July 31st at the House of Commons where he expressed the requirements for membership in the ECE. Available at https://www.cvce.eu/obj/address_given_by_harold_macmillan_on_the_united_kingdom_s_application_for_membership_to_the_ec_31_july_1961-en-a5c95873-aca0-4e9f-be93-53a36918041d.html (Last accessed on 03.01.2024).

partners. A more muted welcome once again came from France, mainly because of the economic difficulties experienced by the United Kingdom and the country's special relationship with the United States in matters of foreign policy, which, in the eyes of the French president, threatened to hinder Franco-German plans for political cooperation. However, the British Prime Minister was convinced that lessons had been learned from the failure of the first application and that this time, he would be able to persuade General de Gaulle that British acceptance was essential[5].

On 2 May, after ascertaining the reactions of Commonwealth and EFTA members, Harold Wilson announced to the House of Commons that the government had decided to apply for membership of the European Communities. A large majority approved the Prime Minister's announcement. On May 11, the British government presented its second application for membership in the European Communities in Brussels. The United Kingdom's application for membership was joined by those of Ireland, Denmark, and Norway[6]. The French President pointed out the economic difficulties that the United Kingdom has experienced, emphasised the incompatibility of the British economy with Community rules, and demanded that the country undergo a prominent political and economic transformation before its membership in the Community. For this, he proposed an association agreement that would bring about the desired political and economic transformation to be admitted to the EEC. Still, Britain immediately rejected this request as the associated country's status made it feel inferior in the community. De Gaulle's second veto also brought about the deterioration of Franco-British relations, and he was charged with the responsibility of hindering the expansion of the Community and the European integration process[7]. Negotiations with Great Britain, interrupted in December 1967, after the second French veto and with the arrival at the rule of President Georges Pompidou, were officially resumed on 30 June 1970 in Luxembourg in the wake of the Hague Summit, which, in December 1969, had accompanied strengthening the Community with its enlargement[8]. Diplomatic discussions were conducted in parallel with

[5] The United Kingdom's second application for accession to the Common Market. Available at https://www.cvce.eu/en (Last accessed on 03.01.2024).

[6] Luxembourg Centre for Contemporary and Digital History available at https://www.cvce.eu/en (Last accessed on 03.01.2024).

[7] P. MILO, *Bashkimi Evropian*, Tirana 2002, pp. 80-81.

[8] Note du minière Luxembourgeois des Affaires étrangères (March 9, 1970), Source: Luxembourg National Archive, Luxembourg. Ministry of State. External work. File 56, 1970. On March 9, 1970, in the framework of the future enlargement of European Communities, the act of the Ministry of Foreign Affairs of Luxembourg detailed issues related to the procedure and conditions of membership of Britain, Denmark, Ireland, Norway.

Denmark, Ireland, and Norway, whose economies remained closely linked to the British in trade, particularly under the European Free Trade Association (EFTA). At the opening of the negotiations, Britain accepted the Community's treaties and decisions, showed some reservations about its contribution to the Community's budget, where it asked for a progressive contribution, and the acceptance of the common agricultural policy was set for a 5-year transitional period. The non-negotiable issue remained the sterling, where the French minister asked for its devaluation due to the risk to the plans to create the monetary economic union. Still, Britain firmly requested that the part of the sterling not be treated as they would not give up. Under these conditions, France would not risk saying a third no, as it would be difficult for its image, but it would also bring a loss of trust towards the community members. On January 22, 1972, the accession treaties of Great Britain, Denmark, Ireland, and Norway were signed, which entered into force on January 1, 1973[9]. Norway failed to pass the internal referendum, and the Community became nine members in this round.

2. The second enlargement of the Community

Although the political, economic and social criteria provided for in the Treaty of Rome were not applied to the first enlargement, these criteria were established for the other countries of Southern and Eastern Europe in the condition of their admission to the family of the European Community. The association agreement was first signed by Greece in 1961, Turkey in 1963, Malta in 1970 and Cyprus in 1972. Since the signing of the Athens Agreement on July 9, 1961, Greece enjoyed associate status as a Member of the Community. The Association Agreement that entered into force in November 1962 provided in particular for a customs union between Greece and the Community at the end of a 22-year transition period as well as for the conclusion of a financial protocol and the harmonisation of certain policies, especially about agriculture and taxation. The free movement of persons, services and capital would come into effect at the end of a 12-year period. Article 72 of the Association Agreement also recognised that Greece would eventually join the European Community. After the military coup in April 1967, financial aid was cut off, and only after the overthrow of the colonels' regime on July 24, 1974, and the restoration of republican democracy in the country on November 28, 1974, was Greece readmitted to the Council of

[9] Treaty of Accession of Denmark, Ireland and the United Kingdom (1972) Official Journal OJ L 73, 27.3.1972, available at https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-accession.html#new-2-9 (Last accessed on 16.1.2024).

Europe[10]. On June 12, 1975, in Brussels, the ambassador of the Greek government, Mr. Staphatos, presented the official request for accession to the European Economic Community (EEC). The government of Konstantin Karamalis and his cabinet took every opportunity to make known to the 9 members their commitment toward the European Community; Greece now fulfils all the requirements of membership: it is "European", it has recognised democratic political institutions and, finally, has reached an adequate level of economic development[11].

Although Karamalis's request was supported only by France and Germany, one for political and the other for economic reasons since the latter was Greece's main supplier of goods, other community members had doubts. They were of the opinion that the association regime should be postponed for a long delay before Greece joins the common market, as difficulties may arise in relation to agricultural issues and their financial implications, and this led to disagreements among the nine current member states, as according to the European Community Report, structurally, agriculture in Greece remains far behind the rest of Europe. One of the arguments that the Government of Mr. Karamanlis and that of most political parties and the business community would like a quick entry into the Community, as Greece's entry into the European Community would enable it to reduce its dependence on the United States, which is very unpopular in country, especially since the Turkish intervention in Cyprus in 1974. This intervention was accompanied with the expansion of American interests in several sectors of the economy with the April 1976 agreement between Washington and Ankara on a new aid program for Turkey, and were received hostilely in Athens. For this reason, the Greek Government called for joining the European Community in order to strengthen democracy in Greece[12].

At the request of the Council, the Commission presented its opinion on May 23, 1979, in a report on Greece's application for membership, showing a measure of the reserve, as it was aware of the political importance of this enlargement. In 1976, almost 50% of Greek exports went to the Member States of the Community, and these countries accounted for about 40% of its imports. More than 240,000 Greek immigrants were already working in the European Community, mainly in Germany, the United Kingdom and France. There were

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[10] E. DESCHAMPS, C. LEKL. *The accession of Greece*, CVCE European Navigator, 1999. Available at https://www.cvce.eu/obj/the_accession_of_greece-en-61a2a7a5-39a9-4b06-91f8-69ae77b41515.html (Last accessed on 16.1.2024).

[11] H. GERSON, H. PAOLINI, *Greece applies for accession to the E.E.C.*, Le Figaro, Paris, 13.06.1975, p. 4.

[12] Ibid.

considerable economic hurdles to overcome. Greece had a much lower gross domestic product (GDP) and a higher unemployment rate than its future European partners. Its GDP was 50% below the Community average. Through membership, Greece hoped to benefit in particular from the guarantee of agricultural prices and some structural funds of the Community. Furthermore, the report continued that some Greek agricultural products (olive oil, wine, and fruit and vegetables) threatened to compete with products in Italy or France, which were already in surplus under the common agricultural policy (CAP).

In the opinion of the European Commission, Greece also suffers from the lack of appropriate marketing structures and especially from an underdeveloped network of cooperatives. Therefore, the Commission proposed a transitional period of seven to eight years.[13] The Commission emphasised that the economy and agriculture in Greece are backwards compared to the nine most industrialised nations that then composes the European Economic Community (EEC). The Commission believed a long transition period would be necessary if the Greek economy were to adapt and integrate successfully into the Community. The Commission proposed that the nine should establish a pre-accession period. He also warned member states of the danger of indirectly involving the Community in the dispute between Greece and Turkey, reignited by the Cyprus crisis in July 1974 after Turkish troops occupied the northern part of the island. Turkey had also signed an Association Agreement, which had been in force since 1963.

Several warnings, in the Commission's opinion, provoked strong reactions in Greece. The Greek government, led by Konstantinos Karamanlis, was eager to consolidate its newfound legitimacy on the domestic and international stage. It played the political card, citing support for democracy, to insist on accession as soon as possible. He also expressed his willingness to accept the entire *corpus* of Community legislation, the Community *acquis*. There were also strong arguments from Leblond, who, in favour of Greece's membership, highlighted the vital contribution that Greece could make when it joins the Community. According to him, the Greek state has significant mineral resources that are partially undeveloped, primarily bauxite, ferronickel, copper and magnesium. According to recent research, there may also be oil in Western Greece and the Ionian Sea, and Europe, with its limited natural resources, could benefit greatly. Then there is the strength of Greece's geographical position, an asset for companies wishing to trade with the Middle East and Africa, where many Greeks are based. He emphasised that in the last five years, Greek companies have undertaken many large-scale projects in the Arab

[13] Luxembourg Centre for Contemporary and Digital History, *The accession of Greece*, pp. 2-3.

world (Iraq, Libya and Saudi Arabia), Iran and Africa. As a result of the Lebanese civil war, Greece is becoming a major financial centre for the Eastern Mediterranean. The third Greek advantage is an extraordinary merchant fleet. With Greece in the Community, the latter's share of the world merchant fleet would increase from 21.7% to 35.8%.[14]

The Treaty of Greece's accession to the EEC was signed on May 28, 1979 and entered into force on January 1, 1981. Undoubtedly, the total "Yes" that the Council gave to Greece is a "historic event" according to Mr. Karamanlis, there are not many such cases since its membership with full rights was not only for economic reasons, it also had some political motives, like its acceptance will strengthen its position towards Turkey, but, the event is even more so much for the Community, whose course was heading in an unpredictable direction.

In accordance with the provisions of the Treaty, the Commission gave its opinion unfavourable to a rapid accession, putting forward three arguments: its economic backwardness, the ongoing conflict with Turkey and the risk of successive 'enlargements' following each other too quickly for the Community to absorb. The first argument is not unassailable: Ireland's standard of living is no higher than Greece's. The second was a real nuisance for governments: the Commission is overstepping its mandate, the most disaffected claim, by taking a stand on international problems outside its competencies. In the third argument, the Community is open to any country that applies to join as long as it agrees to respect the provisions of the Treaty. Despite the Commission's request to impose a "pre-accession" period on Greece, the Council decided to bypass the Commission. Following the displeasure between the two, Greece's request was declared admissible without conditions, as desired by France and West Germany, among others. Like the United Kingdom, Ireland and Denmark, Greece will not have to fulfil any preconditions but will benefit from the transitional period once inside the Community[15].

[14] L. LEBLOND, *When Greece knocks at the door*, in *30 jours d'Europe*. dir. de publ. Fontaine, François. Novembre 1976, n° 220. Paris: Service d'information des Communautés européennes. "Quand la Grèce frappe à la porte", p. 16. Available at https://www.cvce.eu/en/obj/when_greece_knocks_at_the_door_from_30_jours_d_europe_november_1976-en-db31cba7-9074-4151-bf51-800e1257bf00.html (Last Accessed on 16.1.2024).

[15] Source: Le Monde. dir. de publ. Fauvet, Jacques. 11.02.1976. Paris: Le Monde. "Le «oui» de l'Europe à la Grèce", p.1. Available at https://www.cvce.eu/obj/europe_says_yes_to_greece_from_le_monde_11_february_1976-en-63080c7a-49af-4648-9bc7-037afc1aebfe.html (Last accessed on 16.1.2024).

3. The third enlargement of the EEC

After years of isolation under authoritarian regimes, in the second half of the 1970s, the success of the democratic transition processes in Portugal and Spain paved the way for full membership in the European Community. Without a doubt, the Iberian countries belonged to Europe, not only geographically, in their traditions, culture, religion, cultural identity, and the integration of these two countries was in the interest of all parties, on the one hand the Community, their membership would serve them strengthened their strategic position in the Mediterranean and with Latin America by strengthening them towards the south and providing connections with the peripheral regions of the EC, but on the other hand, in Portugal and Spain, integration was seen politically and economically as the best way to consolidate their structures because EC decisions directly affected the Iberian countries, having a more significant impact on the economy than the internal decisions of their national administrations, also the integration process would help consolidate the newly created democratic institutions in the modernization of their economic structures and in the normalization of relations with their European neighbors.

In this context, EU integration catalysed the Iberian countries' eventual transformation into modern Western-type economies. Economic liberalisation, trade integration, and modernisation of their economies began in the 1960s, and both countries were growing increasingly during the two decades before EU membership. The EC's economic impact began long before membership. Preferential Trade Agreements (PTAs) between the EC and Spain (1970) and the EC and Portugal (1972) resulted in the further opening of European markets to the latter countries, which paved the way for a model of development and industrialisation which can also be based on exports.

The prospect of EU membership acted as an essential motivating factor that influenced the actions of policymakers and businesses in both countries, where they took unilateral measures in preparation for membership, including increased economic flexibility, industrial restructuring, the adoption of VAT and the intensification of trade liberalisation.[16] Spain and Portugal made the official request on March 28 and July 27, 1977, and negotiations began on October 17, 1978, with Portugal and on February 5, 1979, with Spain.

However, the developments were slow and hesitant due to the difficulties of adopting the economies of these two countries and especially the structural changes that had to be made in them. Economic conditions in Spain and Portugal in the second half of the 1970s and almost half of the 1980s were not

[16] S. ROYO, *Lessons from Spain and Portugal in the European Union after 20 years*, Dans Pôle Sud 2007/1 (n° 26), pp. 19-45.

encouraging. The world crisis caused by the second oil shock at the end of the 1970s and the lack of an adequate response to the fall of authoritarian regimes in both countries intensified the problems in the structure of these economies. Portugal, a founding member of EFTA, had lowered its trade barriers earlier and was theoretically in a better position than Spain. At the time of accession, Spain was the fifth largest EC economy and Portugal the tenth. The economic crisis of the late 1970s and the latter half of the 1980s had devastating consequences for both countries, and EC accession was viewed as a risk of the economic destabilisation of the Community. France, Italy, and Greece had expressed concern about the Spanish competition in the production of wine, fruits, and vegetables, and Germany and Britain were against the increase in agricultural spending that would benefit the new member countries. Portugal itself agreed to limit textile exports to the Community and block the free movement of labour until the end of the transition period. For its part, even Spain was committed to cutting the production and production of some steel products. At France's request, restrictions were placed on the production of Spanish wines, as well as restrictions on fishing. In 1984, the political conflict between Spain and Great Britain over Gibraltar was resolved. The signed agreement saw Britain agree to discuss its sovereignty with Gibraltar while the Spanish government opened its border between Gibraltar and Spain[17].

The European Community played a crucial role in bringing these two countries closer to its family, bypassing the economic criteria defined in the Treaty of Rome for the new member countries in the membership of Spain and Portugal. The EEC decided based on political considerations, not economic ones, evaluating the progress in the values of freedom and democracy that were almost absent during the 40 years of the dictatorship. When the European Community was founded, it pledged to defend the principles of peace and freedom, whatever other difficulties or problems may arise. This was the fundamental objective of the Community. Given this commitment, the still young democracies of Spain and Portugal needed to be given a positive answer regarding their integration. Otherwise, there would be a risk of weakening these new democracies that Europe was committed to protecting. The European leaders clearly expressed this objective, proclaiming that the accession of Spain to the Community originates from a political goal, transmitting to the stability, consolidation and protection of the democratic system in Europe.

The European Commission itself acknowledged the fact that integration into the EC was essentially a political choice. The opening of the negotiations

[17] P. MILO, *Bashkimi Evropian*, op. cit., f.128-129

clearly recognised that significant changes had taken place in Spain and Portugal, which needed to be protected and consolidated within the European context. In other words, Portugal's and Spain's political, economic, and social stability were perceived as stability factors for the community itself[18].

According to the terms of the membership agreement signed on June 12, 1985, both countries had to take essential steps to harmonise their legislation in the industrial, agricultural, economic and financial policies towards the European Community[19]. Ratification of the Treaty was done without problem and entered into force on January 1, 1986, bringing the Community in 12 members.

EC membership contributed to the consolidation of democratic regimes in these countries, helped to improve the national image with feelings for democracy, and public opinion itself helped to legitimise the new system and strengthen support for democracy. Financial contributions from the EC budget, as well as the economic benefits of membership, contributed to improving economic conditions and influenced the conditions and better prospects for social and political stability. Membership also forced the institutions of the two countries to implement the *acquis communitaire*, which strengthened democracy and encouraged democratic governments to reform administration (for example, Portugal improved its Constitution in 1989 to allow the privatisation of companies that had been nationalised during the revolution). Finally, membership also promoted elite socialisation and the development of transnational networks, which, for example, proved vital for strengthening groups of interest and political parties (such as the Spanish and Portuguese socialist parties, which received substantial support from their European counterparts). The development of economic interests and networks at the

[18] S. ROYO, *Lessons from Spain and Portugal in the European Union after 20 years*, op. cit.

[19] Document 11985I/TX OJ L 302, 15.11.1985, p. 9–497, Treaty (signed on 12 June 1985) between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Communities) and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community.

Document 11985I/ACT OJ L 302, 15.11.1985, p. 23–465 Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties. Available at http://data.europa.eu/eli/treaty/acc_1985/act_1/sign (Last access on 5.1.2024)

European level also strengthened the support of economic actors for democracy[20].

4. The fourth enlargement of the EEC

Negotiations for the membership of Austria, Finland, Sweden and Norway in the European Union began on February 1, 1993. Due to some claims, these states had to maintain certain prerogatives, especially in agriculture, regional aid, contribution to the Community budget and the determination of quotas for fishing. The negotiations were not so easy, despite the interest of some of the 12 member states in having these countries within the community as soon as possible. Germany had a great interest in the enlargement of the Union to include Austria, and the United Kingdom and Denmark included the Nordic countries as these countries were EFTA member states as well as meeting the conditions to be members of the EU as they had high standards of living and had developed democratic institutions.

However, the EU institutions faced severe problems during this enlargement. With the arrival of new member states, the number of votes in the Council increased, as did, in turn, the blocking minority. The UK opposed increasing this blocking minority in order to weaken the decision-making process, making it more challenging to achieve a qualified majority. Spain adopted the same position for fear of seeing its northern neighbours dominate the Union at the expense of the Mediterranean countries. The European Commission, the European Parliament, France and the Benelux countries expressed regret at the possible blockage this would bring. The fierce debate eventually resulted in the adoption of a complex compromise on March 29, 1994, in Ioannina. This took the form of a Council decision, which was not included in the Treaty to avoid the need for further ratifications.[21]

Negotiations between the Union and the candidate countries were complicated on agriculture, regional aid, contributions to the Community budget and the determination of fishing quotas. Austria had three main problems for which it sought the compromise of the community members regarding agriculture, transalpine road transit and second residents. Also, environmental standards, regional policies, and neutrality (common foreign and security policy) were the areas of importance that needed to be compromised before membership. It featured reservations that included: mountain agriculture

[20] S. ROYO, *Lessons from Spain and Portugal in the European Union after 20 years*, op. cit.

[21] Luxembourg Centre for Contemporary and Digital History, *Historical events in the European integration process (1945–2009)*, available at https://www.cvce.eu/en (Last accessed on 03.01.2024).

(milk quotas, etc.), the determination of EEC production limits; the restriction of transit transport in its territory, the alcohol monopoly, the transition period for the monopoly (aimed at supporting farmers' incomes); given the high ranking of ecological values, any "lowering" of Austrian standards would be seen as unacceptable; Austria refused to envisage a geographical coverage less than its national borders. Objections came from Italy, to which Germany and the Netherlands joined. Austria did not accept the Community's negative position regarding second residences, which insisted on the need to control, thereby discriminating against residents (i.e. non-Austrians) and what it emphasised was its neutrality, at the price of giving up on European integration[22]. Anxious to normalise its position on the international stage and to accommodate the country's economic circles, Austria managed to obtain from the Twelve various exemptions that enabled it to continue subsidising its mountain agriculture, restrict the transit of heavy goods on roads in the alpine regions and to protect the property of its citizens by limiting the purchase of plots of land by foreign citizens in areas popular with tourists.

As a member of EFTA and the development of economic relations with the EEC, Finland decided to request its membership, respecting the preservation of its neutrality. The Finnish authorities reached several temporary regulatory measures during the negotiations. They ensured the possibility of continuing funding for the country's northernmost regions in addition to providing new regional funds and Community agricultural aid.

Sweden received preferential treatment by not participating in the Economic and Monetary Union (EMU) and retaining some of its distinctive social, ecological and health structures[23]. Officially neutral Sweden has had opposition from social democratic political parties who opposed its entry into the Community due to the neutrality agreements it had, but only after the 80s, with the fall of the Soviet Union, it change its opinion to join the EEC "with the idea of the common coexistence of European peoples in peace, to build a stable European security order through integration and cooperation"[24]. The budget was perhaps the only remaining issue specific to Sweden, like all the other

[22] Archive document, Briefings for TFE - Austria and Sweden" Graham J. L. Avery 1993 – 1994, GJLA-126, accessed in Historical Archieve of the European Union.

[23] Negotiations for accession to the European Union, Luxembourg Centre for Contemporary and Digital History.

[24] Statement by Ulf Dinkelspiel at the opening of Sweden's negotiations on accession to the EU (1 February 1993). On 1 February 1993, Ulf Dinkelspiel, Swedish Minister for European Affairs and Foreign Trade, emphasizes the importance of Sweden's negotiations for accession to the European Communities. Documents on Swedish Foreign Policy 1993. Volume I: C 43. Stockholm: Ministry for Foreign Affairs, 1994.

applicants except Finland. It would be a net contributor to the European budget but wanted its financial contribution to all community obligations and costs to be progressive. Also, Sweden has indicated that it wants five votes in the Council instead of 4.

Lastly, Norway categorically refused to implement the common fisheries policy or allow European vessels, especially French and Spanish ones, to enter its territorial waters. It also declined to suspend whaling, although this was prohibited by a Community directive[25].

Most Nordic countries ultimately offered a higher guaranteed price level than that provided by the European Union. They had much higher farm-gate prices than those in the Union (up to twice as high in the case of Finland and Norway). The Commission, therefore, proposed to offset the price adjustment with revenue assistance to farmers to be financed by the applicant countries. However, those countries insisted that the European Union contribute to the basis of the bill. Regarding regional aid, according to the Community principle, only those regions where the GDP per capita was less than 75% of the Community average were authorised to receive the gift from the cohesion funds. However, applicant countries wanted to be able to provide aid to some Arctic or mountain regions where GDP reached 113% of the average. Norway eventually managed to secure significant temporary measures for its farmers and fishermen[26].

In the foreign and security policy, the candidate countries officially accepted the *acquis* of the Union in this policy area. The Accession Treaties were signed in June 1994 during the European Council of Corfu proceedings. Austria was the first to approve ratification on June 12, even before it had signed the Accession Treaty, with a large majority: 66.6% voted "Yes", with a turnout of 82.3%. Finland followed suit on October 16 with a 56.9% majority (74% turnout), and Sweden on November 13 with a 52.2% majority (82.4% turnout). As for Norway, it had said 'No' to the Accession Treaty in 1972, so the hope on this occasion was that being the last to vote, its neighbours would absorb it. However, in the referendum held on November 28, with a massive turnout of 88.4%, the 'No' camp won again with 52.2% of the vote. Consequently, Norway would not join the Union, although it remained a member of the European Economic Area (EEA). In the three Nordic countries, cities and southern regions accounted for the highest proportion of pro-Europeans, while rural areas, fishing communities and northern regions provided the majority of

[25] Briefings for TFE - Austria and Sweden, Graham J. L. Avery 1993 – 1994, GJLA-126.

[26] Negotiations for accession to the European Union, Luxembourg Centre for Contemporary and Digital History.

Eurosceptics[27]. On January 1, 1995, the Union of Twelve became the Union of Fifteen. The Maastricht Treaty, which entered into force on 1 November 1993, was implemented by 15 member states.

5. Enlargement with Central and Eastern European countries

The end of the '80s and the beginning of the '90s marked a historical moment for Europe, the birth of a new era of democracy, peace, and unity based on respect and cooperation. The Charter of Paris (1990) declared the end of the era of confrontation and division, and the heads of state of the OSCE pledged to "undertake to build, consolidate and strengthen democracy as the only system of government of our nations"[28].

The period after the Cold War was characterised by a large-scale project of international socialisation, when the countries of Central and Eastern Europe expressed the desire to join the organisations of the Western community: OSCE, EC, NATO or EU as the primary institutional structures of the configuration of European architecture, which were identified with liberal democracy and created a set of institutional relations with the CEEC countries, passing them from observer status to a kind of association until they arrived in the process of enlargement in the East. This geographical area had become the centre of the world for the moment due to the radical changes of the system from authoritarian to democratic, which constitutes a form of identity construction through adopting a new set of norms accompanied by several external agents (international organisations). International socialisation in Europe refers to the expansion of the Western international community, which is based precisely on liberal political norms, and only states that have adopted these norms are considered legal members of the Western community[29].

Frank Schimmelfennig explains international socialisation through rationalist and constructivist theories since both explain the nature of the socialisation process, the conditions in which it occurs and the means to have adequate socialisation. Rationalist theory considers the process of socialisation between two social actors as a negotiation process, the success of which will depend on the size and reliability of tangible political incentives, as well as the size of the political costs of the target states in adopting community rules.

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[27] W. KAISER, *The EU Referenda in Austria, Finland, Sweden and Norway*, ECSA Conference, Charleston, 11-14 May 1995.

[28] Charter of Paris for a new Europe, Paris 19-21 November 1990, pp. 3. Available at https://www.osce.org/files/f/documents/0/6/39516.pdf, (Last accessed on 03.01.2024).

[29] F. SCHIMMELFENNIG, S. ENGERT, H. KNOBEL, *International Socialization in Europe. European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, New York, 2006, p 1-6.

While constructivist theory conceives the process of international socialisation as a strategic action in a highly institutionalised international community characterised by the strategic behaviour of both socialisation agencies and their target states, it is the right of target states to decide if they accept the costs of compliance with the rules, in exchange for the promised benefits[30]. The EU, as a socialisation agency, has used a socialisation strategy which is exclusive in nature because, at first, it has communicated its own rules and norms to the target states, then invited them for membership after they had accepted the rules and standards, and had progressed in the process of fulfilling the membership obligations.

In 1997, the Baltic states were invited to start accession talks with the EU, which was a success story, as the EU had left behind the prejudice for these states as part of the former BS. They had a good performance and met the Western standards of democratic development. In the presentation of Agenda 2000[31], the EC recommended accession negotiations for Poland, Hungary, the Czech Republic, Slovenia and Estonia, and, in December 1999, in Helsinki, decided that Bulgaria, Romania, Latvia, Lithuania and Slovakia should also join the accession negotiations in February 2000, which were concluded at the end of 2002. In 2004, Poland, Hungary, Slovenia, the Czech Republic, Slovakia, Latvia, Lithuania, Estonia, Malta and Cyprus joined the EU, with the exception of Romania and Bulgaria, where the expansion took place in 2007. Other Balkan countries also took up the prospect of EU membership[32].

For the membership of these countries, unlike other previous enlargements, the Commission had to evaluate the criteria that the member countries had to meet, according to the determinations issued by the Council of Europe in June 1993, known as the Copenhagen criteria, which presented the necessity of three basic criteria[33]:

-stable institutions to guarantee democracy, the rule of law and respect for human rights, especially those of national minorities;

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[30] Ibid., p. 5

[31] Archive of European Integration, Commission of the European Communities, Agenda 2000, Summary and conclusions of the opinions of Commission concerning the Application for Membership to the European Union presented by the candidates Countries, Strasbourg/Brussels, 15 July 1997, DOC/ 97/8. Available at https://aei.pitt.edu/3137/1/3137.pdf (Last accessed on 03.01.2024)

[32] F. SCHIMMELFENNIG, *The EU, NATO and the Integration of Europe*, Cambridge University Press, 2003, 3, 260-261.

[33] European Council in Copenhagen 21-22 June 1993 Conclusions of the Presidency SN 180/1/93 REV 1 Available at https://www.consilium.europa.eu/media/21225/72921.pdf (Last accessed on 03.01.2024).

-a functional market economy capable of coping with competitive pressures and market forces within the European Union;

-and the administrative and institutional capacities to effectively implement the *acquis* as well as the ability to assume the obligations of membership.

In the political criterion, the main goal was to determine whether the applicant countries present the characteristics of democracy and how democracy is working for progress[34]. For all applicant states except Bulgaria, Romania and Slovakia, it was found that "political institutions function properly", are stable and "respect the limits of their competencies by cooperating with each other". For Romania and Bulgaria, progress was called for to ensure the protection of individuals against abuses by the secret services and the police. Slovakia's case presented some problems in meeting the Copenhagen criteria. For several applicant states, issues related to minority rights were identified: the situation of Roma communities was mentioned in particular in Hungary, the Czech Republic, and the problem of Russian-speaking minorities in the Baltic was referred to only in the case of Slovakia the Commission concluded that did not meet the political criteria. Malta had democratic institutions, and the accession of Cyprus was also intended to have a stabilising effect as EU members thought at the time, albeit wrongly, that it would help solve the problem of the division of the island following Turkey's occupation of the northern part in 1974.

In the economic criterion, the Commission sought to determine whether the applicant states have a functional market economy and whether they can withstand the pressure and the competitive market within the Union in the medium term of 5 years. In this regard, it asked for liberalised trade and prices, macroeconomic stability, consensus on economic policies and a well-developed financial sector. It also requested the state policies on how it administers aid and support for small and medium-sized businesses, as well as existing trade links of the country with the European Union. Regarding the Czech Republic, Estonia, Hungary, Poland and Slovenia, the Commission requested the initiation of negotiations and the further continuation of reforms by the five, especially in the financial field, capital markets and competition regulation. Latvia and Romania, despite their progress, had difficulty coping with competition in the medium term. Slovakia presented a lack of transparency in implementing legislation measures in the functioning of the

[34] Commission of the European Communities, Agenda 2000 – Volume I – Communication: For a stronger and wider Union, DOC/97/6, Strasbourg, 15 July 1997, Part II: “The Challenge of Enlargement”.

market economy. Bulgaria was found at the beginning of the transformation of the structural process.

In the criterion of the capacity to assume the obligations of membership, the Commission focused on evaluating the applicants' work for the obligations assumed and the recommendations. Hungary and Slovakia declared that they had fulfilled most of the obligations of the European Agreement. Also, Poland and the Czech Republic considered the elements of the European Agreement implemented, Bulgaria and Romania were determined in their efforts to fulfil the obligations of the European Agreement, and Slovenia. However, it had not yet ratified the European Agreement and declared that it was progressing in accordance with the obligations of the temporary agreement. The Baltic countries were considered to have generally fulfilled their obligations and taken advanced steps towards the adoption of the agreement[35].

The Council of European Ministers in December 1994, during the meeting held in Essen, Germany, defined the strategy for the pre-admission of these countries to the EU, and this consisted of six points[36]: preparing to enter the internal market - focusing on training programs for administration employees to help them implement the rules, the commission made a list of the main points where intervention and assistance should be given to the candidate countries, as well as in the adoption of the *acquis* for the internal market, and left the task to the Commission to issue a guide (White Paper) for the candidate countries.

On the other hand, the promotion of economic integration, through the PHARE program has given a great help in cooperation in services and trade. Furthermore, the cooperation between the candidate countries themselves as they should be able to work together to achieve political and security stability in cross-border activities and many other bilateral agreements.

The development of assistance for the candidate countries - the PHARE program was founded as a fund to help the candidate countries. Still, this fund was accompanied by a condition that was related to the real needs of the candidate countries and the commercial interests of the member States. In example, the conditions for Poland were the implementation of the steel industry, the continuation of the privatisation of state enterprises and changes

[35] J. DE RUYT, *Stabilizing the European Continent*, Egmont Policy Brief 282 – July 2022.

[36] European Council Meeting on 9 And 10 December 1994 in Essen Presidency Conclusions Available at https://www.europarl.europa.eu/summits/ess1_en.htm (Last accessed on 03.01.2024).

in the free movement of capital[37]. It should be emphasised that the strategies used by the European Union during the enlargements of Central and Eastern European countries in 2004-2007 differed from the previous enlargements of the EU for the following reasons:

-The new enlargement strategy is more conditional and has stricter criteria for the countries that want to join the Union, compared to the strategy used before the 90s.

-Besides the Copenhagen criteria, it is required to meet security criteria, care for good neighbourly relations and the absence of conflicts over territorial claims.

-The evaluation, regardless of group involvement, was done in the analysis of the individual merits of each country separately.

-In this enlargement, only the candidate countries, with a date set for the start of negotiations for membership, could start the review process and not, as was the case before, all the candidate countries.

-The volume of the *acquis communauitare* was increased from 31 to 33 chapters, and it was decided that without the achievement of successful negotiations of one chapter, the next chapter could not be negotiated.

-Also, the possibility of terminating the negotiations for the started negotiations was determined in cases where the Union assessed that the candidate state does not meet the essential membership criteria, unlike other enlargements in which these negotiations had to be completed.

The integration prospects for the countries of Eastern Europe were complicated. For the new members, economic modernisation was the result of a systemic challenge, not simply the consequence of an adaptation process, as happened with the Iberian countries. Therefore, the economic benefits will be lower and take more time to materialise.

Moreover, the growing nationalism in these countries will also hinder the cultural effects of integration. The new member states will face similar problems to previous accessions. In 2002, Cameron[38] has argued that the new member states will face four significant internal challenges: first, the ability to reform administrative structures to develop institutional capacity in implementing the *acquis*; second, the willingness to deepen the necessary

[37] Phare 1994 Annual Report from the European Commission: Brussels 20.7.1995 COM(95) 366 final. Available at https://aei.pitt.edu/33800/1/COM_(95)_366_final.pdf (Last accessed on 03.01.2024).

[38] As cited in S. ROYO, *The Challenges of EU Integration: Iberian Lessons for Eastern Europe*, Jean Monnet/Robert Schuman Paper Series Vol. 5 No.27 August 2005, p.25. See also G. BURGHART, F. CAMERON, *The next enlargement of the European Union* in *European Foreign Affairs Review*, 2, 1997, pp. 7-21.

reforms in the transformation of their economy into a functional market system; third, the ability to reduce unemployment levels by addressing the structural inequalities of their economies; and, finally, the political challenges of finalising the transition to membership in the face of growing opposition to enlargement within (and outside) their countries. The ten new entrants had to reform nationalised industries, tackle corruption, strengthen their judicial systems and their administrative capacity to implement EU rules, fix tax legislation, reform their public finances, include competition in economic sectors, improve the general business climate (promoting privatisation, taxes, investments and limiting abuses of market power), strengthening financial regulation, developing transparent procurement procedures and respecting EU rules.

The criteria set by the EU, in particular the democratic precondition for membership, was a powerful incentive for democratisation and institutional reforms, and European integration had a significant effect on the democratisation processes of the post-communist countries of Eastern Europe. Moreover, the EU had substantial political and economic incentives, especially during membership negotiations, to influence the direction of events and the decisions of policymakers and economic actors, where it offered the target country material or political rewards (financial aid, technical expertise or the right to vote in international organisations), in exchange for compliance with the common values of the Union.

The Nice European Council (December 7–9, 2000) decided to speed up membership negotiations with the 12 candidate countries. It developed a strategy specifying the chapters to be tackled over the next two years. This request came at a time when the European Parliament called for the new member states to participate in the European elections of June 2004, and the Commission had presented a proposal to this end. The Göteborg European Council (15–16 June 2001) decided to end the negotiations at the end of 2002 for those countries that were ready to enable them to participate in the European elections as member states.

The commission, which regularly reports on the progress of negotiations and reforms achieved in the candidate countries, considered that Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia could be ready. Only Bulgaria and Romania had to make further progress as these two countries had problems creating the administrative and

legal systems necessary to adopt the *acquis* in national legislation and bring the required economic reforms to a successful conclusion[39].

The Copenhagen European Council of 12-13 December 2002 finally concluded negotiations with ten countries applying to join the European Union and set the date of their membership on 1 May 2004, but as a precondition for this date, a transitional period which consisted in successive stages from the signing of the Accession Treaty (April 16, 2003)[40].

In the case of Bulgaria and Romania, the European Council followed the recommendations drawn up by the Commission, where it set the objective to welcome these two states in 2007. In the monitoring report for Bulgaria and Romania, although the Commission identified several areas that continued to present problems, it concluded that Bulgaria and Romania were able to obtain the rights and obligations associated with their accession as of January 1, 2007. To avoid the threat of uncertainty that could be brought by pushing the accession of these countries further, the Commission decided that the two countries would continue the required reforms within the European Union[41]. These accessions completed the accession process of Central and Eastern European countries. They brought the number of member states of the European Union to 27, thus ending the division of the European continent.

6. The integration of Croatia

The case of Croatia has not been easy to gain membership in the Union. It has even been one of the most complex processes compared to previous memberships because the country has been at the centre of post-Yugoslav conflicts and wars, where internal and external conflicts have prevailed. The conflict in which Croatia was involved ended in 1995 with the signing of two peace agreements. The first was the Dayton agreement, which officially ended the war in Bosnia and Herzegovina, in which it was involved[42], and the second was the Erdut agreement, which resulted in the creation of the UN interim administration in the region of eastern Slavonia[43]. Only in 1998 was the last

[39] The accession of the 10 new Member States and the adaptation of the Union's institutions, Luxembourg Centre for Contemporary and Digital History.
[40] Copenhagen European Council (12 and 13 December 2002) Presidency Conclusions.
[41] Commission Opinion on the applications for accession to the European Union by Bulgaria and Romania (22 February 2005). Available at https://eur-lex.europa.eu/legal- (Last accessed on 03.01.2024).
[42] See Dayton Agreement. Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121 (Last accessed on 16.01.2024).
[43] Erdut Agreement. Available at

part of the territory of what used to be the Socialist Republic of Croatia (1945-1991) reintegrated into the post-Yugoslav Republic of Croatia, and Croatia assumed full sovereignty over the entire territory.

The fact that Croatia faced one of the most significant conflicts of the Western Balkans made its democratisation and europeanisation a problematic process where the political and economic system completely changed. The very identity of the state and the nation went through radical transformations after the '90s, where in this country, as in other countries of the post-Yugoslav area, the political culture of the years 1990-2000 was marked by nationalism. Croatia's approach to EU membership began in 2000 when membership was now seen as the last step in the long transition process. It started with declaring independence from Yugoslavia, separating from the Western Balkans complexities, and becoming part of Europe. Just as it saw itself geographically in the position of Central Europe, moreover, Croatia's EU membership would mean the end of its 20 years of international oversight of the state's policies[44]. But with its membership in EU, Croatia would have to abandon the Central European Free Trade Agreement (CEFTA), a trade agreement between non-EU countries in Southeast Europe.

Croatia's accession process took a long time, and there was opposition, especially from Slovenia and Italy. In the past, the country had numerous problems with neighbouring countries, and Croatia's EU membership would affect relations in the Balkans, where some issues regarding national borders remain open. Of concern remained the borders between Croatia and Serbia, Montenegro and Bosnia-Herzegovina due to a dispute with Slovenia mainly related to the area around the Gulf of Piran and its waters that led to Ljubljana blocking Croatia's admission from December 2008 to October 2009. In May 2011, the two countries decided to submit an arbitration agreement to the UN to resolve their dispute. In addition, another dispute existed between the two countries regarding the "Ljubljanska Bank case" over money owed by a Slovenian bank to Croatian depositors since 1991. The two countries reached an agreement to settle the case before Croatia's accession, which the EU Commissioner for Enlargement and European Neighborhood Policy, Štefan Füle, greeted as "a good deal for both countries and enlargement. This is also a very good example of how joint efforts in the field of good neighbourly

https://peacemaker.un.org/sites/peacemaker.un.org/files/HR_951112 (Last accessed on 16.01.2024).

[44] D. JOVIĆ, *A view from the Balkans*, European Union Institute for Security Studies (EUISS) Available at https://www.jstor.org/stable/pdf/resrep07053.5.pdf (Last accessed on 16.01.2024).

relations bring benefits to both sides and provide a basis for solving open issues"[45].

Croatia also had a dispute with Italy regarding the ability of Italian citizens to purchase land in Croatia, particularly in Istria, which was once part of the Kingdom of Italy and was conceded to Yugoslavia after World War II. The fact that Italians were not allowed to own land in Croatia was considered discriminatory, and a solution to the problem was searched. In 2006, an agreement was reached between the two countries that allowed Italians to buy land in Croatia and vice versa. Due to the quick settlement and Croatia's open attitude towards negotiations, Italy was one of the first EU countries to ratify Croatia's accession treaty in March 2011[46].

Croatia submitted its application for membership in the European Union on February 21, 2003, and the Council of Ministers decided on April 14, 2003, to implement the procedure outlined in the European Union Treaty. In the same year, it signed the SAA, whose institutional framework would provide a mechanism for the implementation, management, and monitoring of all areas of relations. In preparing its Opinion, the Commission took into account the "Thessalonica Agenda for the Western Balkans" approved by the European Council of June 2003, where the EU declared "that the pace of further movement of the Western Balkan countries towards the EU lies in their own hands and will depend on the performance of each country in the implementation of reforms, thus respecting the criteria established by the Copenhagen European Council of 1993 and the Conditionality of the Stabilization and Association Process"[47].

The Commission stated that in fulfilling the political criteria, Croatia has stable democratic institutions that function properly, respect their limits and competencies, and cooperate with each other. The Commission assessed the elections held in 2000 and 2003 as free and fair. Although it demonstrated respect for fundamental rights, Croatia should take measures to ensure the rights of minorities, predominantly the Serbian minority, by facilitating the return of Serbian refugees from Serbia and Bosnia and Herzegovina. It also had to strengthen the fight against corruption and strengthen regional cooperation efforts.

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[45] Croatia's Road to Joining the EU, 9 august 2013. Available at https://revolve.media/features/ (Last accessed on 16.01.2024).

[46] Ibid.

[47] Communication from the Commission, Opinion on Croatia's Application for Membership of the European Union, Brussels, 20.4.2004 COM(2004) 257 final. Available at https://eur-lex.europa.eu/legal (Last accessed on 16.01.2024).

In fulfilling the economic criteria, Croatia was characterised by a functional market economy with a significant degree of macroeconomic stability with low inflation. However, it had to continue further with the implementation of reforms to cope with the competitive pressure within the Union itself in the medium term. The tourism sector was considered competitive, but the shipbuilding and agriculture sectors needed to be modernized. Furthermore an address to the cadastre system was also required, as well as further efforts of the fiscal systems, social security, and public administration.

On Croatia's ability to assume other membership obligations, the Commission referred that progress has been made in approving and harmonising its *acquis* legislation, especially in the internal market and trade field. Still, it should continue with the harmonisation of legislation in administrative structures and judiciary. The accession agreement with Croatia was signed on December 9, 2011, after the end of a long process of negotiations and preparations for membership. According to the Commission's favourable opinion and the Parliament's acceptance, the Council decided to sign the accession treaty and its ratification by the Member States[48].

In the Monitoring Report on Croatia's Preparations for Membership in April 2012[49], the Commission noted the progress made by Croatia in its preparations for membership, identifying areas where further improvements are needed to fully meet all membership requirements.

In the 2012 report of the European Commission to the Parliament and the European Council, a satisfactory result is confirmed, and it assesses Croatia's readiness to fulfil the political and economic criteria for membership and the request to approve and implement the EU *acquis*. Efforts should continue to strengthen the rule of law, improve public administration and the justice system, and effectively fight corruption and organised crime. In terms of economic criteria, Croatia is a functioning market economy, but it needs to vigorously implement structural reforms to enable Croatia to face competitive pressures and market forces within the Union in the medium term. Croatia has continued to make progress in adopting and implementing EU legislation.

[48] Decision of the Council of the European Union of 5 December 2011 on the admission of the Republic of Croatia to the European Union, Article 3. Available at https://eur-lex.europa.eu/legal. (Last accessed on 16.01.2024).

[49] Communication from the Commission to the European Parliament and the Council Monitoring report on Croatia's accession preparation Brussels, 24.4.2012 COM(2012) 186 final, Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0186:FIN:EN:PDF (Last accessed on 16.01.2024).

Further progress has been made since the 2011 Progress Report, followed by the Monitoring Report on Croatia's accession preparations, where the Commission identified several issues requiring further progress. These issues are mainly related to: the preparations of the EU structural funds to ensure their proper management; of the restructuring of the Croatian shipbuilding industry; the strengthening of the rule of law by continuing to implement Croatia's commitments to improve public administration and the judiciary system further. Also, Croatia should pay special attention to agriculture and rural development[50].

Also, referring to the final report of March 2013 on the monitoring of the preparation for membership of Croatia addressed to the Council and the Parliament, the conclusions were positive; Croatia is fulfilling the commitments and requirements of the accession negotiations in all its chapters, demonstrating the ability to fulfil within the set deadlines, and the Commission expressed its conviction of the continuity of the reforms and pointed out the importance of the accession for Croatia which will be an impetus for the further continuation of reforms in the field of the rule of law, especially in the fight against corruption[51].

The Council approved the accession treaty, and Croatia joined the Union on July 1, 2013, becoming its 28th member where the Union believed in the strategic importance of Croatia in the Western Balkans for an active role in regional cooperation.

7. Conclusions

In the above analysis, we conclude that integration has been an essential process in the European Union. It was operationalised from the first steps of establishing the Union but displayed different characteristics at different stages of development. The analysis highlighted that the integration process has been gradual and transparent, in dialogue with all interested parties and decided case by case. The enlargements before the 1990s showed that the EU did not have a detailed *acquis* that defined precisely what aspiring countries had to accomplish for membership.

The new enlargement strategy is more conditional and characteristic of the post-90 expansion, more precisely at the moment when the EU decided to

[50] Communication from the Commission to the European Parliament and the Council "On the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership" SWD (2012) 338 final dated 10.10.2012 in COM(2012) 601 final.

[51] Communication from the Commission to the European Parliament and the Council Monitoring Report on Croatia's accession preparations Brussels, COM(2013) 171 final.

expand with the countries of Central and Eastern Europe, there was the presence of the 'Copenhagen Criteria', according to which the candidate countries must fulfil political, economic criteria, the effective implementation of the *acquis* as well as the ability to assume the obligations of membership.

The analysis focused on the efforts of the Western democratic community to spread liberal democratic rules and values in the countries of Central and Eastern Europe and the latter's adhesion to the organisation of the Western community, the EU. This development has been assessed as a large-scale project of international socialisation. Through socialisation, the target countries internalise the norms and rules of a given community, which brings them a change of identity. The analysis brought an interweaving of the rationalist perspective with the constructivist one, as both explain the nature of the socialisation process, the conditions in which it occurs, and the means to have adequate socialisation.

With the integration process and the conditions for membership, we analysed the degree of fulfilment of the criteria for each country separately and the role of the EU in contributing to the democratic stabilisation of the candidate countries, in promoting their economic stability following the monetary policies of the Union, and the alignment of the legislation of these countries with the *acquis* of the EU, even though this was a deliberate approach of its policy, to bring the countries of Central and Eastern Europe closer to the big European family, but also an indicator of the pursuit example for other candidate countries from the Western Balkans.

Chapter II

New methodology of Enlargement in EU, the burden of acquis adoption and Albanian institutional framework: evidence and the way ahead in the path of integration

Introduction

The process of enlargement of the EU for Western Balkans countries is an ongoing process, which is the most important from the adhesions of 2004. The enlargement processes of the EU had different political, economic, and legislative backgrounds through the decades. This chapter offers insight into the processes' main legal and institutional features up to date. Through this chapter, we aim to offer a descriptive analysis of the EU institutions' position regarding enlargement from the issuing the new methodology of enlargement up to the new perspective for the WB countries opened by the 2023 package on enlargement, which is a clear and comprehensive policy document presenting the path toward future. Regarding enlargement, after the adhesion of Croatia, the process in WB countries is the most advanced, and we will analyse the new EU approach with findings from the Albanian case on implementing reforms and *acquis* according to the new enlargement methodology. This new and enhanced methodology is a product of EU institutions' taking into consideration the political dialogue between Member States, and it is also a tool for addressing internal concerns within Member States regarding enlargement. It is a response to the motto that "the EU should be stronger before being bigger". The candidate countries involved in the EU integration process must face this new evaluation framework proposed by the European Commission. The outcome of the ongoing integration processes will give us evidence if the enlargement is more a process based on the geopolitical needs of the EU or a classic merit-based process to reach a bigger and stronger Union inclusive of all continent states through the promotion of common shared European values, like citizenship, internal market and the rule of law[52].

[52] Regarding EU as a legal community and the importance of rule of law see A. VOßKUHLE, *"European integration through law" The contribution of the Federal Constitutional Court*, in *European Journal of Sociology*, 58, 1, 2017, pp. 145-168.

In our opinion, the key and most relevant condition to fulfil within the process of integration remains the fulfilment of EU standards and, *in primis*, the correct adoption of the *acquis.* We will analyse this component in light of the screening report for Cluster 1 for Albania, as well as the Albanian institutional framework for addressing negotiations according to the new methodology.

1. EU enlargement as a dynamic process from 1958 to present days

The foundation of the European Community (EC) with the Treaty of Rome[53] was considered a new beginning after WWII in Europe regarding economic and social progress as well as peace and liberty[54]. In the following years, several attempts were made to consolidate this Union, especially in the field of security and defence.

The first enlargement took place in 1973 with the adhesion of Denmark, Ireland, and the United Kingdom. In 1981, Greece joined the EC, and then in 1986 was the turn of Spain and Portugal. Due to the nature of the Treaty and the countries involved, the process of enlargement consisted of the direct adhesion of new European countries that met the criteria of complying with European Community standards and rules, with approval from the Council after consulting the European Commission, followed by the ratification of all Member States and approval according to the internal constitutional system by the applicant country (national parliament approval or referendum). The priorities of the EC at this moment were driven toward actualising economic and social progress through reaching customs union, the single market, and common agricultural politics.

The Treaty of Maastricht in 1992 definitively changed the EC structure, objectives and functioning[55] with an impact on enlargement as well. Thus, the following adhesions should be measured on more specific criteria in adhesion

[53] Entered into force on 1 January 1958.

[54] In general, on EU law see P. CRAIG, G. DE BURCA, *EU law. Text, cases and materials*, 7th Edition, Oxford University Press, 2020; A. ARNULL, D. CHALMERS (eds.), *The Oxford handbook of the European Union law*, Oxford University Press, 2015; G. TESAURO, *Manuale di diritto dell'Unione europea. Volume I*, P. DE PASCUALE, F. FERRARO (eds.), 4th edition, Editoriale Scientifica, 2023; G. TESAURO, *Manuale di diritto dell'Unione europea. Volume II*, P. DE PASCUALE, F. FERRARO (eds.), Editoriale Scientifica, 2021. Regarding internal market and substantive law of the EU see C. BARNARD, *The substantive law of the EU. The four freedoms*, 7th edition, Oxford University Press, 2022; L. DANIELE, *Diritto del mercato unico europeo e dello spazio di liberta, sicurezza e giustizia*, 5th edition, Giuffre, 2021.

[55] The division into three pillars: EC (supranational); Common Foreign and Security policy (Intergovernmental); Justice and Home Affairs (Intergovernmental). This moment has paved the path for political integration, EU citizenship, monetary provision.

to the Treaty standards and rules, as specified in the so-called Copenhagen criteria: stability of institutions guaranteeing democracy, the rule of law, human rights; a functioning market economy; ability and willingness to fulfil membership obligations[56]. Furthermore, the procedure foresees the approval by the Council and the European Parliament. Thus, in 1995, the accession of Austria, Finland, and Sweden took place.

The most considerable enlargement of the EU was in 2004 with the Central and East European countries[57] after the Treaties of Amsterdam and Nice. The 2004 process was a massive process that started from the fall of communism, and the criteria of adhesion remained those established in Copenhagen in 1993. On the same patterns, three years after this enlargement, there was the adhesion of Bulgaria and Romania, completing the adhesion of the Central European enlargement[58].

The last successful enlargement was Croatia in 2013[59], which basically met the same criteria of accession and was carried along within the ongoing EU enlargement process in the Western Balkan countries under the agreements of association and stabilisation[60]. This was the first adhesion in the EU after Lisbon, which came into force in 2009, and its reshaping of the Treaties.

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[56] Copenhagen European Council of June 1993 DOC/93/3.

[57] Namely Czech Republic, Lithuania, Slovenia, Estonia, Hungary, Slovakia, Cyprus, Malta, Latvia, Poland.

[58] See in general for the enlargement of these cases and the problems there arisen after the process of adhesion D. ADAMSKI, *The social contract of democratic backsliding in the "New EU" countries* in *Common Market Law Review*, 56, 2019, pp. 623-666.

[59] For an analysis of Croatian case as a case of enlargement where the stricter EU criteria of adhesion were applied see H. BUTKOVIĆ, V. SAMARDŽIJA, *Challenges of continued EU enlargement to the Western Balkans – Croatia's experience*, in *Poznan University of Economics Review*, Volume 14, no. 4, 2014, pp. 91-108. Also, the readiness of Croatia was outlined in 2016 from the ECJ judgement of 30.9.2016 in the case T-70/15 Trajektna luka Split d.d vs. European Commission, ECLI:EU:T:2016:592. It was observed in point 53-54 that "the Republic of Croatia was able to join the European Union only after satisfying the political and economic criteria and the obligations incumbent upon candidate States, as established by the Copenhagen (Denmark) European Council of 21 to 22 June 1993. Those criteria require the candidate State, inter alia, to have the ability to take on the obligations of membership, in particular the ability to implement effectively the rules, standards and policies forming the EU legal framework" and that "the ability of the Croatian courts to apply EU law cannot be called into question as a matter of principle".

[60] Albania, as part of Western Balkan, was identified as a potential candidate state worth for EU membership during the Thessaloniki European Council held in June 2003 and included in a larger agenda of enlargement advanced in the aftermath of the imminent adhesion of the countries of Central Europe and Balkans of 2004. The Stabilisation and Association Agreement (SAA) signed from the Republic of Albania in 12 June 2006 and entered into force in 2009 with the signature of all Member States.

Actually, there are nine candidate countries: Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Turkey, Ukraine and Kosovo[61]. The process of enlargement is singular and merit-based for each candidate country. In the past, there were countries which applied for membership and withdrew their application. The most singular case in the analysis of the enlargement of the EU is Turkey, which is still a candidate for membership but with frozen negotiations with 16 opened chapters out of 33 negotiating chapters, of which 1 chapter is provisionally closed[62].

As we can see from the above, the enlargement process is set on criteria but still remains very political, and its periodic assessment from EU institutions takes broader considerations. Yet, for the candidate countries, their efforts must

[61] Kosovo has submitted its application, despite its independence is not recognized by 5 EU Member States.

[62] A. GJETA, *EU integration process for Albania and Turkey: similarities and differences*, 2023, paper presented at *VII International Congress on Afro-Eurasian Research*,17-18 November 2023, Tirana, Albania (in print).

Turkey was found eligible as a potential EU member during the Luxemburg Council summit in 1997 and the European Council held in Helsinki in 1999, almost 25 years ago, declares it as a candidate country. The process of integration of Turkey started a quarter of century ago and it is still an ongoing process. In 2004, after the European central countries accession, EU opened the negotiation process with Turkey, which meets the Copenhagen criteria. After October 2005 the screening process started and formally, the negotiations started in June 2006, when the first chapter to be negotiated was the 25 (Science and research) successfully closed.

The EU states that the process of enlargement will remain strongly linked to the established criteria of adhesion and the principle of merit based process for each candidate country will remain despite the proposal of block enlargement for the WB countries. Thus, the path of Turkey toward EU integration remains in this status quo but the relationships between parties has continued in a constant process of political negotiations in several areas of mutual interest, i.e. migration, climate or agriculture.

In 2023, the European Council is seeking an understanding regarding the relationship between EU and Turkey in order to better asses the relation between the two entities. In the last progress report the European Commission finds that in several areas the adhesion criteria are not meet. Thus, the report finds deficiencies in the functioning of democratic institutions, backsliding regarding civil society, early stage in fight against corruption, backsliding in human and fundamental rights, etc.

There are some advances and a moderate level of preparation regarding other issues as public administration reform, early stage of preparation regarding judiciary, fight against organized crime, migration and asylum policy, public procurement, Green Agenda and sustainable mobility, agriculture and cohesion and fight against corruption.

There are areas that show a good level of preparation regarding internal market cluster, part of cluster in competitiveness and inclusive growth and economic criteria with a well-advanced economy. It is of interest to document the findings of the EC regarding obligation of membership on alignment with the *acquis* that are on a limited degree and on ad hoc basis of transposition of legislation. Thus, one of the most important criteria in the path of integration, from a legal point of view, need to be improved. Turkey 2023 Report SWD(2023) 696 final.

be well-driven and linked to the specific criteria set in the Treaties and the Copenhagen Declaration as the *acquis* adoption criteria.

1.1 Legal basis and criteria for adhesion in the EU

The Treaty on European Union states in its article 49 that "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be considered. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements".

The above article constitutes the legal basis for any adhesion in the EU with a procedure that follows a specific pattern: application of a State; opinion of the European Commission; receiving the status of candidate country; opening of negotiations; transitional agreements (eventually)[63]; adhesion.

Nonetheless, each candidate country, despite the procedure undertaken, shall show respect for the founding values of the EU laid in Article 2 TEU, such as "respect of human dignity, freedom, democracy equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".

The specific criteria are set by the European Council in Copenhagen in 1993[64] as essential conditions to satisfy in the integration path: political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic criteria: a functioning market economy and the capacity to cope with competition and market forces; administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership. On

[63] Gradual adoption of some provisions of the EU legislation within the candidate state. Offering a certain time for adoption without causing internal problematics to the candidate state. I.e. Croatia benefited to some transitional provisions regarding fisheries and maritime sector.

[64] DOC/93/3.

the other hand, there is an EU internal criterion, which lately has become of vital importance, which is the capacity of the Union to absorb new members.

Furthermore, it is essential to mention, as an integral part of EU membership requirements that are measurable in the path of adhesion, the criteria established in the European Council of Madrid of 15 and16 December 1995 on the readiness of a potential candidate country: being ready for the application of EU legislation and to guarantee that the transposition of the EU legislation in their state is implemented, and it is applied effectively through an adequate administrative and judicial structure. It is a more detailed and specific criterion than only being able to adopt the *acquis* correctly.

Yet, bearing in mind the nature of the European Union[65], the final evaluation of whether a country is worth and ready for membership lies on EU institutions and Member States according to a "merit-based evaluation" formula.

The new methodology of enlargement was proposed by the Commission after the threats within the ongoing processes of integration of Turkey, Albania and North Macedonia in order to offer a more predictable way of the enlargement process and linked to measurable criteria of assessment.

2. New enlargement methodology launched by the European Commission in 2020 and the EU institutions

The process of enlargement, as shaped by the Copenhagen criteria, needs a credible process of enlargement toward Western Balkan countries. Nonetheless, for the EU institutions, and more for the Member States, there is the need to bear in mind also the lessons learned by the enlargement process of 2004 and all the problems that arise there, especially regarding the rule of law and democratic institutions[66]. The fulfilment of the duties of assistance, support, and monitoring toward the candidate countries relies on the

[65] Outlined on the TEU and TFEU as legal binding base for each State singularly. We should bear in mind the Protocols and the composition of article 50 on unilateral withdrawal from EU after Lisbon. This clears any doubts and dynamic reference to the Vienna Convention on the Law of the Treaties.

[66] See D. ADAMSKI, *The social contract,* op.cit. Also, for the ongoing process for the enlargement of 2004, see G. BURGHART, F. CAMERON, *The next enlargement of the European Union* in *European Foreign Affairs Review,* 2, 1997, pp. 7-21. For the new enlargement methodology see also SMART BALKANS, *A brief overview of the EU enlargement methodology*, 2022 available at https://smartbalkansproject.org/smart-news/a-brief-overview-of-the-eu-enlargement-methodology/ (last accessed on 5.1.2024) and D. TILEV, *The new enlargement methodology: enhancing the accession process*, Institute for Democracy "Societas Civilis", 2020, available at https://idscs.org.mk/wp-content/uploads/2020/03/Final-Commentary-Dragan-Tilev.pdf (last accessed on 5.1.2024).

Commission. The Commission is keen to foster the enlargement process with the WB countries, and it is evident in the analysis of the progress reports[67]. On the other hand, the final scrutiny at the EU level relies on the Council and the Parliament. Each of the institutions is engaged and assesses the process for each candidate autonomously, despite a consolidated policy at the EU level for an *en-block* enlargement with the countries of WB[68]. The long process of Association and Stabilization with WB countries has been in place for several decades.

Firstly, in 2018, after several problems in opening the negotiations for Albania and North Macedonia, the Commission, with a communication to the EU Parliament, Council, and other institutions, addressed the need for a "credible enlargement perspective for and enhanced EU engagement with the Western Balkans"[69]. In this communication, the Commission starts underlining the received support of the WB countries from the EU, stressing that "this firm, merit-based prospect of EU membership for the Western Balkans is in the Union's very own political, security and economic interest"[70], but at the same time the EU "must be stronger and more solid, before it can be bigger"[71] and the process of accession will remain merit-based. The Commission finds that reforms need to be done regarding crucial areas such as the rule of law and fundamental rights[72], competitiveness[73] and regional cooperation, and

[67] An important base and policy document on candidate country assessment is COM(2018) 65 final. See p. 9 ff.

[68] See COM(2020) 660 final "2020 Communication on EU enlargement policy" where it is stated that "The proposal set out by the European Commission in February 2020 and endorsed by the Council in March will further strengthen the accession process by making it more predictable, more credible, more dynamic and subject to stronger political steering. The Commission's proposal underlines the importance of a merit-based accession process built on trust, mutual confidence and clear commitments by the European Union and the Western Balkans. Even stronger focus will be placed on reforms in the fundamental areas of rule of law, the functioning of democratic institutions, public administration and the economy. The Western Balkans also need to make progress on reconciliation, good neighbourly relations and regional cooperation" p. 19.
See also COM(2019) 260 final "2019 Communication on EU Enlargement Policy", COM(2022) 528 final "2022 Communication on EU Enlargement Policy", COM(2023) 690 final "2023 Communication on EU Enlargement Policy".

[69] COM(2018) 65 final.

[70] Ibid., p. 1.

[71] Ibid. p.2, p. 15 ff.

[72] Ibid. p. 4-5. There is a need to deal with independence and efficiency of the judiciary system, fighting corruption, judiciary ruling enforcement, a strong framework in public procurement, fight against organized crime, money laundering. Also applying correctly, the legislation on fundamental rights. Furthermore, there is a need for public administration reform strengthening of democratic institutions and political dialogue.

conciliation, and highlights the processes besides association and stabilisation, i.e., the Berlin process[74]. The statements in this document lay the basis for the evaluation of each country in its integration path as well as the commitments of the EU institutions in the process of enlargement[75].

In 2020, finally, after the "internal readiness of the EU and Member States", the Commission proposes an enhancement to the accession process, offering a credible EU perspective for the Western Balkans[76]. The Communication recalls all the efforts of the EU and its Member States from the Feira e Thessaloniki Summits to support the European perspective of the WB countries. It presents a new and enhanced methodology of enlargement, which affects the process for the WB countries and the successive enlargements, reinvigorating the adhesion process. It needs to be established in "trust, mutual confidence and clear commitments from the parties"[77]. That means that the efforts should be credible and focus on fundamental reforms, which will be opened first and closed last in the process when the progress in these fields will significantly impact the negotiations' pace[78].

On the other hand, when proposing this new and enhanced methodology, the Commission is aware that it needs a more robust political steer, with the more active involvement of the Member States[79] in the process and by creating a political momentum through EU-Western Balkans summits[80] and contacts at

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[73] Ibid. p. 5-6. The efforts should be on strengthening the economies and tackling structural weakness. Also as enhancing connectivity.

[74] The last Berlin Process Summit on 16.10.2023 took place in Tirana with considerable progress in reaching the Common Regional Market with the signature of the Agreement on recognition for professional qualifications for midwives, vets, nurses and pharmacists and a number of joint statements related to regional cooperation.

[75] Regarding enlargement policy of the EU in the WB see R. SHTINO, G. KAMBERI, *Different speeds of EU enlargement within the Western Balkans and the constitutional adaptation approach in Albania to fulfill the aspects of EU conditionality*, in *Avokatia*, no. 45 (1), Year XII, October 2023, pp. 25-57.

[76] COM(2020) 57 final of 5.2.2020.

[77] Ibid., p. 2.

[78] Ibid. p. 3. The negotiations on these fundamental chapters will be guided by a roadmap for the rule of law chapters, functioning of the democratic institutions and public administration reform, a clear and link with the economic reform programme.

[79] Member States are now invited to contribute during the accession process and have the possibility to overview more closely the process.

[80] One of the most important for enlargement the summit held in Tirana, the first-ever summit held in a Western Balkan country on 6 December 2022. In the Tirana Declaration the EU affirms that "its full and unequivocal commitment to the European Union membership perspective of the Western Balkans and calls for the acceleration of the accession process, based upon credible reforms by Partners, fair and rigorous conditionality and the principle of own merits, which is in our mutual interest. It welcomes the progress made by the Western Balkans Partners on their respective EU paths since the EU-Western Balkans Summit at Brdo

ministerial levels. Regarding each candidate, the importance of the Inter-Governmental Conferences (IGCs) between parties and of the Stabilisation and Association Councils is stressed for better discussion of the meeting of interim benchmarks and proposing closure of Chapters to the Council.

Yet, the key actor in the whole evaluation process remains the European Commission, which has the duty to prepare the progress reports for each country every year. It proposes the framework of negotiations for each case and is the leading institution that maintains contact with candidate countries.

There is a need to shape the negotiation process to be more dynamic. In this renewed proposed methodology, the Commission proposes that "in order to inject further dynamism into the negotiating process and to foster cross-fertilization of efforts beyond individual chapters, the negotiating chapters will be organised in thematic clusters"[81] and the clusters with cover different chapters of negotiations with broader thematic[82]. In the opinion of the Commission, clustering chapters will improve the ability of the candidate countries to propose reforms in core sectors and will reach a higher level of political engagement in macro sectors. The new model will be aligned with the SAA in force with each candidate country and will consider the progress made within that process.

As for the process itself, negotiations on each cluster will be opened after fulfilling the opening benchmarks rather than on an individual chapter basis like before. More importantly, the screening process at the beginning of the negotiations will be made for clusters in order to have a more realistic evaluation of macro areas and to better agree between EU institutions and the candidate country on real and significant reforms to be carried out by the candidate. For each chapter inside a cluster, set the opening benchmarks and the closing benchmarks, bearing in mind that the closure of the chapters is provisional, with the possibility of reopening it once backsliding is noticed. This makes the process reversible and controlled by the EU and Member States until the signature of the accession treaty, satisfying the fear of Member States.

This new methodology was mentioned to lead to more predictable, positive and negative effects for candidate countries, which will affect the process and

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in October 2021. In particular, the EU welcomes the holding of the first Intergovernmental Conferences with Albania and North Macedonia" Available at https://www.consilium.europa.eu/media/60568/tirana-declaration-en.pdf (last accessed on 10.01.2023). The last WB-EU summit was held in Brussel on 13 December 2023.

[81] COM(2020) 57 final, p. 4.

[82] Ibid. Despite Montenegro and Serbia has already an approved framework of negotiations in chapters, due to the progress made, even for them there will be a reorganization in clusters.

offer greater clarity on the output of the process[83][84]. The planning of the reforms to be made and implemented will be addressed by the Commission with the Enlargement Package each year. This means that there is the possibility of rewarding or punishing candidate countries with partial integration through benefits from more EU programmes of funding or exclusion from them.

The technical annexe lays down a division into 6 clusters, with chapters 34 (Institutions) and 35 (Other issues) to be dealt with separately. The clusters are: 1. Fundamentals (23 - Judiciary and fundamental rights; 24 - Justice, Freedom and Security; Economic criteria; Functioning of democratic institutions; Public administration reform; 5 - Public procurement; 18 – Statistics 32 - Financial control); 2. Internal market (1 - Free movement of goods; 2 - Freedom of movement for workers 3; - Right of establishment and freedom to provide services 4; - Free movement of capital; 6 - Company law; 7 - Intellectual property law; 8 - Competition policy; 9 - Financial services; 28 - Consumer and health protection); 3. Competitiveness and inclusive growth (10 - Information society and media; 16 – Taxation; 17 - Economic and monetary policy; 19 - Social policy and employment; 20 - Enterprise and industrial policy; 25 - Science and research; 26 - Education and culture; 29 - Customs union); 4. Green agenda and sustainable connectivity (14 - Transport policy; 15 – Energy; 21 - Trans-European networks; 27 - Environment and climate change); 5. Resources, agriculture and cohesion (11 - Agriculture and rural development; 12 - Food safety, veterinary and phytosanitary policy; 13 – Fisheries; 22 - Regional policy & coordination of structural instruments; 33 - Financial & budgetary provisions); 6. External relations (30 - External relations; 31 - Foreign, security & defense policy).

The process itself is very technical, to be explained on a case-by-case basis, and offers many changes from the other enlargement processes in the past[85].

[83] See A. HACKAJ, A. PIRDENI, *EU candidate country reforms and the revised enlargement methodology: searching for a roadmap*, Cooperation and Development Institute, (working paper), 2020, available at https://cdinstitute.eu/wp-content/uploads/2020/04/EU-Candidate-Country-Reforms-New-Enlargement-Methodology-final.pdf (last accessed on 5.1.2024).

[84] For a critical lecture ofthe new methodology of enlargement see U. ĆEMALOVIĆ, *Toward a new strategy for EU enlargement – Between the wish for anencouragement, the reality of the fatigue and the threat of a dead end* in *EU and comparative law issues and challenges series (ECLIC)*, Issue 4, 2020, p. 281-298.

[85] See M. EMERSON, S. BLOCKMANS, D. CENUSA, T. KOVZIRIDZE, V. MOVCHAN, Balkan and Eastern European Comparisons: Building a New Momentum for the *European integration of the Balkan and Eastern European associated states*, CEPS Policy Contribution, of 25 Feb 2021. Available at https://core.ac.uk/download/395028732.pdf (last accessed on 16.1.2024).

The case of Albania is taken as an example to see fully implemented the new methodology of enlargement.

The new methodology offers a renewed process and, what is more important, an accepted one for both Member States and the Council of EU, as well as a credible, more flexible, topic-related organisation of work for candidate countries. It is of fundamental importance in light of the recently launched growth plan for the Western Balkans[86], which reshapes the financing of the candidate countries from this region by the EU. The aim is to enhance economic integration with the European Union's single market[87], creating a Common Regional Market according to the Berlin Process summit, accelerating fundamental reforms, and increasing financial assistance through new mechanisms of funding.

2.1 Albanian integration process as a WB country and relationship with the EU institutions under the new methodology of enlargement

In June 2014, Albania was awarded the status of candidate country for membership[88]. The first unconditional recommendation for opening the negotiations was granted by the Commission in 2018, then with the Enlargement Package in May 2019, while the Council only recognised the progress made from Albania without opening negotiations[89]. In light of the statements of the Council in 2018 and the Presidency conclusions of 2019, the opening of the negotiations remained a hot topic for both Albania and the Republic of North Macedonia to deal with in 2020. This time, with a clear

[86] COM(2023) 691 final. New growth plan for the Western Balkans.

[87] It is foreseen priority action for integration in free movement of goods, services and workers, access to Single Euro Payments Area (SEPA), facilitation of road transport, integration and de-carbonisation of energy market, creation of the Digital Single Market, integration into industrial supply chains. Ibid. pp. 3-5.

[88] The Council conclusions on Albania (General Affairs Council meeting in Luxemburg 24 June 2014) states, among other conditions, that "Following the granting of candidate status, the Council underlines that Albania should act decisively on all of the recommendations in the Commission's report and intensify its efforts to ensure a sustained, comprehensive and inclusive implementation of the key priorities, notably the reform of the public administration and the judiciary, the fight against organized crime and corruption, the protection of human rights and anti-discrimination policies including in the area of minorities and their equal treatment, and implementation of property rights." Available at https://www.consilium.europa.eu/media/21900/143354.pdf (last access 10.01.2024) endorsed by the European Council with EUCO 79/14.

[89] Council Conclusions of 26 June 2018 (ELARG 41 – 10555/18) p. 17. https://data.consilium.europa.eu/doc/document/ST-10555-2018-INIT/en/pdf (last access 10.01.2024). The Council meeting of 2018 is the key point in shaping the path of Albania, having regard of a new enlargement methodology and a new perspective for Western Balkan countries, toward the opening of the negotiations.

intention to open negotiations, bearing in mind the Communication of 6 February 2018 of the Commission[90], the Communication of 5 February 2020 of the Commission[91], the annual progress reports of the Commission and the statements and decisions of the Council of 2018. Thus, through this decision of the Council, which represents the interest of each member State, through the commitments of the candidate countries and the European Commission's decision regarding a new and enhanced methodology of enlargement, the path for enlargement with Albania was cleared.

Thus, on 24 March 2020, after the adoption of a new enlargement methodology, the Council decided to open negotiations with Albania.[92] In July

[90] COM(2018) 65 final "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" where it is stated that "This firm, merit-based prospect of EU membership for the Western Balkans is in the Union's very own political, security and economic interest. It is a geostrategic investment in a stable, strong and united Europe based on common values. It is a powerful tool to promote democracy, the rule of law and the respect for fundamental rights. A credible accession perspective is the key driver of transformation in the region and thus enhances our collective integration, security, prosperity and social well-being. It remains essential for fostering reconciliation and stability" but "our Union must be stronger and more solid, before it can be bigger. This is why, in line with its Roadmap for a More United, Stronger and more Democratic Union".

[91] COM(2020) 57 final "Enhancing the accession process - A credible EU perspective for the Western Balkans" where the Commission recognizing that the enlargement is a two way process and declaring that "It is of major importance to build more trust among all stakeholders and to enhance the accession process and make it more effective. It has to become more predictable, more credible - based on objective criteria and rigorous positive and negative conditionality, and reversibility - more dynamic and subject to stronger political steering". Through this Communication, the Commission offers concrete proposals for enhancing the accession process that must be more credible, with a stronger political steer, more dynamic, predictable and with well-defined clusters of the negotiation chapters.

[92] Council Conclusions of 25 March 2020 (ELARG 20 – 7002/20), p. 4. https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf (last access 10.01.2024). On its conclusions the Consilium states that "Prior to the first intergovernmental conference, Albania should adopt the electoral reform fully in accordance with OSCE/ODHIR recommendations, ensuring transparent financing of political parties and electoral campaigns, ensure the continued implementation of the judicial reform, including ensuring the functioning of the Constitutional Court and the High Court, taking into account relevant international expertise including applicable opinions of the Venice Commission, and finalise the establishment of the anti-corruption and organised crime specialised structures. Albania should also further strengthen the fight against corruption and organised crime, including through cooperation with EU Member States and through the action plan to address the Financial Action Task Force (FATF) recommendations. Tackling the phenomenon of unfounded asylum applications and ensuring repatriations and amending the media law in line with the recommendations of the Venice Commission remain important priorities. The Commission will provide a report on these issues, including progress regarding the track record, when presenting the negotiating framework." Ibid. p.5.

2022, a draft negotiations framework was approved[93], fixing the first Intergovernmental conference on 19 July 2022. 2023 was very intensive with the procedure of screening, and, actually, the Commission has issued its screening report on cluster 1 (Fundamentals). Still, in its conclusions on enlargement on 12 December 2023, the Council "welcomes the first intergovernmental conference held with Albania in July 2022. The Council welcomes the reform progress made in the past year, including the successful completion of the screening meetings. The Council looks forward to taking the next steps in Albania's accession process and to opening the first negotiating cluster as soon as possible"[94].

In light of this timeline, we notice that Albania's path toward full adhesion was long and shaped by serious threats, especially regarding the institutional infrastructure within the country and its functioning. Furthermore, the adhesion process is a long and energy-draining process driven often by political will and not only mere fulfilment of technical issues foreseen in the SAA or just formal adoption of EU legislation in order to harmonise and enhance legal framework and legislation. The adhesion procedure passes through the strength of institutions and implementation of EU principles within the national system. On the other hand, the readiness of the EU itself regarding the opening of the negotiations with Albania (as well as North Macedonia) is a determinant factor for evaluating the enlargement so far.

The process remains between the candidate country and the EU institutions, namely the Commission, the Council of EU and the European Council, as well as the singular Member States. The process of integration becomes a hybrid process between politics and socio-economic factors. Yet, in the centre, as explained supra, the most important and instrumental criteria to adopt the *acquis* remains. It is essential to bear in mind that the *acquis* adoption shall be accompanied by a robust implementation within institutions in order to ensure the rule of law and to comply fully with European values[95]. For example, in the Council conclusions of 2018, progress in some areas, such as liberalising the

[93] Council Conclusions of 18 July 2022 (ELARG 65 – 11440/22), p. 3. https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf .

[94] Council conclusions on Enlargement of 12 December 2023 (ELARG 94 – 16707/23). It is important to underline that the conclusions refer to WB countries, Türkiye and for the first time including Ukraine, Moldova and Georgia.

[95] Council conclusions on enlargement and stabilization and association process of 26 June 2018. In the assessment of the Council, despite a favorable opinion issued by the Commission, a significant progress was made in order to meet the criteria for opening the negotiations but still there is a need for further reforms in Albania especially fighting corruption, increasing competitiveness, fighting informal economy, fiscal consolidation and continuing judiciary reform.

energy market, enhancing transport infrastructures and digitalisation, was fully recognised, but Albania didn't obtain the green light for negotiations. Thus, the conclusions of the Council are to be considered not only as a milestone for the process of enlargement of the Western Balkans but also as a political statement, an expression of the position of member states toward enlargement of the Union.

The efforts of the candidate countries in the accession procedure now are focused on the priorities, which are determined by the Council for each country. The Council, in assessing the candidate's progress, affirms that adhesion shall be evaluated in terms of merit and eligibility for adhesion only if the general criteria are met but, on the other hand, reaffirms the importance of the enlargement toward Western Balkans as a crucial political process. The evaluation of the fulfilment of the conditions relies both on the Council on the Commission, which prepares each year progress reports and is entrusted by the Council to monitor the progress made overall and to complete a "process of analytical examination of the EU acquis with the country, starting with the fundamentals' cluster"[96].

The yearly report issued by the Commission is with interest not only for institutions of candidate countries but also for stakeholders and civil society interested in the enlargement process, a process with a very high public interest[97].

Despite the conclusions of the Council of 12 December 2023 not still opening negotiations for singular chapters for Albania, enormous progress was made in the process of completing the screening phase for all the clusters of negotiations and having in hand the first report from the Commission on Fundamentals. The screening process is essential in assessing Albania's readiness to open and close a negotiation chapter in light of the new methodology of enlargement, especially regarding the *acquis* adoption. In our opinion, despite the importance of other parameters, the ability to adopt EU legislation is of vital importance not only during screening but also in the whole process of negotiations due to the nature of the enlargement process

[96] I.e. the Commission, in its progress report of 2021, informed again the Council on 12 May 2021 that all the conditions were met as in the report of 2020 without backsliding (SWD(2021) 289 final, p. 129).

[97] See as an explanatory document for general public M. QESARAKU, F. CAKA ET AL., *Manuali i negociatave per qytetaret mbi anetaresimin e Shqiperise ne Bashkimin Evropian. Sipas metodologjise se re te zgjerimit*, Tirane, April 2023. There are explanation regarding the progress made so far from Albania and the Authors provide examples from other candidate countries like Croatia or Montenegro regarding requirements for the opening of negotiations for each singular chapter, the opening benchmarks.

after the new methodology as reversible and the possibility of reopening chapters once they are provisionally closed.

2.2 Latest progress reports on Albania and the *acquis* adoption assessment

In the latest progress reports concerning Albania taken into consideration for this research, those from 2019 to 2023, the Commission has recommended the opening of the negotiations of adhesion. It has recognized the efforts made under the SAA and bilateral relations between the EU and Albania, as well as identified a good fulfilment from the latest of many obligations and a good adoption of the *acquis* in order to build institutions and markets. The general criteria, which the Commission evaluates[98], are the political criteria, public administration reforms, judicial system reform, fight against corruption, fight against organised crime, fundamental rights, economic criteria, good neighbourhood and regional cooperation, *acquis* adoption and migration.

Thus, the progress report of 2019 evaluated the progress made by Albania in fulfilment of each criterion and found that in most areas, the grade of evaluation is that Albania has some level of preparation (judicial system, fight against corruption, fight against organised crime), and in other areas results moderately prepared (public administration, economic criteria). Furthermore, in specific fields, the Commission finds that good or significant progress was made (political criteria, adoption of a plan for implementation of inter-sectoral strategy against corruption, etc., track record of investigating and prosecuting high-level corruption and organised crime) and in other sectors, some progress was made (political criteria, economic criteria, migration).

The 2020 progress report takes note of the Council's conclusion of 25 March 2020. It determines that Albania has addressed all the issues levied by the Council meeting the conditions for the first Intergovernmental convention (functional High Court, basis for the Constitutional Court to regain functionality, creating SPAK and appointing director of National Bureau of Investigation, the ongoing process of re-evaluation of judges and prosecutors, fighting corruption and track record, fighting organised crime). The overall

[98] SWD(2021) 289 final Commission staff working document explains that the report use as assessment scales: early stage, some level of preparation, moderately prepared, good level of preparation, well advanced. On the other hand, regarding the assessment of the progress made the scales are: backsliding, no progress, limited progress, some progress, good progress, very good progress.
In general, a chapter have an evaluation from the Commission that consists in marking the chapter as: totally incompatible; early stage; considerable efforts needed; some level of preparation; further efforts needed; moderately prepared; no major difficulties expected; good level of preparation; well advanced.

report was better than in 2019. The Commission found that in most areas, the grade of evaluation is that Albania has some level of preparation (judicial system (to moderately prepared), fight against corruption, fight against organised crime); meanwhile, in other areas, results moderately prepared (judiciary system, public administration, economic criteria). Furthermore, in specific fields, the Commission finds that good or significant progress was made (fighting corruption, organised crime, and terrorism). In other sectors, some progress was made (migration, economic criteria in terms of ability to cope with competitive pressure and market forces within the Union).

The 2021 progress report, including the monitoring tasks levied by the Council, describes a better panorama of Albania and finds that the issues to be addressed levied by the Council are continuing to be fulfilled. Albania is moderately prepared in fields like public administration and judiciary system, fundamental rights with particular oversight on freedom of expression, some aspects of the economic criteria, significant development regarding migration, public procurement, some aspects of the internal market, Green agenda and sustainable connectivity. On the other hand, it continues to have some level of preparation in fields like the fight against corruption, organised crime, agriculture and cohesion, and the capacity to cope with competitive pressure and market forces within the EU. Furthermore, there is a good level of preparation regarding external relations, foreign security and defense. In many areas, there are assessments of good or very good progress.

The panorama offered by the analyses of the Commission reports shows the strong commitment of Albania in order to reach the first intergovernmental conference and open de facto the negotiation on some chapters, in line with the Commission draft framework, enunciated on 1 July 2020.

The 2022 report offers a comprehensive evaluation of Albania, with most of the chapters being evaluated as moderately prepared and showing good progress in some areas, especially under the economic criteria and judiciary reform[99].

The 2023 progress report for Albania issued in November 2023 refers to political criteria mainly regarding elections in Albania in 2023. For the Commission, Albania is moderately prepared regarding public administration, functioning of the judiciary, public procurement, statistics, financial control, most areas of the internal market, and areas linked to competitiveness and inclusive growth.

There is some level of preparation in the fight against corruption and organised crimes, areas of green agenda and sustainable connectivity such as

[99] SWD(2022) 332 final.

transport and TEN, environment and climate change, areas of resources, agriculture and regional policy and cohesion.

There is a need to better implement the legal and policy framework in the field of fundamental rights, and regarding freedom of expression, Albania is classified between some and moderate levels of preparation in its accession process.

Regarding economic criteria, Albania is between a moderate and good level of preparation for a functioning market economy. In addition, regarding external relations, foreign security and defense Albania has a good level of preparation.

This report shows Albania's efforts in the process of integration and finds relevant improvements[100]. Being in the phase of the screening process, Albanian institutions made an enormous effort to fully auto-evaluate their progress correctly. The findings of this report should be readied in light of the screening process that was ongoing for Albania in 2022 and 2023, and a conclusion should be reached at the end of the year with the commission issuing the first screening report on fundamentals.

2.3 The *acquis* adoption procedures in Albania in the light of the progress reports

As regards the most crucial point, the *acquis* adoption, which is instrumental and fundamental to achieving all the other criteria, the reports of 2019, 2020, and 2021 present almost the same situation. In our opinion, besides deep reforms of public administration and judiciary system, the correct harmonisation of the legislation with the *acquis* is of crucial importance, especially with regard to the nature of implementation of directives. Thus, candidate states like Albania shall have very efficient legislative drafters in order to ensure correct implementation. This will undoubtedly impact the good and efficient interpretation of legislation in line with EU principles and also provide a faster path toward full adhesion.

During 2019, according to the Commission, "Albania continued to align its legislation to EU requirements in a number of areas, enhancing its ability to assume the obligations of membership", and it is moderately prepared in some areas such as financial control, education, culture and statistics. In other areas, such as public procurement or trans-European networks, it has some level of preparation. The Commission individuates some areas like transport and energy where Albania shall continue the development of networks. The Commission's main concerns remain the administrative capacities and

[100] SWD(2023) 690 final.

professional standards of the bodies entitled to the implementation of the *acquis* and their independence[101].

The same conclusions are present in the 2020 report with a more explicit statement on the need to "to continue its efforts as regards the overall preparations for adopting and implementing the EU *acquis*"[102].

In the 2021 report, there is no specific mention of the process of *acquis* adoption, but the Commission, on several occasions, recognised Albania's efforts in light of the imminent first intergovernmental conference that was held later in 2022. Thus, Albania has changed and enhanced its governance structure and appointed a Chief Negotiator responsible for negotiations with the EU and the other structures related to EU issues[103].

The assessment of the Commission through these progress reports is made in the light of the new and enhanced methodology proposed in February 2018 on "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans"[104] and the Communication of 5 February 2020[105].

Through its new methodology of enlargement, the Commission underlines the importance of adopting the *acquis*. Thus, it is clearly stated that "much remains to be done across the board to align with the EU's *acquis*, to establish or build up the related institutions, and to ensure implementation capacity, whether in terms of single market rules, social policy, energy and transport *acquis* or EU environmental law"[106]. In addition, it finds it essential to offer technical assistance and support for institution building, keeping in mind that for a credible enlargement perspective, there must be strong support from the European Union. In our opinion, besides deep reforms of public administration and judiciary system, the correct harmonisation of the legislation with the *acquis* is of crucial importance, especially with regard to the nature of implementation of directives. Thus, candidate states like Albania shall have very efficient legislative drafters in order to ensure correct implementation.

The correct adoption of the *acquis* is one of the most important issues in the path toward adhesion[107]. The correct adoption of the *acquis* is of crucial importance and instrumental in enhancing and boosting the process of

[101] SWD(2019) 215 final dated 29.5.2019 in COM(2019) 280 final.
[102] SWD(2020) 354 final of 06.10.2020, p. 8.
[103] SWD(2021) 289 final of 19.10.2021, p. 11.
[104] COM(2018) 65 final.
[105] COM(2020) 57 final.
[106] COM(2018) 65 final, p. 6.
[107] Amplius, see A. GJETA, *The process of enlargement of the EU: the state of art of efforts of Albania in the light of the latest reports* in *Euro-Balkan Law and Economics Review*, no 1/2023, pp. 68-84.

integration. This is vital now in the imminent opening of singular chapters of negotiations. The correct adoption of the *acquis* may create synergy between institutions in Albania and better enforcement of the law in order for the future evaluation to change from 'some preparation' to a better assessment. Yet, the most critical issue that threatens the whole process remains the poor acknowledgement of the EU legislation and institutions within the country. It suffices to say that there are only a few judicial decisions that rely on the ECJ ruling in order to motivate the ruling based on the correct interpretation of EU principles that are now included within Albanian legislation[108]. Actually, the grade of adoption of the *acquis* for Albania is under scrutiny under the Screening process for 2023.

The process of accession for Albania reached a milestone in 2022 with the first intergovernmental conference in Brussels on 19 July 2022, after several years of uncertainty regarding enlargement processes within the EU and several denials on opening the negotiations with candidate countries. This might help bring more focus to EU law in Albania and improve the pace of effective implementation of the *acquis* adopted so far.

2.4 The first screening report for Albania as an essential instrument for assessing *acquis* adoption and undertaken reforms.

The process of screening is important in assessing Albania's readiness to open and close a negotiation chapter in light of the new methodology of enlargement, especially regarding the *acquis* adoption. In our opinion, despite the importance of other parameters, the ability to adopt EU legislation is of vital importance not only during screening but also in the whole process of negotiations due to the nature of the enlargement process after the new methodology as reversible and the possibility of reopening chapters once they are closed[109].

The process of screening is the first procedure within the negotiation framework for accession. It consists of an assessment of readiness in the EU *acquis* from the candidate country and European Commission, covering 33 chapters of the negotiations as divided into 6 clusters[110]. The process is divided

[108] A. GJETA, *Shoqeria e thjeshte midis Kodit Civil dhe legjislacionit tregtar. Problematika ne sistemin ligjor shqiptar*, in *Avokatia 30*, 2019.

[109] See A. GJETA, A. SPAHIU, *EU enlargement and the case of Albania in the light of the latest progress report and screening process*, in *11th International Scientific Conference "Recent challenges in entrepreneurship innovation and legal framework"*, held in Elbasan, November 18, 2023, Proceedings book, p. 382-387.

[110] Clusters: Fundamentals; Internal market; Competitiveness and inclusive growth; Green agenda and sustainable connectivity; Resources, agriculture and cohesion; external relations.

into two moments when: the first is the explanatory meetings from the EU, and the second is the bilateral meetings on each cluster with their chapters, where the candidate country presents its position on *acquis* adoption and implementation of EU legislation. At the end of the procedure, a final report is drafted by the EC, which evaluates the preparation of the candidate country and assesses its intention toward reforms that might help the country during negotiations in order to successfully close each chapter that is included in the specific cluster. The result of the screening will consist of fixing the opening benchmarks for the cluster of negotiations as a whole.

The importance of the screening reports is for the candidate country to self-evaluate its readiness and preparation for the negotiations to come and, on the other hand, for EU Member States and institutions to have credible and reliable preparatory documents during the negotiations phase.

The draft screening report for cluster 1 – Fundamentals was presented to the Council by the Commission in July 2023[111]. The Council has not yet taken a position on Albania whether to open the chapters of the clusters for negotiation due to the lack of a unanimous decision in December 2023.

The main areas included, as defined in the new methodology of enlargement[112], are the rule of law, judicial reform and the fight against corruption and organised crime, fundamental rights, the strengthening of democratic institutions and public administration reform, as well as the overall economic criteria. Basically, it refers to the political criteria and puts the rule of law criteria in the centre of the negotiations, being this cluster is the first to be opened and, after continuous monitoring during the process, the last to be closed[113]. The report is divided into areas that respect chapters involved within the cluster, offering firstly an overview of the standards to be reached by the candidate country (EU *acquis*), a description of the country presentations and expert discussions during meetings, and then an assessment by the

[111] See COM(2023) 690 final, p. 19-20 The Commission remarks that the screening process of EU *acquis* has proceeded smoothly and that Albania has showed seriousness during the process.

[112] COM(2020) 57 final.

[113] As stated in the draft-screening report "The fundamentals cannot be seen in isolation, but interact with each other and can be mutually reinforcing. A country grounded in democracy and the rule of law will be attractive for foreign investments and international trade, and allow businesses to flourish, thus strengthening economic performance and prosperity of citizens. In turn, thriving economic and social conditions will bolster the social consensus around democracy and the rule of law, and bring resources for the good functioning of public institutions" Screening Report Albania – Cluster 1 Fundamentals, p. 3. Available at https://neighbourhood-enlargement.ec.europa.eu/screening-report-albania_en (last access 10/01/2024).

Commission. Its assessment, findings, and recommendations are a comprehensive analysis from several sources (i.e., civil society organisations) and do not rely only on Albanian institutions' statements during the process.

2.5 The screening findings regarding the functioning of democratic institutions and public administration reform

The first evaluation is made on democracy, the electoral process, Parliamentary life and strength and the role of civil society.

Albania states that there is a good general framework for democracy with strong institutions and a sound check and balance guarantee which derives from the functioning of the independent bodies and authorities, such as the Chair of the Election Regulatory Commission and the Commissioner for Information and Data Protection, the Board of the Audio-visual Media Authority.

Regarding the electoral process, especially regarding media or financing of political parties, Albania reflects EU and international recommendations. The Commission asses that there is a good overall legal framework for organising elections, yet there is the need to review the Electoral law in order to limit the use of party-produced content in the news. In its final conclusion, the Commission evaluate that the legal and institutional framework is adequate for granting a democratic electoral process, but it needs to address the recommendations of OSCE/ODIHR and the Venice Commission, the need to strengthen the legislation on media in electoral campaigns and revision of the legislative framework on the financing of political parties for more transparency.

On the function of Parliament, the Commission is mainly concerned regarding the appointment of independent authorities, being "often subject to political bargaining or held up over many months due to political disagreements in the Assembly, occasionally leading to questions on the authority and independence of some of the resulting appointees", the oversight of independent institutions which is only yearly based and seen as a bureaucratic exercise[114], as well as on transparency and accountability where is the need of further improvements in order to "ensure more timely and user-friendly public availability of official parliamentary documentation to civil society, the media, other stakeholders, and the broader public. These include, in particular, the minutes of plenary sessions and committee meetings. In addition to more timely publication of such minutes, these could also be made more

[114] Screening Report Albania – Cluster 1 Fundamentals, p. 13

user friendly"[115]. Furthermore, the public consultation with civil society remains formal and needs to be improved despite the creation and functioning of the National Council on European Integration.

The screening report offers a relevant assessment of the role of civil society in reaching a functioning democracy, and in Albania, there is a need for improvement, especially regarding the total implementation of the Law on Registration of Non-Profit Organisations adopted in June 2021, establishing the National Electronic Register of Non-Profit Organisations. Furthermore, serious legal improvement is needed regarding the taxation of CSOs, financial support from the government, tax exemption for corporate donors, and VAT refunds for CSOs, which are subject to the general VAT regime. The role of civil society organisations is fundamental in the process of EU integration and the discussions on EU *acquis* adoption, but the consultation should not be only formal. The screening report, in its final findings, states that, overall, the "legal, regulatory and institutional framework for CSOs is in place, but implementation needs to be further reinforced, in particular for the registration procedures. The consultation processes need to be improved to become more inclusive and allow for an enabling environment."[116]

On the other hand, there is the reform of the public administration assessing the strategy for reform during negotiations, policy development and coordination, the public service and human resource, their organisation and accountability, their ability to deliver services and public financial management. These requirements are in line with the Copenhagen criteria, as well as with EU citizens' fundamental right to good administration (article 41 EU Charter of Fundamental Rights).

The Commission finds Albania moderately prepared to lay out its strategic framework for public administration and public financial management reform. Albania has implemented legislation (see Law on Organisation and Functioning of the State Public Administration) in order to coordinate its functioning better and has changed and improved legislative iter in general in order to fully coordinate it with the *acquis* adoption and EU harmonisation requirements. Also, Albania has upgraded the institutional organisation regarding the EU integration process due to the imminent starting of bilateral meetings of negotiations.

The findings of the Commission regarding the legislative and institutional framework focus on Albania's need to strengthen coordination between policy-making institutions and extend the use of regulatory impact assessment to

[115] Ibid.
[116] Ibid., p. 21.

secondary legislation[117]. It is recognised the ability to transpose *acquis* in Albania is optimal, but there are concerns regarding "the translation of the *acquis* planned for approximation into the national language is inadequate, resulting in delays in the availability of translations and therefore, potential delays and weaknesses in transposition"[118].

Regarding the functioning of public service and human resource management, the Commission finds that Albania is moderately prepared, and there is a need to enhance the regulatory framework, which has legislative gaps, like remuneration, job classification, recruitment or promotion. In order to have a good and accountable administration, Albania has made progress in establishing the administrative justice system but yet needs to address issues like the strengthening of activities of public independent authorities with oversight roles, i.e. strengthening the powers of the Information and Data Protection Commissioner by providing the mechanisms to enforce decisions and the mandate to conduct comprehensive inspections. The digitalisation of public services is an achievement of Albania regarding the delivery of services to the public, with the establishment of the E-Albania Governmental Portal State Database in 2020 and the adoption of the Law on e-government in February 2023. The Commission's evaluation is that Albania is moderately prepared for its service delivery system with a significant improvement by its digitalisation.

In the end, regarding Public Administration, the Commission finds that in the public financial management system, Albania is moderately prepared with a well-established framework for the management of public finance but needs to do more in the medium-term budgetary framework and increase the institutional capacities for monitoring fiscal risk and the management of public finance.

[117] The Commission finds in particular that "Albania still needs to strengthen capacities related to policy development to be aligned with EU standards. Since 2019, the country has made significant efforts to improve the regulatory impact assessment (RIA) process, including through the provision of dedicated trainings. In practice, RIAs are being systematically used in law making, but the quality of the analysis requires improvement. Training should be developed, as there is currently no regular training on policy making and RIA for civil servants. The Government also needs to continue efforts in the institutionalization of RIAs and to improve the central quality control function of the General Secretariat in this area" Screening Report Albania – Cluster 1 Fundamentals, p. 27.
[118] Ibid., p. 27.

2.6 The screening findings regarding economic criteria, public procurement, statistics and financial control

The self-analysis of Albania and that of the EU Commission in the screening report is worthy of careful reading. Included in cluster 1 is the importance of these areas, which are fundamental for the whole adhesion process.

Regarding economic criteria, it is crucial for the future adhesion within the internal EU market[119] because "the capacity to cope with competitive pressure and market forces within the Union requires sufficient human and physical capital, adequate sectoral and enterprise structures capable of innovation and an infrastructure, which facilitates the integration of the national market, connects it to other countries at competitive costs and enables sufficient trade and investment integration within its region and with the EU"[120]. Actually, Albania benefits from the EU market and has strong links due to the ASA provisions between the EU and Member States and Albania. Other parallel processes, like the Berlin process, are in place in order to reach first a regional integration of markets in Western Balkans in order to have a smooth integration in the EU market.

As regards economic criteria, Albania has macroeconomic stability but still has the second-highest debt ratio in WB. More detail is to be dealt with under Chapter 17 (Economic and Monetary Policy). In becoming a functional market, Albania has undergone serious reforms and enhanced legislation in several fields, such as electric supply, digitalisation, tax legislation, bankruptcy legislation[121], private bailiff implementation, etc. In order to reach a good evaluation under economic criteria, we will expect to evaluate progress in singular chapters as 1 (free movement of goods), 3 (right of establishment and freedom to provide services), 8 (competition) and 9 (financial services) which are under cluster 2 (internal market), also as chapter 20 (Enterprise and industrial policy) dealt under cluster 3.

In the evaluation of the Commission, Albania is between a moderate and a good level of preparation to become a functioning market economy. In our

[119] Reaching and being full part of the internal market is one of the hardest tasks in *acquis* adoption and implementation. As ECJ ruling and studies shows there are obstacles in Member States national legislation that threats the free movement in the EU internal market. See E. DAHLBERG ET AL., *Legal obstacles in Member States to Single Market rules*, Policy Department for Economic, Scientific and Quality of Life Policies, 2020, available at http://www.europarl.europa.eu/supporting-analyses (last accessed on 5.1.2024).

[120] Screening Report Albania – Cluster 1 Fundamentals, p. 99-100.

[121] Law no. 116/2016 "On bankruptcy".

opinion, in this cross-cutting criteria, Albania needs more effort to address factual shortages, such as informal economy or tax provisions uncertainty. However, it has good legislation in place, which is mostly aligned with EU standards.

Last, regarding economic criteria, the assessment of the Commission on the capacity to cope with competitive pressure and other market forces in the EU is that Albania has reached some level of preparation in its capacity to cope with competitive pressure and market forces within the Union[122] with some shortage to be addressed regarding education and innovation (with poor data on presence in Horizon2020 programme, lower quality of education in rural areas and low rate of scientific publications), economic integration with EU and price competition (rising export capacity and addressing the lack of standardisation and certification in the trade with EU partners).

On the other hand, significant progress was made regarding physical capital and the quality of infrastructures (especially in the transport sector – Chapter 14, Energy – Chapter 15, TEN – Chapter 21 under cluster 4).

The first evaluation of the economic criteria is a general roadmap on how Albania need to perform reforms in many of the areas covered by these chapters. It is an important point on how to proceed further in the path of integration in the EU.

The importance of Chapter 5 on procurement is undoubtedly being within cluster 1 in the process of integration as a direct implementation of the TFEU core principles and EU *acquis* in general. In this chapter, we will deal with it in a separate section, but it is essential to analyse the Commission evaluation within the screening process.

In public procurement, the general framework that Albania presents is exhaustive. It is stated that it has a high level of alignment with *acquis* in classic procurement, utilities and defence and security procurement. The law

[122] It is assessed that "Albania 's energy and transport infrastructure, the digitalisation of the economy and education outcomes have greatly improved, but significant gaps to regional and European levels remain, also regarding conditions for an inclusive and balanced economic development. Investment into all areas of physical infrastructure needs to continue on a high level, complemented by improved public investment management and governance reforms. Albania's competitiveness continues to be hindered by a lack of entrepreneurial and technological know-how, unmet investment needs in human development, and persistently low spending on R&D. Its transition to an economy of higher productivity will require higher quality and levels of education outcomes, and incentives to invest into research. Increasing coverage and adequacy of social protection and health insurance is necessary to reduce the share of population at risk of poverty to enable an inclusive and socially balanced economic development while narrowing the gap in living standards to the region". Screening Report Albania – Cluster 1 Fundamentals, p. 109.

on public procurement was rewritten in 2020,[123] and there is a national strategy in place for procurement. Also, there is a new law on defense and security procurement[124], a planned new legislation on PPP and concessions and there was established in 2018 a National State Agency for Centralized Procurements (NSACP) responsible for the centralised award of some services. The Commission finds that, in general, the public procurement in Albania is moderately prepared with a legislative framework that shows a high level of alignment with EU *acquis* in the classic sector and defence and security sector. On the other hand, with regard to implementation, Albania is moderately prepared with a major need for transparency, competition between operators and integrity. E-procurement is a significant development toward transparency, but there is a need for centralised authority on procurement to strengthen support to contracting authorities. In conclusion, Albania is assessed as partially aligned with the EU *acquis*.

Regarding effective and efficient remedies, there is a high level of alignment with the Remedies Directive being in place. Administrative solutions are in front of the Public Procurement Commission, whose decisions can be challenged in the Administrative Court of Appeal. An electronic system of appeals is in place in order to improve transparency and efficiency.

In the end, there is a system and a strategy in place to fight corruption within the procurement system.

Regarding statistics, Chapter 18, EC finds that the statistical infrastructure is partially in line with the *acquis* and international standards. INSTAT is the general institute responsible for statistics in Albania, and the law on official statistics (Law no. 17/2018) is in line with Reg. (EC) 223/2009 on the development, production and dissemination of European statistics. Also, Albania has an administrative structure in order to prevent corruption in statistics, adopting a code of ethics by INSTAT, which reaches the changes of other laws like whistleblowing, prevention of the conflict of interest and ethics in public administration.

At the same time, the sectorial statistics, macroeconomic, business, social, fisheries, environmental and energy are also partly aligned with the EU *acquis*. Yet, in agriculture and transport (road transport), Albania still needs to enhance its legal framework to be in line with the EU *acquis*. In summary, Albania is partially aligned with the EU *acquis* on sectoral statistics. Further progress is needed in all statistical areas to reach full alignment. The main issue remains

[123] Law no. 162/2020 "On public procurement" that mostly transposes the Public Procurement Directive and the Utilities Procurement Directive.
[124] Law no. 36/2020 "On procurement in the field of defense and security".

not only the adoption of the EU legislative framework but also a lack of human resources in the sector.

In line with statistics, financial control is a key chapter (Chapter 32) in reaching EU values on public spending and accountability of governors through adopting international standards and EU good practices on public internal financial control and independent external audit institutions.

Regarding the public internal financial control (PIFC), the Commission recognises that Albania has a regulatory framework with the adoption of the Law on Financial Management and Control in 2010 and amended in 2015 and 2023[125] and the creation of the Central Harmonization Unit within the overall public administration reform regarding internal control. On the other hand, in Albanian, there should be a strengthening of the internal audit legislative framework, despite the Law on Internal Audit reflecting the international standards regarding the function of audits, the impact of internal audit activities, human resource enhancement and the role of internal audit in general in institutions. The same conclusions are valid for external audit control, where Albania has a legislative framework in line with EU *acquis* foreseeing in the Constitution State Supreme Audit institution and regulating it with an organic law[126]. In the end, the EC finds that Albania is partially aligned with the *acquis* on public financial internal and external control, and Albania should increase the impact of internal and external audit functions.

Also, Albania has reached a partial alignment with EU law regarding the protection of EU financial interest, especially with Directive 2017/1371. Actually, Albania is rewriting the Criminal Code, and it is expected to adopt the EU *acquis* totally.

2.7 The findings of screening regarding judiciary and fundamental rights

The issues evaluated and dealt with under Chapter 23 (Judiciary and fundamental rights) are the very core and most important EU values to be fulfilled within the integration process, as pointed out in TEU and TFEU, as well as in the Charter of the Fundamental Rights of the EU. Thus, this first evaluation within the screening is of fundamental importance for the negotiations and an important test for the new methodology of enlargement, where this chapter is first to be opened and last to be closed with continuous monitoring of the candidate country.

[125] Law no 10296 of 08.07.2010 as amended and consolidated with Law no. 110/2015 and with Law no. 14/2023.

[126] Law no. 154/2014 "On the Organisation and Function of the State Supreme Audit Institution".

As regards fundamental rights, Albania has ratified international conventions, constitutional provisions, and independent institutions in order to monitor and ensure the factual respect of the provisions. The Commission finds that there is a need for more efforts in implementing the recommendations of the Council of Europe's bodies and ECtHR decisions effectively, reducing Parliamentary blockages in appointing independent institutions and strengthening the implementation of the People's Advocate's recommendations.

In the report are considered the right to life and to the integrity of the person and human dignity, prevention of torture and inhuman or degrading treatment and prison system[127], right to marry and to found a family, the protection of personal data[128], freedom of thought conscience and religion, freedom of assembly and association, non-discrimination, measures for combating racism and xenophobia and hate speech and hate crime, right of child, gender equality and women's rights, rights of persons with disabilities, right of lesbian gay transgender intersex and queer persons, right to property, procedural rights[129], rights of victim of crimes[130], rights to persons belonging to minorities and cultural rights[131].

It is important to see how Albania addressed many concerns about implementing fundamental rights by its administrative bodies and courts. The

[127] The Commission finds that there is an institutional framework and legislation in place regarding torture, also as probation system as an alternative to prison, but efforts should be done regarding implementation of the ECtHR, European Committee for the Prevention of Torture and improving prison and detention centres.

[128] There is the need to align the law on personal data protection with the EU General Data Protection Regulation 2016/679 and the Law Enforcement Directive 2016/680. There is also the need to enhance awareness on data protection as fundamental right and to address concerns regarding autonomy and administrative capacity of the Information and Data Protection Commissioner.

[129] The Commission rise particularly concerns regarding procedural rights in criminal proceedings like under European Arrest Warrant proceedings, right to information in criminal proceeding (Directive 2012/13/EU), the right to access a lawyer, free legal aid, etc. These are serious concerns that probably will be addressed through the ongoing reform in criminal law, where a first draft of Criminal Code is issued and the work for the Criminal Procedure Code is imminent to start.

[130] The Commission evaluates that "Albania needs to take some further legislative steps to align its legislation with the requirements of Directive 2012/29/EU on the rights, support and protection of victims of crime, the 2004 Compensation Directive and the two EU instruments on mutual recognition of protection measures (Directive 2011/99/EU on the European protection order in criminal matters and Regulation (EU) no. 606/2013 on protection measures in civil matters)." Screening Report Albania – Cluster 1 Fundamentals, p. 67.

[131] See the Law no. 96/2017 "On protection of the national minorities in the Republic of Albania". More efforts are needed, in the evaluation of the Commission, in order to fully implement the legislative provisions.

cross-cutting right of non-discrimination, in our opinion, is the basis of addressing many of the concerns. Thus, besides the long-established authority of the Ombudsperson, Albania has adopted a specific Law on Protection against Discrimination[132] and established an independent authority for the protection from discrimination, the Commissioner for Protection from Discrimination[133]. As regards legislative framework, Albania has ratified Protocol 12 of the ECHR, and the law is partially aligned with Directive 2000/43/EC. The Commission finds that the legal and institutional framework is partly aligned with the EU *acquis*.

Furthermore, some concerns arise from the Commission's evaluation of Albania's proposed programmes for acquiring citizenship based on a strategic investor scheme. This would not be in line with the EU *acquis*, especially article 20 TFEU and the principle of sincere collaboration laid down in Article 4(3) TEU.

In conclusion, Albania's legal and institutional framework is partially aligned with EU *acquis* and European standards on fundamental rights. During the negotiation process, full implementation and efforts are needed in order to enjoy human rights in practice regarding "strengthening the capacities of the independent fundamental rights institutions, protection of personal data and freedom of expression, gender equality and non-discrimination, rights of the child, rights of persons with disabilities, as well as completion of the transitional processes in the area of property rights and ensuring the protection of persons belonging to minorities"[134].

Albania has undergone a massive and in-depth reform of its judiciary and the anti-corruption legislative framework, with which we will deal in a separate chapter, and it is essential to read the screening results on the issue now.

As regards the judiciary, it is the sector in which Albania has undergone an in-depth reform, changing the constitutional provisions in order to implement the judiciary corpus vetting and substantial institutional reform,[135] and there are tangible results and implementation. The Commission assess that Albania is moderately prepared for the functioning of the judiciary, with a high alignment

[132] Law no. 10221 date 04.02.2010 "On the protection from discrimination", as amended with Law no. 124/2020.

[133] It is an independent body and has powers in support for cases of discrimination, litigation powers and can act on its own initiative once finds a suspect case of discrimination. The tracking records shows that the number of complaints brought in front of the Commissioner has tripled in the last year "indicating greater trust in the institution and an increased awareness" for this relatively new authority. Screening Report Albania – Cluster 1 Fundamentals, p. 58.

[134] Ibid., p. 69.

[135] Creation of High Judicial Council and High Prosecutorial Council, theHigh Inspector of Justice and the Justice Appointments Council.

of the legislative and institutional framework with EU *acquis* and with a good pace of implementation of the reform. Yet, according to the Commission, "the capacity, independence and efficiency of the independent self-governance bodies of the judiciary need to be strengthened, including by ensuring the quality of their decisions, transparency of their work and effective public communication. The capacity of specialised bodies (SPO, NBI and the Courts for High-Level Corruption and Organised Crime) need to be significantly strengthened to ensure that they conduct their work in an efficient manner. The renewal of the HJC and HPC membership should follow the principles of full transparency and independence"[136].

As regards independence and impartiality, the reform brought new legislation in place in order to fully ensure the independent functioning of the justice institutions and set new standards for the independence of prosecutors and judges. The Commission finds that independence and impartiality are assured by this legislative and institutional framework, but concerns arise regarding "internal and external interference with the judicial system, political pressure and intimidation, including by public officials or politicians waging accusations against magistrates that need to be prevented and sanctioned"[137]. Also, regarding accountability, the Commission finds that the legal and institutional framework ensures a robust regulation of accountability, but there is a need to implement the legal framework and a need to raise the human resources of the High Justice Inspectorate. There are concerns and issues regarding the quality of the magistrates and their efficiency as well. The Commission finds that it is a very good basis for the new legislative framework, but there is a need to strengthen the capacities of the School of Magistrates for training, reflecting EU standards in decision reasoning, as well as improving case law tracing and transparency. Regarding efficiency, there is a need to address issues like adequate distribution of courts and prosecution offices, reducing the workload of judges, foreseeing additional figures like legal assistants for judges, better use of ADR in the system of justice, improving communication and cooperation between courts, reduce the timing of court proceedings.

Regarding anti-corruption Albania has established and set legislation in place for its prevention, with a partial alignment with Directive (EU) 2017/1371 of the European Parliament and the Council on the fight against fraud, with Council Regulation (EU) 2017/1939, partial alignment of Council Framework Decision 2003/568/JHA on combating corruption in the private

[136] Screening Report Albania – Cluster 1 Fundamentals, p. 39.
[137] Ibid., p. 41.

sector and planning to transpose Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime. Significant developments are made for asset investigation-based proceedings besides the provisions of Article 36 of the Criminal Procedure Code, Law no. 10 192, dated 3.12.2009 (Anti-Mafia Law) and the Normative Act No. 1, dated 31.01.2020 'On Preventive Measures in the Framework of Strengthening the Fight Against Terrorism, Organised Crime, Serious Crimes and Consolidation of Public Security Order' with the adoption of the Law No.60/2019, "On whistleblowing and whistle-blowers protection", which is partly aligned with Directive (EU) 2019/1937.

The Commission finds that "Albania needs to increase the coherence of the legal and institutional framework on the prevention of corruption and integrity of public officials, which is comprehensive but overly complex, in particular as regards high-level officials. Legislative framework on conflict of interest needs to be aligned with the European standards and EU acquis"[138]. As regards track recording, institutions should do more in high-level corruption cases. The Commission finds that Albania has some level of preparation in the fight against corruption, with many issues to be addressed, specifically regarding track records[139]. Yet, the Commission recognises some improvement in the institutional framework regarding the fighting of corruption where "the e-procurement, e-appeals and e- complaints systems have already helped to increase transparency in the area of public procurement"[140] and the creation of the Special Prosecution Structure Against Corruption and Organized Crime and National Bureau of Investigation, which capacities need to be enhanced and consolidated.

[138] Ibid., p. 48.

[139] Ibid., p. 52 "Albania's legislative and institutional framework on anti-corruption is partially aligned with the EU acquis. Corruption is prevalent in most areas of public and business life, including in all branches of central and local government and institutions and remains an area of serious concern. Overall, anticorruption measures have a limited impact in particularly vulnerable sectors. Albania needs to address the high complexity of the corruption prevention framework and ensure its efficiency notably in risk sectors such as property, public procurement and public finance. Regarding implementation, Albania needs to make decisive progress towards tackling impunity and the generalised and wide-spread nature of corruption, consolidation of operational and human capacities of SPAK and SPAK courts and towards establishing a solid track-record in the systemic repression of corruption, notably at high level, including final confiscation of assets. Albania must address systematically and effectively the recommendations of Council of Europe's Group of States against Corruption (GRECO)".

[140] Ibid., p. 50.

2.7 The findings of screening regarding justice, freedom and security.

The importance of being part of the adhesion of an area of justice, freedom and security is crucial as it lies directly in the TFEU, assuring collaboration between States regarding border control, visas, external migration, asylum, police cooperation, the fight against organised crime and terrorism, cooperation in the field of drugs, and judicial cooperation in criminal and civil matters as well as the Schengen *acquis*. The overall evaluation of the Commission is positive for Albania being between some level of preparation and moderately prepared to implement EU *acquis*.

Regarding the fight against organised crime, Albania has in place an adequate legislative framework based on the Criminal Code, Criminal Procedure Code, Anti-Mafia Law, international adhesion (UN Convention against Transnational Organised Crime – Palermo Convention) and an action plan being evaluated as partially aligned with the *acquis*. Yet more should be done regarding track records, financial investigations, investigation of money laundering[141], establishing an asset recovery office, trafficking in human beings or law enforcement cooperation. The final assessment of the Commission is that Albania has some level of preparation in the fight against organised crime[142]. Also, Albania has become one of the first countries to regulate cryptocurrencies in order to address issues with money laundering and organised crimes[143].

[141] Legislation aligned with Directive (EU) 2015/849. Albania is still under monitoring by the Financial Action Task Force (FATF) and still remains in the "grey list" due to concerns about the draft fiscal and criminal amnesty legislation.

[142] With a "law enforcement cooperation with EU Member States, EUROPOL and EUROJUST, as well as a very active involvement in EMPACT, are yielding positive results. Further efforts are needed to consolidate the track record of investigations, prosecutions, final convictions and seizure and confiscation of assets related to organized crime." Screening Report Albania – Cluster 1 Fundamentals, p. 79.

[143] For a first comment on Law no. 66/2020 "On financial markets based on distributed ledger technology" see A. GJETA, *Legal regulation of virtual currencies in Albania (cryptocurrencies) in the light of EU integration process and acquis adoption*, in *Avokatia*, no. 45 (1), Year XII, October 2023, pp. 71-85. It should be understood that while the 5DAML is the only EU legislation that has harmonized the specific treatment of cryptocurrencies, further guidance is also provided by EU legislation in other legal areas. A number of international institutions and national regulatory bodies have issued statements and guidance explaining the applicability or otherwise of existing EU law and national legislation to cryptocurrencies. Additionally, individual member states have taken the initiative to adopt national legislation in an attempt to regulate cryptocurrencies. EU legislation regulates certain aspects and does not provide a comprehensive regulation of the field. In a fragmentary way, the regulation offered by the EU is more interested in the field of preventing money laundering and the fight against terrorism or the taxation of these activities. However, an intervention at Directive level, guiding the uniform

The same situation as above is delineated on cooperation in the drug field and fight against terrorism where the legislative framework is partially aligned with EU *acquis*, and more should be done regarding track records on the fight against drugs and terrorism despite that Commission finds that there is a good level of cooperation of law enforcement agencies and their peers in EU Member States.

Albania has legislation and structures in place to fight euro counterfeiting and corruption within the justice system and home affairs.

As regards migration, Albania is partially aligned with EU standards. Yet, some concerns still need to be addressed, such as the capacity of reception centres, activity to conclude readmission agreements with third countries, less turnover of the officers at the borders, more capacities of the border officers to identify refugees with special needs and address the case of unaccompanied minors travelling to EU from Albania.

There is a need to fully adopt the EU *acquis* in regular migration, aligning legislation with Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021, as well as regarding irregular migration. Regarding the latest, there is a good collaboration between Albania and Frontex.

The same situation is presented regarding asylum and visa policy,[144] where Albania is partially aligned with the EU *acquis* but still needs to address some issues regarding more administrative capacity and better performance.

As regards the Schengen area and external borders, the Commission finds that Albanian actual legislation and implementation are a reasonable basis for

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regulation of TD markets, would be satisfactory. Full harmonization in this field is still to be achieved since it is the member states themselves that are not yet intervening with national legislation for a legal regulation of the markets or transactions of these digital currencies. Law 66/2020 constitutes an innovation not only in Albanian legislation, but also in the legal systems more broadly, and Albania is considered one of the pioneers of regulation in this field. However, the reasons are not found in the fast development of the TD financial market in Albania, but in the urgent need to prevent money laundering and terrorist financing. This law has a long structure, it tries to define many technical terms and notions by translating them into legal ones, the by-laws are being completed, however the fact remains that in Albania there are no normal stock exchanges of the financial markets and we see with difficulty that the most the great regulatory aspect of this law will see application in practice in the near future. The regulation of a difficult field with so many technological implications is premature for Albania. The protection that the letter of the law offers to the general investor is satisfactory. This law was drafted with the help of foreign expertise and in many parts of it reaches and retains the regulation that the EU countries have or the European legislation offers. Ibid., pp. 84-85.

[144] The Commission report for visa suspension mechanism states that Albania fulfill its obligations. COM (2022) 715 final/2.

being ready for total alignment in the future. This primarily relies on the excellent collaboration between Albania and Frontex.

The main issue to work on in the whole chapter regards judicial cooperation in criminal, civil, and commercial matters. The Commission finds that the legislative framework is partially aligned[145]. It should be clear that, upon accession, there will be a direct application of EU *acquis* in the field of private international law.

Issues to be addressed, like mutual recognition of judgements in criminal cases, will probably be addressed with the adoption of the new Criminal Code, Criminal Procedure Code, and all the relevant complementary legislation.

In civil and commercial judicial cooperation, Albania has a sound legislative background, being part of the Hague Conference on Private International Law and has ratified 14 conventions; in commercial matters, it has ratified several international conventions[146]. As in regard to the EU *acquis*, Albania is partially aligned with it in order to enhance service documents and exchanging of evidence[147], but there is a need to fully align in order to ensure direct collaboration between courts regarding witness hearings or direct transmission of evidence. There are also a number of issues that Albania should address, such as applicable law, jurisdiction, recognition and enforcement of judgements in civil and commercial cases, mediation, family law and succession issues, insolvency law,[148] and legal aid.

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[145] Namely, the Commission finds that Albania should ratify the remaining relevant international convention in the field of judicial cooperation, notably the Hague Convention on Choice of Court Agreements (2005) the Protocol on the Law Applicable to Maintenance Obligations (2007), the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 222), the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224), the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190), the Convention on the Protection of the Environment through Criminal Law.

[146] Convention of 7 June 1959 on the recognition and the enforcement of foreign arbitral awards; Convention of 1 January 1988 on the contracts for the international sale of goods; Bilateral agreements on Legal Assistance in Civil, Family, Matrimonial, Commercial and/or Criminal Matters with nine third countries; European Convention of 17 December 1969 on the information on foreign law; European Agreement of 28 February 1977 on the transmission of applications for legal aid.

[147] Regulation (EC) 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents); Council Regulation (EC) 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

[148] Council Framework Decision 2015/848/JHA On Insolvency Procedure; Directive (EU) 2019/1023 On preventive restructuring frameworks, on discharge of debt and disqualifications,

Regarding insolvency law, some specifics are presented in adopting *acquis* in Albania. First of all, the law no. 110/2016 was a considerable effort made by Albania due to substantial changes in other laws and Codes linked to affirming the supremacy and speciality over their provisions regarding bankruptcy[149]. It has envisaged inclusion in a separate chapter with the strategic objective that the adoption of the UNCITRAL Model Law on Cross-Border Payment Ability should send strong credibility signals to foreign investors in search of the highest levels of predictability in the Albanian bankruptcy system and the design of the reorganisation plan is in line with the most modern and best working systems, being all EU countries incorporating this type of rules, especially after the European Commission´s Recommendation of March 2014.

In family law, several issues need to be addressed, like recognition and enforcement of the specific regimes for matrimonial property regimes, and there are no provisions on registered partnerships. Addressing these issues is part of a more extensive reform to the Albanian Family Code, which presents social and constitutional issues.

In the conclusion of the Commission, Albania needs to enhance its administrative capacity to meet EU requirements on judicial cooperation as well as to undertake serious reforms in important pieces of legislation, i.e., the Albanian Family Code. In other sectors, i.e., insolvency law, despite massive legislative reforms, there is a lack of usage of the new and enhanced law in practice. Yet, the insolvency law is also a work in progress within EU legislation as well. These reforms, as we explained, are linked and harmonised with issues that are broader than judicial cooperation and will need first

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and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

[149] *Amplius*, see G. ALIMEHMETI, A. GJETA, *The new Bankruptcy Law in Albania: new challenges for improvements*, working paper, available at www.jeanmonnetchairelbasan.al. The first special regulation of the pathological moment that affects a business, the bankruptcy, was the adoption of the Law no 8017, of 25.10.1995 "On Bankruptcy Procedures", followed by Law no. 8901 of 23.5.2002 "On bankruptcy", as amended in 2008 and 2009 in order to be more compliant with the new company legislation adopted in Albania, after the signing the SAA, with the specific purpose to be aligned with EU acquis. The law no.116/2016 "On bankruptcy" was drafted based on comparative analysis of current bankruptcy laws, in particular: American Law with Chapter 11, which was taken into consideration as a sub-caption model with definitions and concepts, the Italian law from which was taken as a sub-caption model for debt restructuring through an extrajudicial deal, German Reconciliation Law which took into account the changes made after 2012 (as previous legislation was based on German legislation), the law of the countries of the region, such as Serbia and Montenegro. It was drafted within an ongoing process of modernization of other parties of the Albanian legal corpus and it was fully harmonized with other legal acts, especially with the Code of Civil Procedure and Civil Code, with a clear supremacy and specialty of the Bankruptcy Law over the Codes.

political consent and more commitment from Albanian institutions to undertake reforms.

2.8 Addressing the issue of family law and fundamental rights protection and the impact of EU *acquis* adoption

Regarding family law, the legislative reform in Albania will be invasive and deep, with a need to intervene in Albanian legal tradition maturing from 1928[150]. Some issues go beyond the mere implementation of matrimonial property regimes, but it should be understood that there are issues to be addressed under Chapter 23 on fundamental rights as well, which go to the very core notions of family law, like marriage or adoption.

The notion of marriage has suffered several changes through the years, and maybe it is still a work in progress, bearing in mind that Albania has undertaken an important path toward the EU in order to become a member State of the Union. It will be imperative to conform legislation to ECJ's relevant ruling, also as the ECtHR ruling. Actually, there is a proposal regarding changes to the Albanian Family Code brought to Parliament by the government, which deals with adoption. The proposal intends to open the possibility of adoption for de facto couples in cohabitation as recognised by the Family Code. *De iure condendo*, this proposal presented for public consulting has raised the debate, fostered by the groups of interest in civil rights protection if it is the moment for a more incisive reform even regarding other institutions, especially marriage.

Marriage, as a right, is highly affected by the ECHR, and it is a specific provision of Article 12 and an adjunct application of Articles 14 and 8. Albania's solution to actualise the right to marry and have a family through a specific Code is a good solution for granting stability to legislation in a delicate and important sector that implies direct constitutional rights. Yet, as specified in Article 12 ECHR, the concept of marriage and family in the Albanian national legislation falls under and is governed by the exercise of these rights to internal national law.

The actual proposal of changes for the Family Code does not include an intervention regarding the factual unions other than the possibility for factual

[150] See in detail A. GJETA, *Albanian Family Code and the definition of marriage in Albania. Latest updates in the light of EU integration process*, (in publication process) as presented in conference A. GJETA, *Albanian Family Code and the Definition of Marriage in Albania. Latest Updates*, in *The impact of the definition of marriage on the legal solutions applied in Poland and selected Member States*, International Conference, Lublin, 27-28 April 2023, Katolicki Uniwersytet Lubelski Jana Pawła II.

couples to be eligible for adoption. Maybe the legislator can consider reforming this part of the Code in its intervention.

Regarding family legislation, EU law or ECJ rulings[151] influence might affect the notion of marriage or factual cohabitation within the codicistic system in Albania[152] under chapter 23 of negotiations regarding justice and fundamental rights. Actually, it is not yet mandatory to conform, like in the case of the ECHR and ECtHR jurisprudence[153]. Yet, we need to bear in mind that the EU sees the latest as a minimum protection of fundamental rights. The latest pronounces of the ECtHR found a violation of Article 14 (prohibition of discrimination) and Article 8 (right to respect private and family life) in the case regarding legal recognition and protection of same-sex couples in Ukraine. The ECtHR found that the protection of the notion of traditional family could not be considered as a justification for the denial of legal recognition and protection of same-sex couples[154].

Lately, there have been individual attempts for recognition and equal rights in Albania. Thus, there is a pending case in front of the Administrative Court of Tirana regarding the registration of children with two mothers, who are a factual same-sex couple, in the Civil Registry with equal motherhood rights with the same family composition. The case is ongoing, and the Ombudsman

[151] See CJEU Judgement of 5 June 2018 Case C-673/16 Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne ECLI:EU:C:2018:385 regarding to the free movement in EU obliging all EU states to recognize same-sex marriage for granting freedom of movement and residential rights under Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State (OJ L 158, 30.4.2004, p. 77–123).

[152] Civil marriage is a legal status existing in all EU countries, but the rules regarding civil unions or de facto unions are different in different EU national legislations. In addition, the marriage contracted in one State in principle is recognized in all EU countries, when it complies with their national legislation. This excludes recognition in the cases of the same-sex marriages in countries that does not allow it. Yet, there are some rights granted by EU law that might be recognized in all EU countries despite their national legislation on marriage, like the right of free movement of EU citizens with their spouses. "Marriage". Your Europe, Citizens, available at https://europa.eu/youreurope/citizens/family/couple/marriage/index_en.htm (last access on 5.1.2024).

[153] According to it, there is the need to introduce for every State subject to the Convention to introduce specific legal framework for the same-sex unions. It remains within the national legislator prerogative the determination of the adequate legislative instrument. ECtHR Judgement of 21 July 2015, Case Oliari and Others vs. Italy, application no. 18766/11, hudoc.int.

[154] ECtHR Judgement of 1 June 2023, Case Maymulakhin and Markiv vs. Ukraine, application no. 75135/14, hudoc.int.

delivered an amicus curiae opinion upon the Court's request[155]. The Ombudsman proposes to start a process of recognition of rights and obligations for same-sex couples, changes of the law in Albania toward recognition and, as an individual request of interested persons, to address the cases to the Albanian Constitutional Court[156].

De iure condendo, the above analyses might offer the possibility to consider and prepare how to intervene without proposing changes within the AFC. In time writing, no case is pending or foreseen to go to the ECtHR from Albania. Yet, Albanian legislators need to foresee how to act regarding the duties that arise for the State within the process of EU adhesion and Chapter 23 on fundamental rights within the first cluster of negotiations.

2.9 Conclusive remarks on the screening process for Cluster 1 – Fundamentals

The process of screening was carried out by Albania in two years. As we analysed above, the self-evaluation of the Albanian government is satisfactory. Yet, the Commission has carried out an evaluation report that constitutes a milestone in the path of integration and is to be taken into account and worthy of comment on the Albanian progress so far, despite there being no opening of negotiations for singular chapters from the Council and official endorsement of this report.

The EC finds, in summary, that Albania is moderately prepared in many of the sectors within the first cluster and that progress was made. These first chapters are important for the other clusters because their impact, with their track record, is considerable in other fields, and the EU standards thereof foreseen. In our opinion, the following chapters shall address mainly the *acquis* and institutions because the track record for other clusters will be hugely impacted by implementing Cluster 1, especially regarding judiciary and fighting corruption.

We are waiting for the opening benchmarks to be set after the screening by the EU institutions, and the opening position of Albania in the First Intergovernmental Conference is confident that these benchmarks will be reachable.

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[155] The opinion offers a complete exposition of the notion of family in Albania and international conventions. Furthermore, there is integral part of the opinion the Advocate General Kokott delivered on 15 April 2021, ECLI:EU:C:2021:296. See also CJEU Judgement of 14 December 2021 V.M.A. v Stolichna obshtina, rayon 'Pancharevo', Case C-490/20, ECLI:EU:C:2021:1008.

[156] Opinion *Amicus Curiae* of Albanian Ombudsman upon the request from the Administrative Court of First Instance Tirana, for the case presented by A.A., E.M., H. M. and A. M., 2022, p. 29 ff.

In the last analyses, we had a positive first screening report from the EC, foreseeing address shortages within five years. The Albanian institutional framework and the regular adoption of the National Plan for European Integration give confidence in maintaining a good pace in the *acquis* translation and adoption process. In our opinion, some concerns arise from the capacity of Municipalities to address EU integration issues. The paragraphs below will analyse Albania's institutional framework in the integration process and preparations for negotiations.

3. Albanian institutional framework in the integration process

The path toward the EU for Albania started after the fall of communism. As we explained supra, the first milestone for the adhesion process is to be considered the Thessaloniki Council of 2003 and the signature in 2006 of the Stabilization and Association Agreement[157] (SAA). The process of *acquis* adoption started there, and it is an ongoing process. The institutional efforts of the Albanian government were not always maintaining a good pace in the process of integration; still, from 2006, the EU *acquis* adoption was on Albania's institutional agenda, especially after the status of the candidate country was granted. Thus, important legislative documents were produced in 2015 and after.

Firstly, the need to create EU integration units in each part of public administration was identified. The units in each ministry and the network of EU integration units were created in accordance with Article 70 of the SAA. The main goal of these units is to draft legislation in accordance with the *acquis* adoption in order to fulfil SAA obligations. According to point 4 of the Decision, the EU integration unit is functionally responsible for addressing all issues regarding EU integration, from legal drafting and *acquis* adoption to general coordination of the specific needs to implement EU *acquis*. On the other hand, according to point 5 of the Decision, the legal drafting unit is responsible for legal drafting according to standards of drafting and cooperation with the EU integration unit[158].

In 2019, preparations were made to respond to the imminent opening of negotiations in order to better address the specific needs that arise from the new enlargement methodology. The base is the decision of Council of

[157] Council of the European Union, Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, 8164/06. Ratified from Albania with Law no. 9590 of 27.07.2006 and published in the Albanian Official Gazzette no.87 of 14 august 2006.

[158] In order to be unified the external experts and coordination is under the supervision of the General Secretary of the Council of Ministers (Point 8and ff. of the Decision).

Ministers no. 749 of 19.12.2018, "On creation, organisation and functioning of the state structure responsible for the negotiations and signing of the adhesion treaty of the Republic of Albania in the European Union"[159], as amended[160], which with address the negotiation process during screening and draft Albanian statements for each chapter of negotiations and finally negotiation and signing of the adhesion treaty.

The decision constitutes the State Committee for European Integration[161], State Delegation[162], negotiator group, Albanian Mission in EU, EU Integration Secretariat[163], interinstitutional working groups[164], and Platform of the Partnership for European Integration[165].

Firstly, was adopted the framework of the interinstitutional working groups on EU integration in May[166], creating a group with a leader institution for each chapter of EU integration for individualising the responsible institution for harmonisation and implementation of the *acquis*, tracking records on implementation, to prepare the Albanian presentation of the screening process, to address the negotiation presentation of Albania, etc.[167] Each group has a Chairman, vice chairman, secretary, a member from institutions involved in the chapter, a member from the ministry responsible for financing, a member from the Institution of Statistics, and a member from the responsible institution for leading the chapter of negotiations[168]. Secondly, in order to address conditions of transparency, public awareness, accountability and inclusivity in the process,

[159] As published in the Official Gazette of the Republic of Albania no. 194 on 9.1.2019

[160] Decision of Council of Ministers no. 17 of 11.1.2024.

[161] According to Point III.2 the Committee "is led by the Prime Minister and the with participation of: a) Chairman of the State Delegation; b) Chief negotiator; c) ministers responsible for internal affairs, economy, finance and justice; ç) Secretary General of the Council of Ministers". Among other competencies, the Committee "evaluates and coordinates the negotiating position for each chapter of the acquis, presented by the Chief Negotiator, according to the definition in point 5, of chapter V, of this decision, with the opinion of the National Council for European Integration" (Point III.5 of the Decision).

[162] Regulated in point IV Decision of Council of Ministers no. 749 of 19.12.2018. It "represents the Republic of Albania in the Intergovernmental Conference Albania - European Union, within the framework of accession negotiations to the European Union".

[163] Regulated in point VII Decision of Council of Ministers no. 749 of 19.12.2018.

[164] Regulated in point VIII Decision of Council of Ministers no. 749 of 19.12.2018.

[165] Regulated in point IX Decision of Council of Ministers no. 749 of 19.12.2018.

[166] Order of the Prime Minister no. 94 of 20.05.2019 "On constitution, composition and functioning of the interinstitutional groups on EU integration" repealing Order no. 107 date 28.2.2014 "On constitution, composition and functioning of the interinstitutional groups on EU integration".

[167] Point 2 of Order of the Prime Minister no. 94 of 20.05.2019.

[168] On composition of each group see Annex 1 of Order of the Prime Minister no. 94 of 20.05.2019.

the Partnership Platform for EU integration[169]. This platform aims to manage and implement the right to information, transparency and public consultation of the adopted legislation within the process. On the other hand, Albania has, since 2014, a specific law for public notification and consultation and has established on this base an online registry, integrated with the e-Albania platform, for addressing transparency and public accountability[170]. It might be helpful to address public debate issues and to raise awareness of the process through specific qualitative media time at the national public broadcasters for informing citizens[171].

After the opening of negotiations in March 2020, Albania created its institutional framework for dealing with integration. Thus, the Negotiation Group and the competencies of the Head Negotiator, who is responsible for the technical process of negotiations, were established during negotiations[172]. The status of the head negotiator is that of a Minister of State within the structure of the Prime Minister's office, and the competencies are broad within the process of negotiations[173]. Part of the group is each vice minister or responsible for

[169] Order of the Prime Minister no. 113 date 30.08.2019 "On forms for participating, functioning and institutional structure of the Partnership Platform of EU Integration".

[170] In the register, actualizing the right to information, there are specific sectors for citizens, institutions, interest groups or experts.

[171] See for a depth analyses regarding Montenegro N. RUŽIĆ, *The Role of the Public Broadcaster in Informing Montenegrin Citizens about European Integration with Special Emphasis on Chapter 27*, in *Studies in European Affairs*, 2020, no. 2, p. 147-159.

[172] The members of the group cochair subcommittees of stabilization and association EU-Albania and identify needs of Albania, after each Intergovernmental Conference the negotiation group draft a report on the ongoing negotiations for the State Committee for the EU integration and the Council of Ministers, etc.

[173] Decision of Council of Ministers no. 422 of 6.5.2020 point II enumerates the competencies of the Head Negotiator as follows: "a) Directs the work of the Negotiating Group; b) Guides the Secretariat of European Integration in the implementation of relevant tasks; c) Ensures the unity of action of the Negotiating Group by coordinating its work; ç) Represents the Negotiating Group by signing and forwarding its acts and decisions; d) Calls meetings or meetings of the Negotiating Group and directs the discussion of its members according to the previously drawn up agenda; dh) Decide on the possibility of opening the meetings of the Negotiating Group to the public; e) Appoints a member of the Negotiating Group as leader of a specific negotiation issue, if this issue is addressed in more than one chapter of the EU acquis or if more than one member of the Negotiating Group deals with the same topic; ë) Conveys the decisions of the Negotiating Group, which are related to a special chapter of the acquis of the EU, to the chairman and members of the responsible inter-institutional work group, together with the minutes of the meeting of the Negotiating Group; f) Proposes to the Negotiating Group the methodology and deadlines for the preparation of the negotiating position for each chapter by the inter-institutional working group, responsible for the chapter, after an assessment of complete and analysis of the screening report of the European Commission; g) Presents to the European Union, through the Mission of the Republic of Albania to the Union European, the negotiating position for each chapter and any other

independent authorities, which has a special delegation regarding EU integration. The Negotiator Group is supported by the Secretariat of EU integration.

The above structure has successfully concluded the screening process within 2022-2023. Actually, Albania has held the First Intergovernmental Conference with the EU, and its position lies on the Decision of the State Committee on EU integration of Council of Ministers no. 1 date 21.6.2022 "Approval of the opening statement of the Republic of Albania, regarding the First Intergovernmental Conference on the adhesion of the Republic of Albania in European Union". It is interesting to read about the opening position of Albania, which was approved by the Decision of the State Committee for

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supporting document, after approval from the Council of Ministers, following the receipt of the opinion from the National Council for Integration European and review by the State Committee for European Integration; gj) Informs the institutions of the European Union and EU member countries regarding Albania's views on issues related to membership negotiations, through the Ministry for Europe and Foreign Affairs and diplomatic missions of the Republic of Albania; h) Conveys, through the Ministry for Europe and Foreign Affairs, the instructions of the Negotiating Group for diplomatic missions of the Republic of Albania; i) Conveys to the Negotiating Group all relevant information from the institutions of the Union European, EU member states and other EU candidate countries; j) Conveys to EU states, EU institutions and other candidate countries, through the Ministry for Europe and Foreign Affairs, the Negotiating Group's requests for information and opinions related to the drafting of negotiating positions and any other request of the Negotiating Group for necessary information regarding a particular chapter or the negotiation process; k) Approves the requirements of the Negotiating Group regarding the professional engagement of organizations professional or any entity other than the members of the Negotiating Group and performs the commitment of experts in various fields to support the performance of his duties or tasks and to the needs of the negotiating group for special complex issues, after having received the approval of the head of the State Delegation or the person authorized by him. If such action requires allocation of additional funds, the Chief Negotiator, after receiving the opinion of the ministry responsible for finance, submits the request to the Council of Ministers through the minister responsible for Europe; l) Presents, at least every three months, to the State Committee for European Integration and the Council of Ministers a consolidated report on the progress of negotiations of membership in the Union European, based on the quarterly reports of the members of the Negotiating Group according to point 3, of chapter I, of this decision; ll) Co-chairs the EU-Albania Stabilization and Association Committee and is part of the Albanian delegation in the EU-Albania Stabilization and Association Council; m) Participates in the capacity of deputy chairman in the State Delegation and in the capacity of member in the State Committee for European Integration; n) Drafts a framework guideline for coordinating the work of the Secretariat of European Integration, which is an integral part of the rules of operation of the Secretariat, which is approved by order of to the minister responsible for Europe, according to the provisions of decision no. 749, dated 19.12.2018, of Council of Ministers. nj) Sign cooperation agreements in order to increase the efficiency of the Group's work Negotiator and the performance of relevant duties after receiving approval from the Chairman of the State Committee for European Integration;

o) Every task and function provided for in decision no. 749, dated 19.12.2018, of the Council of Ministers".

European Integration no. 1 of 21.6.2022. It is a clear political and technical statement that matured after the institutional efforts of the above institutions prior to the imminent First Intergovernmental Conference. Through this document, Albania clearly understands and welcomes the new methodology of enlargement and division in clusters, accepts the *acquis* and has made efforts for its translation into Albanian, endorses the efforts made internally for reforming the judiciary and takes commitment to the future, stresses its contribution to the regional cooperation and asylum. The statement explains the process of *acquis* adoption through the National Plan for the Implementation of the SAA and the recent National Plan for European Integration (NPEI) (2021-2023) and (2022-2024). It is stated clearly that "the Republic of Albania finds itself in a favourable position concerning accession negotiations because of the organised approximation of its legislation with the EU acquis starting as far back as 2007. In line with its SAA obligations and the NPEI for the Adoption of the EU acquis, Albania has made progress in aligning its legislation with the EU. The country is ready to fully align its legislation with the EU acquis and ensure its timely and efficient implementation"[174].

Furthermore, the opening statement finds the most important forum for internal debate during negotiations between the Albanian Parliament and its National Council for European Integration, as well as the dialogue with civil society[175].

Despite a lack of decision of the Council of EU in December 2023, Albania has started to address the findings of the Commission in the Screening Report on Fundamentals cluster issued in July 2022. Thus, with the Order of the Prime Minister no. 57 of 24.4.2023 "On some amendments in the order no. 94 of 20.5.2029 For the Constitution, composition and functioning of the interinstitutional working groups for European Integration" delegation of the competencies to the interinstitutional working groups were made foreseeing the creation of the interinstitutional working groups for drafting of the roadmap on rule of law (including chapter 23 and chapter 24), roadmap on functioning of the democratic institutions and the roadmap on public administration (political criteria).

Actually, the first roadmap drafted by the interinstitutional working group, under the Ministry of Justice and Ministry of Internal Affairs, on the rule of

[174] Point 49 of the Decision of the State Committee for European Integration no. 1 of 21.6.2022.

[175] The role of the Parliament is defined in Law no. 15/2015 "On the role of the Assembly in the process of integration of the Republic of Albania in the European Union".

law is issued and approved with the Decision of Council of Ministers no. 736 of13.12.2023 "On the approval of the roadmap for the rule of law". It defines the fields and subsections for each part of the intervention, relevant strategic, legislative, and institutional framework, implementing capacities, and performance during negotiations. Furthermore, the roadmap "On the functioning of the Democratic Institutions" is open for public consultation[176].

As regards local government, the main unified act remains the Decision of the Council of Ministers no. 450 of 26.7.2018, "On conciliation and coordination of the process of European Integration, between the central government and the units of local self-government". Each municipality has an obligation to create, within its structure, a European Integration office with competencies and functional responsibilities for addressing integration issues. Centrally, these units report to the Ministry of Interiors and the Ministry for Europe and External Affairs every six months. The EU support is continuous in raising awareness and building capacities and human resources through the EU4 Municipalities Programme.

In our opinion, regarding the human resources of municipalities, there is a need to better implement and address integration issues despite continuous training of the administrative staff. It is essential to understand that more than 70 percent of the EU *acquis* is addressed to local government and is to be implemented locally.

4. National Plan for European Integration and Albania *acquis* adoption

In the functioning of this institutional structure, the principal expression is the National Plan for European Integration, adjourned every year[177] according to the obligations taken by Albania[178] within the SAA in Article 70 and the negotiation process. The cycle and methodology of the NPEI are explained in the document, and it foresees from drafting to the monitoring of the application of the plan in the cycle[179]. As in regard to methodology, it is based on prior

[176] Available at https://www.konsultimipublik.gov.al/Konsultime/Detaje/692 (last accessed on 15.01.2024)

[177] The National Plan for European Integration 2021-2023 (approved by the Decision of Council of Ministers No 90 of 17.02.2021 "On the approval of the National Plan for European Integration 2021 – 2023") was monitored from the Government and was realized in 2021 76 percent. The monitor of the precedent NPEI 2020-2022 for the year 2020 was at 87 percent.

[178] "The National Plan for European Integration has reflected from year to year, the increased commitment of Albania, in accordance with its status vis-a-vis the EU, to approximate the EU legislation, in order to achieve a legal and normative framework and standards that will enable it to take over the obligations of accession" National Plan for European Integration, p. 9.

[179] The cycle passes through: Preparatory work; Gap analysis; Planning; Drafting and quality control; Consultation and approval; Monitoring, reporting, and evaluation.

experience in preparation and foreign assistance, and it was approved by the Negotiator Group[180]. The main structure is divided into the introduction, narrative part, and planning part.

From the beginning of the process in 2014, when candidate country status was granted, there were several plans adopted by Albania: NPEI 2014-2020; NPEI 2015-2020; NPEI 2016-2020; NPEI 2017-2020; NPEI 2018-2020; NPEI 2019-2021; NPEI 2020-2022; NPEI 2022-2024. Their ancestor was the National Plan for Application of the Stabilisation and Association Agreement 2007-2012.

Due to the dynamism of the negotiation process, the planning period, even updating every year in the latest year, has considerably reduced the planning time from 5 years to 2 years. In March 2023, the NPEI 2023-2025 was released[181]. In November 2023, the National Plan for European Integration 2024-2026 and a National Programme for the Adhesion in the European Union 2024-2030 were launched for public consultation. In January 2024, the NPEI 2024-26[182] was approved.

Once approved, the NPEI is detailed in planning tables in order to be readied by the responsible institutions for each measure to be addressed during the planning period. Three tables are made available: the table of legislative measures, the table of implementation measures and the financial allocation for each. Annexe 1 of NPEI "Planned legislative measures" is detailed by chapters, subchapters, EU *acquis* to be adopted as updated, Albanian relevant legislation, the type of legislative act approximated, if there is a strategic document, the institution which proposes, the grade of approximation to the EU *acquis*, year of approximation, trimester planned for approval of legislation and if the *acquis* is translated.

On the other hand, in annexe 2, coordinated with annexe 1 provisions, are foreseen the implementation measures detailed by chapters, subchapters, planned implementation measure, responsible Ministry of Institution, year for starting the activity, starting trimester, year of the conclusion of the activity, conclusive trimester. As concerning annexe 3 foresees the financial implications of the NPEI for each implementation measure as planned in the Albanian budget or donation for a three-year plan.

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[180] Approved in October 2022. As cited in NPEI 2023-2025, p. 12 available at https://www.drejtesia.gov.al/wp-content/uploads/2023/03/PLANI-KOMB%C3%8BTAR-P%C3%8BR-INTEGRIMIN-EVROPIAN-2023-2025.pdf (last accessed on 5.1.2024).

[181] Decision of Council of Ministers no. 122 date 1.3.2023 "On the approval of the National Plan for European Integration 2023-2025".

[182] Decision of Council of Ministers no. 16 date 11.01.2024 "On the approval of the National Plan for European Integration 2024-2026".

The above planning by the Albanian government and institutions is sometimes realistic and, at other times, very ambitious, as we will address examples in the following chapter. The national plan contributes to setting milestones and measurable goals, making the integration process predictable and understandable for government professionals.

The main problem remains the link and cooperation between Ministries and other Institutions, as well as the understanding of the EU *acquis* and better implementation within the country, both from the legislator and Government. In some cases, there is evidence of incorrect transposition after planning and achieving the adoption of the acquis in certain areas[183].

Another issue to be addressed is the municipalities' position within the EU enlargement process. In our opinion, there is a need for a Regional plan for European integration due to cross-border collaboration between municipalities in many of the areas covered by the *acquis* transposition and implementation, and there are issues that need to be addressed regionally. At this moment, Albania is planning to institute districts that will better respond to needs under the principle of subsidiarity.

5. Conclusions

The above analysis of the process of enlargement offers different important insights, both singular and worth for comment. First, each enlargement has its own specifics, yet the turning point was to be deemed the Maastricht Treaty and the events of the 90s that opened an EU perspective for enlargement to the East. Furthermore, the Copenhagen Council in 1993 is the cornerstone for enlightening the legal basis for EU adhesion and setting the criteria. These are fixed parts and core principles in the enlargement process, which is based on merit-based assessment for each applicant in order to be a member of the Union.

In recent years, in order to enhance the process of enlargement and to address fears of single Member States for uncontrolled process, a new enlargement methodology was proposed. The basis relies on the motto that Europe needs to be stronger before being bigger and on the reversibility of the process of enlargement, with a stronger assessment from EU institutions and single Member States. Furthermore, the receipt of the *acquis* and reforms to be

[183] See regarding commercial late payments A. GJETA, *Shoqeria*, op. cit. Also see regarding state aid authorities in the WB countries A. GJEVORI, *State Aid authorities in South-East Europe: developments and challenges*, in *Euro-Balkan Law and Economics Review*, n. 2/2019, pp. 64-94.

made are organised in chapters but grouped in clusters, evaluated compressively and in relation to each other.

The WB countries, as candidates, need to conform their adhesion efforts according to the new methodology. The path of Albania toward the EU is to be assessed according to this new methodology. Despite novelties in the process, the most important and relevant part of the process remains the conformation to the EU standards and the *acquis* adoption. The analysis of the assessment in the latest progress reports gives us relevant insights into Albania's progress in reaching EU standards. Thus, compressively Albania results in being moderately prepared for adhesion. Regarding the transposition of the EU legislative framework, Albania has done good work and is showing progress. Yet, in light of the evaluation made under the screening process, which was lately completed in 2022-2023, there are clear findings to be addressed regarding the first cluster (Fundamentals).

As in the 2023 progress report, Albania has an overall evaluation where 1 chapter is at an early stage (consumer and health protection), eight chapters with some level of preparation (freedom of movement for workers, agricultural and rural development, food safety, veterinary and phytosanitary policy, transport policy, Trans-European networks, science and research, environmental and climate change, financial and budgetary provisions), 19 chapters where Albania is moderately prepared, five chapters with a good level of preparation (financial services, energy, economic and monetary policy, external relations and foreign, security and defence policy), and two last chapters with nothing to adopt.

In many chapters during the assessment period, Albania's efforts have given tangible results, especially regarding *acquis* adoption and legislative framework improvement. Thus, regarding the freedom movement of workers (chapter 2) and agricultural and rural development (chapter 11), Albania passed from an early stage to some level of preparation in public procurement (chapter 5) and intellectual property (chapter 7), there is an advance from some level of preparation to moderately prepared.

On the other hand, a good pace is maintained regarding fisheries (chapter 13), passing from an early stage to some level of preparation and, in the last years, moderately prepared. In science and research (chapter 25), in recent years, the achievements have passed from an early stage of preparation to some level of preparation.

In the 2023 progress report, there is an enhancement in addressing *acquis* adoption in financial services (chapter 9), energy (chapter 15), and economic and monetary policy (chapter 17), passing from moderately prepared to a good

level of preparation, at least for some areas within the chapters. The same situation applies to external relations (chapter 30), which, in recent years, has shown a good level of preparation.

In the judiciary and fundamental rights (chapter 23), the evaluation passed from some level of preparation to moderately prepared, at least for some areas. In the chapter, the main achievement is the reform of the justice system, which yet has to show tracking.

Time writing is available the screening report of the EU Commission, which is important in order to photograph the achievements of Albania, despite the fact that no further progress was made with the opening of negotiations for single chapters and the benchmarks for starting position are not set yet.

The screening on fundamentals, which is taken in analysis in this chapter besides the progress reports, offers a firm evaluation of Albania's overall situation, and it is to be considered as a preview of the benchmarking to be set for each chapter. Good progress is shown in the transposition of the *acquis*, and a good pace is maintained in implementing reforms in the cluster of fundamentals, especially regarding judiciary and collaboration in judicial matters. Yet, according to the new methodology, the tracking records in the implementation are of paramount importance, and the pace of implementation should be higher. The latest concerns are the threats of not achieving the interim benchmarks in one chapter or setting new ones from the EU institutions with the risk of delaying the process or, more often, adopting reforms, strategies, or action plans that result in backsliding.

On the other hand, in order to address the needs of the process of integration, Albania shows institutional readiness. In order to cope with the integration and *acquis* adoption burden, the institutional framework results that can address *acquis* identification, translation, and transposition.

Institutionally, the process is led by the government, which has structures in place for negotiating with the EU institutions and the Member States. The role of the Prime Minister and the Council of Ministers is fundamental. Best practices and models from other candidate countries are taken into consideration.

The other actors involved, such as the Parliament, have set up entities like the National Council for Integration or Institute for Parliamentarian Studies in order to fulfil their duties better. There are structures in place to collect the contribution of external actors like civil society organisations. More should be done to explain better the process of integration and its steps to the public and public administration officials, despite the creation of the monthly newsletter

on EU integration issues[184]. Thus, it will be of interest that the NPEI should have more publicity among PA-dedicated units, even those that do not deal with EU integration. Furthermore, a user-friendly guide on how to read and address the NPEI should be available for all PA officials, as well as for the general public and stakeholders.

At this stage of the process, it is essential to address problems that may arise in municipalities and local entities regarding institutional readiness for coping with the integration with the EU. The preparedness of Municipalities and their human resources and capacities remains a serious threat since a consistent amount of *acquis* is to be implemented at the local or regional level. It will be of interest that cross-cooperation between municipalities should be encouraged. Lately, Albania has proposed to create larger regions, and that will undoubtedly contribute to better tackling the needs of the process of integration, also as better chances in the process of competing for EU funds.

In light of the new methodology of enlargement, to which Albania and other Balkan countries' process of integration is conformed, the overall progress so far is good. The main threats in this reversible process are the extended time taken in order to reach a decision by the Council and the maintenance of a good pace of record tracking from the candidate countries. Another serious threat is the correct adoption of the *acquis* and the dynamism of EU legislation to maintain a good pace in the translation and transposition of up-to-date legislation. The latest is a severe burden regarding legislative drafting and implementation.

Lastly, there are relevant parallel processes that help in the path of enlargement, such as the Berlin Summit Process or Transport Community. These are comprehensive and inclusive of all the WB candidate countries that have the final goal of helping in the adhesion process.

The process so far is proceeding smoothly, but the above considerations are to be addressed.

[184] Newsletter available at https://www.parlament.al/struktura/7158d48a-222e-4e25-8f58-1ac600e3c7ce (Last access on 16.1.2024).

Chapter III

Section 1 - Judiciary reform and its implementation as a key point for the Albanian integration process in the EU

Introduction

The legal framework of the European Union, where the principles of European law materialise, lays down the rights and obligations of its Member States and also of those candidate countries that intend to be EU member states. It is, therefore, necessary for any candidate country aiming to become an EU member state to recognise and align to the EU standards, as laid down in Chapter 23, "Judiciary and Fundamental Rights", included within the first cluster “, Fundamentals”. The chapter is divided into three main areas where reforms are addressed, namely, the judicial system, the fight against corruption, and implementing and protecting fundamental rights and freedoms. All three of these pillars are closely and mutually connected. Furthermore, it is to be said that their impact on other sectors is fundamental. In Albania, primary efforts and substantial reforms are made regarding the judiciary system. Reforming the justice system was the fundamental milestone regarding the opening of the negotiations for adhesion in 2020.

Member States and future members should establish a judicial system to ensure, above all, confidence in this system. They must also fight corruption effectively, as it poses a threat to the stability of democratic institutions and the rule of law. Article 83.1 of the TFEU defines the authority of the Union to draw up minimum rules concerning the definition of criminal offences and sanctions in the field of corruption. Respect and protection of fundamental rights are essential. Under Article 6 of the EU and the jurisprudence of the Court of Justice of the European Union, the EU shall respect the fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union as resulting from the constitutional traditions shared with Member States as general principles of EU law. Thus, they are binding on the institutions of the

Union in the exercise of their powers and for Member States when applying EU law[185].

1. SAA requirements for alignment with the acquis of the European Union and Chapter 23

The approximation of the EU principles and acquis for Chapter 23 constitute an obligation under the EU-Albania Stabilisation and Association Agreement. In particular, Articles 1, 2, 13, 70 and 78 of the ASA are of paramount importance to this Chapter. According to Article 78 of the SAA, particular importance should be devoted to strengthening the rule of law and strengthening institutions at all levels in the area of administration in general, as well as law enforcement and administration of justice. Furthermore, Article 78 of the SAA disposes that cooperation between Albania and the European Union should aim at strengthening the independence of the judiciary and improving its effectiveness, improving the functioning of police and law enforcement bodies by providing adequate training and fighting corruption and organised crime.

In addition, alignment with the Acquis and EU standards for Chapter 23 is one of the requirements that the EU candidate country must implement during the EU accession negotiation process.

Regarding the approximation of Union legislation into national law, it should be noted that the transposable acquis is divided into "hard acquis" (acquis deriving from acts with binding effect such as treaties, directives, regulations, etc.) and "soft acquis" (acquis deriving from standards, principles and recommendations of the EU institutions or other relevant international organisations). Preliminary analysis has estimated the total "hard acquis", which consists of 61 acts, while the "soft acquis" consists of 65 acts[186].

[185] Article 51 of the Charter of Fundamental Rights of the European Union states that "1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. 2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties".

[186] Following a comprehensive analysis of the harmonisation level for Chapter 23, which involved drafting 39 draft acts with an amount of 2374 pages, including comparisons with about 60 national legislative and sub-legislative acts, it was found that 66% of the acts are partially harmonised, 25% are not harmonised, and 9% have been assessed as not relevant for harmonisation at this time. See National Plan for European Integration 2022-2024.

2. The problems of the justice system and the perception of it that raise the necessity of justice reform in Albania

The reform in the justice system, which began with the constitutional changes of 2016, is primarily due to the public perception that until then, the justice system was affected by the phenomenon of corruption and external influence in the delivery of justice. Corruption, the lack of transparent practices, the prolongation of processes, and the non-implementation of court decisions have influenced the public's negative perception of the transparency and effectiveness of the judiciary. Judicial power was considered one of the areas with a high level of corruption, from the evaluation reports of foreign and domestic organisations to public complaints or denunciations made to the toll-free numbers activated in each institution[187].

In a 2009 survey titled "Corruption in Albania: Perceptions and Experiences", the Institute for Research on Development Alternatives found that Albanians believed that courts are most influenced by financial interests, business connections, judges' personal connections, and political considerations. In the eyes of the public, another problem is the low level of professionalism of the main actors of the justice system.

In October 2012, the Centre for Transparency and the Right to Information conducted a survey with 58% of the total number of judges. 25% of them were of the opinion that the justice system is corrupt, while 58% believed that the system was perceived as corrupted. 50% of judges were of the opinion that the judicial system was not free from political influence.

The 2014 progress report for Albania of the European Commission[188], among other things, states that the key legal acts for the reform of the Constitutional Court, the Supreme Court, the Supreme Council of Justice and the Prosecutor's Office must be approved. Regarding the independence and impartiality of the judiciary, no measures have been taken to integrate the Supreme Court within the judicial system. Further efforts are needed to streamline Supreme Court procedures and significantly reduce the backlog of cases, including modifying the composition of panels that hear criminal cases and transforming the Supreme Court into a court of cassation. The status of the Supreme Court and the process of appointing its members remain worrisome in terms of possible politicisation as long as the relevant constitutional provisions are not changed. The independence and impartiality of the Supreme Court is still not fully guaranteed.

[187] Intersectoral Strategy on Justice 2021-2025
[188] SWD(2014) 304 final - Annex to COM(2014) 700 final of 8.10.2014, p. 39 e ff.

The main problems in the justice system were presented as follows:

a)Problems in the procedure of appointing Judges of the Constitutional Court and the Supreme Court

There were delays in the renewal of the Constitutional Court and in the filling of vacancies in the Constitutional Court and the Supreme Court, which has led to distortion of the Constitution regarding the extension of the mandate of these judges. There were no stipulated deadlines within which the appointment process should take place. There was a lack of a transparent process for the application and selection of candidates for the Constitutional Court (CC) and the Supreme Court (SC), which would guarantee a qualitative composition of these bodies. The process of appointing judges of the Supreme Court was not based on clear rules, so the legal criteria must be fulfilled by the candidates in order to testify to the objectivity and impartiality of the decision-makers. The constitutional provisions did not contain clear essential criteria that candidates for constitutional judges must meet, while these criteria are entirely absent for senior judges. The Parliament does not always give clear reasons for rejecting candidatures. The minimum majority (36 deputies) required for the approval of the candidature chosen by the President to be appointed constitutional judge and High Court judges does not provide sufficient guarantees in terms of respect for independence, impartiality and quality in the composition of the CC and SC.

b)Problems in the High Council of Justice.

The lack of essential constitutional criteria for the selection of members elected by the Parliament does not ensure transparency and quality in the composition. It leaves unlimited discretion to the legislator in determining these criteria. The minimum majority (36 deputies) required for their vote in the Parliament does not provide sufficient guarantees in terms of respecting the independence of the HCJ. The role of the Minister of Justice is considered problematic due to the exclusivity he enjoys in initiating the disciplinary process against judges, which contradicts EU principles.

c)Problems regarding the Prosecution Office

The Constitution did not provide for the basic criteria that the candidate for Attorney General must meet. The 5-year duration of the mandate was not sufficient, and the possibility of renewing the mandate does not provide adequate guarantees in exercising the function independently from the political power. The approval of the candidacy by the Assembly with a minimum

majority (36 deputies) does not serve to obtain broad support from the legislator and guarantee the independence that should characterise this high official.

d)Problems in the organisation of the Judiciary.
The judicial power with the constitutional, legal, and institutional organisations showed numerous problems and was not properly carrying out its mission for the consolidation of the rule of law.

The Administrative Court of First Instance had an overload in the cases it examined, and practically every legal deadline for their resolution was violated. At the same time, it is noted that the scope of this court's powers is vast, which damages the effectiveness of its activity.

e)Problems in the good governance of the Judiciary.
There was a fragmentation of responsibilities in the field of good governance of the judiciary between the High Council of Justice and the Ministry of Justice. The HJC had a limited role in relation to important areas of good governance.

The composition of the HJC, where judges have 10 of the 15 seats foreseen by the Constitution, created the conditions for the flourishing of corporatism, did not exclude the influence of the executive and the political power and undermined the credibility and legitimacy of the judiciary.

It was noted that there are conceptual and legal inaccuracies regarding the role of the Minister of Justice in the field of judicial administration, especially regarding the case management system, public and media relations, quality management system, security system and administrative and support staff of the courts.

The inappropriate political influence on the activity of the HJC, the overlaps between the competencies of this Council and the Minister of Justice in relation to court inspections, the review of complaints against judges and disciplinary proceedings against judges were some of the issues that must be addressed during the reformation of this institution.

f)Problems in the status of judges.
The legal framework of the judicial system guaranteed the independence and impartiality of judges to a considerable extent. However, in practice, serious problems of political and financial influence of judges during the exercise of their duties have been found.

There was a lack of a comprehensive law that provided in detail the provisions on the status of judges, as well as the responsible institutions and the procedures that were to be followed in making decisions on this status. The provisions regarding the specific incompatibilities of the judge's function and the prohibitions against them to exercise certain public and private activities were very general.

The law did not make a clear distinction between the appointment, transfer and promotion of judges.

In the conditions where the judicial system needs new judges, there was a lack of a long-term strategy regarding the needs for judges in the coming years, and the criteria and procedures for selecting candidates for judges at the School of Magistracy have not been re-evaluated.

The appointment of judges had been generally evaluated with critical marks in relation to the necessity to guarantee the standard of their selection, according to professional merit and without inappropriate external influences on the judicial career.

The law regulating the judiciary[189] contained an unusual and confusing classification and order of disciplinary violations. This resulted in not responding to and not helping the goal of exhaustive and unambiguous provision of disciplinary violations according to their type and importance. The range of disciplinary sanctions was relatively small and, as such, does not always allow determining proportionate sanctions. The disciplinary investigation was partly under the umbrella of the executive and partly under the competence of the HJC Inspectorate, which exercises its function under the supervision of the vice president of the HJC. Procedural rules were weak and did not fully comply with international standards. The legislation does not provide for disciplinary responsibility for judges of the Supreme Court, as well as members of the High Council of Justice.

g)Problems in the efficiency of the judiciary.

The review of court cases by the courts of the three levels did not fully guarantee the trial of the cases within a reasonable time. The problem in the efficiency of the courts of the first instance was related to a number of factors such as the high number of cases for judges, non-filling of vacant positions of judges, delegation of judges for special cases to courts other than those where they exercise their duties, lack of sufficient support with administrative staff, inadequate physical and technological infrastructure, postponement of court

[189] Law no. 9877 dated 18.2.2008 "On the organization of the judicial power in the Republic of Albania", as amended by law no. 114/2013 dated 11.4.2013.

hearings, as a result of difficulties in the notification of the parties and other participants in the process, the lack of provision for different procedural forms of judgment for different types of cases, depending on their importance, etc.

3. The preparations and reform of the judiciary system in Albania, according to Chapter 23 of the negotiation process

For Albania, Chapter 23, entitled "Judiciary and Fundamental Rights", is essential in the Stabilisation and Association process and carries a particular importance during accession negotiations. As stated above, this chapter covers three important areas: the judicial system, anti-corruption policies and fundamental rights. EU policies in the field of judiciary and fundamental rights aim to preserve and further develop the European Union as an area of freedom, security and justice[190]. It is included within the framework of cluster 1 (Fundamentals).

Establishing the foundations for an independent and efficient judiciary is of great importance. Impartiality, integrity and high standards in court judgment are essential for respecting the rule of law. In order to achieve this objective, a strong commitment is required to avoid any external influence, as well as to devote sufficient financial resources and capacity building to the justice system. It is also important to create legal guarantees and certainty.

For Albania, within this chapter, among other issues, addressing the Justice Reform is of paramount importance. It is one of the most profound legal and institutional reforms of the last two decades and aims to transform the judiciary system profoundly. In detail, it is foreseen that:

- Establishment of new bodies for the administration of justice and supervise the activity of judges and prosecutors;
- Change the selection and appointing procedures of judges of the Constitutional Court and the High Court;
- Expanding the jurisdiction of the Constitutional Court;
- Re-evaluation of judges and prosecutors (vetting process).

For the public, the impact of the reform is:

- Impartial, independent, responsible and effective delivery of justice;
- Clean judges and prosecutors, or the exclusion from the system of corrupt judges and prosecutors;
- Equality of all citizens before the law;
- Establishing duties and supervising the activity of judges and prosecutors;

[190] Enlargement and Stabilisation and Association Process – Council conclusions, Annex No. 15935/22, par. 10.

- Citizens have the ability to address the Constitutional Court to guarantee the implementation of their constitutional rights.

The primary legislation, amendments to the constitution and organic laws that regulate the organisation of the judiciary as well as the fight against corruption were adopted and entered into force in 2016[191].

Preparations for the justice reform began earlier, in 2014, when the ad hoc parliamentary commission for justice reform was established[192]. The first document of the ad hoc Commission was the analysis of the justice system[193], which identified the most critical problems in terms of the organisation and functioning of the justice system. Based on these issues, a group of high-level experts was engaged in drafting strategic directions focusing on justice reform and then the package of constitutional amendments and the first seven organic basic laws[194]. The process of drafting the justice reform is estimated to have been carried out with the involvement of all political forces, expert lawyers in the field, civil society, academics and other interest groups.

The lack of an effective judicial system was a serious problem for Albania. Since a judiciary consisting of judges and prosecutors with problems with assets declaration and justification, the integrity of their personal figure and professional skills cannot be considered judicial, it is foreseen in the legislation that the judiciary should be cleared first, and then it needs to be re-established. The clean-up of the system began with the highest courts, resulting in nearly all members of the Constitutional Court and Supreme Court being dismissed, and a minority of them resigned, while the Attorney General also resigned.

This process clearly evidenced how urgent the justice reform was. However, the appointment of new judges and prosecutors was hindered for the reasons

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[191] See QBZ, *Paketa e ligjeve te reformes ne drejtesi*, 2018. The package includes: Law no. 76/2016 "On changes on Constitution of the Repoblic of Albania"; Law no. 84/2016 "On transitory reevaluation of judges and prosecutors in the Republic of Albania"; Law no. 95/2016 "On the organisation and functioning of the institutions to fight corruptionand organised crime"; Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", as changed by the Decision no. 34 dated 10.4.2017 of the Constitutional Court; Law no. 97/2016 "On the organisation and functioning of the Prosecution Office in the Republic of Albania"; Law no. 98/2016 "On the organisation of the juridical power in the Republic of Albania"; Law no. 115/2016 "On the governance bodies of the justice system", changed with Decision no. 41 dated 10.04.2017 and no. 78 dated 12.12.2017 of the Constitutional Court; Law no. 8577 dated 10.2.2000 "On the organisation and functioning of the Constitutional Court of the Republic of Albania", as amended with Law no. 99/2016.

[192] Decision of Parliament no. 96/2014 dated 27.11.2014.

[193] Ad hoc Parliamentary Commission Decision no. 14 dated 30.7.2014 On the approval of "Analysis of the Justice System in Albania".

[194] Ad hoc Parliamentary Commission Decision no. 15 dated 30.7.2015 On the approval of "Strategy of the Reform in the Justice System" and its Action Plan.

analysed above, creating another obstacle to citizens' access to justice for a considerable period.

The new constitutional and legal framework for reforming the justice system, among others, foresees the correct organisation and functioning of new justice system governance bodies, namely the High Judicial Council (HCJ), the High Prosecutorial Council (HPC), the Justice Appointments Council (JAC), the High Justice Inspector (HJI) and the School of Magistrates. The fundamental aspects of the organisation and functioning of the new justice system governance bodies are provided for in the latest Constitutional amendments adopted by law no. 76/2016 by the Parliament of the Republic of Albania. Meanwhile, the organic law regulating the principles and rules for their organisation and functioning in more detail is law no. 115/2016 "On the Governance Bodies of the Justice System". The implementation process was carried out under the constant monitoring of international partners, Parliament,[195] and stakeholders[196].

A summarised presentation of these bodies is presented as follows:

-Justice Appointments Council (JAC).

Justice Appointments Council is a new institution that will exercise a central role in appointments in the justice system. Its main responsibilities are to evaluate the fulfilment of legal, professional and moral conditions and criteria by candidates for appointment as members of the Constitutional Court of the Republic of Albania. The JAC consists of 9 members who are elected each year by lottery with a 1-year mandate, selected as follows: 2 members from the judges of the Constitutional Court, one member of the judges of the High Court, one member of prosecutors of the General Prosecutor's Office, two members from the courts of appeal, and one member from administrative courts.

-High Judicial Council (HJC).

Before the constitutional changes, the management of the justice system was the responsibility of the High Council of Justice. Instead, the constitutional changes foresee the establishment of the High Judicial Council, which will be responsible for ensuring independence, governance and accountability in the judicial system. The HJC appoints judges of all levels, except those of the

[195] Only in 2018 was established, based on law no. 115/2016, the Independent Commission on coordinating, monitoring, and the following of the application of Law. No. 115/2016 "On the Governance Bodies of the Justice System". Decision of the Parliament no. 74/2018.

[196] See the reports prepared under the project "Monitoring of the implementation of the reform in judiciary", A. HOXHA, L. IKONOMI, E. MERKURI ET. AL., *Monitorimii zbatimit te reformes ne drejtesi*, Tirane,2019; E. MERKURI, *Organet e sistemit te drejtesise, Monitorimi i zbatimit te reformes ne drejtesi, I*, Tirane, 2020.

Constitutional Court, and decides on disciplinary measures and the dismissal of judges. The HJC consists of 6 judges elected by the National Judicial Conference and five members elected from the ranks of lawyers, academics and civil society.

- High Prosecutorial Council (HPC).

High Prosecutorial Council is a new institution, created for the first time, which is responsible for ensuring independence, good governance and accountability in the prosecution system.

- High Justice Inspector (HJI).

The High Justice Inspector is a new institution responsible for verifying complaints against judges and prosecutors of all levels, members of the HJC, members of the HPC, and the General Prosecutor. The HJI is also responsible for the institutional inspection of courts and prosecutor's offices. The High Justice Inspector is elected for a period of nine years, without the right to re-election by the Justice Appointments Council, and is appointed by the Assembly.

The Constitutional Amendments proposed in the Reform of the Judiciary also brought significant changes in the composition and procedure of the election of some constitutional institutions, as follows:

-Constitutional Court.

Before the constitutional amendments, the members of the Court were elected on the proposal of the President and approved by a simple majority of the Parliament. After the Reform, the members of the Court shall be elected: 3 members from the Supreme Court, three members from the President, and three members from the Assembly with 3/5 of all members of the Assembly.

- Supreme Court (SC).

Before the constitutional changes, the election of the members of the Supreme Court was done on the proposal of the President and approval by a simple majority vote by the Parliament. As a consequence of the Reform, the election of the S.C. members is done by the HJC. The Supreme Court is entitled to address the unification and the development of judicial practice.

-Attorney General (AG).

Before the constitutional changes, the AG was appointed with a five-year mandate with a possibility of reelection. In the changes brought by the Reform, the Attorney General is appointed with a 7-year mandate without the right to re-appoint. The election of the AG is made by the HPC, which selects the three best candidates and forwards it to the Assembly for approval. If the Assembly fails to secure a majority within 30 days of all its members, then the highest-ranked candidate by the HPC will be appointed.

-Special courts for corruption and organised crime.

The reform envisioned the creation of two special courts, the Special Court of First Instance and the Court of Appeal, for adjudicating criminal offences of corruption and organised crime, as well as criminal charges against high officials, such as President and former Presidents, President and Former Presidents of the Parliament, Prime Minister and Former Prime Ministers, Members of the Parliament, Ministers, Attorney General, High Inspector of Justice, Mayors, Deputy Ministers, Members of the HJC and HPC, Members of the Constitutional Court and Supreme Court, and the heads of central or independent state institutions defined in the Constitution or law.

- Special Prosecutor's Office.

The reform foresees the creation of two new investigative and prosecutorial institutions, the Special Prosecution against Corruption and Organised Crime and the National Bureau of Investigation (NBI), which are independent of the Prosecutor General. The Special Prosecution Office exercises its functions at the special anti-corruption and organised crime courts, and N.B.I. reports only to it. The HPC appoints the prosecutors of the special prosecution for a 9-year term.

3.1 The Vetting Process as an ad hoc evaluation and transitional of judges and prosecutors.

One of the most significant innovations of Justice Reform is the Process of Transitional Re-evaluation of Judges and Prosecutors (Vetting), which aims to guarantee and ensure the professionalism and integrity of the employees of the justice system in order to guarantee an independent and fair justice by aiming to remove from the system of all magistrates who do not justify their patrimonial assets, who are affiliated or related with criminals or lack professional skills. Throughout the process of the vetting, all judges and prosecutors of all levels, counsellors and legal assistants, and inspectors of the HJC are assessed.

The re-evaluation began in October 2016, following the entry into force of constitutional amendments and the law on the transitional re-evaluation of judges and prosecutors in the Republic of Albania. All subjects should be re-evaluated within a five-year period. The vetting process is carried out by three special institutions created by the Constitution for this purpose, which are coordinated and assisted by the International Monitoring Operation, a special EU mission composed of experienced observers from EU member states and the US. These institutions are:

1. Independent Qualification Commission (IQC)
The IQC. functions as an administrative evaluation entity and will consist of 4 judicial bodies of commissioners, each composed of 4 commissioners. The members of the Commission enjoy the status of members of the High Court. The Independent Qualification Commission (IQC), for the period 1 January – 5 November 2021, has issued 144 decisions, of which 50 decisions of confirmation in office, 61 decisions for dismissal from duty, 24 decisions on interruption of the process of vetting, eight decisions on completion of the process and one decision of suspension from duty for one year and the obligation to follow up the training for a period of one year at the School of Magistrates.

2. Public Commissioners
Represent the public interest in the vetting process and have the right to appeal I.Q.C. decisions in the Special Appeals Panel to the Constitutional Court. The Institution of Public Commissioners, during the period January – October 31, 2021, has reviewed a total of 131 decisions, and 13 of them are in the process of review according to legal deadlines. For the 131 decisions reviewed, the Public Commissioners have decided to appeal 13 decisions in the Appeals Chamber, and for 118 decisions of the IQC, they have decided not to exercise the appeal.

3. Special Appealing College (SAC)
Special Appealing College is the supreme institution that reviews the complaints against IQC decisions. It consists of 7 judges and rules in 5-member judicial bodies. The members of the College enjoy the status of members of the Constitutional Court. The Special Appeals Panel continues to exercise its function in the process of re-evaluating judges and prosecutors after submitting a complaint by the re-evaluation subjects or the Public Commissioner to the decisions of the Independent Qualification Commission. In total, from the beginning of the Vetting process until the end of 2021, a total of 120 jurisdictional decisions have been reassessed by the HPC.

4. International Monitoring Operation
The IMO assists the process of the process through process monitoring and assistance to IQC and SAC by providing data, information and advice. Observers of IMO monitor the entire vetting process and have all the information and documents available to the I.Q.C. and S.A.C. at their disposal. The International Monitoring Operation, during the period January – 31

October 2021, has submitted to the Public Commissioners 8 written recommendations to appeal. In the public registry of donations, for the period January – October 31, 2021, 172 denominations were recorded.

Carried out by the above institutions, the process of vetting is based on three re-evaluation pillars, in which each magistrate needs to demonstrate that it is compliant with the standards. In this procedure, there is an inversion of the burden of proof, and the subject shall give evidence of findings made by the administrative inquiry of the Commissions. In detail, these three pillars regard:

- Control of patrimony of judges and prosecutors

Each subject of the procedure of the vetting shall be subject to self-declaration and then control of all his assets and persons related to it. The subject must justify his property on the basis of legitimate sources, which are considered only declared income for which taxes are paid. If the reported or disclosed asset is greater than twice that of legitimate income, the subject of revaluation has the burden of proof and is excluded from the system unless it manages to prove otherwise.

- Control of the integrity and image of the personal figure

The subject of re-evaluation is subject to verification of inappropriate contacts with persons involved in organised crime. If such contacts are verified and the subject fails to prove otherwise, he is dismissed from the justice system.

- Professional skills control

The subject of re-evaluation is subject to verification of the capacity to investigate and judge judicial cases, organisational and administrative skills, as well as professional ethics and personal qualities. The subject assessed as having deficiencies which cannot be corrected through education is dismissed immediately. A subject who is deemed to have the knowledge, ability, judgment or inappropriate behaviour but may be improved, suspended and undergoes a mandatory one-year training program.

4. Assessment of the European Commission and the Council on Albania's key achievements in relation to Chapter 23.

According to the latest progress reports from the Commission, Albania needs credible institutions to support a coherent policy for addressing issues within the justice system and preventing corruption. Like all member states, Albania must ensure respect for the fundamental rights and rights of EU citizens, as guaranteed by the acquis and the Charter of Fundamental Rights[197].

[197]https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

On the other hand, the Council recognises that Albania made progress in the area of the fundamentals, particularly in the field of the rule of law, specifically by implementing the comprehensive justice reform, which has advanced steadily, and by strengthening the fight against corruption and organised crime. The Specialised Structure for Anti-Corruption and Organised Crime Court delivered several important final decisions on high-ranking state officials. Efforts to establish a solid track record in the fight against corruption and organised crime need to intensify, including high-level cases. The implementation of final court verdicts remains essential. The action plan to address the Financial Action Task Force recommendations must be further implemented. Furthermore, the vetting process has continued to advance steadily and produced tangible results, and the functionality of the High Court and the Constitutional Court are established[198].

According to the European Commission's 2021 report, Albania has reached a certain level of preparation/is moderately prepared for the implementation of the EU acquis and European standards in this area. Success has been achieved through the implementation of justice reform. The Constitutional Court has regained full functionality with the appointment of new judges. The Supreme Court has increased its efficiency with the appointment of six new judges. The vetting process has been going on to produce tangible results. The legal framework has been strengthened by ensuring more effective justice. Anti-corruption efforts are bringing results. Additional efforts are needed to increase the seizure of assets derived from corruption and to have results in high-level matters. In terms of fundamental rights, there has been progress in most areas.

The same evaluation is offered in the progress reports of 2022 and 2023. It is to be considered that the implementation of the vetting process has granted the assessment of good progress in the judiciary. The judiciary reform is under continuous monitoring, and, actually, there is momentum on how to correct the packages of law on the reform after the maturing of the first five years that are in force in order to foster the full implementation and to bring enhanced provision to address the risen needs. Corrections were made from 2019 to 2023[199] but in consultation with international partners and their missions,

[198] Enlargement and Stabilisation and Association Process – Council conclusions, Annex No. 15935/22, par. 71.

[199] Changes were made to mostly of the laws in the package: in law no. 96/2016 some articles were repealed with the decision of the Constitutional Court no. 34/2017 dated 10.4.2017, changed with law no. 48/2019 date 18.7.2019, law no. 15/2020, dated 12.2.2020, law no. 149/2020 dated 17.12.2020, law no. 50/2021, dated 23.3.2021 and law no.33/2023, dated 25.5.2023; in law no. 97/2016 changes were made with law no. 148/2020 dated 17.12.2021, law no. 42/2021 dated 23.3.2021; in law no. 98 changes were made with law no.46/2021

EURALIUS and OPDAT. The second package of amendments was proposed in 2022 but was withdrawn after the negative evaluation from EU missions EURALIUS and OPDAT.

4.1 Justice Reform and the governing institutions of the judicial system in Albania

According to the European Commission's 2021, 2022 and 2023 report, Albania is moderately prepared for the functioning of the judiciary. Good progress has been made with the continued implementation of the justice reform and vetting process.

A significant achievement was the appointment of new judges to the Constitutional Court, which regained its necessary quorum with a minimum of six members to hold plenary sessions, thus becoming fully operational and fulfilling the important condition for the first Intergovernmental Conference. Progress has also been followed by appointments to the Supreme Court, with the promotion of six new judges from the High Judicial Council in March and July 2021. Parliament adopted amendments to ten laws with the aim of further strengthening the efficiency of the judicial system and its capacity to tackle corruption and organised crime.

The vetting process has continued with the delivery of concrete results under the careful supervision of the International Monitoring Operation (IMO). To date, 62% of vetting files handled have resulted in dismissals or resignations. Magistrates dismissed from duty by vetting bodies are being prosecuted by the Special Prosecution Office.

On the other hand, the institutions of the justice system governance have remained fully functional and have operated with full efficiency. The decision-making of the High Judicial Council (H.J.C.) has focused on the adoption of bylaws, collective administrative acts and those of individual character. This voluminous work has aimed to address the most urgent priorities and problems of the judicial system as well as the strategic objectives set out in the strategic plan of the H.J.C. Currently, the H.J.C. has approved the new strategic plan for the judicial system for the period 2022 – 2024, a plan that will shape the future of the judiciary in the function of comprehensive reform. The High

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dated23.3.2021; the law no. 8577, dated 10.2.2000 "On the organization and functioning of the Constitutional Court in the Republic of Albania" as changed with law no. 99/2016 changes were made with law no. 45/2021 dated 23.3.2021; in law no. 115/2016 there were repealed articles with the decision of the Constitutional Court no. 41 dated 12.12.2017, with the decision of the Constitutional Court no. 78 dated 12.12.2017, and changes were made with law no. 47/2019 dated 18.7.2019.

Prosecutorial Council (H.P.C.) has normally carried on working after being filled in its structure[200].

In order to foster the reaching of the objectives of Justice Reform for the next five years, the Ministry of Justice has completed the 1-year working process for drafting the strategic package for the second phase of the implementation of the justice reform, which consists of adopting of Intersectoral Justice Strategy (I.J.S) 2021 – 2025 and its Action Plan 2021 – 2025[201].

This strategy aims to consolidate the legal and institutional framework of the justice system, incorporate modern European criminal justice practices, improve the infrastructure of the justice system and provide IT solutions, including innovative electronic solutions that support substantial increases in efficiency and transparency in the justice sector. The Intersectoral Justice Strategy 2021 – 2025 has set out four major policy goals, as well as 16 specific objectives. The vision of this Strategy is to offer "an independent, accountable, accessible, transparent and efficient justice system that protects human rights and serves society according to European standards"[202]. This vision is intended to be realised through four policy goals listed below:

"- Full and professional functioning of the institutions of the justice system governance in accordance with constitutional and legal requirements and European standards, guaranteeing independence, efficiency and accountability;

- Strengthening transparency, efficiency of the judiciary and access to justice in accordance with constitutional, legal and European standards requirements;

-A criminal justice system based on modern justice principles, guaranteeing re-socialization, reintegration and rehabilitation, as well as respect for human rights and freedoms and gender equality within an integrated approach and with solid crime prevention practices;

[200] During 2021, 5 new members of the High Prosecutorial Council were selected from among prosecutors of all levels. Additionally, in 2021, the Albanian Parliament announced vacancies for two non-prosecutor members of the High Prosecutorial Council. The High Prosecutorial Council, in turn, made a total of 388 decisions.

[201] Decision of Council of Ministers no. 823 date 24.12.2021 "On approval of the Intersectoral Justice Strategy 2021 – 2025 and its Action Plan".

[202] Intersectoral Justice Strategy 2021 – 2025, p. 16. Available at https://www.drejtesia.gov.al/raportet-e-monitorimit-anglisht-2/ (Last accessed on 16.1.2024). See also the Annual report of monitoring from Ministry of Justice, March 2022 Available at https://www.drejtesia.gov.al/wp-content/uploads/2022/04/Annual-Report-2021_Cross-Cutting-Justice-Strategy.pdf (Last accessed on 16.1.2024).

-Coordination, efficient and effective management of the justice system in all sector institutions"[203].

Within the implementation of the policy goals as above, three significant investments are envisaged, such as the e-justice program, the implementation of the New Judicial Map in Albania, and the continuation of the Juvenile Justice program[204].

4.2 The new judicial map in Albania and operation of the Special Prosecution Against Organised Crime and Corruption.

The High Judicial Council established an Interinstitutional Group to conduct the evaluation of the judicial system and to make recommendations on how best to reorganise the courts and their land powers. The judicial system in Albania was divided into first-instance courts, courts of appeal and a high court. In Albania, there were 29 first-instance courts, 22 being district courts with general jurisdiction, six administrative courts and one special court. Also, eight appeals courts were functioning, with 6 being appeals courts with general jurisdiction, one administrative court and one special court.

The new judicial map presents an innovative approach to court distribution, setting out new principles and criteria of judicial configuration.

The new judicial map, which provides for the concentration of courts at both levels and all jurisdictions (general and administrative), provides for:

-12 Courts of First Instance of General Jurisdiction.

-2 Courts of First Administrative Instance (Tirana and Lushnjë).

-1 National Court of Appeal for the Courts of General Jurisdiction established in Tirana.

Regarding the special courts and prosecution offices thereof, they are established in Tirana with competencies in judging and prosecuting high-level corruption and organised crime.

After the establishment of a special Anti-Corruption and Organised Crime Court[205], the High Judicial Council has worked intensively to fill vacancies in these courts. In October 2021, due to dismissals by vetting bodies and appointments to the Supreme Court, the Special Court of Appeals had six judges in office out of the 11 provided for by the law, while the Special Court of First Instance has seven judges in office, 3 of which are assigned by the delegation scheme, out of 16 such foreseen.

[203] Ibid.
[204] Ibid., p. 87
[205] Decision of the High Justice Council No. 288, dated 18.12.2019.

Due to the legal requirements for these positions and the lack of human resources that have resulted from the vetting process, despite the continuous opening of calls for vacancies on both scales of the Special Courts, the number of applications has remained very low[206].

On the other hand, regarding the prosecution office, the Albanian Parliament, by Decision No. 6, dated 28.01.2021, approved the total number (20) of prosecutors in the Special Prosecution Against Corruption and Organized Crime. In connection with the functioning of the National Bureau of Investigation, the first 28 investigators of the latest have begun to exercise duty in support of the special prosecution office. The selection phase of 32 other investigators to complete the number of 60 investigators continues. The establishment of special institutions for the fight against corruption has begun to yield the first results, where several cases of investigation are sent for trial high-level figures.

5. Conclusions

Since 2017, Albania has implemented a new framework of justice legislation as approved in 2016. The process of implementation was an onerous burden for the institutions and society in general due to the shortages created in the system by the harsh application of the vetting. In recent years, the vacancies have been addressed in the institutions governing the judiciary, the courts have been filled with new magistrates, and the system is working according to the legal framework outlined by the Reform. The first results are perceptible.

The efforts of Albania are recognised by the latest progress report of the EU Commission, also as from the statements of the Council of the EU. The progress made by Albania was good, but still, Albania is moderately prepared in the judiciary sector. The judiciary, as an integral and most important part of the first cluster in the negotiations, is of paramount importance for fully reaching the rule of law. The reform in Albania is to be considered a milestone in the path of negotiations and, in our opinion, the most crucial issue to address due to its impact on the other fields for reaching EU standards. It is important not only regarding the rule of law but also in achieving the other objectives of the process of adhesion, like functioning the internal market, fighting against

[206] Throughout 2021, the HJC published 25 calls for applications (of which 12 were repeated due to a lack of applications). In total, 10 applicants submitted documentation, some applying for more than one announced position. The HJC and EURALIUS V undertook a series of awareness campaigns inviting judges to apply for these positions, clearly demonstrating the Council's commitment to fully completing the organizational structure of the courts against corruption and organized crime.

corruption, enhancing foreign investments and doing business environment, assuring implementation of fundamental rights, etc.

After seven years of implementation, there is a need for intervention in the legislative framework. Still, no draft has been proposed that is endorsed by EURALIUS and OPDAT, the most important EU and US missions in Albania regarding the judiciary. Time writing, after the screening evaluation is issued, it will be of interest to know the opening benchmarks when Chapter 23 is opened for negotiations. Overall, the reform in the judiciary sector lays a sound basis for a smooth process of negotiations of the chapter.

Section 2 - Public Procurement in the EU and Albania. The acquis adoption.

Introduction

Public Procurement is an administrative procedure in which public bodies act as contracting authorities/entities for the realisation and purchase of goods, works, or services from private entities (economic operators) for the achievement or not of public goals and interests. Due to the importance of this field and the connection it has with different sectors of the economy or other social aspects, the provisions on the public procurement process and public contracts occupy a special place in the legislation of the European Union.

The fundamental principles, rights and obligations of Member States and candidate countries aiming for membership of the community are provided for and are part of what is called the *acquis communautaire*.

Within the EU integration process, the candidate countries must recognise and align their internal legislation in the field of public procurement with the EU *acquis*. The main purpose of the EU directives related to the procurement process, in accordance with the general principles of European law, is to ensure efficiency and effectiveness by promoting and promoting a sustainable procurement system based on the principles of transparency, competition and free and fair, non-discrimination and equal treatment.

Compliance with the Treaty law principles and general law principles which apply to public procurement in the EU context is a requirement that flows through the whole procurement process, from the design of the technical specifications through the choice of award procedure and selection of tenderers to the award of the contract. Failure to respect these fundamental principles can jeopardise the entire procurement, and they apply independently of the European Directives or national procurement law.

Although the EU rules are intended to provide tenderers from one member state the right to bid in other member states, they also give tenderers rights in their own countries; these are often rights that they did not have before. It should be noted that tenderers raise the majority of disputes on procurement against contracting entities (public purchasers) in their own countries and not against those from other countries. Even where the applicable rules are drafted

as national rules, they will often be the result of EU rules which have been transposed (incorporated) into national law.

1. European Union regulatory framework for Public Procurement.

In the case of public procurement, it is necessary to look not only at the procurement directives themselves but also at the context within which they have been adopted. Even with the directives in place, more general provisions contained in the Treaty of Rome will apply, as well as more general principles of law which will guide the interpretation of the directives.

The Treaty of Rome does not include any explicit provisions relating to public procurement. They do, however, establish a number of fundamental principles which underpin the European Union. These principles apply equally to the field of public procurement. Of these fundamental principles, the most relevant in terms of public procurement are Article 12 on the prohibition against discrimination on grounds of nationality, Article 28 on the free movement of goods and the prohibition of quantitative restrictions on imports and exports and measures having equivalent effect[207]; Article 43 on the freedom of establishment[208]; Article 49 on the freedom to provide services[209].

1.1 Basic principles of Public Procurement, according to the jurisprudence of the ECJ.

In addition to these basic principles provided in the Treaty, some general principles of European law in the field of public procurement have also emerged from the judicial practice of the European Court of Justice (ECJ). General principles of European law have served as a guide in the drafting and interpretation of Directives on public procurement. They are important because the ECJ will often use them to fill in gaps in the legislation and provide solutions of principle to situations that are often very complex. Together, these elements constitute what is called the EU *acquis*, the set of written acts,

[207] The objective of this principle is to prevent member states, through their contracting authorities, from buying only national products ('buy national' campaigns). It applies both to distinctly applicable measures which are clearly intended to discriminate against foreign goods (such as local content clauses) as well as to indistinctly applicable measures which apply equally to local and foreign goods but which, nevertheless, discriminate indirectly against foreign goods in that their effect is to make market access more difficult for imported products than local ones.

[208] In effect, this means that a tenderer from a member state will be permitted to carry out a business in another member state through the establishment of a local entity.

[209] In effect, this means that a tenderer based in one member state will be entitled to submit a tender in another member state without the need to set up a local entity or representative.

treaties, directives, and resolutions of the EU, as well as what is known as 'case law'.

The most important of these general principles of law in the current context are:

- Equality of treatment - This principle requires that identical situations be treated in the same way or that different situations will not be treated in the same way. It does not depend on nationality (as with the principle of non-discrimination) but is based on the idea of fairness to individuals. Thus, treating two tenderers from the same country differently could be unequal treatment, but since they are of the same nationality, there would be no discrimination (on the grounds of nationality)[210].

- Principle for ensuring transparency - This principle imposes an obligation of transparency on the contracting authority, which consists of providing, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed[211]. Guidance on how the transparency objective might be achieved can be found in the Commission's interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives[212].

- Mutual recognition - In practice, this means that the Member State in which the service is provided must accept the technical specifications, checks,

[210] The Danish Bridge case provides a good example of the difference. In this case, there were two alleged breaches of procurement law at issue. First, a clause which required the use of local goods and labour. Second, the way in which the employer had given one of the tenderers the chance of putting forward a variation to the specifications contrary to the instructions set out in the tender documents. The first breach was clearly discriminatory and thus gave rise to unequal treatment between those tenderers who could fulfil the nationality condition and those who could not, even though they could meet the output specifications. The second breach was not discriminatory because it did not distinguish between national and non-national tenderers. It merely treated one tenderer differently from the others. This is unequal treatment but is not necessarily discriminatory it could also (coincidentally) be discriminatory if it were applied to different nationalities. Case C-234/89 Commission v Denmark [1993] ECR I-3353.

[211] Where the Directives do not apply to the contract in question (either because it is outside the Directives or below the thresholds), the principle of transparency will apply to require some form of advertising of the proposed contract. That will be the case whenever the contract in question may be of interest to an undertaking located in another member state. This is not required, however, where the lack of advertising can be justified by 'objective' or 'special' circumstances such as where there is only a very modest economic interest at stake. Case C-231/03 Consorzio Aziende Metano ('Coname') vs Padania Acque SpA ('Coname') [2005] ECR I-7287.

[212] See M. P. VAN DER HOEK, *Local public procurement: How to deal with a creative bidder? A case study from the Netherlands* in *Journal of Public Procurement*, Vol. 10, no. 1, 2008, pp. 121-135.

diplomas, certificates and qualifications required in another Member State if they are recognised as equivalent to those required by the Member State in which the service is provided.

- Proportionality - The principle of proportionality requires that any measure chosen should be both necessary and appropriate in the light of the objectives sought. In the case of contracting entities, for example, when selecting candidates and tenderers, contracting entities should not impose technical, professional or financial conditions which are excessive and disproportionate to the subject of the contract.

These general principles of law are enunciated, for the most part, by the European Court of Justice. These principles are unwritten rules, not contained in the Treaty but inspired by those common general principles of law recognised in the national legal systems of the Member States.

1.1. Directives of the European Union in the field of Public Procurement

General principles of law are difficult to apply in specific situations and tend to be negative in substance, i.e. they tend to proscribe incompatible behaviour but do not, at the same time, provide positive guidance on how they may be applied in concrete situations to which they apply. It was necessary, therefore, to introduce procedural conformity to achieve non-discriminatory access to public procurement markets. The Community, therefore, adopted a series of Procurement Directives based on the principles of non-discrimination, free competition, transparency, etc.

2. The current situation in Albania for the alignment of internal legislation with the *acquis*, chapter 5, "Public Procurement".

The obligation of the Albanian state to align the legislation with the *acquis* of the European Union, for chapter 5, "Public Procurement", derives from the general obligation provided for in articles 70 and 74 of the EU-Albania Stabilization and Association Agreement (SAA). In Article 74 of the SAA, it is foreseen that the parties to the agreement (Albania and the EU) consider and have as a desirable objective the liberalisation of public contracts between them. This objective will be realised by taking into account and based on the fundamental principles of non-discrimination and reciprocity.

In this provision, it is determined that the community periodically examines whether Albania has really adopted legislation in accordance with the EU *acquis* in the field of public procurement. Pursuant to the latter, our country reports annually to the European Commission, according to the EU

methodology, on the progress of the adaptation of the legislation, as well as the implementation of the recommendations for Chapter 5, "Public Procurement".

Regarding the alignment of internal legislation with that of the EU, it is necessary to do it not only with the provisions of the directives on procurement and public contracts but also taking into consideration the context within which the latter were approved.

The directives in force[213] will be implemented and transposed into the internal legislation of the member and candidate states, taking into consideration more general provisions and the principles of European law.

The European Commission, in the 2023 Annual Report on Albania, as far as Chapter 5, "Public Procurement", is concerned, stated that Albania is moderately prepared in the field of public procurement. Albania has made good progress, especially through the adoption of the new law on public procurement and the national strategy for public procurement after extensive public consultations. Also, it is emphasised that the recommendations given in 2020 have been implemented to the greatest extent.

The National Strategy for Public Procurement, as approved by the Decision of the Council of Ministers No. 850, dated 4.11.2020, constitutes the strategic framework for the development of public procurement in the Republic of Albania. This Strategy aims to identify all the main strategic objectives in terms of further improvement of the procurement system, as well as the necessary measures to be taken to achieve these objectives.

2.1 Legal framework on public procurement.

The current legislation in the field of public procurement is composed of a legal and sub-legal framework which is broadly aligned with the *acquis* of the European Union, despite the fact that there are still some elements that need changes.

According to the 2023 report for chapter 5, "Public Procurement", Albania is moderately prepared in this field, even though it evaluates the progress made so far and, in particular, that related to the increase in the use of the most favourable economic criteria for announcing the winners of economic operators in procurement procedures. In relation to the recommendations left a year ago in the 2022 report, it is found that they have been partially implemented, and the latter remain valid for 2023 as well. Throughout 2024, the commission estimates that the effort to harmonise the legislative framework

[213] Directive 2014/23/EU, Directive 2014/24/EU, Directive 2014/25/EU, Directive 2009/81/EC, Directive 89/665/EEC and 92/13/EEC, and by the jurisprudence of the European Court of Justice.

with the *acquis* of the EU, especially in the field of concessions and public-private partnerships.

Chapter 5, "Public Procurement", according to the EU methodology, is divided into 5 (five) sub-chapters as follows:

1. Classic procurements;
2. Procurements in the field of utilitarian sectors;
3. Complaints in the field of public procurement;
4. Concessions and public-private partnership;
5. Procurements in the field of defence and security.

In the following, we will analyse the alignment and transposition of the EU directives for each of the sub-chapters.

A. Classic procurements and procurements in the field of utilitarian sectors.

Since 2020, Albania has engaged in the approximation and harmonisation of legislation in the field of public procurement with the Directives of the European Union. Specifically, the first step in this regard was the approval of Law 162/2020, "On Public Procurement", which entered into force on March 31, 2021. This law is partially aligned with the following:

-Directive 2014/24/EU of the European Parliament and the Council, dated February 26, 2014, "On public procurement and repealing Directive 2004/18/EC", as amended"[214].

-Directive 2014/25/EU of the European Parliament and the Council, dated February 26, 2014, "On procurement by entities operating in the sectors of water, energy, transport and postal services and repealing Directive 2004/17/EC", as amended"[215].

-Council Directive 89/665/EEC, dated December 21, 1989, "On the coordination of laws, regulations and administrative provisions regarding the implementation of review procedures for the awarding of public supply and public works contracts", as amended"[216].

-Council Directive 92/13/EEC, dated February 25, 1992, "On the coordination of laws, regulations and administrative provisions regarding the implementation of Community rules for the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors",

[214] Number CELEX 32014L0024, Official Journal of the European Union, Series L, no. 94, dated 28.3.2014, pp. 65-242.
[215] CELEX number 32014L0025, Official Journal of the European Union, Series L, no. 94, dated 28.3.2014, p. 243-374.
[216] CELEX number 31989L0665, Official Journal of the European Union, Series L, no. 395, date 30.12.1989, p. 33-35.

changed"[217]. The amended Law 162/2020 has brought innovations in terms of important aspects, compared to the old law no. 9643, dated 20.11.2006 "On Public Procurement", amended, as this law is widely aligned with the *acquis*. The purpose of the legal changes was to enable an efficient, effective public procurement system with good performance, non-discriminatory, which respects principles such as the protection of competition, equal treatment, etc. This goal was achieved by clarifying the scope of the law and the type of procurement, specific exceptions, and determining the lower and upper monetary limits.

One of the provisions that have been implemented and evaluated by the EU structures in Chapter 5 is related to the provision of the use of the evaluation criterion "the most economically advantageous offer", which is identified on the basis of price and cost, using the method of cost-effectiveness.

Throughout the process of reporting on the progress of the approximation of the legislation and the screening process developed by our country in 2022, the need for the continuation of the approximation of the current law with EU directives has been identified. In this prism, the law "On some additions and changes to the law "On public procurement" was recently approved, in which the provisions of the EU Directives were transposed, with the aim of further alignment with these Directives.

A well-functioning complaint review system ensures better enforcement of public procurement legislation, ensuring that violations committed by contracting authorities are rectified. One of the main impacts of the complaint review system on the efficiency of the entire procurement process is the speed of decision-making by the Public Procurement Commission (PPC). Regarding the complaint review system, it has been possible to finalise and make public the database for complaints on the PPC website, as well as the finalisation of the Electronic Complaints System.

Other secondary legislation completes the legal framework in the field of public procurement:

1. Decision of Council of Ministers no. 285, dated 19.05.2021, "On the approval of public procurement rules";
2. Decision of Council of Ministers no. 384, dated 30.06.2021, "On the form of communication in public procurement procedures";
3. Decision of Council of Ministers no. 457, dated 30.07.2021 "On the approval of the common procurement vocabulary";

[217] CELEX number 31992L0013, Official Journal of the European Union, Series L, no. 76, dated 23.3.1992, p. 14-20.

4. Decision of Council of Ministers no. 768, dated 15.12.2021 "On determining the types of social services and other specific services, types of special services, for which the right of participation of organisations in public procurement procedures can be reserved, as well as detailed rules for their procurement";

5. Standard tender documents;

6. Instructions;

7. Recommendations;

8. Technical manuals.

B. Concessions and public-private partnership

The law on concessions and public-private partnerships (PPP) is partially in line with the EU *acquis*. The government plans to adopt a revised PPP law in 2023. The MFE, together with the Concessions Handling Agency (ATRAKO), are the main organisations responsible for PPPs and concessions.

Law No. 125/2013, "On concessions and public-private partnership", as amended, regulates concessions and public-private partnership in the Republic of Albania. This Law is partially aligned with Directive 2014/23/EU of the European Parliament and of the Council of February 26, 2014, on the awarding of concession contracts.

The legal framework in the field of concessions and public-private partnership is completed by other secondary legislation:

1. Decision of Council of Ministers no. 280, dated 7.4.2020, "On the approval of the regulation on the way the concession/PPP project selection committee operates and the criteria for evaluating the requests of the contracting authorities for support with specialised expertise";

2. Decision of Council of Ministers no. 285, dated 10.4.2020, "On the organisation, operation as well as procedures and the level of service fees to be offered by the Concessions Handling Agency (ATRAKO)";

3. Decision of Council of Ministers no. 420, dated 27.05.2020 "For some changes and additions to Decision no. 575, dated 10.7.2013, of the Council of Ministers, "On the approval of the rules for evaluation and awarding with concession/public-private partnership", amended".

C. Procurements in the field of defence and security.

Albania is also partially aligned with the EU *acquis* for defence and security procurement.

Regarding procurement in the field of defence and security, Law No. 36/2020, "On procurement in the field of defence and security" partially approximates Directive 2009/81/EC of the European Parliament and the Council, dated July 13, 2009 "On the coordination of procedures for awarding

certain contracts for work, supplies and services by contracting authorities or entities in the fields of defence and security, and which amends Directives 2004/17/EC and 2004/18/EC".

The legal framework for procurements in the field of defence and security is supplemented by secondary legislation:

-Decision of Council of Ministers no. 1170, dated 24.12.2020, "On the approval of procurement rules in the field of defence and security";

-Decision of Council of Ministers no. 1085, dated 24.12.2020 "On determining the rules for concluding contracts for the purchase of equipment/tools specially designed or adapted for military purposes, as well as weapons, ammunition or war materials for operational purposes, including technology and software of related to these goods, as well as for the composition, organisation and functioning of the special commission for the classification of these contracts";

-Decision of Council of Ministers no. 542, dated 29.09.2021, "On the rules, procedures and requirements for the protection of classified information during procurement in the field of defence and security".

2.2 Institutional Framework on Public Procurement.

According to the 2023 report, an important point parallel to the harmonisation of legislation continues to be the institutional organisation in the field of public procurement.

1. The Public Procurement Agency (PPA) is a legal entity, a central institution which, among other things, presents legal and sub-legal proposals for public procurement, issues decisions, instructions and recommendations, gives advice and assistance, etc. APP coordinates and is the leading institution of membership negotiations in the EU in the field of public procurement. With the revision of Law no. 162/2022, some of the powers of PPA have been changed this year in terms of contract monitoring and database administration, as well as cases of exclusion of economic operators from the right to win public contracts. In the framework of the entry into force of Law no. 162/2020 and the approval of Decision of Council of Ministers No. 285, dated 19.05.2021, "On the rules of public procurement", PPA, in cooperation with the OSCE Presence in Tirana, from May 25 to June 16, 2021, has organised online 12 information sessions for Authorities and Contracting Entities, with the aim their familiarity with the new legal framework and the innovations brought by it. Also, PPA, in cooperation with ASPA, has started the training process for the Authorities and Contracting Entities according to the agreed modules and thematic areas.

2. The Public Procurement Commission (PPC) is a public, independent legal entity and is the highest administrative body in the field of procurement for reviewing complaints about procurement procedures.

3. ATRAKO - The unit for dealing with concessions/public-private partnerships assists the contracting authorities in order to prepare the feasibility study, preparation of competitive procedure documents and evaluation criteria, evaluation of proposals and determination of the best bidder; conducting negotiations and signing the concession contract; monitoring of concession contracts.

4. The Ministry of Finance and Economy is another central institution responsible for policy-making and implementation in the field of concessions and PPPs in Albania. The MFE assesses and pre-approves all concession/public-private partnership (PPP) projects from the perspective of fiscal implications, budget deficit, sustainability of public debt, etc.

5. The Ministry of Defence, the Ministry of the Interior and AKSIK are the leading institutions responsible for procurement in the field of defence and security.

6. Central Purchase Operator sh.a. is a central purchasing body subordinate to the Ministry of Finance and Economy, whose mission consists of carrying out centralised procurement procedures for goods, works, and services, budget funds with a value above the monetary limit of small value procurements, on behalf and for the account of the Prime Minister's Office, the ministries and the institutions depending on them. The Agency for Centralized Procurement is a new organisational structure that was created in March 2023.

3. Identified gaps in public procurement and future priorities

Regarding the field of public procurement, through the adoption of the new Law on public procurement in 2020, the rules for public procurement in May 2021, DSTs (Standard Tender Documents), instructions, the Decision of the Council of Ministers for communication forms and the Decision of the Council of Ministers for CPV codes, have achieved a very substantial approximation of Directive 2014/24/EU and Directive 2014/25/EU.

Regarding the review of complaints, through the adoption of the new Law on public procurement in 2020 and the rules on public procurement in May 2021, a very significant approximation of Directives 89/665/EEC and 92/13/ECC.

Regarding concessions and PPPs, the degree of alignment with Directive 2014/23/EU has been assessed as partial. ATRAKO is developing an

evaluation of the legal deficiencies for this directive through foreign technical assistance.

As for procurements in the field of defence and security, through the adoption of Law 36/2020 on procurements in the field of defence and security, the rules for procurements in this field in December 2020, as well as the DSTs in April 2021, a very significant approximation of Directive 2009/81/EC has been achieved.

In general, the EU *acquis* on Chapter 5 has been aligned to the broadest extent by means of recent legal changes, with the exception of the area of concessions, which will require further alignment.

The priorities in the field of public procurement for the period 2022-2024 are:

-Guaranteeing that the conditions of intergovernmental agreements related to third countries are in accordance with the requirements of the *acquis* included in the SAA, especially with those in the field of public procurement.

-Further alignment of the law on concessions and PPP with Directive 2014/23/EU.

The approximation of Directive 2014/23/EU was to be achieved through the revision of the current law on concessions and PPPs (law no. 125/2013) within the first quarter of 2023.

These issues are to be addressed within 2024.

Section 3 – Enterprise and Industrial Policies. The case of tourism legislation in the path of integration.

Introduction

The European Union (EU) requirements for industrial policies fall within the third group of competencies of the EU[218]. These policies primarily consist of industrial policy principles and communications, which are essentially soft laws. A key document outlining the EU's industrial development framework is "Europe 2020: Strategy for smart, sustainable, and inclusive growth"[219]. Additionally, enterprise and industrial policy instruments have been established within the EU program for the Single Market (SMP)[220].

Another significant instrument for harmonisation is Directive 2011/7/EU[221], which serves as the foundation for addressing late payments in commercial transactions, which is mandatory to be fully aligned with EU standards. Furthermore, the EU's space policy programs contribute to enhancing the EU's competitiveness and are integral to this chapter. The directive is partially transposed in Albania through Law No. 48/2014, "On late payments in contractual and business obligations"[222]. The transposition is not without problems due to the fact that Albania has wrongly transposed the notion of entrepreneurship that the Directive offers in its recitals. The law was object to criticism in doctrine and jurisprudence[223].

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[218] Supportive competencies to the action of Member States (Article 6 of the TFEU). The EU can only intervene to support, coordinate or supplement the actions of member states. More information on:
http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=URISERV:ai0020&from=EN (last accessed on 16.1.2024).

[219] For more information about the Europe 2020 Strategy, National Reform Programs and national objectives visit the website Strategy 2020-2024 - European Commission (europa.eu) (last accessed on 16.1.2024).

[220] manifestoJUL23 (tradepromotioneurope.eu) (last accessed on 16.1.2024).

[221] Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, recast, in OJ L48/1 23.2.2011.

[222] As amended by law no. 64 dated 20.5.2021.

[223] See A. GJETA, *Shoqeria e thjeshte midis Kodit Civil dhe legjislacionit tregtar. Problematika ne sistemin ligjor shqiptar,* cit. Lately the law no. 48/2014 transposing the Directive was subject of a ruling by the Albanian Constitutional Court. With the Decision no. 30 date 02.11.2022 the Court found inconstitutional a part of Article 511 par. 5 lett. d) but not on the

In terms of research and innovation, it's essential to highlight Chapter XIX of the Treaty on the Functioning of the European Union (TFEU), which contains research provisions. These provisions include specific association requirements, the European Research Area, National Reforms and the European Semester, "Open Science" and "Open Access" policies, the forthcoming "Horizon Europe" Program, Research Integrity, and more.

1. Enterprise and industrial policy in Chapter 20 of the framework of negotiations with the EU

The Industrial *acquis* encompasses three groups of policies aimed at enhancing competitiveness: enterprise policies, industrial policies, and sector-specific measures. The policy principles outlined in Chapter 20 are designed to facilitate structural adjustment, foster a conducive business environment, attract domestic and foreign investment, support small and medium enterprises (SMEs), promote research and development (R&D) and innovation, and encourage entrepreneurship activities. This chapter spans various policy areas horizontally, with the Ministry of Finance and Economy leading its implementation.

In the National Plan for European Integration 2023-2025, several ministries and state institutions responsible for industrial policies are identified, including[224]:

-Ministry of Infrastructure and Energy (MIE)
-Ministry of Education and Sports (MAS)
-Ministry of Tourism and Environment (MTM)
-Ministry of Agriculture and Rural Development
-Ministry of Justice
-Ministry of Defense
-Ministry of Culture
-Albanian Investment Development Agency (AIDA)
-National Agency of the Information Society
-National Agency of Scientific Research and Innovation (AKKSHI)
-Public Procurement Agency (APP)
-Competition Authority (CA)
-National Business Center (NCB)
-Extractive Industries Transparency Initiative (EITI) Secretariat
-General Directorate of Standardization

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basis risen from the *a quo* judge (Court of Tirana) on its contrariety with the obligations taken in the SAA agreement article 6 and 70 and Directive 2011/7/EU.

[224] National Plan for European Integration, 2023-2025, December 2022.

-General Directorate of Taxes
-General Directorate of Customs
-Bank of Albania (BSH)
-State Inspectorate of Labor and Social Services
-Postal and Electronic Communications Authority
-Institute of Statistics (INSTAT)

These institutions play crucial roles in implementing industrial policies and fostering economic development in Albania in alignment with EU standards and objectives.

Understanding EU integration as more than just an institutional agenda but as a dynamic and ambitious project driven by society, the role of civil society and active citizens becomes crucial in promoting European values and increasing public awareness about the impact and benefits of Albania's EU membership. Given the importance and scope of policies within this chapter, stakeholders such as small and medium-sized enterprises, business associations, chambers of commerce, innovation and business development centres, business incubators, the Confindustry, and trade unions play significant roles. Their involvement can help address the identified deficiency highlighted in the progress report of 2022[225], particularly the low level or lack of cooperation and coordination between governmental bodies and non-governmental organisations.

What has Albania's situation been up to this stage of integration?

As for Albania's situation in the integration process, according to the European Commission's progress report, the chapter on enterprises and industrial policies is considered relatively easy to adopt. However, during the period of 2010-2015, Albania made limited progress and efforts towards aligning with EU legislation in most sectors[226]. Currently, the rate of annual progress for Albania in this chapter is deemed limited[227], with the country being assessed as moderately prepared and having made some progress in industrial policies[228]. From 2020 to 2021, there has been no significant change in either the level of preparation or progress in this chapter.

According to the EU and its institutions, the following actions are recommended based on the 2022 progress report:

1. Addressing Key Challenges for the Business Environment:
   - Reduce regulatory burdens.

[225] SWD(2022) 332 final.
[226] According to the EU Policy, See more: http://eupolicyhub.eu (last accessed on 16.1.2024).
[227] SWD(2022) 332 final. Also, see Progress Report 2023 SWD(2023) 690 final.
[228]National Plan for European Integration 2023-2025.

- Increase participation in financing programs available to businesses.
- Strengthen efforts to combat informality and corruption.
- Increase business support services.
- Enforce the law for businesses initially.

2. Approval of Legislation:
- Approval of the law on innovation.
- Approval of the unified investment law.

3. Implementation of the Business and Investment Development Strategy:
- Ensure that the Business and Investment Development Strategy addresses challenges to competition and growth as highlighted in the joint recommendations of the 2022-2024 Economic Reform Programs.

4. Establishment of the Albanian Agency for Start-Ups:
- Establish the Albanian Agency for Start-Up to support and promote entrepreneurship and innovation[229].

Furthermore, the EU emphasises that competition and structural changes require not only a favourable environment for business creation and growth but also improvements in the environment in which Small and Medium Enterprises (SMEs) operate. The Strategy for the Development of Business and Investments 2021-2027, approved by the Decision of the Council of Ministers no. 4466, dated 30.07.2021, serves as the strategic framework for the development and support of enterprises and investments in the Republic of Albania. Its three main objectives are:

1. Attracting and Internationalizing Investments.
2. Development of SMEs, Entrepreneurship, and Innovation.
3. Human Capital Development.

The coordinating institutions of integration recognise the importance of aligning the Business and Investment Development Strategy (BIDS) 2021-2027 with comprehensive strategies and programs at both national and international levels. This alignment includes coordination with the Economic Reform Program domestically, the Action Plan for the Common Market 2021-2024 for the Western Balkans, and the EU Strategy for SMEs internationally.

The new strategy acknowledges the significant contribution of Small and Medium Enterprises (SMEs) and start-ups to fostering an innovative and knowledge-based economy. It emphasises their role in enhancing Albania's economic structure. However, the entrepreneurship and innovation ecosystem

[229] Approved with Decision of Council of Ministers no. 466 dated 30.7.2021 "On the approval of the Business and Investment Development Strategy, 2021-2027, and its action plan".

in the country is still in its early stages, partly due to limited access to finance and markets. To address this, Albania requires more financing programs and the development of new forms of financial support. Building a sustainable and interconnected ecosystem would provide favourable conditions for the growth of entrepreneurship and innovation in the country.

Implementing measures to create an inclusive business environment that promotes development and innovation policies, with a specific focus on SMEs, aligns with Chapter 20 of the EU *acquis*. By prioritising support for SMEs and fostering innovation, Albania can enhance its competitiveness, stimulate economic growth, and contribute to the overall prosperity of the country.

The business environment in Albania is marked by numerous challenges that hinder business development and growth at both micro and macroeconomic levels. Some of the characteristic obstacles include:

1. Administrative Burden:

- Businesses face a heavy administrative burden due to complex regulations, bureaucratic processes, and red tape.

- Compliance with various administrative requirements consumes significant time and resources, diverting attention and funds away from core business activities.

2. Complicated Processes:

- Business operations are hampered by complicated processes that involve multiple stakeholders and lengthy procedures.

- These processes often entail high transaction costs, delays, and inefficiencies, making it challenging for businesses to operate efficiently and competitively.

3. Low Competitiveness:

- The business environment suffers from low competitiveness, both domestically and internationally.

- Factors such as inadequate infrastructure, limited access to technology and innovation, and a lack of skilled labour contribute to the overall lack of competitiveness in the market.

4. Lack of Financial Resources[230]:

- Many businesses struggle to access sufficient financial resources to invest in growth and expansion.

- Limited access to credit, particularly for small and medium-sized enterprises (SMEs), constrains their ability to innovate, upgrade technology, and seize new market opportunities.

[230] T. HAZIZI, XH. SINANAJ, A. MADHI, *Young entrepreneurs in the natural tourism sector, their leadership model*, ShpresaPrint, Tirana, 2023.

5. High Level of Informality:

- A significant portion of economic activity operates within the informal sector, outside the formal regulatory framework.

- Informality undermines fair competition, tax revenues, and the overall effectiveness of regulatory measures, further exacerbating challenges in the business environment.

Improving the business environment in our country requires a multi-faceted approach that addresses various challenges. Here are some ways to enhance the business environment:

1. Streamlining Administrative Processes:

- Reduce the administrative burden by simplifying laws and regulations that businesses must comply with.

- Regularly review and update existing legal acts to ensure they remain relevant and minimise unnecessary costs for businesses.

2. Promoting the Use of Electronic Services:

- Encourage entrepreneurs to utilise electronic platforms, such as the e-Albania platform, to streamline administrative processes and reduce paperwork.

- Provide training and support to businesses to effectively use electronic services for their operations and transactions.

3. Investing in Education and Skills Development:

- Enhance education and skills development initiatives to equip entrepreneurs and workers with the necessary knowledge and skills to thrive in a competitive market.

- Collaborate with secondary and higher education institutions to offer formal and informal training opportunities, both in-person and online, to meet the evolving needs of businesses in the digital and green transition.

4. Ensuring Fair Competition:

- Enforce well-written laws and regulations to promote fair competition in the market.

- Implement continuous supervision, analysis, and evaluation mechanisms to detect and address instances of unfair competition.

- Take concrete measures to create a level playing field and prevent monopolistic practices that could hinder business growth and innovation.

By implementing these measures, Albania can create a more conducive environment for businesses to operate and thrive, fostering economic growth, innovation, and competitiveness in the country.

Chapter 20 in the path of integration, despite being mostly inclusive of policies and strategic planning, affects the industry's other chapters and criteria

like the internal market, competition, social policy, and employment. It is included in cluster 3 (competitiveness and inclusive growth), and Albania is assessed as moderately prepared in the 2023 progress report.

2. Development of tourism policy and legislation as a key factor in the Albanian integration path

Albania's tourism sector, renowned for its diverse natural landscapes and rich cultural heritage, plays a crucial role in the national economy. With the aspiration for closer integration with the European Union, aligning the tourism industry with European standards has emerged as a strategic imperative.

To invigorate its tourism sector, Albania has embarked on implementing a range of policies. These efforts encompass investments in infrastructure, the promotion of eco-tourism and cultural tourism, and enhancements in hospitality services. A strong emphasis is placed on sustainable development practices, prioritising the preservation of natural resources and cultural heritage. Additionally, the government has launched initiatives aimed at amplifying the global appeal of Albania's tourism offerings.

In the pursuit of European integration, Albania has endeavoured to align its tourism policies with EU standards, notably:

-Directive 2015/2302 on package travel and linked travel arrangements, focusing on consumer protection (DG JUST).

-VAT special scheme for travel agents as outlined in Articles 306-310 of the VAT Directive (DG TAXUD).

-Regulation No 80/2009 on a Code of Conduct for Computerized Reservation Systems (CRS) (DG MOVE).

This journey also involves adopting European best practices in tourism management, fostering cross-border collaborations, and leveraging EU-funded projects dedicated to tourism development. Currently, most EU initiatives in tourism are supported by COSME under objective 3, which aims to create a business-friendly environment by reducing administrative and regulatory burdens and encouraging innovative practices.

Regarding Albanian possibilities, key types of funding and initiatives that have been in place include:

- *Instrument for Pre-accession Assistance* (IPA): IPA funds have been allocated to support Albania's efforts to align with EU standards and prepare for future EU membership. Within this framework, funding has been provided

for projects related to tourism infrastructure, capacity building, and policy harmonisation[231].

- *COSME Programme*: The COSME program, aimed at enhancing the competitiveness of SMEs, has supported tourism-related businesses in Albania. This support includes access to finance, business development services, and initiatives to improve the quality and sustainability of tourism offerings[232].

- *European Regional Development Fund* (ERDF): Although Albania is not an EU member state, it has received support from the ERDF through cross-border cooperation programs with neighbouring EU countries. These programs have funded projects focused on improving tourism infrastructure, promoting cultural exchange, and enhancing regional connectivity[233].

- *Cross-border Cooperation Programs*: Albania has participated in several cross-border cooperation programs funded by the EU, such as the Interreg IPA CBC Programmes. These initiatives aim to strengthen cooperation and collaboration between Albania and neighbouring countries in areas such as tourism development, environmental protection, and cultural heritage preservation[234].

- *National Tourism Development Strategy*: EU funding has supported the implementation of Albania's National Tourism Development Strategy, which outlines priorities and actions to enhance the competitiveness and sustainability of the tourism sector. This strategy includes measures to improve infrastructure, promote sustainable tourism practices, and enhance the quality of tourism services[235].

Key challenges confronting European tourism include administrative hurdles, global competition, adapting to the digital revolution, and ensuring quality jobs and skill development. Conversely, Albania faces its own set of challenges, such as infrastructural limitations, environmental concerns, and the need for skilled workforce development. However, these challenges also present opportunities for growth and innovation, especially in sustainable tourism, digital marketing, and niche tourism markets.

To develop skills and competencies, Albania might focus on:

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[231] https://integrimi-ne-be.punetejashtme.gov.al/en/mbeshtetja-e-be-se/ipa/ (Last accessed on 16.1.2024).

[232] https://single-market-economy.ec.europa.eu/smes/cosme_en (Last accessed on 16.1.2024).

[233] https://ec.europa.eu/regional_policy/funding/erdf_en (Last accessed on 16.1.2024).

[234] https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/cross-border-cooperation_en (Last accessed on 16.1.2024).

[235] https://turizmi.gov.al/wp-content/uploads/2019/12/National-Tourism-Strategy-2019-2023-EN.pdf (Last accessed on 16.1.2024).

-The New Skills Agenda for Europe, promoting skill development, mutual recognition of qualifications, and supporting vocational and higher education to unlock the full potential of digital jobs, with tourism identified as a strategic sector for pilot actions[236].

-The Erasmus+ call for proposals for the establishment of a platform of key tourism stakeholders, with a budget of €4 million (2017-2020) for analysing trends and skills needs, developing actions, updating curricula, and promoting mobility.

-Furthermore, a COSME call for tender aims to support actions that enhance the image of tourism careers with a budget of €800,000 (2018) for communication and awareness-raising actions[237].

Looking ahead, Albania should continue to strive for integration with the European tourism ecosystem through strategic investments in technology, infrastructure, and human capital. The government's future tourism strategies ought to focus on:

-Aligning with EU standards to enhance Albania's allure as a tourism destination in Europe. Implementing regulations in terms of environmental objectives, digitalisation, data collection and monitoring;

-Boosting innovation in tourism services;

-Tackling the specific challenges of tourism destinations (climate mitigation and adaptation needs, infrastructure needed to improve sustainability, pressures on biodiversity, water resources or pollution);

-Specific strengths of tourist destinations in terms of natural resources, cultural heritage and the potential to give customers unique and authentic experiences;

-Inclusiveness and accessibility, including for persons with disabilities;

-Supporting SMEs and cultural and creative industries in their crucial role in the tourism ecosystem in terms of technical assistance and the funding needed to meet the objectives of the strategy.

Tourism is one of the critical sectors developed in Albania with precise planning and promotion from the government strategy. The sector has undergone significant transformation in policy, legislation and implementation of EU standards.

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[236] European Year of Skills 2023 - European Commission (europa.eu) (last accessed on 16.1.2024).

[237] https://ec.europa.eu/easme/en/cosme/cosme-open-calls-proposals (last accessed on 16.1.2024).

Thus, in regard to tourism, there is legislation in force that deals with consumer protection and the regulation of travel packages. For the purpose of this chapter, it is taken into consideration as progress, despite partial, in the adoption of the EU *acquis*. The law no. 93/2015 "On tourism"[238], as amended by law no. 114/2017 and law no. 101/2018 intends to regulate the operators that work in the tourism sector, their relationship with governing and monitoring governmental entities, the collaboration between state and regional competent agencies on tourism, as well as regulate the relationships between institutions and potential investors that are interested in developing tourism in accordance with the public interest.

This law is partially aligned with Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours[239], which is no longer in force, and Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC[240].

The law lays down provisions on general principles for developing tourism, institutions and agencies responsible for tourism policy and promotion, tourism planning, financial support, the definition and regulation of tourism structures categories, travel agencies and touristic operators, Albanian roadmap for tourism, statistics, education in tourism, and international collaboration.

Also, the law on tourism offers a comprehensive regulation of the tourism sector, addressing both public and private issues, yet it is interlinked with other sector legislation that affects tourism. Thus, there are relevant provisions on travel packages in the Law no. 9902 dated 17.4.2008, "On consumers protection", as amended[241]. These provisions seem to be in line with the regulation offered in the law on tourism.

The provisions of the law offer regulations for touristic packages, including rules and definitions of the tour operator[242] and travel package[243]. Article 54 of

[238] The precedent law on tourism in Albania was in force from 2007 to 2015. Law no. 9734 date 14.5.2007 "On tourism".

[239] OJ L 158, 23.6.1990, p. 59–64. The directive is replaced by Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC OJ L 326, 11.12.2015, p. 1–33.

[240] OJ L 192, 22.7.2011, p. 17–32. Regulation is consolidated in text available at http://data.europa.eu/eli/reg/2011/692/2020-01-01 (last access on 16.01.2024)

[241] Article 46 defines the contracts of travel packages and article 47 specifies the essential general and special obligations that the offeror of the package is bound to include.

[242] Article 4 point 20 of the Law no. 93/2015 states that the tour operator is "the natural and legal person who develops a physical commercial activity, which is related to the design and

the Law are laid down the essential obligations in the contract with a consumer-tourist, and Article 55 foresees the guarantees offered by law by the tour operator regarding a valid insurance policy. The provisions of the law regarding elements to be included in a travel package are regulated in detail with the Decision of Council of Ministers no. 65 dated 21.01.2009, which should be subject to revision due to the fact that it precedes the law of 2015. Yet, the basis for issuing the decision is Directive 90/314/EEC, and the Albanian legislator shall consider intervention to transpose Directive EU 2015/2302, which substantially redefines the travel package regulation[244].

We should bear in mind that, regarding the private law issues in the tourism sector, other essential provisions in the sector overlap protection with the law on tourism or that on consumer protection, like, for example, the protection offered in air transport by Regulation 261/2004, fully transposed by Albania.

3. Conclusions

In this section, we offered an analysis of Albania's planning and programming regarding chapter 20, which mostly deals with soft law. Yet, some provisions are instrumental in reaching the internal market as a whole, although the relevant EU *acquis* is foreseen in specific chapters within the process of integration. It is also interesting to note that *acquis* adoption is a fundamental criterion in order to reach the goals foreseen in each chapter. Many issues are

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organization of a pre-planned and promoted trip/package through catalogs, leaflets, TV ads, etc., being active for that product, both in sales to real agencies and in the case of direct sales to the client. The tourist operator shows the contracts with the suppliers of tourist services, pre-purchasing these services".

[243] Article 4 point 21 of the Law no. 93/2015 states that the travel package is "the prior combination of no less than two types of travel services, such as transportation and accommodation, or any tourist service for the purpose of the same trip or holiday, for more than 24 hours, if: a) these services are combined by an operator licensed tourist, at the request or with the choice of services by the tourist, before the end of the contract related to this combination of services; or b) regardless of whether separate contracts have been concluded with specific tourist service providers, these services: i) are sold at the same point of sale, through the same booking process; ii) are offered or sold at a single price; iii) are published or sold under the name "package" or a similar name; iv) are combined after the conclusion of the contract, by which the tour operator gives the traveler the right to choose between different options of travel services; or v) are purchased by licensed service providers, through related electronic reservation processes, where the name and other data of the traveler, necessary to close the reservation, are transferred to the other service providers in question, no later than the time when the first service is confirmed".

[244] As an example, see in Italian legislation M. MUSI, *Commento all'articolo 40 "Modifica di alter condizioni del contratto di pacchetto turistico"* in V. CUFFARO, A. BARBA, A. BARENGHI (EDS.), *Codice del Consumo e norme collegate*, Giuffre, Milano, 2023, pp. 1347-1359.

addressed, as a first step, through the correct adoption of the *acquis*, as we see in the case of tourism.

Furthermore, in a long process of negotiation, the timing of the legislator's intervention should be taken into consideration, as we noticed regarding the adoption of the legislation on travel packages and the changes that are made at the EU level itself. To address the issue of the transposition of up-to-date legislation, we are confident that the institutional framework of the Albanian government is prepared to identify the need for translation and transposition of the relevant in-force EU *acquis*. Yet, in some sectors, the intervention is transversal, covering many fields of legislation, like the law on tourism and the law for the protection of consumers.

Thus, the legislator's preparation should be higher in drafting and proposing legal acts that address the intervention in the same sector transversally and in a timely manner.

Actually, the screening process for cluster 3 is completed, and the issuing of the screening report is imminent. The progress report of 2023 for Albania finds Albania moderately prepared in the area of enterprise and industrial policy but still finds some progress on the implementation of legislation and fighting the informal economy and corruption. Yet, Albania should address challenges such as increasing funding for businesses, reducing regulatory burden, reducing informal economy and corruption, accelerating the *acquis* adoption on late payments, and adopting the investment law.

Chapter IV

Transport and infrastructure legislation in Albania under the EU integration process, ECAA, and Transport Community Treaties

Introduction

Adopting the *acquis* in the transport sector is the most critical and challenging task. The regulation of modes of transport is different, and the legislation is fragmented, without the possibility of reaching a unitary concept or principles. The EU transport *acquis* has the goal of reaching and improving the functioning of the internal market through harmonisation of legislation regarding offering services in a safe, secure, and efficient way within the EU market[245]. It is essential to understand that air transport services have been a pioneer in completing the Single Market in the EU since the adoption of the Third Package in 1992. On the other hand, due to its international nature, the transport legislation is highly impacted by duties the Member States have taken internationally.

Regarding Albanian legislation, the adoption of legislation in line with the *acquis* was often made not through legislative debate but as a need to implement EU regulations and directives with the assistance of EU experts. This process has offered the best models of legislation but, at the same time, has marginally considered the specifics of the Albanian legal system.

Through this section, we aim to offer a panorama of the implementation of the *acquis* in the field of transport law and also as an insight into how Albania has regulated the sector between international conventions, EU legislation and other state models, analysing the process of codification in specific.

Albania has adopted Codes for regulating rail, air and maritime transport; on the other hand, there are laws regulating road transport. These codes are considered an exhaustive regulation of their field of competence. Yet, there is evidence that these codes are far from being considered autonomous legislative

[245] In general, regarding *acquis* in transport sector see L. ORTIZ BLANCO, B. VAN HOUTTE (eds.), *EU regulation and competition law in the transport sector*, 2nd edition, 2017; M. COLANGELO, V. ZENO-ZENOVICH, *Introduction to European Union transport law*, 3rd edition, 2019.

acts within the legal system. Despite the correct adoption of the *acquis* with codes, there is a lack of secondary legislation that should actualise these codes and transpose relevant *acquis* in Albania's transport sectors.

For this Chapter, we will consider the approval and entry into force of the Maritime and Air Codes, their alignment with the EU legislation and international conventions, and the adoption of the Railway Code. The transport *acquis*, Chapter 14 of negotiations (Transport), covers the sectors of road transport, railways, inland waterways, combined transport, aviation, and maritime transport. It relates to technical and safety standards, security, social standards, state aid control and market liberalisation. On the other hand, it is linked with infrastructure development according to EU planning, Chapter 21 of negotiations (Trans-European Network), under the TEN.

1. The process of codification in the transport law in Albania: reasons for the process

In Albanian legislation, there are considered two breaking points within the legal system and its changes. The first one is the reform made after the fall of the communist regime in the '90. There was a first attempt, under the supervision of the CMI, to draft the first Albanian Maritime Code, but it was unsuccessful. On the other hand, regarding air law, the first law regulating the sector, law No. 7877, dated 30.11.1994, "On Albanian Civil Aviation". Thus, a codification wasn't opted for in the air sector. Road transport was also regulated by state law with the law no. 8308 date 18.03.1998 "On road transport", amended several times and still in force. In the rail sector, the legislator didn't intervene in the first years of transition, maintaining in force the law no. 7224 date 22.06.1988 "Rail Transport Code of the Socialist Republic of Albania" until the adoption of the law no. 9317 date 18.11.2004 "Rail transport code of the Republic of Albania".

The regulation offered by these laws was the first set of rules to regulate the transport sector after the fall of the communist regime, according to the principles of a free market economy. Yet, the regulation offered was in line with the duties taken by Albanians internationally. On the other hand, this regulation does not reflect the best models of legislation or the recent trends and changes in the EU transport legislation[246].

The second relevant moment that affected the codification process was signing the Stabilization and Association Agreement with the EU, ratified with law no. 9590 date 27.07.2006 and its provisions on achieving the rule of law

[246] The EU is the most important economic partner of Albania and it is reflected even in the transport sector.

through adopting the *acquis communautaire*, as a paramount duty of the Albanian part to fulfil its responsibilities before the adhesion in the EU. In this agreement, the art. 70 "recognise the importance of the approximation of Albania's existing legislation to that of the Community and its effective implementation. Albania shall endeavour to ensure that its existing laws and future legislation shall be gradually made compatible with the Community *acquis*. Albania shall ensure that existing and future legislation shall be properly implemented and enforced". Regarding the transport services supply, article 59 of the agreement lays out the duties of each party in order to guarantee the free provision of transport services[247]. Yet, there are other provisions of the agreement that Albania needs to address on its path toward EU integration. The provision on the transport sector is deemed crucial due to

[247] Article 59 states that "with regard to supply of transport services between the Community and Albania, the following provisions shall apply: 1. With regard to inland transport, Protocol 5 lays down the rules applicable to the relationship between the Parties in order to ensure, particularly, unrestricted road transit traffic across Albania and the Community as a whole, the effective application of the principle of non-discrimination and progressive harmonisation of the Albanian transport legislation with that of the Community. 2. With regard to international maritime transport, the Parties undertake to apply effectively the principle of unrestricted access to the market and traffic on a commercial basis, and to respect international and European obligations in the field of safety, security and environmental standards. The Parties affirm their commitment to a freely competitive environment as an essential feature of international maritime transport. 3. In applying the principles of paragraph 2: (a) the Parties shall not introduce cargo-sharing clauses in future bilateral agreements with third countries; (b) the Parties shall abolish, upon the date of entry into force of this Agreement, all unilateral measures and administrative, technical and other obstacles that could have restrictive or discriminatory effects on the free supply of services in international maritime transport; (c) each Party shall grant, inter alia, no less favourable treatment for the ships operated by nationals or companies of the other Party than that accorded to a Party's own ships with regard to access to ports open to international trade, the use of infrastructure and auxiliary maritime services of the ports, a well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading. 4. With a view to ensuring a coordinated development and progressive liberalisation of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in air transport shall be dealt with by special Agreements to be negotiated between the Parties. 5. Prior to the conclusion of the Agreements referred to in paragraph 4, the Parties shall not take any measures or actions which are more restrictive or discriminatory as compared with the situation existing prior to the date of entry into force of this Agreement. 6. Albania shall adapt its legislation, including administrative, technical and other rules, to that of the Community existing at any time in the field of air, maritime and inland transport in so far as it serves liberalisation purposes and mutual access to markets of the Parties and facilitates the movement of passengers and of goods. 7. In step with the common progress in the achievement of the objectives of this Chapter, the Stabilisation and Association Council shall examine ways of creating the conditions necessary for improving freedom to provide air and inland transport services."

the nature of the sector as an international industry and as crucial for establishing a common market[248].

We must mention here the fundamental importance of the principle of subsidiarity in the transport sector. However, it is a principle of which it is difficult to measure and establish the extent. The EU, through subsidiarity, pursues its objectives by removing obstacles to the free provision of services and the implementation of free competition. In this way, it affects the sphere of competence of the individual States (descending vertical subsidiarity) in matters traditionally reserved for state competence, such as ownership, security, and public services that are particularly relevant in the port or airport sector "where the most marked reveals the conflict between public interest and liberalisation"[249].

Thus, the integration process in the EU constitutes the main path for Albania, and adopting the *acquis* is one of the most important tasks to perform, being reflected in the transport sector as well.

2. The Albanian legislative framework in the transport sectors

The legislative framework that regulates transport in Albanian is shaped according to the EU legislation. The adoption of each singular act shall be seen in correlation with the fulfilment of the tasks under SAA with the EU and the adoption of the *acquis,* as well as with the negotiation process and autonomous international conventions like the European Common Aviation Area[250] or the creation of the Transport Community Treaty, regarding regulation and market integration in the sectors of road, railroad, inland waters and maritime transport[251]. In different transport modes, the legislator has chosen to adopt Codes such as Air Rail or Maritime Codes in order to regulate specially and

[248] P.J. SLOT, *Sectorial policies (Transport)* in *The law of the European Union and the European Communities*, (eds.) A. MCDONNELL, P.J.G. KAPTEYN, K. MORTELMANS, C.W.A. TIMMERMANS, Kluwer Law International, IV ed., 2008, p. 1172. The Author emphasizes the nature of transport as an international sector.

[249] A. XERRI, *Il principio di sussidiarietà nel diritto dei trasporti* in *Trasporti: Diritto, Economia, Politica*, n. 109, 2009, p. 43-44. *Amplius* on the subsidiariety principle regarding infrastructures see S.M. CARBONE, F. MUNARI, *Principio di sussidiarietà e disciplina comunitaria di porti, aeroporti ed infrastrutture del trasporto* in *Diritto dell'Unione Europea*, n. 3, 2002, p. 431 e ss.

[250] Decision of the Council and of the Representatives of the Member States of the European Union 2006/682/EC of 9 June 2006 (OJ L 285, 16.10.2006, p. 1–2)

[251] Council Decision (EU) 2019/392 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Treaty establishing the Transport Community (OJ L 71, 13.3.2019, pp. 1-4). Transport Community Treaty published in OJ L 278 of 27.10.2017, p. 3. Ratified in Albania with Law no. 8/2018 "On ratification of the treaty that constitutes the Transport Community"

with autonomy the affected sectors.

2.1 The regulation in the maritime sector

The maritime legislation in Albania lies in the Maritime Code, adopted in 2004, and several secondary acts and specific laws that regulate issues like security and maritime infrastructures in detail. The Maritime Code, with its 403 articles, is to be considered complete and exhaustive in the regulation of maritime navigation. It was drawn based on the best models and under the guidance of foreign experts.

Other acts that are important, besides the laws that ratify the international convention of the sector, are Law no. 168, dated 30.10.2013, "On security in ships and ports", law no. 10109 date 02.04.2009, "On Maritime Administration of the Republic of Albania", law no. 9130 date 08.09.2003 "On Port Authority". The latest represents the most important innovation in the whole maritime sector.

The Law No. 9130 of 2003 disposes of Port Authorities and regulates their functioning. Approved one year before the entry into force of the Maritime Code, we must assume that it was totally in line with the upcoming code. The scope of this law is to implement a strategy for developing the infrastructure, superstructure, finance and human resources of Albanian ports. Furthermore, it has the scope to foster competition and economic development through direct private investments in order to reduce public investments. To reach this scope, the main objective was shifting ports from service ports to landlord ports, and this law determined the form of organisation, rules for functioning and administering the assets, and relations with operators, State organs and port authority representatives.

Thus, regarding maritime transport, the legislation is up to date, although many ports are not yet functioning as landlord ports but as state-owned companies. Regarding special legislation, several other pieces of special legislation shall be harmonised with the EU *acquis*, such as the EU maritime security *acquis*, the internal market regarding maritime transport services, ports policy, competition issues or state aid legislation. Still, the Maritime Code represents a comprehensive piece of legislation that regulates maritime affairs in their totality, which needs to be reshaped after the adoption of the *acquis* during negotiations. Actually, some of the *acquis* is transposed in total[252]

[252] Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ EU L 131, 28.5.2009); Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ EU L 131, 28.5.2009, p. 57); Regulation (EC) 336/2006 of the European Parliament and of the

or partially[253].

Thus, despite the above legislative framework, more should be done regarding EU *acquis* transposition[254] in Albania regarding maritime

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Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (OJ EU L 64, 4.3.2006, p. 1); Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over (OJ EC L 34, 9.2.1998, p. 1); Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ EU L 131, 28.5.2009); Commission Implementing Regulation (EU) No 651/2011 of 5 July 2011 adopting the rules of procedure of the permanent cooperation framework established by Member States in cooperation with the Commission pursuant to Article 10 of Directive 2009/18/EC of the European Parliament and of the Council (OJ EU L 177, 6.7.2011, p. 18); Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council (OJ EU L 328, 10.12.2011, p. 36); Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ EU L 129, 29.4.2004); Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ EU L 310, 25.11.2005, p. 28); Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ EU L 323, 3.12.2008, p. 33); Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006 (OJ EU L 329, 10.12.2013, p. 1); Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels (OJ EC L 113, 30.4.1992, p. 19).

[253] Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ EU L 283, 29.10.2010, p. 1); Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships (OJ EU L 123, 17.5.2003, p. 22).

[254] There is a need to transpose the following *acquis*: Regulation (EU) No 1255/2011 of the European Parliament and of the Council of 30 November 2011 establishing a Programme to support the further development of an Integrated Maritime Policy (OJ EU L 132 5.12.2011, p. 1); Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ EC L 364, 12.12.1992, p. 7); Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ EC L 378, 31.12.1986, p. 1); Council Regulation (EEC) No 4058/86 of 22 December 1986 concerning coordinated action to safeguard free access to cargoes in ocean trades (OJ EC L 378, 31.12.1986); Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ EC L 378, 31.12.1986, p. 14); Council Decision 2012/22/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (OJ EU L 8, 12.1.2012, p. 1); Council Decision

2012/23/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof (OJ EU L 8, 12.1.2012, p. 13); Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ EU L 131, 28.5.2009); Commission Decision 2009/491/EC of 16 June 2009 on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment (OJ EU L 162, 25.6.2009, p. 6); Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ EU L 131, 28.5.2009); Commission Regulation (EU) No 788/2014 of 18 July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) No 391/2009 of the European Parliament and of the Council (OJ EU L 214, 19.7.2014, p. 12); Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ EC L 208, 5.8.2002, p. 10); Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ EU L 257, 28.8.2014, p. 146); Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ EU L 131, 28.5.2009, p. 24); Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ EC L 188, 2.7.1998, p. 35); Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ EU L 163, 5.6.2009); Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ EC L 138, 1.6.1999, p. 1); Regulation (EU) No 530/2012 of the European Parliament and of the Council of 13 June 2012 on the accelerated phasingin of double-hull or equivalent design requirements for single-hull oil tankers (OJ EU L 172, 30.6.2012, p. 3); Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonized requirements and procedures for the safe loading and unloading of bulk carriers (OJ EC L 13, 16.1.2002, p. 9); Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (OJ EU L 131, 28.5.2009, p. 128); Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (OJ EU L 255, 30.9.2005, p. 11); Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ EC L 332, 28.12.2000); Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships (OJ EU L 115, 9.5.2003, p. 1); Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security (OJ EU L 98, 10.4.2008, p. 5); Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States (OJ EU L 255, 30.9.2005, p. 160); Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) (OJ EC L 167, 2.7.1999, p. 33); Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning

transport[255]. The nature of a Code implies that the reform should be comprehensive and with many legislative efforts. In the WB region, Serbia is the most advanced country in the adoption of the *acquis* in the maritime sector. Maybe it is easy due to the lack of maritime activities, and there are no frictions with stakeholders or interested subjects. Identifying the relevant *acquis* and measuring the grade of approximation for each WB candidate country from the Transport Community is of vital importance in order to boost the integration process, as well as to find the real need for intervention from the EU institutions in the sector.

2.2 The process of codification regarding rail transport

In the rail sector, the process of codification had a different path since rail transport in Albania was underestimated and, after communism, was degraded into a residual means of transport. In the first era of codification, corresponding with 2002-2005, the Albanian legislator adopted a Code of Rail transport that repealed the old Law no. 7224 of 1988, "Rail Transport Code of the Socialist Republic of Albania"[256]. The Code of 2004 aims to set an up-to-date piece of legislation to renew the interest of investors within the railway sector and to revitalise transport by rail[257] through the adoption of a first market opening and introduction of the notion of unbundling between infrastructure management

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the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports (OJ EC L 14, 20.1.2000, p. 29); Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ EU L 124, 20.5.2009, p. 30); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ EU L 334, 17.12.2010, p. 1); Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (OJ EU L 165, 30.6.2010, p. 1); Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ EC L 208, 5.8.2002, p. 1); Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ EC L 324, 29.11.2002, p. 1).

[255] Transport Community, Action Plan and the EU acquis, 2023, pp. 60-61.

[256] Law no. 9317 date 18.11.2004 "Rail transport Code of the Republic of Albania"

[257] The scope of application set in article 1 provides that "The Railway Code of the Republic of Albania has as its object the determination and establishment of general rules and principles in the field of rail transport and of activities related to it".

and rail transport operators. Yet, the rail sector remained underestimated, and railways were organised directly through state companies.

In 2016, due to the obligations mentioned above within the process of integration in the EU and the will to enhance and improve the railway sector in Albania, the legislator adopted a new Code of Rail Transport that repeals the Code of 2004.

The new Railway Code aims to harmonise the Albanian legislation to the EU *acquis* partially and, in particular, with Directive 2012/34/EU "On the creation of a singular railway European zone", Directive 2016/798 "On railway safety", Directive 2016/797/EU "On interoperability of the railway system within European Union", Directive 2007/59/EC, Regulation 2016/976/EU, Regulation 1370/2007/EU, Regulation 1371/2007/EU. Furthermore, in its aims fixed in article 2 the Code foresee to "a) establishment of a favorable and sustainable legal framework for the promotion and development of modern rail transport in the territory of the Republic of Albania; b) the development of efficient and competitive rail transport with other modes of transport, thereby creating the conditions for railway undertakings to have the status of independent operators and to adapt to market needs in accordance with good commercial practices; (c) the organization and functioning of the railway sector on the basis of the principles of separation of management and accounting separation between railway infrastructure and railway transport activities; ç) development and improvement of railway safety and market access for railway transport services through: i) the establishment of a Railway Regulatory Authority, a Railway Safety Authority, a Railway Licensing Authority and a National Rail Accident and Incident Investigation Authority, clearly defining the way in which they interact; (ii) developing and implementing common security objectives and common security methods, with a view to harmonizing national rules". At the same time, this article fixes the principle that drives the EU rail sector as interoperability, unbundling or safety operations and aims to be a programmatic rule for the development of the rail sector in Albania when it aims to "establish a favourable and sustainable legal framework for the promotion and development of modern rail transport" in the Albanian territory (art. 2 lett. a).

Furthermore, in article 4, the legislator clearly states its aim to harmonise Albanian legislation to the EU *acquis* when it provides that "1. Rail transport in the Republic of Albania shall be regulated by the provisions of this Code and the laws and regulations adopted pursuant thereto, in accordance with European Union and international law in this field. 2. The norms and regulations of this Code shall be governed by the principle of railway safety in

motion, the freedom to provide railway services, the interoperability of movement on the railway, the principle of the open and competitive, transparent and non-discriminatory market". Yet, in 2019, we do not have the secondary legislation or bylaws to implement the Rail Transport Code. In the second term of 2019, the Government launched a public consultation on different legislative act drafts regarding the creation of the Authority of Regulation of Railways, the creation of the Authority of Railway Security, etc. The draft proposals are entirely in line with the *acquis communautaire* and will give implementation to the provisions of the Code of Rail Transport of 2016. Thus, in 2021, deemed as "the railroad year", the laws that realise the implementation of the Rail Transport Code were adopted. On the same day, 1 July 2021, the Albanian legislator adopted a package of laws: Law no. 88/2021 "On constitution of Railway Safety Authority", Law no. 89/2021 "On constitution of the Railway Regulatory Authority", Law no. 90/2021 "On unbundling of HSH (Albanian Railways)", Law no. 91/2021 "On constitution of the National Authority of Railway and Maritime Accident and Incident Investigation". These laws were adopted a year after the opening of EU negotiations for Albania in March 2020, and the aim is to provide partial alignment with the relevant EU *acquis* in the rail sector.

Law no. 88/2021 constitutes the Railway Security Authority, a juridical entity established in Durres that acts and functions as an independent agency[258]. It has a managing council, whose members are appointed by the ministry responsible for transport, the Competition Authority, the Prime Minister's Office, and the Faculty of Mechanical Engineering of the Polytechnic University of Tirana. It also has an executive director appointed by the Minister responsible for the transport sector. The competencies of the Agency are in the field of security, safety and interoperability, also as oversight in practice on these issues (art. 5). This law offers a partial alignment with Directive (EU) 2016/798 of the European Parliament and Council of 11 May 2016 On railway safety, as recast[259].

Law no. 89/2021 constitutes the Railway Regulatory Authority. It lays the provisions for its functioning and competencies in the protection of investors in the railway system, granting stability, transparency and reliability of the rail market, as well as granting competition in the market. The Authority is a juridical person, established in Durres, which acts and functions as an

[258] According to article 25 of Law no. 88/2021 the Directorate of Railroad Inspections cease functioning and the competencies and archives passes to the new Agency.

[259] OJ L 138, 26.5.2016, p. 102–149.
Available at http://data.europa.eu/eli/dir/2016/798/2020-10-23 (last access on 5.1.2024)

independent agency, organised with a managing council, with members appointed by the Prime Minister upon the proposal of the Minister responsible for the transport sector and an executive director, appointed by the Minister.

The Law no. 90/2021 actualises the division into four different joint stock companies of the "Albanian Railway" company. These are: Passenger Transportation Railways joint-stock company, Goods Transportation Railways joint-stock company, Vehicle Maintenance of Railways joint-stock company and Railway Infrastructure joint-stock company. With this law, Albania actualises the unbundling of the operators in order to open the market and address monopolistic issues within competition law.

These laws offer a partial alignment with Directive 2012/34/EU of the European Parliament and Council of 21 November 2012 Establishing a single European railway area, as recast[260].

Law no. 91/2021, "On the constitution of the National Authority of Railway and Maritime Accident and Incident Investigation", was the final part of the "rail package" in order to address as fast as possible the constitution of agencies for actualising the Rail Code of 2016 in the process of integration under Chapter 14. The agency is a juridical person with functional and decisional independence but is under the supervision of the Ministry responsible for transportation.

The creation of an investigation agency for both rail and maritime transport, in a first doctrinal comment, may be seen as a poor translation[261] and adoption of the EU transport *acquis*, made only to fulfil the checklist of the implementation in practice of the Rail Code and to report it to the European Commission within the process of integration.

In order to better regulate the sector, these laws should be reconsidered within a short time, maybe with the commitment to fully align with the EU *acquis*[262]. The addressing of these issues will be dealt with now within the framework of the Transport Community Treaty, as well as in the light of the findings of the first screening report of the European Commission on the

[260] OJ L 343, 14.12.2012, p. 32–77.
Available at http://data.europa.eu/eli/dir/2012/34/2019-01-01 (last access on 5.1.2024)

[261] It suffices to underline the translation and formulation of the provision in article 6.2 of the law where it is stated that "AKIAIHD is chaired from the chairman of the AKIAIHD, which is the principal investor". Instead of "investor" should be translated "investigator".

[262] See Annex I.2 – Rules applicable to rail transport in Transport Community, Action Plan and the EU acquis, 2023, pp. 150-166. There are 78 EU relevant acts to transpose in Albanian legislation. The above-mentioned reform offers partial alignment in 38 acts and a total alignment in 1 act (Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (OJ L 165, 30.6.2010, p. 1).)

cluster, which includes the transport chapter (cluster 4 – Green agenda and sustainable connectivity), which is yet to be issued.

2.3 Regulation of the air transport sector

The air sector in Albania was governed by the Air Code of the Republic of Albania, adopted with Law no. 10040 dated 22.12.2008. The Air Code, different from the Maritime Code or the first Rail Code of 2004, was adopted after the signature of the Stabilisation and Association Agreement. Thus, this piece of legislation offers a better harmonisation with the EU legislation of the sector and, indeed, was to be considered one of the best codes within the Albanian legal system.

The other reason for the success of the Air Code is the intensity of commercial relations between the EU and Albania in this sector. The experience and expertise offered in drafting the Air Code were greater, and the duties of the Republic of Albania in front of the EU partners were mainly met[263].

The institutional framework includes the Civil Aviation Authority[264], the National Agency for Accident Investigation[265], and the reform of the National Agency for Air Navigation Traffic as a public company.

Yet, the Government proposed a draft of a new Air Code that brings few substantive changes in regulating the air transport sector in better alignment with the EU *acquis*. Thus, according to the Government in the relation that follows the proposed draft, this Code adopts the mandatory regulation of Reg. 2018/1139 of the EU Parliament and Council[266] and is in line with the relevant *acquis*[267]. The new Air Code was adopted with Law no. 96/2020, "Air Code of

[263] See in general A. GJETA, *La disciplina della gestione aeroportuale e dei servizi aeroportuali nel diritto dei trasporti europeo e nazionale*, Libreria Bonomo Editrice, Bologna, 2015.

[264] Law no. 10233/2010

[265] Decision of Council of Ministers no. 686/2010

[266] A precedent draft of Albanian Air Code was brought in Albanian Parliament in 2018 but it was withdraw in order to make changes for adopting the new Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 in OJ L 212, 22.8.2018, p. 1–122.

[267] Furthermore, there is partial alignment with Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3–20, as recast; Regulation (EC) No

the Republic of Albania", repealing the Code of 2010, bringing further alignment with EU relevant *acquis*. Furthermore, the new Code has made progress in adopting the acts needed under the ECAA agreement[268][269]. The latest is a multilateral agreement adopted to include Albania and the Western Balkans as a whole in a Single European Space, when there was initiated a project of a multilateral agreement between EU and border States, mainly Western Balkans States[270], in the same pattern in which the EU is moving lately with the Transport Community Treaty in the other modalities of transport and TEN infrastructures. The multilateral agreement consists of a "basic agreement" with 34 articles and a series of annexes and protocols. Annexe 1

1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system, OJ L 300, 14.11.2009, p. 34–50; Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, p. 35–50; Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002, OJ L 97, 9.4.2008, p. 72–84.

[268] Decision 2006/682/EC of the Council and of the Representatives of the Member States of the European Union meeting within the Council of 9 June 2006 on the signature and provisional application of the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA).

Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area, OJ L 285, 16.10.2006, p. 1–46.

[269] As in the regard to the ECAA agreement the comprehensive assessment of the EU Commission in the 2012 Communication is the sequent: "Neighbouring countries have done a great deal to align their regulatory framework with EU legislation in key areas such as aviation safety, security, air traffic management, environment, passenger rights, economic regulation and social aspects. This is in the interest of the consumers and aviation industry both of the EU and the neighbouring countries. The EU gives significant assistance to neighbouring countries in supporting them to align their legislation with EU rules. Both sides have agreed to grant additional traffic rights to apply once the process of regulatory harmonisation has been completed. In the case of the Western Balkans, the early implementation of EU aviation rules under the ECAA Agreement will also contribute to their efforts in the context of the EU accession process" COM(2012) 556 final, p. 17.

[270] See on the topic A. GJETA, *EU external aviation policy and the Western Balkans: what a future for the European Common Aviation Area?* in *Proceedings of Conference in Durres*, 2014.

enumerates the applicable EU *acquis*, and there are also various executive protocols that establish the transition phase and the *acquis* to be implemented (article 1.3 ECAA agreement). The objective of the agreement is the adoption by the signatory countries of the EU *acquis* in the field of air transport, such as liberalisation of access to the air services market and prices; the legislation on ground handling services and the slot allocation; regulatory profiles of safety and security; the legislation regarding the management of air traffic and the creation of the Single European Sky and its functional air blocks. The aim is to create a common space which must be based «on free access to the market, on freedom of establishment, on equal conditions of competition and on common rules, also in the sectors of safety and protection of air navigation, in the social and environmental sector" (art. 1.1 of the ECAA agreement)[271].

The codification process in the air sector was completed with the Code of 2020, which, after passing all the legislative *iter*, entered into force, bringing a higher grade of harmonisation with the EU relevant *acquis*.

Regarding implementation, we notice better commitment and preparation from the Albanian institutions after the opening of negotiations with the EU and during the screening process in 2021-2023. It suffices to underline that, i.e. regarding passengers' rights in air transport, there is a serious improvement which can be noticed from the website of the Albanian Civil which is lately adjourned and offered through passengers' friendly complaint forms. These forms contain all the information regarding Regulation 261/2004/EU as transposed by Ordinance of Minister of Transport and Infrastructure no. 1 dated 26.2.2013[272].

2.4 Regulation in road transport sector

Law 8308 dated 18.3.1998 "On Road Transport", as amended, regulates road transport activity in the Republic of Albania. This law has been amended several times, shifting competencies between local and national government bodies, especially in the area of licensing for public transport[273]. Thus, road transportation is regulated by state law and has been amended several times,

[271] See A. GJETA, *Il codice del diritto aereo Albanese. Prime considerazioni in merito a una codificazione ispirata al diritto uniforme e comunitario*, in *Rivista del Diritto della Navigazione*, 2014, no. 2, pp. 749-785.

[272] Available at https://www.aac.gov.al/informacion-per-te-drejtat-qe-gezoni-kur-udhetoni-me-transport-ajror/ (Last Access on 5.1.2024)

[273] Amendments were made through Law no. 8908 of 2002; Law no. 9096 of 2003; Law no. 9373 of 2005; Law no. 9760 of 2007; Law no. 10137 of 2009; Law no. 10302 of 2010; Law no. 21 of 2013; Law no. 37 of 2014; Law no. 118 of 2012 and lately Law no. 10 of 2016, related the latest to the public transport and its licencing.

and there is no foreseen adoption of a Code in this sector. The reasons are to be searched in the passivity of the legislator and his will to regulate the industry despite it was several times rising in doctrine the need for a new piece of legislation that had to consolidate the legislation of road transport in Albania[274].

Finally, Law 10/2016 has introduced substantial changes, especially for public transport. The accompanying reports in parliament state that the aim is to "improve the activity of inland passenger transport, align legislation with EU legislation and update legislation with new acts that have entered into force. The main objective of the additions and changes proposed in Law No. 8308, dated 18.3.1998 "On Road Transport", as amended, is the reorganisation of the market for the carriage of passengers by bus on regular routes within the country, as well as the approximation of the legislation of the country with that of the EU"[275]. The Government also states that it seeks to cope with the needs brought by law 115/2014 "On the administrative-territorial division of local government units in the Republic of Albania".

Secondary legislative acts were primarily issued in 2020 in order to implement the legislation on road transport in accordance with the EU *acquis*, fastening the pace of implementation of *acquis* after the opening of negotiations of Albania with the EU in 2020. Thus, with Ordinance of Minister of Infrastructure and Energy no. 8 dated 19.12.2019, " On criteria, rules and documentation for issuing of licenses, authorisations and certificates for the exercise of the activity in international road transport of passengers"[276], Order of the Minister of Transport and Infrastructure no. 3616/3 of 20.7.2017 "On the rules of implementation of intelligent systems in the field of road transport and

[274] A. GJETA, *Transporti publik urban në Shqipëri: rruga drejt një rregullimi ligjor përfundimtar?* in Proceedings of Conference Elbasan, 2017.

[275] Relation on Draft-Proposal "On some changes and amendments inlaw no. 8308, date 18.3.1998, "On road transports", ammended". Available at www.parliament.al (last access on 5.1.2024). *Raporti i Komisionit të veprimtarive prodhuese*. *Raporti i Komisionit për Integrimin Europian*.

[276] Offering partial alignment of: Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ L 300, 14.11.2009, p. 51–71; Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, OJ L 300, 14.11.2009, p. 88–105, as recast; Commission Regulation (EU) No 361/2014 of 9 April 2014 laying down detailed rules for the application of Regulation (EC) No 1073/2009 as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98, OJ L 107, 10.4.2014, p. 39–55.

connection with other modes of transport"[277] and the relevant strategy for implementation[278] and Ordinance of the Minister of Infrastructure and Energy no. 8 date 31.12.2020 " On criteria, rules and documentation for issuing of licenses, authorisations and certificates for the exercise of activity in international road transport of goods"[279].

It will be likeable that, in the same pattern as the momentum taken before the opening of negotiations, the Albanian legislator takes into serious consideration the recast of the law that regulates road transport in Albania and proposes an up-to-date piece of legislation before the opening benchmarks for the chapter 14 are set.

3. The singularity of the process of codification in the transport sector

The codification process always involves difficulties, starting from the assumption that it must culminate with an organic, complete, and, in principle, tendentially autonomous corpus within the legal system[280]. Usually, Codes are complete and exhaustively regulate a certain area of law.

Transport law, due to its nature as a legislative corpus destined to regulate a predominantly international economic activity such as navigation and transport, for the most part, is regulated by legislation drawn up precisely at the international level[281]. Thus, national legislation is mainly affected by

[277] Offering partial alignment of Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport, OJ L 207, 6.8.2010, p. 1–13, recast.

[278] Order of Minister of Infrastructure and Energy no. 185 of 18.6.2020 "On implementation of the sectoral strategy for the inteligent systems in road transport".

[279] Offering partial alignment with: Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ L 300, 14.11.2009, p. 51–71; Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market, OJ L 300, 14.11.2009, p. 72–87, as recast; Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road, OJ L 33, 4.2.2006, p. 82–85.

[280] The autonomy enjoyed by the Italian navigation code in respect to the common law is well known. P. P. C. HAANAPPEL, *The law and policy of air space and outer space: A comparative approach*, The Hague, 2003, XIII.

[281] It must be emphasized that the "international" nature of transport is a necessary condition for the uniform law conventions to be applied. In this regard, a division must be made between international instruments that only govern cases that have the character of "internationality" and the other instruments that also apply to situations that are internal to a given national order. See on the case of conventions as sources of law S. ZUNARELLI, M.M. COMENALE PINTO, *Manuale di diritto della navigazione e dei trasporti*, I, Padova, 2009, 50 ff.

international law. Yet, Albania has a singular regulation in the transport area since three codes have been adopted, and only road transport is regulated by law.

These legislative pieces are tendentially autonomous not only regarding general law but even other modes of transport, making the process of interpretation very fragmented and missing the opportunity to find a common and unitary lecture on the notion of transport in the Albanian legal system.

Comparatively, is singular the example of the Italian Navigation Code that includes both parties, maritime and air navigation, under the same piece of legislation[282]. In the specific Italian case, the codification carried out in the past weighs heavily, and decodification was constantly auspicated for a long time by navigation law scholars[283], who have always hoped for a process of profound and organic reform[284]. Unlike other countries with a unitary code system in transport legislation, Albania has opted for a complete division of navigation discipline, keeping distinct air, rail, and maritime legislation[285], like in many other legal systems, especially European States.

Lastly, it can be argued that future legislative developments in aeronautical, railway, and maritime law may lead to the embrace of setting up a transport law that includes all forms of the implementation of the transport phenomenon,

[282] In this regard, reference is made to the provisions of the Italian navigation code, the result of the work of the Neapolitan School and its founder, Antonio Scialoja, who advocated autonomy, specialty and the unity of navigation, maritime and air law. The latter was in truth an elite transport and accessory to maritime navigation, and for this reason there was only a single code. For a reconstruction of the doctrinal debate, in Italy and abroad, see: S. ZUNARELLI, M.M. COMENALE PINTO, *Manuale di diritto della navigazione e dei trasporti*, vol. I, Cedam, Padova, 2009, pp. 28-30; M. CASANOVA, M. BRIGNARDELLO, *Diritto dei trasporti, Infrastrutture e accesso al mercato*, Vol. I, Giuffrè, Milano, 2011, pp. 5-12.

[283] M. GRIGOLI, *Il diritto della navigazione fra codificazione e decodificazione*, tomo I, ESI, Napoli, 1993, p. 6-7.

[284] M. GRIGOLI, *Il diritto della navigazione fra codificazione e decodificazione*, Tomo II, ESI, Napoli, 1994, pp. 405-413. The author emphasis the "macroscopic delays and striking inadequacies in the structure of matter" and that only in recent times "has been made a conspicuous, but inorganic, emanation of legislative and regulatory provisions, in the laborious, and often clumsy, attempt to recover the many lost opportunities in starting an incisive reforming work of the by now anachronistic regulatory framework, crystallized in the ancient codified regime". The Author criticizes the position taken by Italy in the renewal process to which the uniform and supranational legislation has been subjected and puts the emphasis on the limits of the internal legislation to regulate the nautical phenomenon.

[285] The Albanian maritime navigation code precedes the aerial one by 5 years (Law no. 9251/2004) It should be noted that even in that case the legislative technique was similar, trying to introduce international legislation within the maritime navigation code and, at the same time, expressly stating (Article 5) the supremacy of the transposed international law.

departing from the mere phenomenon of the nautical operations as a characterising element of the discipline[286].

On the other hand, the leading model for the Albanian legislator is the EU Member States' regulation and drafting of legislation compliant with the EU *acquis*. The latest is composed of a vast number of legislative acts to be transposed within the Albanian legal system that will make it hard for Albanian legislators to develop a model of unitary transport law.

4. The transport sector in the EU negotiations framework, other Treaties with the EU, and the way ahead.

The transport *acquis* is vast and presents difficulties in translation and implementation, directly affecting citizens and businesses. As we highlighted above, it is a sector where legislator intervention was persistent for different reasons, one of them being the EU integration process. The latest is a double track binary due to the constitution simultaneously and parallelly of two international conventions between EU and candidate countries, like ECAA and Transport Community. Yet, within the integration process, Albania needs to track records and perform well regarding adopting the *acquis* under Chapters 14 and 21. The *acquis* is known for Albania, as presented in the explanatory meetings from the Commission during the screening process.

The panorama of the regulation of transport in Albania presents the need for more commitment and cooperation between the Ministry responsible for transport and all the agencies and independent authorities that are created in the sector for translating, transposing, and implementing the *acquis* according to the commitments taken not only in the process of EU integration but as well as under ECAA and Transport Community. Thus, the planning of legislative measures, as approved in the NPEI 2022-2024, foresee the issuing of 15 legislative acts in this period to partially[287] or fully[288] transpose the EU *acquis*

[286] Regarding recent trends in transport regulation see M. MUSI (ED.), *An Overview of Transport Law Regulatory Policies. The Search for New Answers to Old Problems and Possible Solutions to the Challenges Posed by Technological Evolution, the Pandemic, and Brexit*, Bonomo Editore, Bologna, 2021.

[287] It is planned to transpose: Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 OJ L 315, 3.12.2007, p. 1–13; Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community OJ L 315, 3.12.2007, p. 51–78; Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast) (Text with EEA relevance) OJ L 138, 26.5.2016, p. 102–149; Commission Implementing Regulation (EU) 2018/763 of 9 April 2018 establishing practical arrangements for issuing single safety

in maritime, road, air, and railway transport. The institution responsible for coordinating and managing transposition is the Ministry, which is responsible for transport through the interinstitutional group accountable for Chapter 14. As planned in the NPEI 2022-2024, the transposition will be through Decisions of the Council of Ministers, Orders, and Ordinances of the Minister of Infrastructure and Energy, to be issued in 2022 and 2023. Of those 15 EU Directives and Regulation, only four are translated, being in an early stage of transposition without the possibility of adopting the acts as planned.

The Treaty on establishing the Transport Community[289] was signed between the EU and the South East European parties in 2017 and entered into force on 1 May 2019. In the recital part, there is stressed the importance of *acquis*

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certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007 (Text with EEA relevance) C/2018/2001 OJ L 129, 25.5.2018, p. 49–67; Commission Regulation (EU) No 1169/2010 of 10 December 2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation Text with EEA relevance OJ L 327, 11.12.2010, p. 13–25; Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft (Text with EEA relevance.) C/2019/3824 OJ L 152, 11.6.2019, p. 45–71; Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems C/2019/1821 OJ L 152, 11.6.2019, p. 1–40; Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (Text with EEA relevance) OJ L 163, 30.6.2015, p. 1–17; Commission Implementing Regulation (EU) 2020/469 of 14 February 2020 amending Regulation (EU) No 923/2012, Regulation (EU) No 139/2014 and Regulation (EU) 2017/373 as regards requirements for air traffic management/air navigation services, design of airspace structures and data quality, runway safety and repealing Regulation (EC) No 73/2010 (Text with EEA relevance) C/2020/725 OJ L 104, 3.4.2020, p. 1–243.

[288] It is planned to transpose: Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles OJ L 138, 1.6.1999, p. 57–65; Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (recast) OJ L 323, 3.12.2008, p. 33–61 (no longer in force from 2023); Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships (Text with EEA relevance) OJ L 123, 17.5.2003, p. 22–41; Commission Directive 2014/100/EU of 28 October 2014 amending Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system Text with EEA relevance OJ L 308, 29.10.2014, p. 82–87; Commission Implementing Regulation (EU) 2021/664 of 22 April 2021 on a regulatory framework for the U-space (Text with EEA relevance) C/2021/2671 OJ L 139, 23.4.2021, p. 161–183; Commission Implementing Regulation (EU) 2019/1387 of 1 August 2019 amending Regulation (EU) No 965/2012 as regards requirements for aeroplane landing performance calculations and the standards for assessing the runway surface conditions, update on certain aircraft safety equipment and requirements and operations without holding an extended range operational approval C/2019/5623 OJ L 229, 5.9.2019, p. 1–23.

[289] Treaty establishing the Transport Community OJ L 278, 27.10.2017, p. 3–53.

adoption having in mind "the desire of each of the South East European Parties to make its laws on transport and associated matters compatible with those of the European Union, including with regard to future developments of the *acquis* within the Union" and recalling "the European perspective of the South East European Parties as confirmed by several recent European Council Summits"[290].

The objectives are set in Article 1, where it is stated that "the aim of this Treaty is the creation of a Transport Community in the field of road, rail, inland waterway, and maritime transport as well as the development of the transport network between the European Union and the South East European Parties, hereinafter referred to as 'the Transport Community'. The Transport Community shall be based on the progressive integration of transport markets of the South East European Parties into the European Union transport market based on the relevant *acquis*, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement, and environment, for all modes of transport excluding air transport. For this purpose, this Treaty sets out the rules applicable between the Contracting Parties under the conditions set out hereinafter. These rules include the provisions laid down by the acts specified in Annex I"[291].

It includes in its scope of application road, rail, inland waterway, maritime transport, and transport networks, including airport infrastructure or other issues such as the environment, public procurement, administrative formalities, and competition laid down in Annex I but not air transport which falls under the ECAA agreement.

In the Treaty, there are foreseen provisions not only for transport and infrastructure regulation but also regarding the transport infrastructure to develop in the South East European countries as foreseen in Annex 1.1 "Rules applicable to transport infrastructure forming the South East Europe core network"[292], the TEN-T.

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[290] Ibid.

[291] The treaty establishes a ministerial council to provide general policy guidelines and review progress; a regional steering committee to administer the treaty with the power to establish technical committees; a permanent secretariat based in Belgrade to provide administrative support and act as a transport observatory; transitional arrangements for each of the six south-east European countries; a review after 5 years.

[292] Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ EU L 348, 20.12.2013, p. 1); Commission Delegated Regulation (EU) 2016/758 of 4 February 2016 amending Regulation (EU) No 1315/2013 of the European Parliament and of the Council as regards adapting Annex III thereto (OJ EU L 126, 14.5.2016, p. 3).

In annexes and protocols, the Treaty makes a quasi-adhesion of the WB countries possible, as many of the Member States' prerogatives in the EU apply to them. For example, annexe IV makes it possible to refer a case to the Court of Justice of the EU according to Article 19 of the Treaty on establishing the Transport Community or Annex III, which applies rules on competition and state aid according to Article 17.

The constitution of the Transport Community, similar to the ECAA model for air transport, offers a significant and binding tool to address complete integration in the transport and infrastructure sector. The yearly report is a powerful monitoring tool of the EU for these six candidate countries[293] besides the Commission's progress reports on the EU enlargement process and the evaluation of the *acquis* adoption, therefore, for the WB countries.

5. Conclusions

The regulation in the transport sector presents a high grade of fragmentation. Each mode of transportation is regulated and developed by a special body of legislation that is independent but similar to the others. The adoption of codes to regulate three types of transport in Albania, maritime, air, and railways, is a singular legislative choice. Typically, the codification process culminates in a unitary system of rules that claim to be autonomous. Yet, as far as we saw in the Albanian legal system, we are still in an ongoing process of fully implementing codes regarding transport and adopting secondary legislation, primarily driven by Albanian commitments within the process of EU integration. A complete analysis of the panorama is yet to be made once Albania has completed *acquis* adoption in a higher grade and offers substantial implementation of the *acquis*.

In the transport field, we opted for creating separate codes with the character of a specialty rather than autonomy. The legislation cannot be reduced to uniform principles and concepts, albeit many principles, especially regarding navigation notion, are similar. The choice of Albanian legislator to adopt codes in the transport sector mainly responds to the requests of the EU authorities in order to have secure primary legislation that needs a majority of 3/5 in Parliament to be amended or changed. Furthermore, it will be likable to adopt a Code regarding Road transport due to the recent changes made to the sector and because substantial changes are made from its original provisions.

On the other hand, different special sectors, such as business law, are not regulated by codification. We can find a reason for codification in the transport

[293] As reference see https://www.transport-community.org/reports/progress-reports-on-action-plans-and-acquis-implementation/ (Last access on 5.1.2024).

sector in the commitments taken from Albanian in the process of Stabilization and Association in the EU, where the transport sector, due to its nature of internationality, has a significant relevance of being harmonised with priority, differently like other pieces of national legislation. The adoption of a Code offers more legal certainty and better regulation, bringing the regulation of the transport sector out of the usual political debate and programs of various majorities within Parliament.

Thus, the process of adhesion in the EU, besides the international obligations taken by Albania as a signatory of the most essential and relevant conventions in the transport sector, is the main reason for the evolution of transport legislation in Albania.

As analysed in this chapter, the burden of translation, adoption, and implementation of the *acquis* in transport is very difficult due to the high number of EU acts and continuous changes in legislation. Thus, maintaining a good pace of transposition of *acquis* is challenging but crucial for the whole process of EU integration. Harmonising the provisions of Chapters 14 and 21 are of fundamental importance due to the nature of the transport industry.

Transport is crucial in actualising better adhesion to the EU for candidate countries, and it has a significant impact on other areas of integration due to the instrumental nature of the industry. Through better transport legislation and implementation, there is a clear benefit for different sectors, such as reaching the internal market, energy integration, competition, economic criteria for adhesion, environment, etc. Harmonising transport and infrastructure legislation and implementation with priority directly affects core EU values and principles like territorial continuity in the EU, subsidiarity and regional development.

Transport within enlargement processes presents a singularity. The efforts of the EU are made on a double track in essential areas like maritime, rail, road and air transport. The main provisions are within the SAA and the negotiations between Albania and the EU, evaluated by the Commission in the progress reports.

On the other hand, the adoption of international conventions like the European Common Aviation Area or Transport Community offers a parallel tool in order to address the burden of *acquis* adoption in the sector. As we saw in this chapter, these instruments provide a sound framework for reaching the internal transport market parallel with the process of enlargement. This is a case where the possibility of being a de facto member of the EU regarding the transport industry is seen.

In practice, we see that there is a high degree of integration in air transport where Albania fully benefits from the EU market through the ECAA and efforts made within the integration process. Yet, several issues need to be addressed by the Albanian institutions regarding the implementation of EU principles, as we saw regarding passengers' rights and the readiness of institutions to address the transposed legal provisions in practice. In another sector, such as railways, we are at an early stage of implementation due to the passivity that the industry has in Albania. The legislation set in place is compliant with EU provisions regarding unbundling of operations or interoperability, but the industry, in practice, is at an early stage.

Regarding road transport, as we saw, there is a need for a comprehensive and total recast of legislation. The assistance offered by the Transport Community will be of vital importance in order to drive this likeable and long-awaited reform.

In the maritime sector, which is the first to be codified, relevant EU *acquis* needs to be implemented, and ports sector reform is awaited in order to be compliant with EU standards and to be integrated into the TEN-T and linked with the EU.

Despite the above updated analysis, the transport sector offers a good grade of development, and the factual integration seems to precede the *acquis* adoption. Yet, due to the fragmentation of the transport sector and the vast amount of technical *acquis* to adopt, the evaluation of the progress so far is moderately prepared with a satisfactory pace of yearly progress.

Conclusions

1. Final remarks on enlargement and EU institutions

In this book, we presented the conclusions in each single argument dealt with. The described topic presents several difficulties for bringing to unity and coherently draft conclusions. We analysed the enlargement process from an EU perspective but must not forget that the specular process is integration. Thus, if the EU gets bigger and enlarged, there are candidate countries that aim to be integrated into this *sui generis* organisation, that is, the EU. Enlargement and integration are two faces of the same medal which coincide and present a common objective. Yet, sometimes, the motivations on the basis of enlargement and integration are not the same or once adhesion is reached, several other problems arise. As the history of enlargement shows, it does not always mean total alignment and integration. There are cases of backsliding in pursuing EU values or objectives, even from Member States. Regarding the EU, being larger has made the process of enlargement harder for newcomers. The analysis of the enlargement of the EU through the years shows a hardship for the new members to come, more procedures and political or geopolitical issues which arise within the enlargement process as foreseen in the Treaties or Copenhagen criteria.

First, each enlargement has its own specifics, yet the turning point was to be deemed the Maastricht Treaty and the events of the ‘90s that opened an EU perspective for enlargement to the East. Furthermore, the Copenhagen Council in 1993 must be seen as the cornerstone for enlightening the legal basis for EU adhesion and setting the criteria. These are fixed parts and core principles in the enlargement process, which is based on merit-based assessment for each applicant in order to be a member of the Union.

In recent years, in order to enhance the process of enlargement and to address fears of single Member States for uncontrolled processes, a new enlargement methodology was proposed in 2020. The basis relies on the motto that Europe needs to be stronger before being bigger and on the reversibility of the process of enlargement, with a stronger assessment from EU institutions

and single Member States. Furthermore, the receipt of the *acquis* and reforms to be made are organised in chapters but grouped in clusters, evaluated compressively and in relation to each other within the cluster.

The implementation of the new methodology is analysed, taking the case of Albania as an example. We analysed the position of the Council and Commission regarding the enlargement procedure and the progress made so far by Albania. The analysis concentrated on the evaluation of the process and the state of the art of progress documented by the Commission and recognised by the Council. It offers different important insights, both singular and worth for comment. In our opinion, a series of events like the new methodology and the contextual opening of negotiations for Albania and North Macedonia in 2020 gave a boost to the enlargement process after several years of uncertainty for candidate countries and the backsliding in the case of Turkey. The WB countries, as candidates, have conformed their adhesion efforts according to the new methodology.

The path of Albania toward the EU is to be assessed according to this new methodology. Despite novelties in the process, the most important and relevant part of the process remains the conformation to the EU standards and the acquis adoption. The analysis of the assessment in the latest progress reports gives us relevant insights into Albania's progress in reaching EU standards. Thus, compressively Albania results in being moderately prepared for adhesion. Regarding the transposition of the EU legislative framework, Albania has done good work and is showing progress.

The correct adoption of the acquis, even after a positive screening recommendation in several areas, remains the focal point in a successful adhesion in the EU. A better understanding of EU principles from the stakeholders and professionals is needed. In our opinion, despite the importance of other parameters, the ability to adopt EU legislation is of vital importance not only during screening but also in the whole process of negotiations due to the nature of the enlargement process after the new methodology as reversible and the possibility of reopening chapters once they are provisionally closed.

It is clear in our opinion that the adhesion process is a long and energy-draining process driven often by political will and not only mere fulfilment of technical issues that are laid in the SAA or just formal adoption of EU legislation in order to harmonise and enhance the legal framework. The adhesion procedure passes through the strength of institutions and implementation of EU principles within the national system before the adhesion.

The new methodology offers a renewed process and, what is more important, an accepted one for both Member States and the Council of the EU, as well as a credible, more flexible, topic-related organisation of work for candidate countries. The main threats in this reversible process are the extended time taken in order to reach a decision by the Council and the maintenance of a good pace of record tracking from the candidate countries. Another serious threat is the correct adoption of the acquis and the dynamism of EU legislation to maintain a good pace in the translation and transposition of up-to-date legislation. The latest is a severe burden regarding legislative drafting and implementation.

There are relevant parallel processes that help in the path of enlargement, such as the Berlin Summit Process or Transport Community. These are comprehensive and inclusive of all the WB candidate countries that have the final goal of helping in the adhesion process.

In light of the new methodology of enlargement, to which Albania and other Balkan countries' process of integration are conformed, the overall progress so far is good.

2. Albanian efforts in the process and the way forward

As in the 2023 progress report, Albania has an overall evaluation where 1 chapter is at an early stage (consumer and health protection), eight chapters with some level of preparation (freedom of movement for workers, agricultural and rural development, food safety, veterinary and phytosanitary policy, transport policy, Trans-European networks, science and research, environmental and climate change, financial and budgetary provisions), 19 chapters where Albania is moderately prepared, five chapters with a good level of preparation (financial services, energy, economic and monetary policy, external relations and foreign, security and defence policy), and two last chapters with nothing to adopt.

In the 2023 progress report, there is an enhancement in addressing acquis adoption in financial services (chapter 9), energy (chapter 15), and economic and monetary policy (chapter 17), passing from moderately prepared to a good level of preparation, at least for some areas within the chapters. The same situation applies to external relations (chapter 30), which, in recent years, has shown a good level of preparation.

The screening on fundamentals offers a firm evaluation of Albania's overall situation, and it is to be considered as a preview of the benchmarking to be set for each chapter. Good progress is shown in the transposition of the *acquis*, and a good pace is maintained in implementing reforms in the cluster of

fundamentals, especially regarding judiciary and collaboration in judicial matters. Yet, according to the new methodology, the tracking records in the implementation are of paramount importance, and the pace of implementation should be higher. The latest concerns are the threats of not achieving the interim benchmarks in one chapter or setting new ones from the EU institutions with the risk of delaying the process or, more often, adopting reforms, strategies, or action plans that result in backsliding.

We analysed some of the chapters of the process of integration and the efforts therefore made by Albanian institutions. Our analyses cover judiciary reform, public procurement, enterprise and industrial policy, with particular analyses of the tourism policy and legislation and the transport sector. The covered sectors singularly are those where Albania has undergone profound reform of its legal system (judiciary), has a good grade of acquis adoption (public procurement), must adopt policies and soft law (enterprise and industrial policies), or has for a long time started to adopt legislation through SAA or parallel processes (transport).

The reform of the judiciary is a milestone in the process of integration and adoption of EU standards. It is important not only regarding the rule of law but also in achieving the other objectives of the process of adhesion, like functioning the internal market, fighting against corruption, enhancing foreign investments and doing business environment, assuring implementation of fundamental rights, etc. The process of implementation was an onerous burden for the institutions and society in general due to the shortages created in the system by the harsh application of the vetting process. The reform implemented in Albania was an entirely new set of legislation that erased all the traditional and prior legislation in the judiciary, reshaping the whole "third power" of the State. The motive which led the reform was mainly the reaching of the rule of law within the main scope of reaching EU standards in the path of integration.

Actually, after six years of implementation, the first results are perceptible. It is important to underline that threats may arise now that a review of the legislative framework is needed seven years after the entry into force. The EU institutions constantly monitor the Albanian institutions and offer assistance regarding legal drafting in order to be compliant with EU standards and not have backsliding during the process of reshaping and refining the laws.

Regarding spending public money according to standards, the Albanian legislation offers a good grade of approximation. Still, more should be done regarding the adoption of secondary legislative acts in order to fully address

and implement the EU standards and principles in everyday practice and to have track records of effective implementation of new legislation.

In the analysis that we offered regarding Chapter 20, which mainly deals with soft law, there are provisions that are instrumental in reaching a functioning internal market, although the relevant EU *acquis* is foreseen in specific chapters within the process of integration. Reaching EU standards in entrepreneurship and industrial policies is of core importance. The progress report of 2023 for Albania finds Albania moderately prepared in the area of enterprise and industrial policy but still finds some progress on the implementation of legislation and fighting the informal economy and corruption. Yet, Albania should address challenges such as increasing funding for businesses, reducing regulatory burden, reducing informal economy and corruption, accelerating the acquis adoption on late payments, and adopting the investment law.

The specific sector taken into consideration, tourism, is a clear example of how to draft, approve and implement effective policies accompanied by sound and timely *acquis* adoption. The contextual intervention in reinventing tourism in Albania through sectorial strategies must foresee strong intervention in the legislative framework. We must bear in mind, again, that integration is a process where the timing of the legislator's intervention should be taken into consideration, as we noticed regarding the adoption of the legislation on travel packages and the changes that are made at the EU level itself. To address the issue of the transposition of up-to-date legislation, we are confident that the institutional framework of the Albanian government is prepared to identify the need for translation and transposition of the relevant in-force EU *acquis*. Yet, in some sectors, the intervention is transversal, covering many fields of legislation, like the law on tourism and the law for the protection of consumers.

The last sector taken into consideration is transport and infrastructure. The regulation in the transport sector presents a high grade of fragmentation. Each mode of transportation is regulated and developed by a special body of legislation that is independent. The adoption of codes to regulate three types of transport in Albania, maritime, air, and railways, is a singular legislative choice. Typically, the codification process culminates in a unitary system of rules that claim to be autonomous. Yet, as far as we saw in the Albanian legal system, we are still in an ongoing process of fully implementing codes regarding transport and adopting secondary legislation, primarily driven by Albanian commitments within the process of EU integration.

In the transport field, we opted to create separate codes with the character of a speciality rather than autonomy. The choice of Albanian legislator to adopt

codes in the transport sector mainly responds to the requests of the EU authorities in order to have secure primary legislation that needs a majority of 3/5 in Parliament to be amended or changed. The adoption of a Code offers more legal certainty and better regulation, bringing the regulation of the transport sector out of the usual political debate and programs of various majorities within Parliament. Thus, the process of adhesion in the EU, besides the international obligations taken by Albania as a signatory of the most essential and relevant conventions in the transport sector, is the main reason for the evolution of transport legislation in Albania. The burden of translation, adoption, and implementation of the *acquis* in transport is very difficult due to the high number of EU acts and continuous changes in legislation. Through better transport legislation and implementation, there is a clear benefit for different sectors, such as reaching the internal market, energy integration, competition, economic criteria for adhesion, environment, etc. Harmonising transport and infrastructure legislation and implementation with priority directly affects core EU values and principles like territorial continuity in the EU, subsidiarity and regional development.

Transport within enlargement processes presents a singularity. The efforts of the EU are made on a double track in essential areas like maritime, rail, road and air transport. The main provisions are within the SAA and the negotiations between Albania and the EU, evaluated by the Commission in the progress reports. On the other hand, the adoption of international conventions like the European Common Aviation Area or Transport Community offers a parallel tool in order to address the burden of *acquis* adoption in the sector.

For the above reasons, we notice that air transport presents a higher degree of conformation and implementation of the *acquis*. There is a hope that the constitution of the Transport Community will have the same effect.

In conclusion, the importance of the correct *acquis* adoption is vital and marks the process of integration in its totality. This must be borne in mind in order to have a smooth process toward EU integration and avoid the threats of backsliding.

2.1 Albanian institutional framework in the path of integration

On the other hand, in order to address the needs of the process of integration, Albania shows institutional readiness. In order to cope with the integration and *acquis* adoption burden, the institutional framework results that can address *acquis* identification, translation, and transposition. Yet, despite the institutional commitments and efforts, in light of the recommendations of the Commission, Albania might improve the institutional framework by creating

dedicated institutions in order to harmonise legislation better. The correct adoption of the *acquis* remains the focal point in a successful adhesion in the EU. A better understanding of EU principles from the stakeholders and professionals is needed.

Institutionally, the process is led by the government, which has structures in place for negotiating with the EU institutions and the Member States. The role of the Prime Minister and the Council of Ministers is fundamental. Best practices and models from other candidate countries are taken into consideration.

The other actors involved, such as the Parliament, have set up entities like the National Council for Integration or Institute for Parliamentarian Studies in order to fulfil their duties better. There are structures in place to collect the contribution of external actors like civil society organisations. More should be done to explain better the process of integration and its steps to the public and public administration officials. Thus, it will be of interest that the NPEI should have more publicity among PA-dedicated units, even those that do not deal with EU integration. Furthermore, a user-friendly guide on how to read and address the NPEI should be available for all PA officials, as well as for the general public and stakeholders.

One threat that we identified is the preparedness of municipalities and their human resources and capacities regarding the EU integration process since a consistent amount of acquis is to be implemented at the local or regional level. Lately, Albania has proposed to create larger regions, and that will undoubtedly contribute to better tackling the needs of the process of integration, as well as having better chances in the process of competing for EU funds.

NPEIs' planning is well-detailed and exhaustive for institutions, but it does not assure successful, timely implementation and strong commitment for other branches of public administration. Sometimes, the EU negotiation process seems non-understandable and far from their everyday tasks for many of the PAs. On the other hand, the problem of the human resources of municipalities remains. It will be likeable an intervention of the legislator to make a Regional plan for European integration to address issues that need regional cooperation between Municipalities.

This exhausting process passes through capacity building, and maybe Albania is timely correct to launch a massive campaign of brain gain for national human resources that live abroad to take key positions within the institutions. Another important step may be a serious and well-designed campaign to raise awareness and a better understanding of the process of

integration and the role that can play in it not only specialised units but all the PA and citizens, with a particular focus on the professionals of the future, the students.

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Commission Regulation (EU) No 788/2014 of 18 July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) No 391/2009 of the European Parliament and of the Council (OJ EU L 214, 19.7.2014, p. 12)

Council Decision 2012/22/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (OJ EU L 8, 12.1.2012, p. 1)

Council Decision 2012/23/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof (OJ EU L 8, 12.1.2012, p. 13)

Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ EC L 138, 1.6.1999, p. 1)

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Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) (OJ EC L 167, 2.7.1999, p. 33)

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Council Directive 89/665/EEC, dated December 21, 1989 "On the coordination of laws, regulations and administrative provisions regarding the implementation of review procedures for the awarding of public supply and public works contracts", as amended"

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

Council Directive 92/13/EEC, dated February 25, 1992 "On the coordination of laws, regulations and administrative provisions regarding the implementation of Community rules for the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors", changed"

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