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The process of enlargement of EU: the state of art of efforts of Albania in the light of latest reports²

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Abstract

The process of enlargement of EU for the countries of Western Balkans is an ongoing process, which is the most important since the adhesions of

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2004 and, maybe, the conclusive enlargement of the Union. Through this paper we aim to offer an insight of the historical progresses made from Albanian in its integration process from the Association and Stabilization Agreement until the opening of the negotiations and an analyze of some of the latest progress reports of the EC from a legal perspective. In our opinion, the key and most relevant issue within the process of integration and during negotiations is the correct adoption of the *acquis*. Furthermore, analyzing the status of the *acquis* adoption in Albania in the light of the Commission reports will permit us to reach important conclusions on the status of the process and the path forward in future research.

Keywords: *EU enlargement, acquis adoption, negotiations.*

1. Timeline of the integration process for Albania and historical background

Albania has undertaken an important commitment in the path toward EU from several decades now, in order to become a member State of the Union. This important process for Albania, and EU as well³, started with the Stabilisation and Association Agreement (SAA) signed from the

³ 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.

Republic of Albania in 12 June 2006 and entered into force in 2009 with the signature of all Member States. Therefore, in 2009, Albania submitted its formal application for EU membership. The implementation of the SAA started in Albania years before in order to be fully compliant with its obligations, especially the adoption of the *acquis* within its national legislation.

The implementation of the SAA from the Republic of Albania was assessed from the Commission and the first positive recommendation for granting the status of candidate country was given in 2012, yet, under the condition of important reforms in judiciary system and public administration to be undertaken. Thus, the path toward the opening of the negotiations was long and with several burdens, especially regarding the rule of law and important structural reforms within national institutions.

In June 2014, several years after the adoption of the SAA, finally Albania was awarded the status of candidate for membership⁴. The following years several efforts were made from Albania in order to seek the goal of opening accession negotiations and a first unconditional recommendation

⁴ 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.”

for opening the negotiations was granted from the Commission in 2018, then simultaneously with the Enlargement package in May 2019. Thus, the Council in its conclusions in June 2019 assessed the possibility of opening the negotiations and in March 2020 the Council decides to open negotiations with Albania presenting then in July a draft negotiations framework.

On these bases, the Commission, in May 2021, states that Albania has meet the criteria for holding the first Inter-Governmental Conference for accession.

In the light of this timeline, we notice that the path of Albania toward full adhesion was long and shaped by serious threats, especially regarding the institutional infrastructure within country and their functioning. It is also important to bear in mind that the *acquis* adoption shall be accompanied by a strong implementation within institution in order to ensure the rule of law and to fully comply with European values⁵. Yet, in Council conclusions of 2018 progress in some areas, such as liberalizing the energy market, enhancing transport infrastructures and digitalization, was fully recognized.

⁵ 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.

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.

1.1. The enlargement procedure in the light of Commission Communications and Council position regarding Albania

As stated above, the adhesion process is a long and energy draining process driven often by political will and not only mere fulfillment of technical issues foreseen in the SAA or just formal adoption of EU legislation in order to harmonize and enhance legal framework and legislation. The adhesion procedure passes through strength of institutions and implementation of EU principles within national system.

In the light of the statements of the Council in 2018 and the Presidency conclusions of 2019 the opening of the negotiations remained the hot topic for both countries, Albania and Republic of North Macedonia, to deal in 2020. This time with a clear intention to open negotiations, bearing in mind the Communication of 6 February 2018 of the Commission⁶, the

⁶ 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

Communication of 5 February 2020 of the Commission⁷, the annual progress reports of the Commission and the statements and decision of the Council of 2018. Thus, through this decision of the Council, that represents the interest of each member States, through the commitments of the candidate countries and European Commission decision regarding a new and enhanced methodology of enlargement, the path for enlargement with Albania was cleared.

Therefore, the position of the Council was clear in the meeting of 25 March 2020, when assessing the position taken by the European Commission on a credible EU perspective for the Western Balkans and its progress reports on Albania and Republic of North Macedonia. The Council has reached a conclusive formal decision on fostering the enlargement procedures for the two countries. The process of enlargement, for the Council, relies on the Copenhagen political criteria, the consensus of the Member States for enlargement, the good relations

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”.

⁷COM(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.

with Western Balkans and regional cooperation, also as on fair and rigorous conditionality and principle of own merits. Furthermore, it must be said that the new enhanced procedure and methodology of enlargement proposed by the Commission in February 2020 was at the basis of the decision of the Council. It declares that “The Council looks forward to the Commission's proposals integrating the enhanced approach in future negotiating frameworks and building on applicable established practice under the renewed consensus on enlargement. The proposed changes can be accommodated within the existing negotiating frameworks with Montenegro and Serbia with the agreement of the respective countries”⁸.

Regarding Albania, the Council has taken a clear position in recognizing the efforts of the country and fulfilling the conditions set in 2018 for opening the negotiations and, therefore, decides to open accession negotiations inviting the Commission to prepare the necessary framework in order to hold the first inter-governmental meeting after the decision of the Council itself. Yet, several conditions⁹ were to be assessed prior to the

⁸ Conclusions of the Council (ELARG 20, 7002/20) of 25 March 2020, p. 3

⁹ Conclusions of the Council (ELARG 20, 7002/20) of 25 March 2020, p. 5. It is stated 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

adoption by the Council of the negotiation framework and that key priorities in the process of enlargement are successfully fulfilled¹⁰. Furthermore, the Commission shall continue 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”. Thus, the Commission, in its progress report of 2021, informed again the Council on 12 May 2021 that all the conditions were met¹¹, as in the report of 2020 without backsliding.

The conclusions of the Council, as analyzed above, 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

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.”

¹⁰ Conclusions of the Council (ELARG 20, 7002/20) of 25 March 2020, p. 5. It is stated that “The negotiating framework will be adopted by the Council and has to reflect that Albania has successfully addressed all five key priorities such as the initiation of criminal procedures against judges and prosecutors accused of criminal conduct during the vetting process, initiation of proceedings against those accused of vote buying, a sound track record regarding of the local elections of 30 June 2019, as well as further progress in the adoption of the remaining implementing legislation related to the 2017 framework law on the protection of national minorities, the adoption of the law on the population census in accordance with the Council of Europe recommendations, and the advancement of the pro fight against corruption and organised crime at all levels, including initiation of proceedings and completion of first proceedings against high ranking public officials and politicians, tangible progress regarding reform of public administration, implementation of the reform of the electoral law as well as a final decision on the lawfulness of registration of properties”.

¹¹SWD(2021) 289 final, p. 129

priorities, which are determined by the Council for each country. The Council, in assessing the candidate states progress, affirm 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. On this basis, progress was made later in 2022 while preparing the holding of the intergovernmental meetings with Albania e North Macedonia.

2. The latest annual progress reports of the Commission on Albanian preceding the opening of negotiations

The process of enlargement, as shaped in the Copenhagen criteria, on the need of a credible enlargement process toward Western Balkans also as bearing in mind the lessons learned by the enlargement process of 2004¹² is of crucial importance for the institutions of the European Union. The fulfillment of the duties of assistance, support and monitoring toward the candidate countries rely on the 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.

¹² See D. ADAMSKI, *The social contract of democratic backsliding in the “New EU” countries*, in *Common Market Law Review* 56: 623-666, 2019. Also, regarding the enlargement process of 2004, see G. BURGHART, F. CAMERON, *The next enlargement of the European Union*, in *European Foreign Affairs Review* 2: 7-21, 1997

In the latest progress reports concerning Albania taken in consideration, those of 2019, 2020 and 2021, the Commission has recommended the opening of the negotiations of adhesion. It has recognized the efforts made under the SAA and bilateral relations between EU and Albania, also as identifying a good fulfillment from the latest of many obligations and a good adoption of the *acquis* in order to build institutions and market. The general criteria, which the Commission evaluates¹³, are the political criteria, public administration reforms, judicial system reform, fight against corruption, fight against organized crime, fundamental rights, economic criteria, good neighborhood and regional cooperation, *acquis* adoption and migration.

Thus, the progress report of 2019 evaluated the progress made by Albania in fulfillment of each criteria and find that in most areas the grade of evaluation is that Albania has some level of preparation (judicial system, fight against corruption, fight against organized 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 of high level corruption and

¹³SWD(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.

organized crime) and in other sectors some progress was made (political criteria, economic criteria, migration).

The 2020 progress report takes note of the Council 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 organized crime). The overall report was better than in 2019. The Commission find 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 organized 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, fighting organized crime, fighting terrorism) and 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 tasks of monitoring levied by the Council, describe 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 internal market, Green agenda and sustainable connectivity. On the other hand, continues to have some level of preparation in fields like fight against corruption, organized crime, agriculture and cohesion, capacity to cope with competitive pressure and market forces within EU. Furthermore, there is a good level of preparation regarding external relations, foreign security and defense. In many areas there are assessment of good or very good progress.

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

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

As in regard the most important 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, it is of crucial importance, beside deep reforms of public administration and judiciary system the correct harmonization of the legislation with the *acquis*, especially having regard of the nature of implementation of directives. Thus, candidate states like Albania shall

have very efficient legislative drafters in order to ensure a correct implementation. This will certainly 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”¹⁴ and it is moderately prepared in some areas such financial control, education, culture and statistic. In other areas, such as public procurement or trans-European network it has some level of preparation. The Commission individuates some areas like transport and energy where Albania shall continue development of networks. The Commission main concerns remain the administrative capacities and professional standards of the bodies entitled of the implementation of the *acquis* and their independence.

The same conclusions are present in the 2020 report with a clearer statement on the need to “to continue its efforts as regards the overall preparations for adopting and implementing the EU *acquis*”¹⁵.

In the 2021 report there is no specific mention of the process of *acquis* adoption but the Commission in several occasions recognizes the efforts of Albania in the light of the of the first Intergovernmental conference started in 2022. Thus, Albania has changed and enhanced its governance

¹⁴ SWD(2019) 215 final of 29.05.2019, p. 5

¹⁵ SWD(2020) 354 final of 06.10.2020, p. 8

structure and appointing the Chief Negotiator responsible for negotiations with EU and the other structures related to EU issues¹⁶.

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”¹⁷ and the Communication of 5 February 2020.

The Commission, through its new methodology of enlargement, underlines the importance of the adoption of 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.”¹⁸. In addition, it finds important offering technical assistance and support for institution building having in mind that for a credible enlargement perspective there must be a strong support from the European Union.

The correct adoption of the *acquis* is one of the most important issues in the path toward adhesion. The correct adoption of the *acquis* is of crucial importance and instrumental to enhance and boost the process of integration. This is vital now when Albania is fully prepared for the first intergovernmental conference and the opening of singular chapters of

¹⁶ SWD(2021) 289 final of 19.10.2021, p. 11

¹⁷ COM(2018) 65 final

¹⁸ COM(2018) 65 final, p. 6

negotiations. The correct adoption of the *acquis* may create synergy between institutions in Albania and a better enforcement of the law in order for the future evaluation to change from ‘some preparation’ to a better assessment. Yet, the most important issue that threat the whole process remains the poor acknowledgment of the EU legislation and institutions within the country. It suffices to say that are only a few judicial decisions that relies on the ECJ ruling in order to motivate the ruling based on correct interpretation of EU principles that now are included within Albanian legislation¹⁹.

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

3. Conclusions

Through this paper, we analyzed the position of the Council and Commission regarding the enlargement procedure and the progress made so far by Albania. It offers the evaluation of the process and the state of

¹⁹A.GJETA, *Shoqeria e thjeshte midis Kodit Civil dhelegjislacionittregtar. Problematika ne sisteminligjorshqiptar*, in *Avokatia* 30, 2019

art of the progress documented by the Commission and recognized by the Council.

In the light of the position of the EU toward enlargement with the countries of Western Balkans we tried to better understand the path forward for Albania in its adhesion efforts. Despite the opening of negotiations there is still much work to be done and the most important and focal point remains the correct adoption of the EU legislation within national system, especially now that the negotiations of singular chapters is imminent to start.

In 2022 and early 2023 Albania went through the screening procedure on each singular chapter of integration with an overall involvement of national institutions. The efforts of Albanian institutions during the explanatory meetings with EU were high in order to fully and correctly explain the achievements of Albania so far.

Despite the institutional commitments and efforts, in the light of the recommendations of the Commission, Albania might improve the institutional framework in creating dedicated institutions in order to better harmonize legislation. The correct adoption of the *acquis* remains the focal point in a successful adhesion in the EU and a better understanding of EU principles from the stakeholders and professionals is needed.

The current phase of integration process needs important progress in implementation in order to have a more positive assessment from the EU institutions but without backsliding in the component of *acquis* adoption,

especially bearing in mind that the EU material law is in constant evolving. We need to bear in mind that EU adhesion is a merit-based process and every its component might maintain a high level of compliance, especially in the light of the new methodology of enlargement adopted from the EU after 2018.