



Policy Paper

Beyond the candidate status - new approach towards EU accession

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European Movement in Albania (EMA) is a think tank devoted to improving the quality of debate on the European Integration process. It is a forum for exchange of views on political, legal, economic and social challenges Albania is facing in its path towards European Integration. By analyzing different aspects of European Integration process, EMA therefore aims to promote new ideas for improving this process.

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1. Introduction

On 10 October, the European Commission will publish the Enlargement Strategy 2012-2013, along with the Progress Reports for candidate and potential candidate countries. The Progress Report conclusions, for Albania are particularly important, since for two consecutive years, in the 2010 Opinion and 2011 Progress Report, the country has been denied the EU candidate country status.

Beyond the candidate status, it is important to have a look at the new approach adopted by the European Union, regarding the accession negotiations, which was firstly introduced in the Enlargement Strategy of 2011. This approach consists in strengthening the rule of law and democratic governance, which are central to the enlargement process. Hence, the new approach established for the countries of Western Balkans, envisages the opening the negotiations with chapters 23 and 24 of the acquis, covering the most problematic issues for the region, such as the rule of law, judiciary and fight against corruption and organised crime. This policy paper will analyse possible scenarios for the country's candidate status and also what shall follow next in Albania's journey towards EU accession. In this context, examples from other countries of the region that have already completed or have just started this process (Croatia, Montenegro and Serbia) will be taken into consideration; as well as the case of Macedonia, where being unable to open the accession negotiations, have lead the Commission to introduce the High Level Accession Dialogue. The analysis of the negotiating frameworks and High Level Accession Dialogue will provide examples to follow for the upcoming stages in Albania's European journey.

2. Albania's chances for the candidate status in 2012

For two consecutive years, the European Commission did recommend neither the candidate status nor the opening of accession negotiations for Albania. This was as a result of the country's failure in fulfilling the required reforms with respect to the 12 key priorities, put forward by the Commission Opinion of 2010.

The political agreement reached in November 2011 between the ruling majority and the opposition led to some concrete results, such as the adoption of the electoral reform, the election of the Ombudsman, the adoption of important pieces of legislation which

required qualified majority voting and the adoption of constitutional changes to restrict immunity of high officials.

Recognising the need to address 12 priorities identified by the EC's Opinion for Albania, the government and opposition embarked in a joint endeavour to review the existing Action Plan. The process of breaking down the 12 key priorities into concrete measures "deliverables" was made possible through a series of joint meetings with the Ministry of European Integration, the European Integration Parliamentary Committee, consultations with the civil society and consultative meetings with the European Commission.

Based on developments following the political agreement of November 2011, the European Commission in its 2012 Progress Report will present a comprehensive assessment of Albania's progress towards the EU, focusing especially on the fulfilment of 12 key priorities. At present, there are two scenarios for the Commission to recommend candidate status for Albania.

- i) A straightforward positive recommendation
- ii) A conditional recommendation, followed with one or more unfulfilled conditions that must be met in order for the EU Member States to decide the granting of candidate status. In other words, it is called: status with a timeline.

The procedure foresees the discussion of the Commission's recommendation by the Council of the European Union and later on by the Heads of Member States, who must decide by unanimity in the European Council meeting of December 2012. It should be noted that the way the Commission' formulates its recommendation, allows for both confirmation of the proposal, or for it to be postponed in time by the Member States. An example worth mentioning is the case of Serbia in 2011, when in its Enlargement Strategy the Commission gave a conditional recommendation with regards to granting Serbia the candidate status. In its recommendation the Commission stated that "...the Commission recommends that the Council should grant Serbia the status of candidate country, taking into account progress achieved so far and on the understanding that Serbia reengages in the dialogue with Kosovo and is moving swiftly to the implementation in good faith of agreements reached to date"¹. In December 2011, the member states decided to consider the Commission's proposal in another time

¹ See European Commission, Enlargement and Main Challenges 2011-2012, pg. 27

(February 2012) once Serbia showed credible and continuous commitment and further progress in its dialogue with Kosovo.²

The European Commission plays an important role in triggering the reforms in Albania. Thus, a positive proposal would give an encouraging message that useful steps towards reforms are rewarded, especially after a two-year failure. One such message would reinforce EU's "transformative power" and its role as a catalyst for positive change in the country and the region as a whole. Even geopolitically, it would be logical for the European Commission to encourage Albania's role as a stability factor in the region, by anchoring it further to the European family.

However, considering Albania's unsatisfactory³ progress towards the implementation of necessary reforms aimed to meet the 12 priorities, it appears that the Commission is not in a favourable position to propose the candidate status without any conditions. This, especially considering the opinions and evaluations from Member States, which have to a great extent expressed reservations with regards to the organisation and administration of elections, functioning of the democratic institutions, respect for the rule of law, judiciary system, fight against corruption and organized crime, politicisation of the public administration and guarantee property rights.

Notwithstanding the cross-party cooperation on parliamentary level, the adoption of some reforms and laws that require qualified majority voting in the Assembly, for the Commission and Member States, the November Agreement still remains unimplemented for as long as the parliamentary reform has not been completed. The same can be said about the improvement of the constructive political climate in order to establish a track record of achievements in the implementation of main reforms in the justice sector and independent functioning of the judiciary and as well as the fulfilment of 12 priorities⁴.

Moreover, the Member States are less optimistic in their assessments regarding the progress of reforms in Albania, especially about the fight against corruption, where

² See European Council Conclusions, 9 December 2011, pg. 5

³ See the Report of the Head of OSCE Presence in Albania in front of the Permanent Council of OSCE, September 20th 2012, pg. 1

⁴ See the declaration of the current President of the Council of the EU, the Foreign Minister of Cyprus, Kozaku-Marcoullis, on 31st July 2012 in Tirana and declarations from the President of the European Council, Van Rompuy, the President of the European Commission Barroso, the Commissioner for Enlargement Füle during the visit of the President of Albania Nishani in Brussels on 16-17 September 2012.

apart from adoption of laws, political will and concrete results are required. It should be noted that in drafting the annual Progress Reports, the Commission takes into consideration the opinions and concerns of the Member States regarding that country, in order to avoid objections or outright refusal of its recommendation during discussions in the Council.

In recent years, some Member States have grown sceptical of the objectivity of the Commission in its assessments for Western Balkans countries, informally criticizing the Commission as being “more optimistic than necessary”⁵. In dealing with a country’s progress towards European integration, it is often emphasised “how can the EU strike the right balance between offering incentives to anchor the Balkans in Europe while at the same time ensuring that their reform is democratic in substantive terms”.⁶

Based on the above, it is clear that the first scenario, that of positive straightforward recommendation for candidate status is rather unlikely. The most realistic scenario for Albania on 10 October would be the conditional recommendation, or ‘status with a timeline’, after which, in December the Council would require additional time to assess whether the country has done enough progress towards the implementation of the electoral reform (taking into account the parliamentary elections of 2009 and local elections of 2011, continuity of the political dialogue (questioned especially during the election of the President, where it was not possible to avoid a biased process), parliamentary reforms as part of the November 2011 Agreement, reforms in the judiciary system, fight against corruption and organised crime (in absence of concrete examples of sentencing high officials). It appears that the estimated timeline for the Council to grant Albania the candidate status could be stretched to 2013⁷.

3. The EU new approach towards accession negotiations

Obtaining candidate status is important on both political and practical terms, as it is the possibility for the candidate country to benefit from funds allocated in the framework of the remaining three components of Instrument for Pre-accession Assistance⁸ (IPA).

⁵ See The Economist “The Balkans and the EU: Integrated circuit”, September 10th, 2012

⁶ See European Policy Centre “The democratic transformation of the Balkans”, Issue Paper, November 2011, pg. 3

⁷ See Economist Intelligence Unit, Albania Country Report, August 2012, pg.5

⁸ IPA consists of 5 components- (i) support for transition and institution-building; (ii) cross-border cooperation; (iii) regional development; (iv) human resources development; and (v) rural development.

However, a country's European perspective would be clearer once it is decided to open the accession talks.⁹ Upon the successful conclusion of accession negotiations, the acceding country signs the Accession Treaty, which after being ratified by all the member-states, marks the country's EU membership.

EU membership represents a long road of negotiations between the candidate country and the European Commission regarding 35 chapters of the EU acquis. It is to be noted that during the different stages of EU enlargement and the EU's own evolution, the focus and approach with respect to accession negotiation has evolved. In particular, the difficulties with Romania and Bulgaria and the general perception *ex post facto*, that their accession happened too fast, have led the EU to adopt a stricter approach regarding the conditions for membership from 2007. From this period onwards, the Commission has become more attentive to the factors that affect negatively the security and democracy in the Western Balkans, such as the widely spread corruption and organised crime. "They (corruption and organised crime) are key issues for the functioning of democracy and economy, they impinge on EU's own interest and security, and hugely impact the EU accession process. They also affect, sometimes in a disproportionate manner, public perceptions of enlargement in the EU"¹⁰.

In this context, the Commission's new approach was officially confirmed on the Enlargement Strategy 2011-2012, where it is clearly stated that "issues related to the judiciary and fundamental rights and to justice and home affairs (...) should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records. The Commission would report regularly, at all stages of the process, on progress achieved in these areas along milestones defined in the action plans with, where appropriate, the necessary corrective measures".¹¹

Potential candidate countries like Albania benefit only from the first two components, while obtaining the candidate status would enable the country to benefit funds from the remaining components.

⁹ For the difference between the candidate status and opening the accession talks see EMA's policy paper: "Scenarios of an application- On the verge of the Opinion of European Commission on Albania's application for EU Membership", November 2010, pg.8

¹⁰ See European Policy Centre "The democratic transformation of the Balkans, EPC Issue Paper, November 2011, pg. 3

¹¹ See European Commission, Enlargement Strategy and Main Challenges 2011-2012, 12 October 2011, pg. 5

The Member States have endorsed this new approach of opening chapters 23 and 24 at the beginning of accession negotiations. It can be said even that certain Member States go even beyond that, as is the case of the Netherlands and its stance towards the opening of negotiations with Montenegro. Hence, just before the Council would decide to open the negotiations with the country, the Netherlands requested the implementation of a package consisting of three elements: (i) the talks should be led by the Council and the decisions regarding the country's progress in the accession process should be taken unanimously by the Member States; (ii) chapters 23 and 24 should be opened at the very beginning and the progress in these areas should be accompanied by a solid track record; (iii) corrective measures should be applied and the possibility of their implementation in cases where the anticipated progress in the area of rule of law is lacking. These corrective measures comprise intermediate measures that ensure the implementation of reforms, adaption of action plans, temporary advancement in other chapters, the adjustment of IPA, but also freezing the accession talks if there is no progress. Important elements of the Dutch proposal are included in the negotiating framework with Montenegro, as explained in the following paragraphs.

4. Applied practises in the negotiations process with the Western Balkans countries

Croatia

Croatia is the first country to start the accession negotiations with the EU, on 3rd of October 2005. By procedure, simultaneously with the opening of negotiations with a candidate country, the Council approves the negotiating framework. This document contains the principles upon which the entire process of negotiations between the candidate country and the Commission is based, constituting the essence and the procedures of negotiations.

Croatia's negotiating framework, set in place after the rejection of the EU constitutional treaty in France and the Netherlands, was more demanding than for any previous applicant.. In its negotiating framework, the EU insisted on handing over generals indicted for war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Hague. Also, Croatia had to demonstrate that its judicial system could put on trial and convict highly placed officials.

Chapters 23 and 24 with Croatia were opened only a year before the conclusion of the entire negotiation process. Thus, Croatia had to face the challenge of presenting tangible results in these areas towards the end of the talks and that a negative assessment from the Commission would have caused the negotiations to remain still open. Jadranka Kosor, who succeeded Ivo Sanader as Croatia's prime minister, was faced with the challenge to find a strategic solution, quite different from her predecessors. The EU kept insisting firmly for important judiciary reforms and Kosor accepted these requests. Croatia changed its legislation, strengthening the public prosecutor's competences. A series of arrests accompanied by trials were carried out in the country. The investigations did not spare even Kosor's predecessor, Ivo Sanader and other important members of his party, Croatian Democratic Union (HDZ). This was the crucial step that enabled the signing of the Accession Treaty with Croatia in late 2011; trials for corruption at high levels convinced sceptics in the EU that change in the judiciary was real.

Croatia can without doubt be considered a successful story of democratic transformation. It is at the same time a clear evidence of the fact that a strict but fair negotiating framework can bring good results and can be used as an example to follow for other countries in the region.

Montenegro

Starting the accession negotiations on 29th of June 2012, only six years after the declaration of its independence, Montenegro has overtaken Macedonia, Serbia and Albania in its European journey. The negotiating framework for Montenegro (approved by the Council on 26th of June 2012) is more explicit and detailed as regards chapters 23 and 24 than the one for Croatia, seven years ago. This document reflects the new approach adopted by the EC in 2011. Thus, the negotiating framework states the concerns of some Member States related to the rule of law, corruption and organised crime. In this context, in addition to setting the benchmarks for opening and closing each chapter of the acquis, which can be decided by the Member States, new procedures regarding chapters 23 and 24 were included.

Given the current challenges and the long-term character of the reforms, chapters "Judiciary and fundamental rights" and "Justice, freedom and security" should be dealt with in the early stages of the negotiations, so that there is enough time for establishing the necessary legislation, institutions and solid track records of implementation, before

these chapters are closed. Their opening will be based on the action plans, to be approved by the Montenegrin authorities.

"Screening reports to be prepared by the Commission for these chapters will provide substantial guidance, including on the tasks to be addressed in the action plans, which will constitute the opening benchmarks. Where justified by exceptional circumstances arising during the screening process, the Council or the Commission, each in accordance with their respective roles, may determine that the action plans should include measures to address the identified shortcomings within a specific timeframe, including where necessary as a matter of urgency. Once the Council is satisfied, on the basis of an assessment by the Commission, that the opening benchmarks have been met, the Council will decide on the opening of these chapters and lay down interim benchmarks in the EU opening positions. These interim benchmarks will specifically target, as appropriate, the adoption of legislation and the establishment and strengthening of administrative structures and of an intermediate track record and will be closely linked to actions and milestones in the implementation of the action plans. Subsequently, the Council will lay down in an interim position closing benchmarks requiring solid track records of reform implementation."

The Negotiating Framework also introduces a "safeguard clause" that allows member states to put the overall negotiation process on hold if progress in the chapters 23 and 24 is lagging too far behind.

Macedonia

It is the first Western Balkans country to obtain the candidate status in 2005. For three consecutive years, from 2009 the Commission has recommended the opening of accession negotiations but this has not happened due to Greece's veto regarding the name issue.

Meanwhile, the Commission has started a new practice with Macedonia, the High Level Accession Dialogue and so far there have been three rounds of this format. High officials from the Commission have stated that the dialogue between Brussels and Skopje is neither overlooking the fact that Greece is blocking the opening of negotiations with Macedonia, nor serving as a substitute to accession talks. According to them, this new practice aims at keeping the pace of reforms in Macedonia until the name issue with Greece is solved.

Among the matters discussed between the two parties during the High Level Accession Dialogue are the implementation of the Ohrid Agreement, freedom of press, electoral reform, public administration reforms, free market economy and last but not least- the rule of law. Hence, based on the new approach for chapters 23 and 24, Macedonia took part as an observer in the screening process for these two chapters for Montenegro.

The purpose of this new practice is to somehow solve the problem noted when a country does not have a clear accession perspective. Inability to move towards this objective puts into question the fundamental principle of the enlargement policy: that the membership perspective will entice the political leaders of these countries to undertake the necessary reforms. It seems that politicians in Macedonia do not see any interest in implementing painful reforms as long as Greece is blocking the accession negotiations. Also, the Commission is fully aware of this negative dynamics. The High Level Accession Dialogue aims at finding a solution to this situation.

A similar approach was adopted by the Commission for Slovakia as well, during the '90s, when due to the authoritarian policies of Vladimir Meciar, the EU could not start the accession negotiations with this country. As an alternative, the Commission applied dialogue between Brussels and Bratislava and during that time both parties dealt with different chapters of the acquis. Thus, when the negotiations were officially opened, the Slovak part was able to use all the experience acquired during the previous dialogue.

5. Implications for Albania

It appears that the new approach adopted by the Commission in the framework of the enlargement process will be applied to Albania as well. Considering the improvement of the political climate compared to last year and the consensual adoption of some important reforms, it is to be anticipated that the Commission will recommend the candidate status for our country. However, it also appears that it will be a conditional recommendation, accompanied by a list of conditions, such as continuation of the political dialogue, the judiciary reform and fight against corruption and organised crime. Thus, the monitoring of these conditions should continue.

This conditional recommendation can help the continuation of reforms even in the first months of 2013, avoiding the start of the electoral campaign on the very next day after the report of the European Commission is published and dedication of all energies of the political actors as well as central and local administration as a consequence.

Particular importance shall be given to the preparation, organization and successful completion of the electoral process. This not only because of the irregularities noticed in previous elections but also because it directly affects other key priorities such as: political dialogue, functioning and independence of the judicial system, professionalism of the public administration, etc. Success in the election process along with the progress of reforms that help the functioning and preservation of the independence of the institutions would be a confirmation of the institutional and political maturity achieved by Albania and a deserved candidate country status for EU membership.

The EU is faced with the dilemma of pushing forward the integration process with countries in the region, so that these countries do not feel left aside, which in turn will slow down the pace of reforms¹². In the words of the Commissioner for Enlargement Štefan Füle: “... it is really important that there is no reform fatigue...”¹³ On the other hand, accession should not be only – or even mostly – about ticking boxes on adoption of laws and preparing of some action plans only on paper. It should also be about the process of decision-making (ensuring it is both inclusive and transparent) and the extent to which the principles entailed by conditionality are internalised and applied in practice.¹⁴

In this context, beyond the candidate status, which is broadly considered as an incentive for Albania to continue the implementation of reforms, the approach adopted by the EU for the country should continue along the same lines as with other countries in the region: constant dialogue on the reforms regarding 12 key priorities of the Commission’s Opinion. This dialogue can take the form of high level accession dialogues (as the case with Macedonia and Bosnia-Herzegovina) or of the consultative meetings such as the ones between the European Commission and Albanian authorities regarding the drafting and implementation of the Action Plan for the implementations of 12 priorities. It is an important process that will serve to promote the domestic reforms and the preparation in due time for the accession negotiations.

¹² See Dimitar Bechev “The Periphery of the periphery: The Western Balkans and the Euro crisis”, August 2012, pg. 6

¹³ See Štefan Füle’s interview for Euractiv, August 13th 2012

¹⁴ European Policy Centre “The democratic transformation of the Balkans, EPC Issue Paper, November 2011, pg. 50