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Indexing

Abstracting

# THE EUROPEAN UNION AS A REFORMING POWER IN THE WESTERN BALKANS: THE CASE OF ALBANIA

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Abstract

*This paper tries to further elaborate one of the most important external powers of the European Union: Its "reforming power" which goes in parallel with its ability as "normative actor" in the Western Balkans. Through Albania as a case study, it tries to argue that the process of Albania's integration to EU has transformed the country in several directions: by introducing a deep juridical reform and by the full alignment of its foreign policy with CFSP and the "regional cooperation". In fact, under the auspices of the EU integration, the country is making all the efforts to deliver on one of the most transformative reforms undertaken in the region, that of the justice system. This gives to EU the features of a "reforming power". The term shows EU as a driving force which makes countries undertake deep reforms they would not have differently realized, if not under the conditionality for the EU integration.*

*Keywords: Albania; EU integration; enlargement; reforming power; transformative power; regional cooperation; conditionality*

## INTRODUCTION

It is now more than a decade since the European Union has been called a “normative power” (Manners 2002) a “civilian power” (Bull 1982) a “soft power” (Nye 1990) and recently also a “regime maker” (O’Brennan, Gassie 2009) a “transformative power” (Grabbe, 2006) or a “member state builder” (Keil, Arkan 2016, 4); all terms used in the context of the “Europeanization” and the “democratization” of potential member states. In every case, the common denominator of these terms has to do with the fact that the European Union represents a substantial, peaceful power vs. a material, military one and there is where its strength lies.

This terminology has had a significant impact on the countries of the Western Balkans (WB), a region which more than ever needs a common European perspective during these hard times of rising of nationalism, populism and influences of third actors. Even though this might seem true in a first glance, there are many scholars who have often criticized the limited impact of the EU in the Western Balkans by stating, for instance, that the EU: “has limited potential when encountering defective democracies with little chance of becoming EU members (Dimitrova, Pridham 2004) or “lacks a strong normative justification, which affects the degree of compliance with the EU’s demands in areas related to state sovereignty” (Noutcheva 2007), or “lacks a plan B in order to prevent countries to be stucked in their way to EU as in the case of FYR of Macedonia, BiH and Kosovo” (Keil, Arkan 2016, 8). Other scholars suggest that the rule-of-law standards in EU accession countries cannot not be met only through “a credible EU accession perspective and an adequate degree of state capacity” (Elbasani 2009), or that the European Union’s external democracy promotion via political conditionality might be ineffective in “countries characterized by legacies of ethnic conflict” (Freyburg, Richter 2010). Another interesting point of view comes from Florian Bieber who argues that “conditionality approach has been largely ineffective in regard to state building in part due to the lack of commitment of political elites to EU integration and the persistence of status issue on the policy agenda” (Bieber 2011).

In order to reach its main goal, this paper will try to explore, as well, how the conditionality principle towards the Western Balkans has been shaped in the last years according to the needs of the Enlargement policy of the EU to adapt to its internal and international crisis. It will try to further explore how this transformation has lately affected the WB Region. The Albanian case will be used as a successful example of the EU’s “reforming power” and its ability to make substantial changes within the Region of the Western Balkans.

## THE SHAPING OF THE EU ENLARGEMENT POLICY TOWARDS THE WESTERN BALKANS

Enlargement has been one of the EU's most crucial questions in terms of its Foreign Policy approach yet has equally suffered from considerable opposition from the start. The phenomenon of the "enlargement fatigue" is not new, it goes back to the France's two vetoes of British accession in the sixties, only that, by that time it was called in another name: that of the "political calculations" (ESI 2016). At the end, both enlargement enthusiasm and enlargement fatigue are only "recurring position in the pendulum swings of the European opinion" (ESI 2016).

The same situation of both enthusiasm and fatigue is reflected in the WB region, as well. From 2003 when the EU Summit in Thessaloniki set integration of the Western Balkans as a priority until now, enlargement has had its ups and downs and the countries of the region are still struggling to fit in the bloc. After Slovenia in 2004, Croatia has been the other member state to join the club in 2013 and it seems to be the last one for a long time to come. The EU perspective dropped in its lowest levels in 2014 when the President of the European Commission, Jean-Claude Juncker, announced a five-year halt on enlargement, a declaration which "echoed pessimism among the WB countries" (Balkan Policy Research Group 2018). This distancing of the membership prospects, coupled with the realization that achieving long-term stability and transforming the region could best be secured through economic growth and increased regional cooperation, produced a controversial trend, leading on the same year to the so-called Berlin process (European Parliament 2016), a German initiative launched by Chancellor Angela Merkel aiming to restore hope for EU integration to the region. Nevertheless, the role of this initiative has often been debated whether it was a substitute for the EU's enlargement agenda or complementary to it. While the former role was clearly the spur in the wake of fading enthusiasm for further expansion, it was suggested that a reinvigorated enlargement effort from the EU part could make the Berlin process facilitate accession of the Western Balkans while enhancing the regional cooperation between them, but things did not seem to go always in the right direction. In fact, the last of its summits in London was expected to open a new chapter and to reiterate the countries' engagement with the WB region, but what happened was that "EU member states 'hijacked' the Berlin Process for their own agenda, while adding little to the process" (Bieber 2018).

As a consequence, a lot of criticism has embraced the Berlin process. There has been a lot of discussion about whether it was best to treat the Western Balkans collectively in this process, in order to avoid cherry-picking future EU members, or to try to generate peer competition to encourage those further behind the reform process to catch up with the leaders. Efforts to foster greater "regional cooperation" would argue for the collective approach. Meanwhile, the European Commission has adopted a more

rigorous approach to preparing the Western Balkans countries for membership in the EU. This approach is based on a benchmarking mechanism for assessing all chapters of the *acquis* (EU law), in particular those on the rule of law and good governance (Apelblat 2018). In parallel, through its main card of SAP (Stabilization Association Process) and the famous principle of “conditionality”, the EU has tried to ‘impose’, even though sometimes not publicly asked, some important policies or activities which have tried to shape the countries in the Western Balkans aiming to split them from the shadows of the past. To achieve this goal, the EC had introduced several changes to the Enlargement approach. In 2015, instead of an annual strategy, the Commission published a multiannual Enlargement Strategy to cover its five-year mandate. As part of its new Reporting Methodology, the Commission placed a stronger emphasis on the state of play and harmonized the assessment scales, making it easier to gauge a country's readiness for EU accession and compare it with other countries over time. The Reports were to include clearer recommendations for priority actions to be carried out within a year, making it easier to track their implementation, known as ‘fundamentals first’: Rule of law including Judicial Reform, tackling organized crime and corruption, fundamental rights including freedom of expression and fighting discrimination and the functioning of democratic elements including Public Administration, Economic development and strengthening of competitiveness (European Commission 2015). In 2016, the time-frame for publishing the next enlargement package shifted from autumn 2017 to spring 2018, to better align it with the release of the Economic Reform programs and the increased focus on Economic Governance (European Parliament 2017).

The main novelty of this renovated EU approach is that it brought Rule of law to the fore by deciding for Chapters 23 and 24 in the negotiation process to be the first to open. Another high spot was insisting on the regional cooperation as an important factor which will give fresh impetus to the region's economic performance, reconcile its society and prepare it for eventual EU membership (European Parliament 2017). In this context, regional cooperation and good neighbor Relations were once again brought to the fore as an indispensable means of re-energizing common reform priorities and maximizing benefits for the region. The current year, 2018, has certainly seen a renewed focus on EU enlargement in the Balkans created by recent and ongoing events and initiatives such as the State of the Union speech and the first visit of President Juncker in the region, the personal engagement of HRVP Mogherini in the Western Balkans, the February Strategy of the Commission, the April enlargement package, EU-WB Summit in Sofia, the latest Council decision on enlargement, the London Summit and the Bulgarian EU Presidency putting the European perspective of the Western Balkans as a key priority. The main responsibility still relies, nevertheless, on the WB’ domestic regimes: they might fail to fully accomplish with the Reforms, as Noutcheva had pointed out a decade ago (Noutcheva 2007).

## ALBANIA'S JUDICIAL REFORM PAVES THE WAY TO THE COUNTRY'S 2018 MAIN OBJECTIVE: OPENING OF ACCESSION NEGOTIATIONS WITH EU

Even though diplomatic relations of Albania with EU (European Economic Community at that time) were established in June 1991, it was the Thessaloniki Summit in June 2003 which officially confirmed the EU perspective for all the countries part of the Stabilization and Association Process (SAP). The visit of the former President of European Commission, Romano Prodi, in 31<sup>st</sup> January 2003 in Albania to open the negotiations for signing the SAP, will stay in the country's public opinion memory for a long time.

From the perspective of the WB countries, the integration process has, for a long time, appeared as a unilateral one, depending mainly on the single country aiming to become part of the EU. This tendency has shifted gradually to a regional one since with the launch of Berlin process in 2014, thus giving more importance to a regional mindset shaping the Foreign Policies of the WB states based on principles of reconciliation, good neighborly relations, political and economic cooperation within the region. The case of Albania is worth mentioning in this direction as a country of the region whose government assessed regional cooperation as one of guiding principles of the Foreign Policy within the Governance Program 2013-2017 (Beshku 2016), while has aligned the governing to the adaptation of its key priorities with the "regional cooperation" and the European Integration in its last Governance Program 2017-2021 (Qeveria e Republikës së Shqipërisë 2017).

From an EU perspective, the EU integration process of the WB, due to frequent internal instability and political crisis of the region since 1990, has often resembled "to the 'raising of a difficult child'" where the "EU has taken the role of a 'European nanny'" (Elbasani 2004). It is important, though, to explore the transformations of both sides in a twofold analysis: The country's Reforms and the shaping of its Foreign Policy from one side and the EU Enlargement policies from the other. It is not the first time that Albania represents a good example in this direction: "Albania-EU relations constitute an excellent case study for analyzing from one side the strategies of transition states in developing their external relations and from the other side the development of the EU's external relations of countries in its regional influence" (Ailish 2001). Meanwhile, the enlargement policy of the EU towards the Western Balkans has changed by becoming more and more demanding and sophisticated than the previous EU enlargement rounds, combining traditional aspects of the Copenhagen criteria and *acquis communautaire* to more specific new ones as those contained in different chapters of SAP, with "rule of law" and "regional cooperation" being the key denominators of the process. The political conditionality of the EU towards the WB countries has changed especially after the 'troubles' faced within the last enlargements and the recent

challenges that have affected the Union such as: migration/refugees crisis, Brexit, foreign and security policy demands (Transatlantic relations, neo Great Power Politics), EU economy (consequence of Euro crises, shifting trade environment, crisis of social state) and the national political transformations (rise of populism, low participation in European elections) (World Economic Forum 2017). A set of precise norms related to state building, the proper functioning of public administration and that of the juridical system towards the Western Balkan countries was developed by introducing “a more muscular conditionality”, as Pridham had put it in a nutshell (Pridham 2007).

The case of Albania pays tribute to these incentives. The country has transformed its foreign policy in line with the EU directives and alienates its domestic policy in this framework. In general, these transformations have usually had the support of the political elites and the society, since the Albanian society's positive perception towards the European Union in Albania has been a lot supportive in the last decades. The “European affiliation” has never been put in doubt by its society and the ruling elites (AIIS 2014). No political party or movement, even outside of the traditional ones, has formally articulated any opposition towards the EU integration of Albania in its public speech, but it seems not to be enough still. A proactive approach from all internal parties is needed. The country is still waiting for the opening of the Accession Negotiations and finally a possible date has been set in June 2019, to prove itself “worthy” of this given possibility.

The EU integration process has had its ups and downs, mostly related to internal domestic crisis and policies, but since 1990 when Albania came out of isolation and embraced the liberal democracy system, the European Integration has always been a national objective for the country and still continues to be one of the main axes of Albania's foreign policy (Beshku 2016). It is still considered from all the parties, as the most efficient way of establishing a stable democracy, a competitive market and a modern society, by considering the EU as a “role model” and as a standard measuring mirror.

In this direction, it is particularly true that the Albanian justice system was in need of a radical overhaul because the system suffered from widespread corruption, co-optation, professional shortages, and structural inefficiencies. Public trust in the courts and law enforcement was extremely low, and all of this represented an enormous challenge for rule of law and the Albanian political class seemed to agree on the need to urgently reform the justice sector, if not necessarily on how to go through it (Dobrushki 2017). Albania is not an exception of the cases. The key problems of the Western Balkans have been overall the same in the last decade: deep corruption, weak rule of law, doubtful justice system, fragmentizing parties and authoritarianism, resulting in a pattern of ‘democratic decline, both institutional and personal (BIEPAG 2017).

The ways out to these problems remain different and personally tailored for each country, all arriving at the same point: reforms in order to reinforce the “rule of law” with a spillover effect on other fields such as “corruption” and “organized crime”. Albania, BiH, Kosovo, FYR of Macedonia, Montenegro and Serbia remain “weak states with dysfunctional institutions, notwithstanding the considerable diversity among them” (BIEPAG 2014). One thing is crucial in the Albanian case: having not been part of the ex-Yugoslavia and its ethnic conflicts, Albania constitutes a country with a “potential of stability” in the whole region. This seems to have been totally comprised also from some EU countries, especially Germany and Austria, the main supporters of the Berlin Process. As Ryan Heath admits: “If anyone can become a surprise front-runner in the membership race it is Albania, already a NATO member, mostly free from the complications of the Yugoslav wars of the 1990s, with no bilateral disputes and a stability factor in the region” (Heath 2017). Furthermore, the fact that the country has undertaken a unique deep reform in the justice sector since 2016 with no predecessors in this direction, may fulfill the bases for the EU to be baptized with the term of a “reforming power”.

Four years after being granted candidate status in 2014, the country has tried to demonstrate progress in the implementation of the five key priorities for the opening of accession negotiations, as confirmed by the last Reports of the European Commission. Referring to the 2015 Report on Albania, the country was “a constructive partner in the region, further developing solid bilateral relations with other countries preparing to join the EU and neighboring EU Member States” (European Commission 2015). Albania has continued to participate actively in the regional cooperation approach and continued to maintain good neighborly relations in line with its commitments under the Stabilization and Association Agreement (European Commission 2015). Although the EU praised Albania's commitment and steady progress on them, it made it clear that the next step – opening negotiations – will depend primarily on completing the ongoing judicial reform and ensuring constructive cross-party political dialogue. “The judicial reform constitutes the toughest nut to crack. The rule of law is the cornerstone of the entire process” (Steinmeier 2014). Thus, the European Commission is supporting Albania in conducting a thorough and credible vetting process through the International Monitoring Operation (EEAS 2016).

The thorough and complex justice reform was launched with a set of amendments that changed to one third of the country's Constitution. The main features of the ongoing reform can be summarized around the following pillars: measures to fight corruption, including by establishing a new Special Anti-Corruption and Organized Crime Structure (SPAK); measures to reduce the influence by the parliament and the executive on the judiciary; measures to increase the independence and effectiveness of the High Court, as well as the independence, impartiality and transparency of the

Constitutional Court and the High Council of Justice and Prosecution system; measures to increase accountability of judges and prosecutors, including by setting up the new High Judicial Council, the new High Prosecutorial Council, as well as a High Justice Inspector; measures to increase justice efficiency and access to justice (European Commission 2018).

In addition to the institutional restructuring of the judiciary, the reform process foresaw the launch of a generalized re-evaluation (vetting) of all judges and prosecutors. This entails that around 800 professionals (judges) are currently undergoing scrutiny through the so called "the vetting process". The vetting has already started. The Albanian vetting institutions have completed the assessment of the top priority cases (European Commission 2018). As a *sui generis* process, "the reform could be used as a role model by other countries in the region, not least because it considers stability concerns" (Bushati 2016). Nevertheless, the process has been stopped due to a political crises started on February 2017: the opposition party (Democratic Party) decided to boycott all parliamentary activities which started some months ahead the general parliamentary elections, supposed to be held on June 2017. There were the first signals that the reform was encountering a strong political resistance within the Albanian political environment.

The crises seemed to finally come to an end in May 2017. The EU appraised the agreement reached by the two main political parties (Socialist party in power and Democratic party in opposition) by postponing the elections on 25 June 2017. After the elections, the Socialist Party (PS) took the power with an outright majority and the ability to form a single-party government. External factors such as the EU and the United States also exerted significant positive influence on Albania's politics (Fras 2017).

Although the vetting of the prosecutors still goes on, some of the main constituent bodies of the Justice System have not yet been put up, even after two years after the process has started. One thing, however, seems clear: "No matter how long it takes, or who is ultimately in control-all roads seem to lead in Brussels" (Dobrushki 2017). As it we tried to argue in the above analysis, the justice system's reform of Albania does not constitute a point of arrival of the country's advance towards the integration in the EU, but rather a point of departure, as a consequence of being the "rule of law" the cornerstone of the EU integration of the country. If duly and fully implemented, the successful ongoing of this Reform should lead to the opening of accession negotiations in 2019 of Albania with the European Union.

## CONCLUSION: A "REFORMING POWER" EU

After the decline of Soviet influence and the shortage of regime alternatives, the EU was the only hegemonic "civic" or "normative" power without competitors in the former communist space. However, the power of the European Union in the Balkans is linked to the credibility of the EU integration process (Abazi 2018). The integration process is strongly linked to the EU enlargement policies that present a fascinating policy field in which to explore the emergence of (new) modes of governance. Entrenched in the path-dependent evolution of EU external relations and enlargement, it exhibits all four modes of governance: hierarchy, negotiation, competition and cooperation. EU conditionality over membership in the club in combination with economic, legal, and financial linkages comes to be a mean for democratization, Europeanization and good governance in the region. Therefore, the integration and enlargement process should be in line with each other and with the development of the WB countries. EU's patronizing role in guiding domestic political reform and economic transition, with the promise of future membership, is crucial for the future of the region. The way forward to the EU of the Western Balkans is based on the "conditionality" test of enlargement through reform driven approach from countries while relying on the golden carrot of membership. This is where EU bases its 'supremacy' as a necessary "reforming power" in the region. Under these conditions, it is true that the EU, often confronted with political pressures coming from national political forces in the WB countries in order to maintain the *status quo*, has become not only the "driving force" (Keil, Arkan 2016, 4) for their democratization, but also a crucial actor for important internal reforms. The question is: for how long will things uphold?

The recent developments within and outside EU "have created a 'power vacuum' in the Western Balkans" (Abazi 2018), which third actors are attempting to use in their interests. In turn, Western Balkan leaders may be attempted to sometimes see the current geopolitical challenges "as an opportunity, not a problem" (Abazi 2018). However, in a changing international order, the EU must consider moving towards a deeper mode of integration and develop mechanisms to anticipate and alleviate any negative consequences of geopolitical developments. Keeping Western Balkan countries tied to a real EU involvement and perspective is a precondition for their not turning the back on Europe and meddling with third actors or authoritarian powers that do not uphold European values. Both sides need not fall for the prisoner's dilemma, the notorious paradox in game theory in which two parties act out of individual self-interest and both lose out in the process (Abazi 2018). In this status of things, "formally opening the negotiations does not necessarily mean a swift or inevitable conclusion, but the EU needs to keep hopes alive among candidate nations if it wishes to retain its influence" (Kouchner 2017).

In the case of Albania, EU is highly perceived as the only way forward since the early nineties. The EU acts as a perfect “normative” or “soft power” able to generate consensus from all the political internal actors in the country, even though the reforms demanded by the EU are sometimes painful but necessary as the case of the still ongoing juridical reform in Albania has shown. In any case, the fact that the country has undertaken such a deep justice reform under the auspices of the EU may make the Albanian case as an “instructive” (Kouchner 2017) one and EU in its regard as an excellent “reforming power”. Thus, as we have tried to argue, Albania constitutes a good example of a *reformateur* under EU’s oversight comprising three areas: foreign policy (full alignment with CFSP), regional relations (good neighborly relations following Berlin Process series) and the domestic policy (reform of the justice system) as the rule of law is a crucial prerequisite for a healthy society, the consolidation of democracy and the economic development of a country on its way to the EU.

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