

# Working Paper

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## EU Candidate Country Reforms and the Revised Enlargement Methodology: Searching For a Roadmap

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## **Abstract**

*An increasing involvement of Member States in the EU Accession process is the new defining trait of Enlargement. Member states are focused in the progress of reforms and actively engaged in setting benchmarks, monitoring their progress and providing technical assistance on the ground. The latest Enlargement methodology published in February 2020 has officialized this trend. But while the EU Commission applies its chapter-based methodology, Member States have a tendency to focus on the progress of reforms, to include a high degree of political conditionality, and to apply the conditionality before the official opening of Accession Negotiations as in the case of Albania and North Macedonia.*

*This development brings to the fore the importance of the implementation of the *acquis* (vs. the adoption) and the functioning of reformed local institutions (vs. the institution building). Aiming to avoid any backsliding, EU has included the “Rule of Law” and “Functioning of Democratic Institutions” in the Cluster of Fundamentals, acknowledging the necessity of higher scrutiny during the implementation phase and on the good governance component.*

*The next challenge remains the design and implementation of the respective roadmap for the Rule of Law and for Functioning of Democratic Institutions. In that regards, Justice Reform in Albania provides a unique experience where Enlargement is intertwined with the country institutional reforms, and where EU Member States have taken a leading role in the scrutiny of the progress towards EU membership.*

### **I. Reforms have become crucial in the assessment of SEE6 countries’ progress during EU accession negotiations**

During last years, and especially during 2019, we have noticed a shift in the application of EU conditionality applied in accession negotiations. While previously the EU Commission (COM) was the designer, monitor and reporter, there is now an increasing participation of EU Member States (MS) in the process of setting standards and benchmarks, scrutinizing and deciding about the candidate country’s progress. Currently we are assisting in the emergence of a dual-track country dynamics

of enlargement and of reforms. This shift is characterized by three features.

First, the nine Bundestag conditions,<sup>1</sup> the opinion of the Dutch parliament or the French decision to block the official opening of negotiations<sup>2</sup> with Albania and North Macedonia in 2019 have illustrated the current multi-layered governance of the enlargement process. This new development brings in the Member States in an increasingly active role in setting the conditions as well as monitoring and

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<sup>1</sup> German Bundestag, 19 electoral term, The German Bundestag, 26 September 2019 [https://www.bundestag.de/resource/blob/661474/a7dbc7059c21262d3053c2baa8704adb/decision\\_albania-data.pdf](https://www.bundestag.de/resource/blob/661474/a7dbc7059c21262d3053c2baa8704adb/decision_albania-data.pdf)

<sup>2</sup> Le Monde, L’élargissement de l’UE aux Balkans bloqué par Paris, Berlin et La Haye [https://www.lemonde.fr/international/article/2019/06/19/l-elargissement-de-l-ue-aux-balkans-bloque-par-paris-berlin-et-amsterdam\\_5478466\\_3210.html](https://www.lemonde.fr/international/article/2019/06/19/l-elargissement-de-l-ue-aux-balkans-bloque-par-paris-berlin-et-amsterdam_5478466_3210.html)

reporting of South-East Europe Six<sup>3</sup> (SEE6) progress.

Second, the nature of the demands raised in the evaluation of Albania's progress would seem to indicate that MS are mostly focused on areas of deep-cutting reforms such as rule of law, functioning of institutions, elections, etc. The 2020 Revised Enlargement Methodology (REM) sanctions this shift with the role that it foresees for MS in monitoring on the ground, in reporting, and in intervening through assistance in selected sectors.

Third, by frontloading the fundamentals, we are assisting today in an increasingly proactive stance of the Commission and of Member States in assessing the progress of candidate country reforms. This insistence stems from lessons learnt from the last wave of enlargement, and is justified, inter alia, by the backsliding phenomenon. The EU progress reports since 2016 have noted a slowing of convergence and sketchy progress in the rule of law. Observations such as state capture and missing political will have been identified as the main impediments confronting SEE6 along their path to full membership.

Until lately, the enlargement methodology has focused on institution building and

adoption of the *acquis communautaire*. It has not paid attention to the underlying political will and the political costs required to push for painful country reforms. It has largely under-estimated costs in time, finance and human capital needed for the creation of a new, EU-compatible social and economic model. The EU financial aid, delivered through Instrument for Pre-accession Assistance (IPA) has been designed to accompany the transformation, not to trigger and support the deep-cutting institutional reforms.

## **II. REM includes Institutional Functioning in its clusters**

From the outset, the Revised Enlargement Methodology for “A more credible, dynamic, predictable and political EU accession process” underlines the importance of reforms on fundamentals, and the level of clarity expected by the EU at the different stages of the process.<sup>4</sup> Reforms on the fundamentals would be under greater scrutiny and subject to stricter monitoring, thereby conditioning the pace of negotiations.<sup>5</sup> In the case of Albania deep-cutting institutional reforms have officially become an integral part of the conditions set by the EU for the official opening of negotiations.

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<sup>3</sup> CDI has decided to use *South-East Europe Six* instead of the historically-charged *Western Balkans Six*

<sup>4</sup> EU Commission, “A more credible, dynamic, predictable and political EU accession process”, 05.02.2020. [https://ec.europa.eu/neighbourhood-enlargement/news\\_corner/news/more-credible-](https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/more-credible-)

[dynamic-predictable-and-political-eu-accession-process-commission\\_en](https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/more-credible-dynamic-predictable-and-political-eu-accession-process-commission_en)

<sup>5</sup> EU Commission, Enlargement Strategy and Main Challenges 2006-2007 Including annexed special report on the EU's capacity to integrate new members. [ec.europa.eu > pdf > 2006 > nov > com\\_649\\_strategy\\_paper\\_en](https://ec.europa.eu/commission/press_corner/detail/news/2006_11_20_649_strategy_paper_en)

The process of frontloading of conditionality merges reform dynamics with the accession negotiation track. The outputs of engaged reforms become crucial for a positive decision by the EU Council. But as it stands today, frontloading is not designed to look inside the newly established institutions, or to scrutinize the way local institutions work and produce their outputs. It has proved powerless to deal with domestic political infighting delaying the pace of reforms and impacting the progress on Fundamentals.

The Albanian case shows that to successfully and sustainably reform SEE6 states, the conditionality applied to the set-up of democratic institutions and the control of their track record (as in Chapter methodology), must be complemented with the scrutiny of their internal functioning – or of “throughput phase”. Institutional good governance directly conditions the quality, efficiency and sustainability of reform outcomes.

Acknowledging the above, REM has included the “Functioning of Democratic Institutions” in the Fundamentals. However, this modification has yet to be completed with a roadmap that would need its own benchmarks, indicators, monitoring and reporting mechanisms, all closely coordinated with the MS.

The preparation of a roadmap should be context-based, and actively involve SEE6 countries starting from the design phase,

aiming to increase ownership, visibility and expected popular support for the reforms. It must use the available national platforms such as the National Council for European Integration, the highest representative forum bringing together enlargement stakeholders.

The Albanian experience and insight in justice reform brings innovative and context-based elements that can be used during the preparation of the roadmap for “Functioning of Democratic Institutions”. It provides a unique opportunity to apply the harmonization the monitoring methodology of enlargement and of country reforms.

### **III. Albania has been frontloading reforms and been subjected to COM & MS scrutiny in its EU accession progress in the last 6 years**

The importance of judicial reform has been stressed by the Council since December 2011.<sup>6</sup> Since 2014 and well before opening of accession negotiations, Albania has initiated a ground-breaking reform of its judiciary. The reform includes, among others, setting up a fully-fledged system of vetting judges and prosecutors, establishing new institutions governing the judiciary, creating a special prosecution and courts for the fight against corruption and organised crime, and substantially reforming existing institutions, including the Supreme Court, Constitutional Court and General Prosecutor’s Office.

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<sup>6</sup> European Commission, Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014,

COM/2013/0700 final <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex%3A52013DC0700>

The EU Commission and Member States have supported the justice reform from the beginning and have closely monitored it. But these combined efforts have often resulted in diverging opinions. In 2018 and 2019 the European Commission welcomed the efforts of Albania on the rule of law.<sup>7</sup> But the Council was not convinced, and decided to revert to the issue of official opening of negotiations before the EU-Western Balkans summit in Zagreb in May 2020.<sup>8</sup>

The politically charged decisions needed for the country justice reform<sup>9</sup> to take place provide a unique view on the elements that shape and condition the political will of local actors. The exceptional scope and depth of reform (one-third of Albania's Constitution rewritten, with 11 ex-nihilo justice institutions created and four others completely restructured) provides a unique insight on the way the good governance of newly created institutions impacts their expected output. The very high number of institutions involved provides the mass of research targets needed for a scientific observation.

Justice reform in Albania gives us the opportunity to go beyond the *acquis* and of the capacity building approach (defined here as the formal establishment of new structures and institutions), and scrutinise the intricate issues unfolding during the implementation of the *acquis* and in the good governance mechanisms of the newly established structures.

ALBE methodology focuses on the institutional governance process. It identifies and examines the indicators of good governance of the newly established institutions as verified by advancement in their organisational set-up, the financial support, human resource endowment, state of adoption and functioning of internal procedures, interaction with other structures and institutions, and public transparency.

#### **IV. Preliminary findings**

Our methodology aims to qualitatively monitor the progress of engaged reforms with regard to “throughput legitimacy”, in the framework of the interaction of engaged reforms with Albania's obligations vis-a-vis

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<sup>7</sup> European Commission, (2018) Albania 2018 Report. Strasbourg. 17.4.2018. SWD (2018) 151 final. Retrieved on 20.01.2020: European Commission, (2019) Albania 2019 Report. Brussels. 29.5.2019. SWD (2019) 215 final. Retrieved on 20.01.2020: at [ec.europa.eu › neighbourhood-enlargement › sites › near › files › 20180417-albania-report](https://ec.europa.eu/neighborhood-enlargement/sites/near/files/20180417-albania-report)

<sup>8</sup> European Council, (2019) Conclusions 17-18 October 2019, EUCO 23/19, Brussels, <https://www.consilium.europa.eu/en/press/press-releases/2019/10/18/european-council-conclusions-17-18-october-2019/>

<sup>9</sup> One of the most spectacular outputs of the justice reform was the complete replacement of the judges sitting in the Constitutional Court (CC) and in the High Court (HC). But as of February 2020, the CC has 4 out of 9 judges while the HC has only one out of 19. This process set in motion a ferocious fight amongst different political parties in Albania as well as a high profile conflict amongst different state structures involved in the appointment of new judges (justice reform structures, the President and the Parliament).

the EU integration process. The goal is to identify components that may be used to draft the roadmap required for the “Rule of Law and Functioning of Democratic Institutions”, by taking into account the changes brought by NEM.

The following table identifies main blocks that define the roadmap for “Functioning of Democratic Institutions”. We have used as a

starting reference the “traditional” Accession Negotiations Approach (TANA) pre-February 2020. In the second column we have merged the MS-related novelties of REM with the Albanian context-based findings during the implementation of Justice reform – we call it a Reforms-Based Approach (RBD). In the last column we have added our preliminary findings.

**Table ALBE: comparing TANA and Reform-based Approach**

	Approach/ Components	“Traditional” Accession Negotiations Approach	Reform-Based Approach	ALBE preliminary findings
1	<b>Rationale</b>	Based on “inevitability” of enlargement; normative, bureaucratic and administrative; chapter-based managed by Commission with MS intervening mostly through Council of Ministers	Based on need for trust; Political, sequential; and transactional; bigger role of individual MS at all enlargement phases, also reflecting internal MS policy priorities	SEE6 and EU context-based and developmental; focused on multi-sector and multi-actor EU/MS-SEE6 connectivity; inclusion of new SEE6 enlargement actors
2	<b>Normative context</b>	Exhaustive normative framework is pre-defined by the EU and adopted as such	Created by candidate country on a case-by-case order with strong input by MS; very fast adoption pace	Need to monitor law implementation (on top of promulgation); closely monitor by-laws and internal good governance rules & procedures
3	<b>Institutional context</b>	Restructuring & establishment of dedicated negotiating structures; and, improvement of existing sector-based ones, based on EU Commission design	Establishment of <i>ex-nihilo</i> central structures, and may directly impact country Constitutional order; adoption of Western institutional design & method	Criteria should include sustainable, locally adapted and context-specific features; monitoring of institutional good governance; identification, support and promotion of “best cases” / islands of excellence
4	<b>Monitoring</b>	Use of Track Record Tables and benchmark approach	Mainly quantitative (i.e., number of new institutions / structures created, number of old officials vetted / fired and new ones vetted / appointed, etc.). Input legitimacy includes monitoring of the electoral system	Law implementation indicators; number of well-functioning SEE6 institutions; good governance indicators; number of joint SEE6-MS projects; number of long-term SEE6-MS partnerships

## **Conclusions**

We have identified the throughput legitimacy as the capacity of the candidate country's institutions to function efficiently and autonomously, and to produce qualitative and efficient outputs satisfying the reform targets and EU requirements.

In the coming weeks, ALBE will publish the detailed monitoring results of "throughput legitimacy" on newly established structures of justice reform in Albania.

The report will contain concrete proposals on potential building blocks of the roadmap for the Rule of Law and Functioning of Democratic Institutions, part of the 1st cluster of the Revised Enlargement Methodology.

Any critic, suggestion alternative proposal, etc would be most welcomed by the authors.