

# MODULE EU LAW INTO ALBANIAN LEGAL SYSTEM

Annex EU.6  
Lectures by Eda Gemi and Andrea Mazelliu

## EU Enlargement and Legal Framework

With the support of the  
Erasmus+ Programme  
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Lecture 1 & 2

# The Roots of the EU

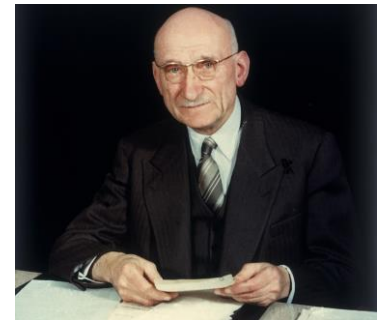
- The French political and economic adviser Jean Monnet dedicated himself to the cause of European integration. He was the inspiration behind the 'Schuman Plan', which foresaw the merger of west European heavy industry. Monnet was from the Cognac region of France. When he left school at 16 he travelled internationally as a cognac dealer, later also as a banker. During both world wars he held high-level positions relating to the coordination of industrial production in France and the United Kingdom.
- As a top advisor to the French government he was the main inspiration behind the famous 'Schuman Declaration' of 9 May 1950, which led to the creation of the European Coal and Steel Community and, as such, is considered to be the birth of the European Union. Between 1952 and 1955 he was the first president of its executive body.





# Birth and Growth of the Community

- <https://www.youtube.com/watch?v=4VCYHTGjr-U>
- “What is Europe now? A rubble heap, a charnel house, a breeding ground of pestilence and hate.” – Winston Churchill
- 9 May 1950 – Robert Schuman - ‘Europe will not be made all at once, or according to a single plan’
- Common market with two important economic sectors
- SIX founders of ECSC (EU) – the little Europe of 6
- ECSC entry into force – 25 July 1952





# EU Enlargement

- First country to access EU? – 1973
- UK, Ireland, and Denmark
- Greece – 1 January 1981
- Spain and Portugal – 1 January 1986
- The Treaty on European Union – Treaty of Maastricht 12 February 1992
- 1<sup>st</sup> January 1995 – Europe of 15- Austria, Finland and Sweden
- *Concurrently – EEA – Norway, Lichtenstein and Iceland*
- In May 2004, 10 more countries joined the EU: Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia.
- On 1 January 2007, Bulgaria and Romania became members of the EU. The latest country to accede was Croatia, on 1 July 2013.
- **On 31 January 2020, the United Kingdom left the EU.**





# EU Treaties

- European Coal and Steel Community – 18 April 1951
- Euratom – European Atomic Energy Community – 25 March 1957
- European Treaty on the Capitol Hill – 25 March 1957
  - European Economic Zone – Treaty of Rome
- Framework treaty
- Creation of a common market
- Achievement of Custom Union – abolition of custom duties
- Introduction of Common Customs Tariff – CCT
- Harmonization of national policies
  - Four fundamental freedoms



# 4 EU Freedoms

- Four Freedom of Movement:



# Treaty of Maastricht

- Signed in Maastricht on 7<sup>th</sup> of February 1992
- Establishment of an entity with global character
- Article B – objectives:
  1. Promote economic and social progress – area without internal frontiers
  2. Common foreign and security policy
  3. Close cooperation on justice and home affairs
  4. Introduction of a citizenship of the Union
  5. Acquis Communautaire
- Treaty of the EU pillars:
  1. European Community
  2. Edifice of justice,
  3. Edifice of common foreign and security policy





# The Treaty of Amsterdam

- 17<sup>th</sup> of June 1997
- A more democratic Europe
- Respect of human rights and democratic principles by the MS
- Free movement of its citizens
- 4 main objectives:
  1. Employment and citizens; rights
  2. Justice and home affairs
  3. Stronger voice in world affairs
  4. Institutional structure



# Treaty of Nice

- 7-9 December 2000
- Reform the Institutional Structure of EU
- Composition of the Commission
- As of 1<sup>st</sup> of January 2005 the decision making process will be alerted to qualified majority in certain area
- Closer cooperation
- Union's legal system



# Treaty of Lisbon - TFEU

- 1 December 2009
- more centralized leadership and foreign policy
- process for countries that want to leave the EU – Article 50
- streamlined process for enacting new policies.
- new rules to enhance cohesion and streamline action within the EU
- replaced the previously rejected Constitutional Treaty, which attempted to establish a Union constitution
- three fundamental principles of democratic equality, representative democracy and participatory democracy



# Primary Legislation

- The Treaty of Lisbon or the Lisbon Treaty (initially known as the Reform Treaty)
- Signed by the EU member states on 13 December 2007,
- Entered into force on 1 December 2009
- Full title: Treaty on European Union and the Treaty on the Functioning of the European Union



# Treaty of Lisbon

Three types of competences:

1. exclusive competence, where the Union alone can legislate, and Member States only implement;
  2. shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so;
  3. supporting competence, where the EU adopts measures to support or complement Member States' policies.
- The Treaty of Lisbon gives the EU full legal personality.
  - The Union obtains the ability to sign international treaties in the areas of its attributed powers or to join an international organisation

# Lisbon Treaty Changes

- Lisbon Treaty include:
- reforming the system of the European Council presidencies from its current six-month rotation
- appointing a full-time European Council President for a period of two-and-a-half years
- changing the weighting of votes by Member States (applicable from 2014);
- extending the scope of qualified majority voting to new areas.



# Lisbon Treaty Frames

- general provisions governing the EU
- overall provisions of the EU's external relations
- Article 18 – High Representative of the Union for Foreign and Security Policy
- Article 21 – External actions (including development cooperation)
- Article 27 – European External Action Service

# High Representative Competences

- responsible for the CFSP and the CSDP within the Council
- not for all of the Commission's external competences.
- responsible for ensuring that all of the EU's external policies are consistent and coordinated
- Out of competence: *external trade, development cooperation and humanitarian aid*
- Article 18(4) also confirms the status of development cooperation and humanitarian aid as independent policies.

# ... A new institutional set-up - ToL

- Parliament 'composed of representatives of the Union's citizens'
- Co-Decision procedure = 0
- Parliament's legislative powers increased through the 'ordinary legislative procedure'
- Policy Areas approx. 73
- Principle of degressively proportional – 705 MPs
- European Council is an EU institution - general political directions and priorities
- High Representative of the Union for Foreign Affairs and Security Policy
- The Council - principle of double majority voting
- The Commission
- The Court of Justice of the European Union

# European Community and European Union

- On-going construction
- Economic and monetary union – common market
- Shared Sovereignty
- Principle of Subsidiarity and proportionality – multi-level governance
  - ART. 5 - The use of Union competences is governed by the principles of subsidiarity and proportionality.





# Treaty on European Union - Article 5 (ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

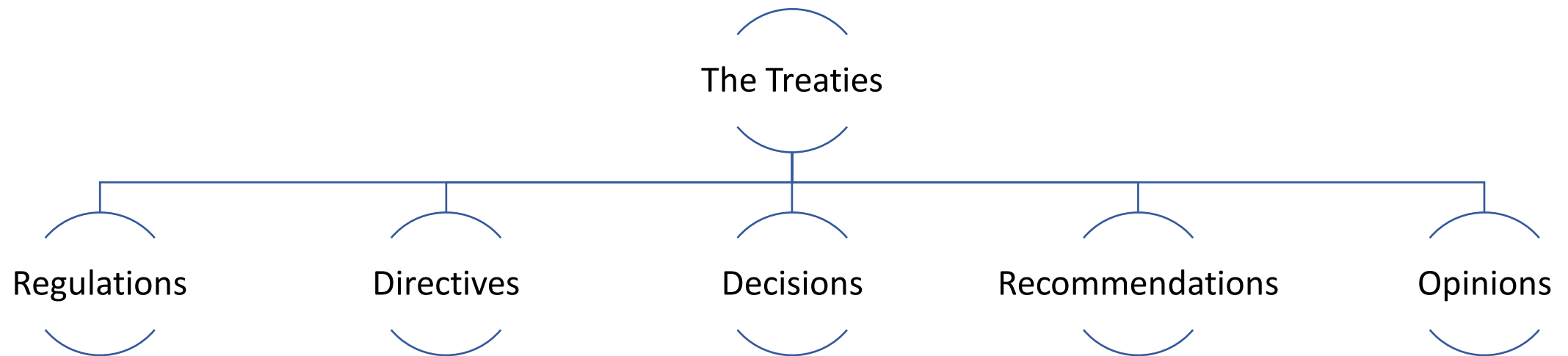
The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

# The EU Legal Acts

- EU law unique status – horizontal direct effect
- Article 288 of Treaty on European Union
- Regulation
- Directive
- Decision
- Recommendation
- Opinions
- Resolutions
- Law of the EU precedence over the national law



# Sources of Law – Ch 2 of TEU – Art. 288 TEU



# THE LEGAL ACTS OF THE UNION

- To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
- A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
- A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.
- Recommendations and opinions shall have no binding force.



# Regulation

- defined by Article 288 TFEU (ex. Art. 249 EC)
- the most powerful form of secondary legislation
- directly applicable in the legal order of the Member States without the need for incorporation into national legislation (implementation by the member states parliaments)
- binding in their entirety
  
- The ECJ has stated in *Commission v Italy* (Case 39/72) that subjecting regulations to domestic implementation would endanger the uniform application of EC law.

# Directives

- defined by Article 288 TFEU (ex. Art. 249 EC)
- binding as to their effect, but the national authorities of a member state can choose the instruments of implementation
- normally there is a defined date / period for implementation
  
- the implementation has often been an issue for the ECJ:
  - a. incorrect implementation
  - b. failure to implement a directive all together

# Decisions

- addressed only to a specific member state, undertaking or individual
- binding in their entirety only on those to whom they are addressed
- often directed to companies which have acted contrary to the provisions of the EC treaty (e.g. the area of competition law)
- Art. 288
- A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

# Recommendations and Opinions

- not legally binding for the parties to whom they are addressed
- considered to have considerable influence, because the ECJ has stated that national courts must consider them when interpreting EC law
- Art. 288
- Recommendations and opinions shall have no binding force.



# SUPPLEMENTARY LAW in the EU

- Composed of –

1. EU case law coming from the decisions of the Court of Justice and the Court of First Instance
2. International law (always taken into consideration by the courts when considering case law)
3. The EU ‘general principles of law’

- Use the following link to read more about supplementary law

- <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14533>



# Questions

- ECSC- \_\_\_\_\_
- EEC - \_\_\_\_\_
- EUROATOM – \_\_\_\_\_
- Treaty on EU - \_\_\_\_\_
- (three pillars until Lisbon)
- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_

# Enlargement - Accession to the EU



# Criteria' ssssssssssss

- Article 49 of the Treaty on European Union
  - be a European state;
  - respect and commit to the values set out in Article 2 of the Treaty on European Union (TEU), namely: respect for human dignity, freedom, democracy, equality and the rule of law; respect for human rights, including the rights of persons belonging to minorities; and respect for a pluralistic society and for non-discrimination, tolerance, justice, solidarity and equality between women and men.
- Article 2
  - The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
- EU eligibility criteria
  1. Copenhagen Criteria
  2. Madrid Criteria - 1995



# Procedure

- A formal application is lodged with the Council of the EU
- Opinion by the European Commission
- Candidate Status
- Negotiations – unanimous decision of the Council of the EU
- 35 policy areas / chapters
- Transitional Arrangements
- Accession

# Copenhagen Criteria

- stable institutions guaranteeing:
  - democracy
  - the rule of law
  - human rights
  - respect for and protection of minorities
- a functioning market economy and the capacity to cope with competition and market forces in the EU;
- the ability to take on and implement effectively the obligations of membership, including the aims of political, economic and monetary union

# Copenhagen Criteria - 1993

- Political criteria
- Economic criteria
- Administrative and institutional capacity
- Stable Institutions – guaranteeing democracy
- Functioning market economy
- Effectively implementation of the obligations of membership
- 'Stabilisation and Association process – WB countries conditions



## Steps Towards joining

- Candidate for membership
- Formal membership negotiation – adoption of the established EU law
- Properly apply and enforce it and implementation of judicial, administrative, economic and other reforms necessary for the country to meet the conditions for joining – Accession criteria
- Join EU - Negotiation chapter

# Madrid Criteria

- ‘candidate status’ - status does not give the country the automatic right to join the EU
- the candidate country must be able to apply EU law
- be able to ensure that the EU law transposed into national legislation is implemented effectively through appropriate administrative and judicial structures
- EU reserves the right to decide when the candidate country has fulfilled the accession criteria.
- EU itself must be able to integrate new members.

# EU's 'acquis'

- the content, principles and political objectives of the Treaties;
- legislation adopted in application of the treaties and the case law of the Court of Justice of the EU;
- declarations and resolutions adopted by the EU;
- measures relating to the common foreign and security policy;
- measures relating to justice and home affairs;
- international agreements concluded by the EU and those concluded by the EU countries between themselves in the field of the EU's activities.





# Pre-accession assistance

- helps candidate countries and potential candidates for European Union (EU)
- Key element of pre-accession strategy – Instrument for Pre-Accession Assistance (IPA)
- 2021-2027 – IPA III – 14.162 billion Euros (not yet confirmed) to for the WB countries and Turkey
- Drafting of the framework
- Strategic documents
- Use of EU funds



Chapter Negotiation

Screening – opening of benchmarks

Negotiation positions

Closing the chapters

Accession Treaty

Acceding country

- Special arrangements



## WB Process

3 aims:

1. stabilizing the countries politically and encouraging their swift transition to a market economy
2. promoting regional cooperation
3. eventual membership of the EU
4. Albania is a Potential Candidate Country



# Albania's Membership Status

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2003 – Thessaloniki European Council – potential candidate

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2009 – submitted the formal Application for EU membership

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2010 – Commission's Opinion – 12 key priorities

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2012 – Granted EU candidate status

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2014 – awarded candidate status by the EU

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2018 – unconditional recommendations to open accession negotiations in 2019

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2020 – decision to open accession negotiation

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July 2020 – draft negotiating framework

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Oct. 2020 - commission proposes Economic & Investment Plan to support and bring the Western Balkans closer to the EU

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May 2021 - Commission informs Council that Albania has met the remaining condition to be fulfilled prior to the holding of the first Inter-Governmental Conference of accession negotiations.

*WAITING....*

# Common Regional Market Action Plan 2021 – 2024

**University of New York Tirana**

**09 November 2021**

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Good.  
Better.  
Regional.



# Introduction

- Sofia Summit in November 2020 – the demonstration of regional efforts and the most notable regional success; in view of adoption of the Common Regional Market (CRM) 2021-2024 Action Plan;
- CRM agenda as a transformative tool for enhanced regional economic integration and bringing WB6 closer to the EU Single market;
- CRM as part of EU recovery efforts in the post-pandemic environment, including through Economic and Investment Plan for the WB;
- Importance of digital and green transition – launch of the Green Agenda for Western Balkans (GAWB) at Sofia Summit;
- Strengthened regional dynamics and cooperation with partners on the CRM implementation – CEFTA, TCT, WB6 CIF, etc.

# CRM Rationale

- Regional economic integration requires strong policy coordination;
- *“If CEFTA were to be further expanded with provisions on movement of capital, consumer protection, labour market regulation, and environmental laws, growth in trade and real GDP would rise by an estimated 2.5%. A 6.7% gain could be achieved if the countries deepened their commitment to the level of those between EU members.”* (World Bank, Western Balkans Regular Economic Reports, Fall 2019);
- Hence, a Common Regional Market (Action Plan) based on the four freedoms, and enriched with **trade, digital, investment, industry and innovation**



## CRM Action Plan

4 key areas, based on "4 freedoms":

- Regional Trade Area
- Regional Investment Area
- Regional Digital Area
- Regional Industrial and Innovation Area

# 1. Regional Trade Area

<i>CROSS-CUTTING TRADE MEASURES</i>	<i>GOODS</i>	<i>SERVICES</i>	<i>CAPITAL</i>	<i>PEOPLE</i>
<p>1.1. Maintain the Green Lanes and streamline BCPs/ CCPs controls</p> <p>1.2. Elimination of Non-Tariff Barriers (NTBs)</p> <p>1.3. Trade related aspects</p> <p>1.4. Private sector dialogue</p> <p>1.5 Reduction of trade costs and transparency</p>	<p>2.1. Mutual Recognition Programmes (MRPs)</p> <p>2.2. Risk Management</p> <p>2.3. System of Electronic Exchange of Data SEED+</p> <p>2.4. Harmonisation and cooperation with the EU</p>	<p>3.1. Additional Protocol 6 (AP6) on Trade in Services</p> <p>3.2. Tourism</p> <p>3.3. Financial services</p> <p>3.4 Postal services</p> <p>3.5. Professional qualifications</p> <p>3.6. Enabling environment</p> <p>3.7. Electronic commerce</p>	<p>4.1 Development of a modern payment system</p> <p>4.2.Strengthening regional cooperation and coordination on COVID-19 response as part of relief, recovery and resilience</p>	<p>5.1. Mobility of students, researchers and professors</p> <p>5.2. Mobility of individuals on the basis of IDs</p> <p>5.3 Portability of social rights and removal of working permits</p>

# Regional Trade Area (rationale)

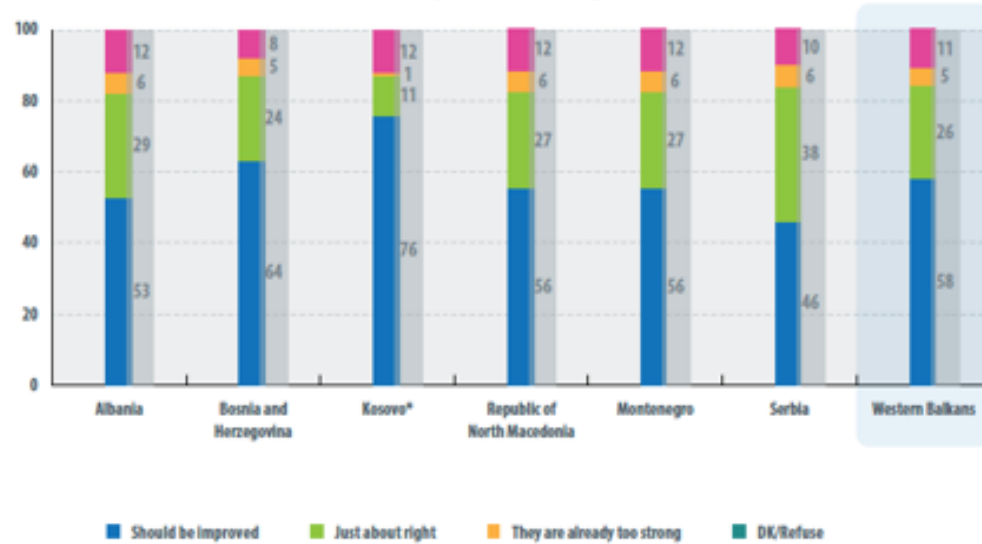
Major obstacles to trade, identified in the WB6 region:

- Non-tariff barriers to trade
- Different customs regimes
- Low connectivity

# Regional Trade Area (rationale)

Figure 84: How would you describe commercial and trade links of your economy with the Western Balkans region?

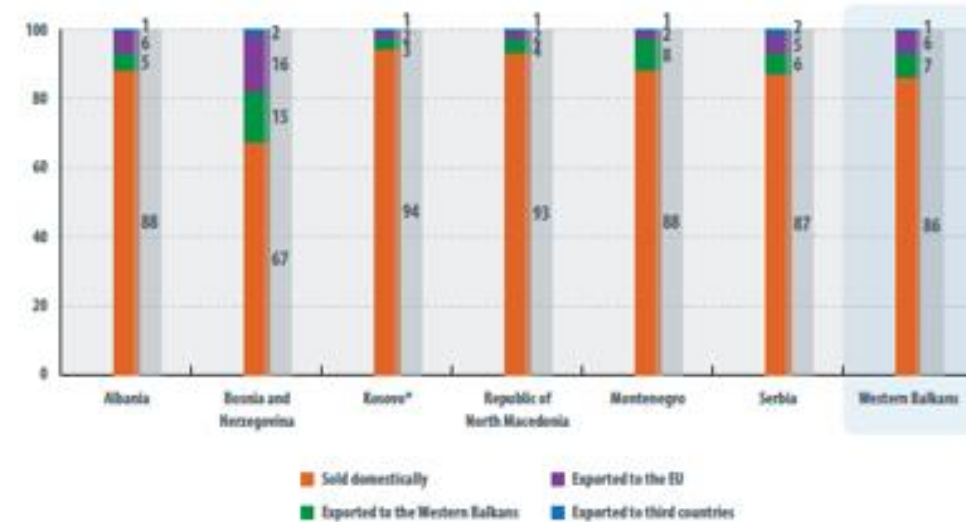
All respondents, N=6000, share of total, % of agreement or disagreement



Source: Balkan Barometer 2021, Public Opinion

Figure 144 – What percentage of your company's sales are made domestically, exported to the WB region, to the EU or to the third countries?

(All respondents - N=1200, share of total, %)



Source: Balkan Barometer 2021, Business Opinion



# Regional Trade Area (rationale)

Figure 145 – Why doesn't your company export?  
(Respondents whose companies are non-exporters, N=883, %)

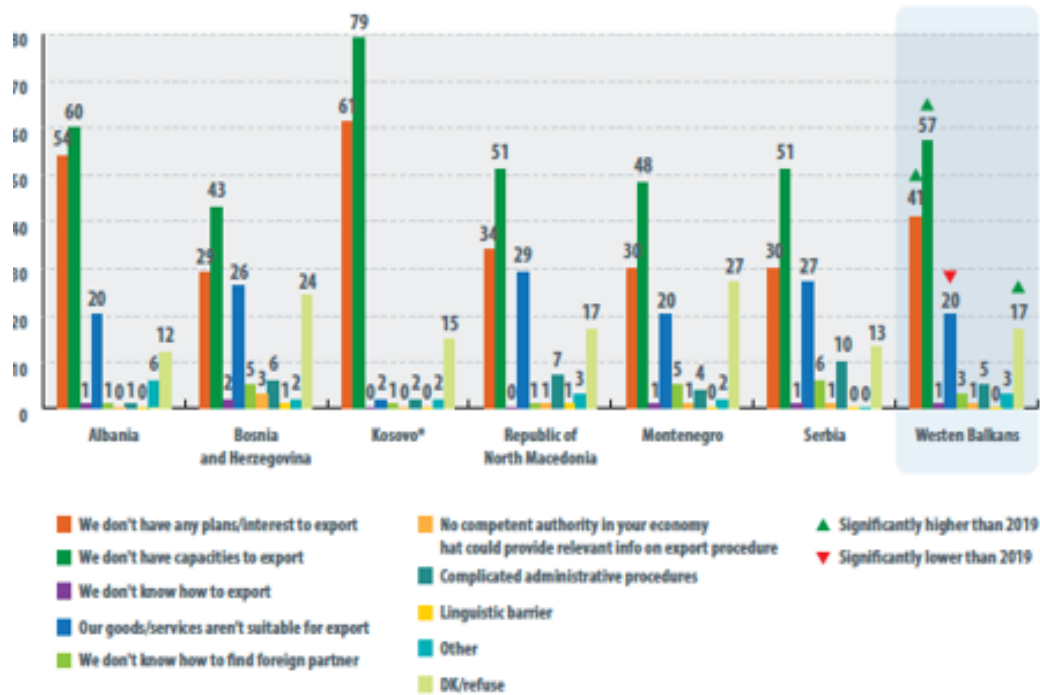
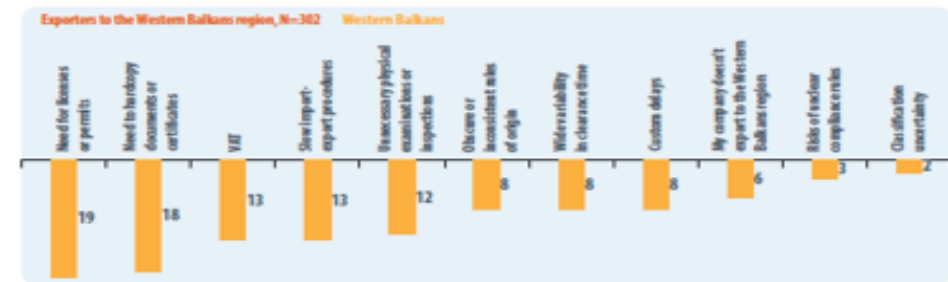
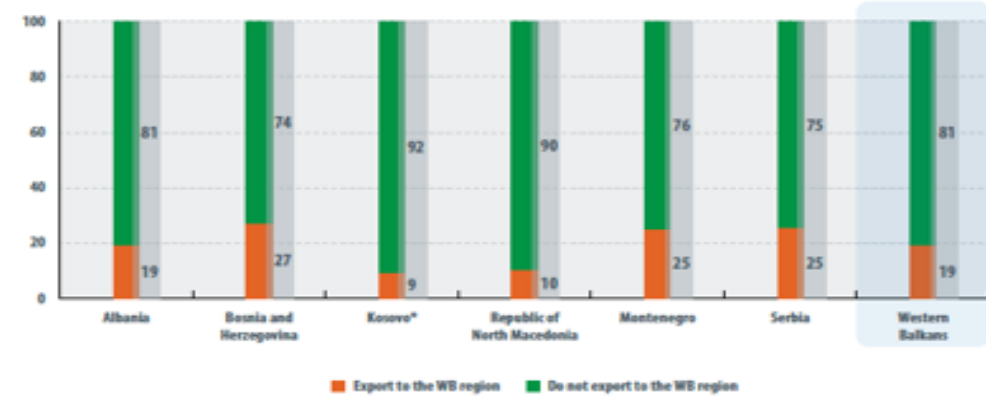


Figure 150 – If your company exports to the Western Balkans region, what are the main obstacles to your exports?  
(All respondents - N=1200, share of total, %)



# Regional Trade Area (cont'd)

## Free movement of Goods

- Harmonization and simplification of customs procedures
- Expand the network of Mutual Recognition Programmes (MRPs) to other goods and services, including certificates and testing results for industrial and agricultural products; professional qualifications; and licenses in tourism, selected financial services and other key services sectors;
- Expanding systemic data exchange to all agencies:
  - Interoperability and data exchange extended from only customs authorities to all agencies involved in clearance of goods

## Free movement of Services

### Tourism:

- Mutual Recognition of licenses
- Align and adopt voluntary quality of service standards for adventure and cultural tourism among WB6;

### Professional qualifications:

- Adopt and implement framework for recognition of professional qualifications for 7 professions based on the EU system of automatic recognition

# Regional Trade Area (cont'd)

## Free movement of Capital

Develop a modern payments system:

- Reduce the costs of regional payments and join the Single Euro Payment Area (SEPA);
- Diversifying the financial markets;

## Free movement of People

- Mobility of students, researchers and professors:
  - Recognition of academic qualifications;
- Mobility of individuals based on IDs.

## 2. Regional Investment Area

**Regional investment promotion**

**Regional investment policy reforms**

**Regional investment retention and expansion**

- Conduct a regional investment promotion campaign through the cooperation of region's investment promotion agencies for the retention and promotion;
- Develop regional guidance criteria and procedures for screening mechanisms at the economy level for quick reaction to FDI concerns based on the emerging EU standards and policy and taking into account the individual economy and region's policy priorities;
- Attract new investment leads in promising sustainable regional value chains for the WB6 region;
- Conclude economy-specific International Investment Agreements (IIAs) between EU and each of WB6

# 3. Regional Digital Area

Digital infrastructure and connectivity

Digital skills and competence

Digital economy in the era of new ICT technologies

Trust and security

- Establish a free roaming region
- Reduce roaming charges between the WB6 and EU
- Develop digital skills strategies
- Provide fixed broadband internet access for majority of households in the region;
- Enable and extend coverage with 5G.



## 4. Regional Industrial and Innovation Area

Regional innovation

Regional industry development

Automotive industry value chains

Green & circular economy value chains

Agro-food industry development

Creative industry

Metal processing industry

Sustainable tourism

- 6 key value chains identified
- Enhancing partnerships between stakeholders
- Skills development
- Support SMEs (*young and women entrepreneurs*)
- Strengthening linkages between suppliers and investors
- Nearshoring
- Greening the value chains
- Harmonizing procedures and introducing frameworks of common standards under key industrial sectors



# Regional Industrial and Innovation Area (cont'd)

Regional innovation

Regional industry development

Automotive industry value chains

Green & circular economy value chains

Agro-food industry development

Creative industry

Metal processing industry

Sustainable tourism

- Regional Supplier Development Programme
  - Starting with mapping in a pilot sector (automotive)
- Creative Industries
- Regional Diaspora Knowledge Transfer Initiative:
  - encourage brain circulation;
  - scale up diaspora initiatives;
- Set up Regional Network of Women in STEM:
  - encourage women to participate in STEM fields,
  - raise awareness on importance of women in stem for sustainable development;
  - create regional STEM talent pool.



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# MODULE EU LAW INTO ALBANIAN LEGAL SYSTEM

## Stabilization and Association Agreement

### Lecture 4

# SAA Negotiation period

With the support of the  
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- November 2000 – Zagreb Summit – EU perspective of the Balkan Countries
- Negotiation opened in 2003 – signing agreement **June 12, 2006**, and entered into force on April 1<sup>st</sup> of **2009**
- A new stage of transition
  - Consolidation of the democratic state
  - Restoration of the rule of law
  - Eradication of the corruption system
- **Article 217 TEU:** *“The European Union may conclude with one or more third countries or international organizations, to establish an association agreement, which includes the mutual rights and obligations*
- *Schengen regime - 2010*
- June 24, 2014 – candidate status



# SAA in the Albanian Legal Order

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



- Position of SAA in the Constitution???
- Integral part of the Albanian legal order
- Articles 5, 116 and 122 Albanian Constitution
- **Article 5 - The Republic of Albania applies international law that is binding upon it.**
- **Article 122** - Every ratified international agreement constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law.







# Aims of the Association

1. to support the efforts of Albania to strengthen democracy and the rule of law;
2. to contribute to political, economic and institutional stability in Albania, as well as to the
3. stabilisation of the region;
4. to provide an appropriate framework for political dialogue, allowing the development of
5. close political relations between the Parties;
6. to support the efforts of Albania to develop its economic and international cooperation, also
7. through the approximation of its legislation to that of the Community;
8. to support the efforts of Albania to complete the transition into a functioning market
9. economy, to promote harmonious economic relations and develop gradually a free trade area
10. between the Community and Albania;
11. to foster regional cooperation in all the fields covered by this Agreement



# Commitment

- continue and foster cooperation and good neighbourly relations
- appropriate level of mutual concessions concerning the movement of persons, goods, capital and services
- development of projects of common interest
  - combating organised crime
  - corruption
  - money laundering
  - illegal migration
  - trafficking





# SAA

- Realization date
- Article 6
- The Association shall be implemented progressively and shall be fully realised over a transitional period of a ***maximum of ten years***, divided into two successive stages.
  - legal approximation and law enforcement
  - legal, administrative, institutional and economic reforms
- First Stage:
  - evaluate the progress made by Albania
  - decide whether this progress has been sufficient for the passage into the second stage in order to achieve full Association



# Areas of the SAA

## 1. Title II/ Art. 8-11: Political Dialogue

- establishment of close links of solidarity and new forms of cooperation
- Albania's full integration into the community of democratic nations and gradual rapprochement with the European Union
- development of good neighboring relations – cooperation in the CFSP of EU

## 2. Title III/ Art. 12-15: Regional Cooperation

- Assistance programs
- Albania review the existing bilateral agreements
- bilateral Conventions on regional cooperation:
  - countries that have signed the SAA – within 2 years
  - candidate countries to access EU
  - Turkey



# FREE MOVEMENT OF GOODS

- Title IV/ Article 16-23
- abolition of all tariff barriers
- tariff reduction is applied on an *erga omnes* basis,
- non-tariff trade liberalization - standards, intellectual property, customs administration and competition – Article 71,73, 75
- Two specific categories of the products not regulated by the SAA:
  1. Art. 17/2 - Products falling within the realm of the Treaty establishing the European Atomic Energy Community - **fissile materials, development of the nuclear industry, ores and nuclear fuels**
  2. Prot 1. Art 23

## ➤ Duties of Albania

1. progressive abolition of trade barriers so as to guarantee the free movement of goods between Albania and EU Member States – Article 70 (1)
2. adoption of new legal and administrative measures
3. not to enact new laws or create new practices which discriminate goods imported from states participating in the free trade area



# Customs Duties

- Articles 18 – 23
- Customs duties on imports into the Community of products originating in Albania shall be abolished upon the date of entry into force of SAA
- Community and Albania shall abolish any customs duties on exports and charges having equivalent effect
- readiness to reduce its customs duties in trade with the Community more rapidly



# Industrial Products – trade liberalization

## • Article 17

- From the date of entry into force of the Agreement - industrial products originating from Albania will be imported into the EU
  1. free from custom duties - Art. 18/1
  2. no restriction on quantitative base – Art 18/2
  3. charges having an equivalent effect of custom duties – Art 20 (levies)
  
- upon the date of entry into force of the SAA - industrial products originating from the EU will be imported into Albania
  1. Industrial products originating from the EU will be imported into Albania – Art 19/1
  2. Exception Products Listed in Annex 1 – sensitive products for Albania Liberalization within 5 years
  3. ‘without tax’ - vehicles originating from EU countries – no more custom duties – *categories???*



# Albanian Legal Framework on Import of Goods

- Albanian Custom Code – Art 8/10
- ‘import duties’ are all the custom duties and other taxes that have the effects equivalent to that of custom duties which are paid on the moment of the importation of goods
- Cars imported in Albania
  - Custom duties – 0 ALL – after the implementation of the SAA – Art. 28 CC
  - Environmental Tax – imported used vehicles -  $ET = (\text{a fixed charge}) \times (\text{the motor's volume}) \times (\text{a coefficient for the years in use})$
  - VAT – Custom Duty
  - YEARS IN USE – DIFFERENCE OF THE YEAR OF ITS PRODUCTION AND THE YEAR OF ITS IMPORTATION



# Agriculture And Fisheries

- Chapter II – Article 24 – 31
- Community shall abolish all quantitative restrictions and measures having equivalent effect on imports of agricultural and fishery products originating in Albania
- No later than six years after the entry into force of the Agreement
- product by product
- orderly and appropriate reciprocal basis
- the opportunities for granting each other further concessions with a view to implementing greater liberalisation of the trade in agricultural and fishery products



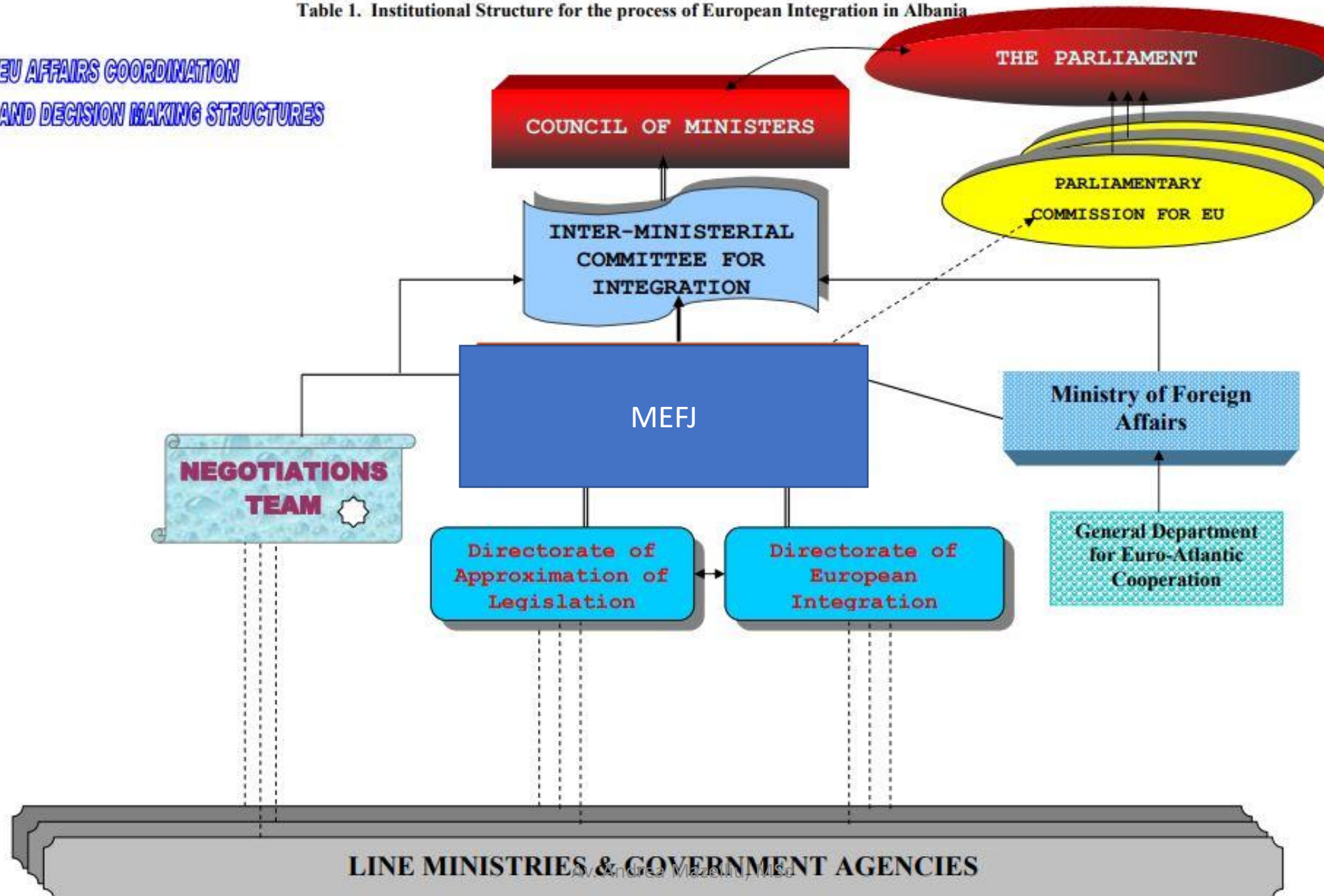


# Administrative Cooperation Article 43

- essential for the implementation and the control of the preferential treatment
- a failure to provide administrative cooperation shall mean, inter alia:
- a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

Table 1. Institutional Structure for the process of European Integration in Albania

*EU AFFAIRS COORDINATION  
AND DECISION MAKING STRUCTURES*





# Negotiation Structure

- **Decision of the Council of Ministers No. 749, dated 19.12.2018**, "On the establishment, organization and functioning of the state structure responsible for conducting negotiations and the conclusion of the Treaty of Accession of the Republic of Albania to the European Union
- **The structure responsible for negotiations according to this decision consists of:**
  - The State Committee for European Integration;
  - The State Delegation;
  - The Negotiating Group;
  - Albania's Mission to the European Union;
  - The Secretariat of European Integration;
  - The Inter-Institutional Working Groups;
  - The European Integration Partnership Platform.



# State Committee for European Integration (SCEUI)

- The Head of the State Delegation, the Minister responsible for European integration;
- Chief Negotiator
- The Minister responsible for justice;
- The Minister responsible for finance;
- The Minister responsible for internal affairs;
- The Secretary General of the Council of Ministers.



MODULE  
EU LAW INTO ALBANIAN LEGAL  
SYSTEM



Stabilization and  
Association  
Agreement  
Part II

Lecture 5



# MOVEMENT OF WORKERS, ESTABLISHMENT, SUPPLY OF SERVICES, CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

## Movement of Workers – Article 46

- Albanian Nationals - Free of discrimination based on:
  - Nationality
  - Working conditions
  - Remuneration or dismissal

## Legally resident spouse and children – access to labor market

- Seasonal workers?

## EU workers in Albania – modalities in the country of their nationality



# Approximated Laws on Working Sector

- Law on Civil Servants
- Law on Security and Health at Work
- Law on Work Inspection
- Law on Social Insurance
- Law on Obligatory Health Care Insurance
- Law on Protection Against Discrimination
- Law on Gender Equity
- Law on Foreigners (amended in 2016)
- Labor Code
- Article 3/1 – Posted Workers in Albania
- Article 15 – Work from Home or Tele-working;
- Articles 18/1, 18/2, 18/3, 18/4 and 18/5 – Establishment of Temporary Employment Agency



# Law on Foreigners (amended in 2016)

Citizens of the EU the right to work in Albania without the need for a Work Permit.

Aligned with some of the EU Directives including:

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Directive 96/71/EC concerning the posting of workers in the framework of the provision of service.

# National Plan on European Integration (NPEI)



- National Plan for European Integration 2018-2020 & 2019-2021
- Legal framework in employment and social policy are mostly but not completed
- full alignment regarding social dialogue, employment policies on non-discrimination and social policy
- Law no. 9634 of 30 October 2006 on “Labour Inspection”, has been amended in 2017
- *“Article 35 of Law no. 9634 was amended to allow the suspension of work from the inspectors, in cases of informal work or when serious life threatening of health and safety of workers is inspected”*



# Protecting Workers in their work environment

- Directive of the Council 94/33/EC
- CDM No. 108 of 15 February 2017 on “Adopting the regulation on protection of minors at work”
- protecting workers in their work environment, defining minimal requirements for occupational health and safety of workers, defining procedures and regulations on medical examination for specific categories of workers
- Law on Unemployed Job Seekers
- Law no. 146/2015 adopted December 2015 to support employment policies and active labour market measures; the “Law on Regulated Professions” adopted June 2016, the amended VET Law of February 2017 as well as the Albanian Qualification Framework Law approved in February 2018

# Coordination of the social security systems - Article 49

- Albania needs to coordinate the regulation of social insurance schemes, with bilateral agreements as foreseen by Regulation 883/2004 of the European Parliament and the Council
- Albania has agreements on social insurance with Belgium, Czechia, Germany, Luxembourg, Hungary, Austria, Romania and with other Western Balkans countries such as the North Macedonia, and with Turkey
- Agreements with Italy and Greece - *tbd*
- Kosovo?

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# POSTING OF WORKERS Directive

- Protect the rights of employees temporarily sent from one Member State to another
- Guaranteeing them the same conditions and rights in the employment relationship as the nationals of the country
- Avoid “social dumping”
- Maximum working periods and minimum rest periods
- Minimum paid annual holidays
- The minimum rates of pay, including overtime rates
- The conditions of the hiring-out of workers, in particular the supply of workers by temporary employment undertakings
- Health, safety and hygiene at work
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people
- Equality of treatment between men and women and other provisions on non-discrimination.



# Employment Law and regulations

- Posting of Workers - ‘interpreted as service provision for a company or temporary employment agency in Albania to any country, or from any country to Albania’
- Directive 96/71/EC on Posting of Workers (PWA)
- LAW No. 108/2013 ON ALIENS - Art 102 - Type C/SHK work permit for contractual services – 90 days (renewable) up to 1 year
- LC, Article 3/1 *“The employment contract is governed by the law of the country where the employee usually carries out his work, and when he works temporarily in another country. Temporary employment of foreign employees in Albania is regulated in accordance with the provisions of this Code.”*
- *Exclusions from this category – Article 4*
- ***What about the basic minimum age???***



# Institutions Related to Posting of Workers

MEF

National Employment Service / Regional Employment Offices

Ministry of Interior

Directorate of Migration/ MI/ State Police

Labour Inspectorate

National Institute of Social Insurance / National Institute of Health Insurance

Temporary Employment Agency

COMPANY/ HR





# Establishment

- Article 49
- "Community company" = "Albanian company"
- C or A National – a natural person
- Registered office or central administration in the territory of the community or Albania  
Respectively
- operations possess a real and continuous link with the economy of one of the Member States or  
of Albania respectively
- "Subsidiary" of a company shall mean a company which is effectively controlled by the first  
company
- "Branch" of a company shall mean a place of business not having legal personality which has the  
appearance of permanency, such as the extension of a parent body, has a management and is  
materially equipped to negotiate business with third parties so that the latter, although knowing  
that there will if necessary be a legal link with the parent body, the head office of which is abroad,  
do not have to deal directly with such parent body but may transact business at the place of  
business constituting the extension



# Establishment

## Nationals

- Right to take up economic activities
- Self-employed persons
- Set up undertakings
- No conferring of this right
- No seeking or taking employment in the labour market

## Company

- Take up economic activities
- Setting up subsidiaries and branches



# Consensus Ad Idem – Same Treatment

- Albanian obligation to facilitate the operation on its territory by community companies and nationalities
  - Upon the entry into force of MSA
- Similar treatment
- No adoption of discriminatory normative acts
- Use and rent real property
- Acquire and enjoy ownership over the real property as Albanian companies
  - Enjoy the rights on public goods or goods of common interest in the same way as the Albanian companies



# Harmonisation to EU Law

- Article 70(3) of the Stabilisation-Association Agreement, there are some newly legal acts that are part of the legal reform toward the approximation of the legislation with the Acquis Communautaire in the area of company law
- Legal statute, registration and dissolution - First Directive 68/151/EEC that was complemented by Eleventh Directive 89/666/EEC
- Representatives upon agreement between employees and the company management (ACL, art.21)
- Legal obligation for company representative to inform the Employee council
  - Activities, decisions, policies, strategies – Art 20



# Laws Harmonized

- Company Law ( Law no.9901 dated 14.04.2008 (Albanian Company Law) as amended)
- Public takeover Law (Law no.10236 dated 18.02.2010 (On takeover of companies with public offer)
- Securities Law (Law no.9879 dated 21.02.2008 (On securities)
- Registration and Disclosures Law (Law no.9723 dated 03.05.2007 (On the National Registration Center)
- Banking Law (Law no.9662 dated 18.12.2006 (On Banks in the Republic of Albania) amended in December 2011)
- Accounting and Financial Statements Law (Law no.9228 dated 29.04.2004 (On Accounting and Financial Statements) as amended)
- Certified Accountants Law (Law no.10091dated 05.03.2009 (On Legal Audit and the Organization of Certified Financial Accountants Profession) as amended)



# Harmonization of the Economic and Trade Legislation with the EU ACQUIS

- Law 131. 2015 ‘ On National Business Centre – merge of the National Registration Centre and National Licensing Centre
  - 9 legal acts
- 9760 foreign companies operate in Albania
- 18 economic legal acts are harmonized with the EU legislation
- More than 243 acts in process of alignment
- NBC – one stop shop



# APPROXIMATION OF LAWS

- LAW ENFORCEMENT AND COMPETITION RULES – Article 70
- Albania *shall* ensure that its existing laws and future legislation shall be gradually made compatible with the EU acquis
- Proper implementation and enforcement
- Tailor – Made approximation process – Article 70/3.2
- Monitoring the implementation of legislation and law enforcement actions
- Incompatibility of agreements which are in contrary to competition rules – Article 71





# State Aid

- Establishment of an independent authority – Article 4
- Commission of the State Aid – Law 21/ 2016
- Members (5): - Article 16 of the Law
  1. MFE Minister – Chair
  2. Others are appointed with a CoM Decision
- lack of independence and weak authority made it an ineffective player in blocking subsidy schemes
- positive decisions approving almost every notified State aid scheme and has not been able to interfere in politically sensitive cases



# Consumer Protection

- Article 76
- standards of consumer protection in Albania to those of the Community
- effective consumer protection to ensure that the market economy functions properly
- administrative infrastructure to ensure market surveillance and law enforcement
- harmonisation of legislation of consumer protection



# Consumer Protection Law

- Directive 92/59 / EEC of 29.06.1992, which has been replaced without any substantive changes by Directive 2001 / 95/EC of 03.12.2001. Council Directive 92/59/EEC of 29 June 1992 on general product safety
- important step towards the approximation
- Safety of goods and services, the provision of products and services is included in the fundamental right of consumers to health and safety of life protection – Article 6 & 7
- obligation on the safety of any product placed on the market intended for use by consumers
- LCP has not transposed the point 2 of the Article 5 of the Directive 99/44 on the notice deadlines that the consumer must comply with to report the defect to the seller after discovering it
- CC Code Article 71.



# Justice, Freedom and Security



# MODULE EU LAW INTO ALBANIAN LEGAL SYSTEM

## Stabilization and Association Agreement Part III

Lecture 6



# JUSTICE, FREEDOM AND SECURITY

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- Article 78 – 84
- Reinforcement of institutions and rule of law
- Cooperation in the area of movement of persons
- Protection of personal data
- Visa, border management, asylum and migration, prevention and control of illegal immigration and readmission
- Cooperation on combating money laundering, terrorism financing, illicit drugs and cooperation in counter-terrorism



# Reinforcement of institutions and rule of law

- Art. 78
  - Strengthening of the rule of law
  - Law enforcement
  - Independence of the judiciary
  - Functioning of the police and enforcement bodies



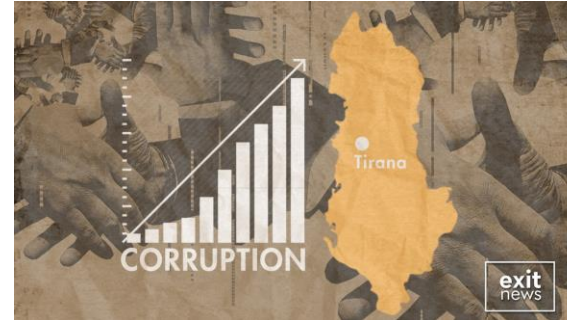
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# Rule of Law, fundamental rights, governance

- independence, quality and efficiency of the judicial system
- root out of corruption
  - enforcement of rulings
- transparent public procurement
- organized crimes reforms
- governance managements – democratic institutions
- public administration reform
- inclusive dialogues on reform priorities
  - Consultation
  - ELECTORAL REFORM – intergovernmental conference



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# Justice Reforms

- Reform of the judiciary in 2016
- Modification of the laws with the EU assistance



# Justice Reform Key Institutions

- CC 9 judges
  - 3 appointed by President
  - 3 appointed by Assembly
  - 3 appointed by High Court
- High Court
- Prosecutor General
- High Judicial and High Prosecutorial Council
  - in 2018
- Special Anti-Corruption Structures
  - SPO
  - NBI
  - ACOCC



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# Vetting

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Independent Qualification Commission

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Appeals Chamber

---

Public Commissioners

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International Monitoring Operations – Funded by the EU and US

---

Vetting Law – Article 54

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91 Dismissed

---

84 Confirmed

---

44 Terminated

# Vetting Criteria



JUSTIFICATION OF THE  
ASSETS



PROFICIENCY



BACKGROUND

# Protection of Personal Data



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- Article 79 – SAA
- Article 35 – Constitution
- Law No. 9887 dated 10.03.2008 as amended in 2012 and 2014- approximated
- Information and Data Protection Commissioner (IDP)
- principle of 'legitimate processing of personal data' is of critical importance and highlights that the right and freedom of privacy should be protected
- Data Controller
- Data Processor
- Personal Data
- Sensitive, Health, Biometric and data subject Data



# Prevention of Illegal immigration and readmission

- Article 81
- readmit any of their nationals illegally present on their territories
- readmit nationals of third countries and stateless persons illegally present on their territories and having entered the territory of Albania via or from a Member State, or having entered the territory of a Member State via or from Albania
- appropriate identity documents and shall extend to them the administrative facilities necessary for such purposes





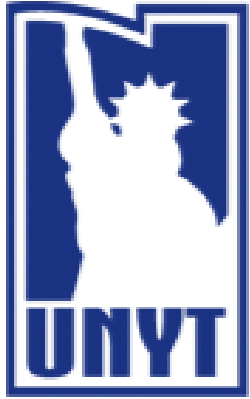
# Cont.

- No single specific legal act
- Reception Centre
- Incomplete legal framework
- Review of the legislation on detention and removal in Albania
  - Legal basis
- National Strategy on Migration and Action Plan 2019 – 2022
- CoM Decision - 439/2000 “On the entry, stay and treatment of the foreigners in the RoA”

Comprehensive legal  
and institutional  
framework

Effective migration  
data collection and  
analysis

Strong partnerships  
on migration  
governance



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TIRANA

# Cooperation in Criminal Matters

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- Article 85
  1. smuggling and trafficking in human beings;
  2. illegal economic activities, and in particular counterfeiting of currencies, illegal transactions
  3. relating to products such as industrial waste, radioactive material and transactions involving
  4. illegal or counterfeit products;
  5. corruption, both in the private and public sector, in particular linked to non-transparent
  6. administrative practices;
  7. fiscal fraud;
  8. illicit trafficking in drugs and psychotropic substances;
  9. smuggling;
  10. illicit arms trafficking;
  11. forging documents;
  12. illicit car trafficking;
  13. cybercrime.

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# Who signed the SAA?

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MODULE  
EU LAW INTO ALBANIAN LEGAL  
SYSTEM

EU Enlargement  
Policy and  
Albania

Lecture 7



# Enhancing the accession process

- A credible EU perspective for the Western Balkans
- FIRST INTERGOVERNMENTAL CONFERENCE – EU and Albania
- Key areas
  1. Rule of law
  2. Fight against corruption
  3. Organized crime
- Albania's *further **progress*** in electoral reform





# Economic and Investment Plan for the Western Balkans

- Bridging the socio-economic gap between the region and EU
- Assistance:
  1. Investments
  2. Policy initiatives
- Transport, energy, digital transition, green agenda, support of private sector, economic integration, innovation and support to human capital development
- IPA III – 9 billion EUR
- 20 billion EUR in investments
- Establishment of the Common Regional Market



## Credible enlargement policy

- Strengthening of the accession process
- No more delays of accession negotiations
- Brdo Declaration - 6<sup>th</sup> of October 2021
- EU-Western Balkans summits as regular events – Green Agenda
- EU digital COVID certificate
- Strengthening good neighbourly relations
  - Genocide, glorification of war criminals, inflammatory rhetoric





# Albania – accession negotiations

- Tangible and sustainable results
- Comprehensive justice reform
- Operationality of the Constitutional Court and Supreme Court
- 100% - alignment rate to the EU's foreign and security policy
- The EU's Foreign Direct Investment in Albania reached €492.5 million in 2020
- Visa-free travel to the EU since December 2010
- Over 9,835 participants from Albania in student, academic and youth exchanges under ERASMUS+ (2014-2020)
- €25 million in support to civil society (2014-2020)

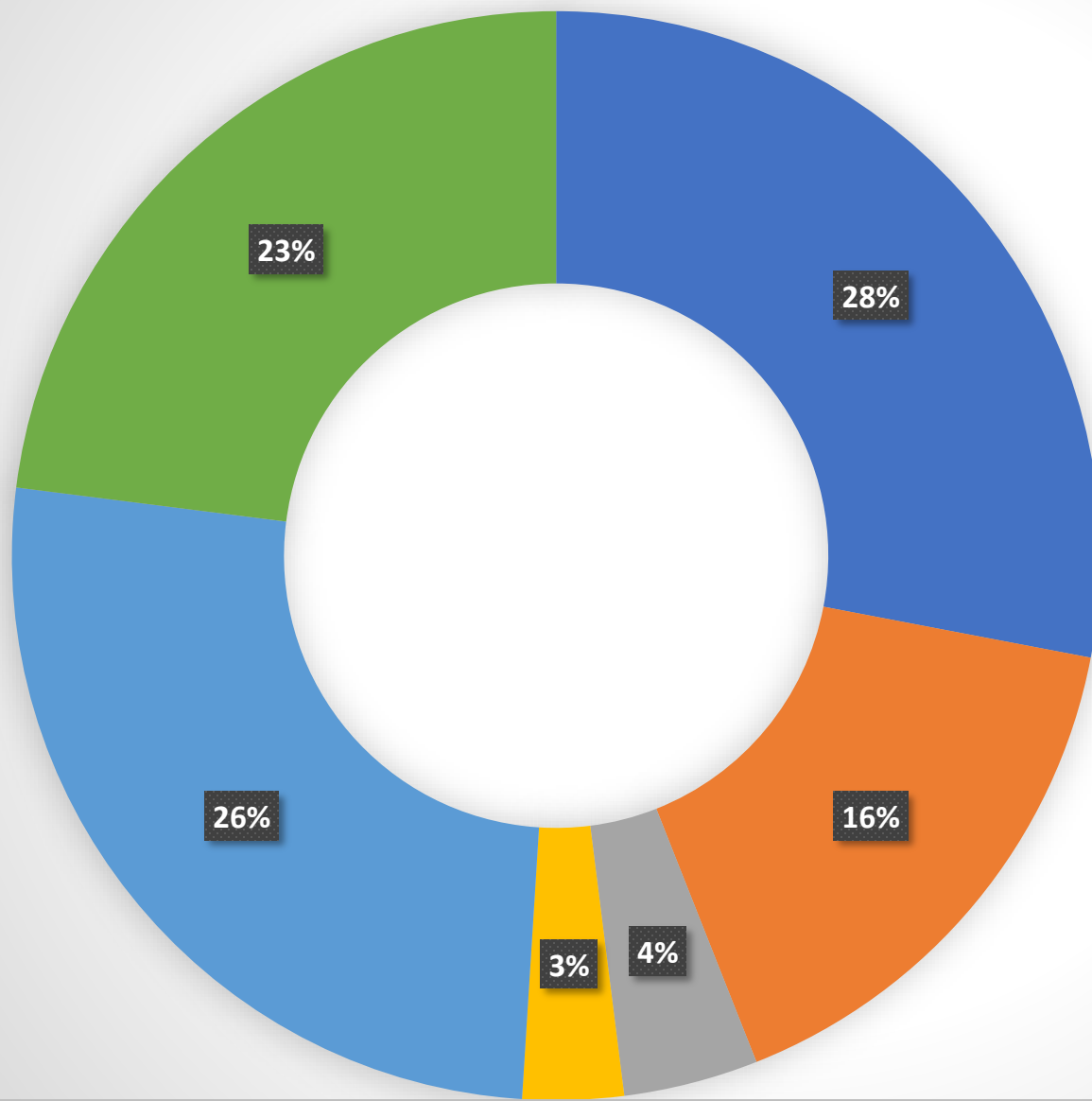


# Albania on the European path

1. Strengthening democracy: rule of law, justice and fundamental rights
2. Reforming public administration
3. Fostering competitiveness and supporting business development
4. Working towards a cleaner environment and safer food supply
5. The EU is the largest provider of financial assistance to Albania
  1. €1.35 billion in EU pre-accession funds 2007-2020, including €115 million EU grants for the rehabilitation and reconstruction of Albania after the 2019 earthquake.
  2. €464 million provided in European Investment Bank loans since 1999
  3. €143.8 million provided since 2009 in Western Balkans Investment Framework grants, to leverage investments of estimated €2.3 billion
6. Covid funds for the Western Balkans



## EU Support for key sectors



- Democracy and governance
- Rule of law and fundamental rights
- Enviroment, climate, action and energy
- Transport
- Competitiveness, innovation, agriculture and rural development
- Education, employment and social policies



# Albania's Reforms

- Political Criteria
  - Elections on 25<sup>th</sup> of April 2021
- Electronic identification
- Elections generally well organized
- Public resources / official functions – vote buying
- Legal acts on – asylum seekers, population census, and the efficiency of the judiciary
- Coordination with the administration
- Local fiscal autonomy
- Enabling environment for civil society



# PA reforms

- Guidelines for public consultation
  - <https://www.konsultimipublik.gov.al/>
- IT system – integrated planning
- National European Integration Plan
  - PLANI KOMBËTAR PËR INTEGRIMIN EVROPIAN 2019 – 2021
- Increasing of numbers in e-service
- PAR 2015-2022
  - Vendimin e Këshillit të Ministrave Nr. 319, datë 15.04.2015, u miratua "Strategjia Ndërsektoriale e Reformës ne Administratën Publike (SNRAP) 2015-2020"
- Public Financial management 2014-2022



# Judicial Reform – conditions for the first IGC

- Seven justice in office – CC
- Nine justice in office – SC
- Vetting process - temporary re-evaluation of all judges and prosecutors
  - 62 % of the vetting files processed
- Specialised Structure for Anti-Corruption and Organised Crime (SPAK)
  1. Special Prosecution Office (SPO)
  2. National Bureau of Investigation (NBI)
- fight against organised crime
- new national cross-sector counter-terrorism strategy
  - The Coordination Center for Countering Violent Extremism – Albania



# Fundamental Rights

- ratified most international conventions related to the protection of fundamental rights
  - by-law on minority education in December 2020
- remaining
  - implementing legislation on self-identification and use of minority languages
- freedom of expression – some level of progress
- Venice Commission - criticism
  - Legislation on media
- Proper consultation



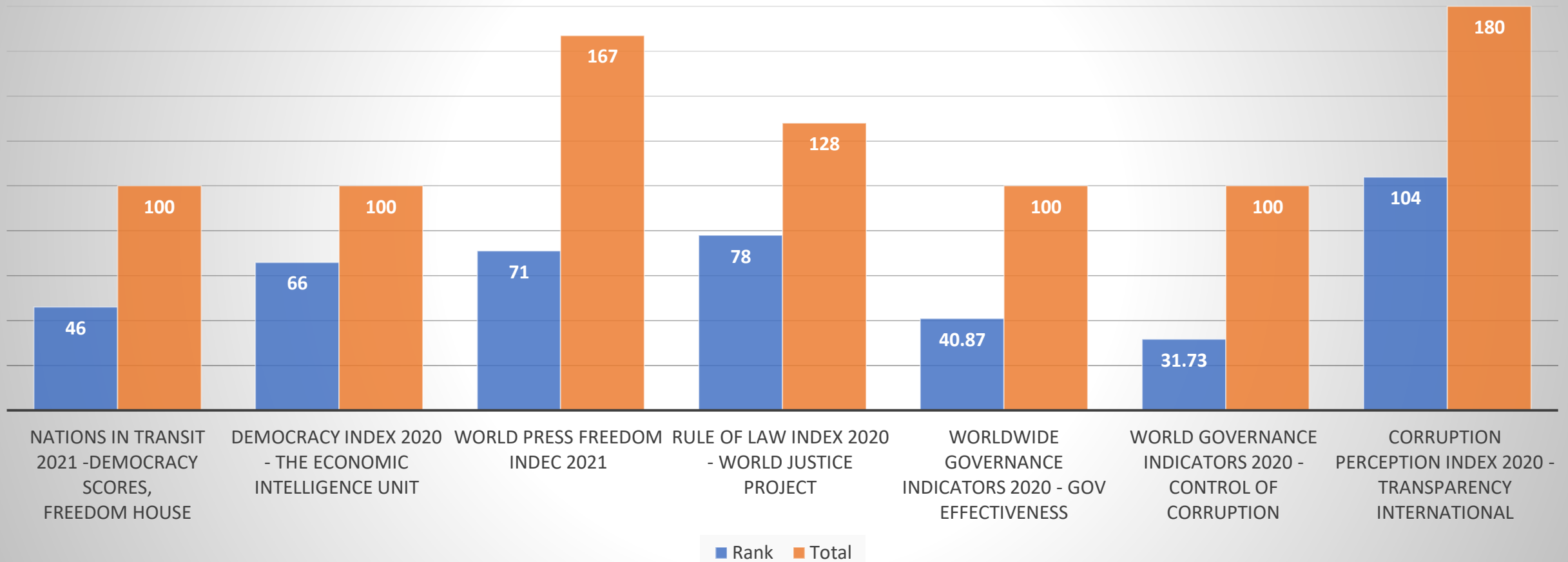


# Fundamental Rights

- Gender equality
  - New strategy on gender equality 2021-2030
  - Adequate state funding
- Migration
  - Strategies on an integrated border management
  - National migration strategy
  - Influx of irregular migrants increased by 13%
- Albanian citizens lodging asylum requests in EU MS
- Public procurement – financial control, faster publication, European Systems of Accountants 2010
- ONE HEALTH APPROACH!!!

# THIRD PARTY INDICATORS RELATED TO THE STATUS OF DEMOCRACY, GOOD GOVERNANCE AND THE RULE OF LAW IN CANDIDATE COUNTRIES AND POTENTIAL CANDIDATES

## INDEXES





# Clusters of Negotiation Chapters



Fundamentals
Internal Market
Competitiveness and inclusive growth
Green agenda and sustainable connectivity
Resources, agriculture and cohesion
External relations

Fundamentals

Internal Market

Competitiveness and inclusive growth

Green agenda and sustainable connectivity

Resources, agriculture and cohesion

External relations



MODULE  
EU LAW INTO ALBANIAN LEGAL  
SYSTEM

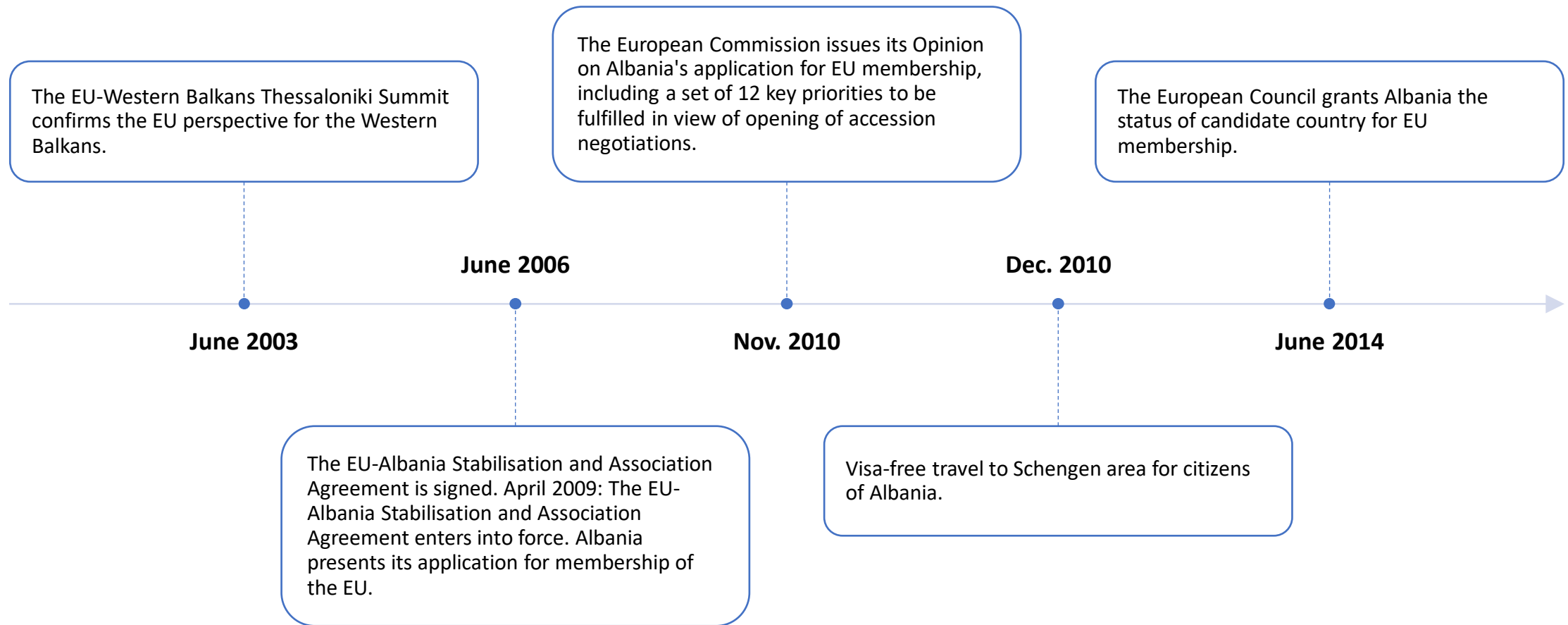
# Albania Progress Report 2021

June 2020 to June  
2021

Lecture 8



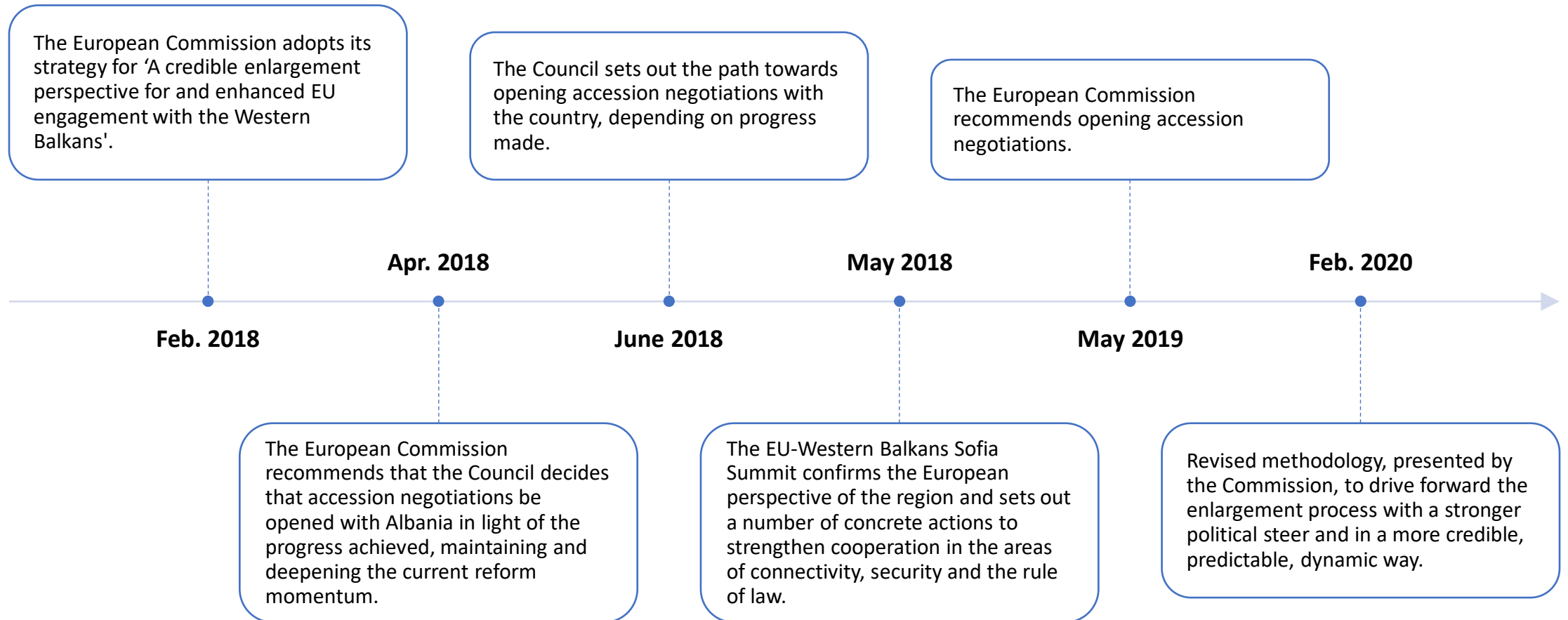
# Key Dates





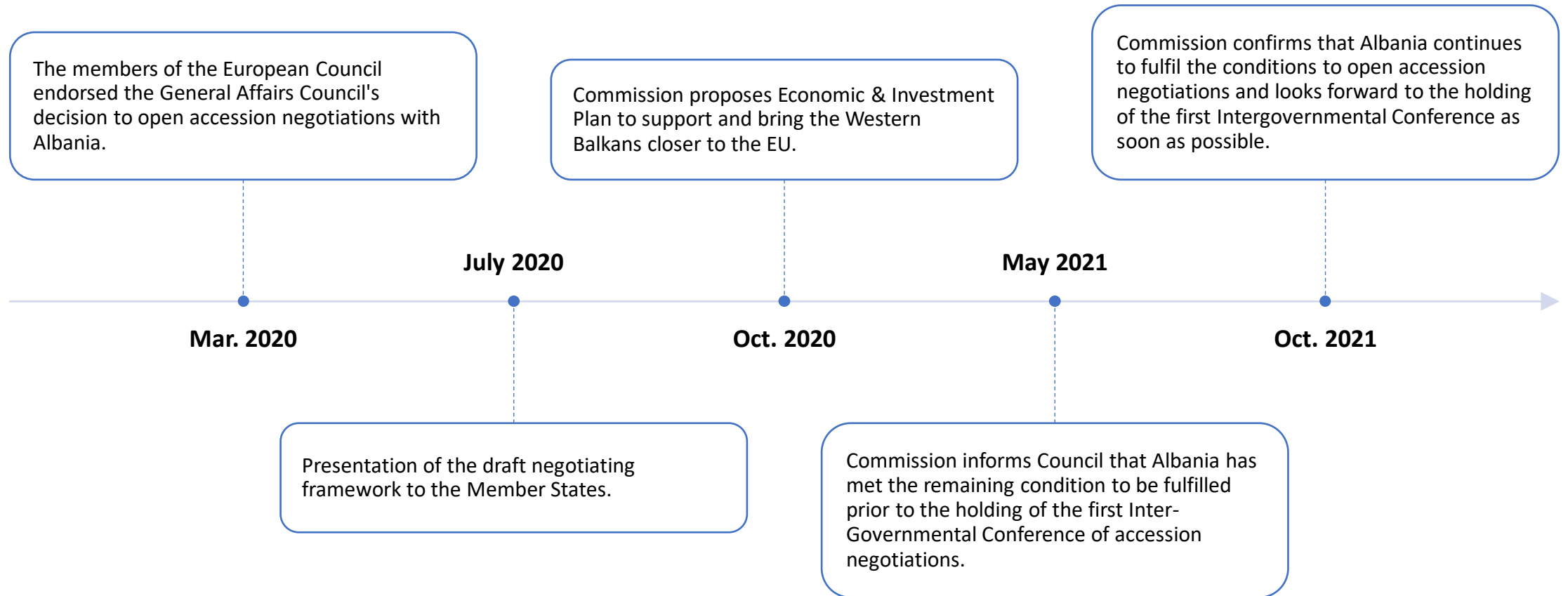


# Conts.





# Conts.







# Progress Report of Albania 2021

Implementation of the Stabilisation and Association Agreement

Issues to be addressed by Albania

Aspects of the Report

- Fundamentals of the Accession Process
- Internal Market
- Competitiveness and Inclusive Growth
- Green agenda and sustainable connectivity
- Resources, agriculture and cohesion
- External Relations

# Political Criteria

- Electoral reform: e-counting system
- Public resources or official functions, to allegations of vote buying
- Leaking of sensitive personal data covering the political preferences of citizens
- Further improve political dialogue
- Territorial administrative reform:
  - Local fiscal autonomy
  - Empower of the municipalities
- Limited progress on the implementation the roadmap on creating an enabling environment for civil society

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# Public Administration

- Few progress in building capacity in line ministries – implement of RIA
- Adopting guidelines for public consultations
- Increasing the implementation rate of the National European Integration Plan
- NATIONAL ACTION PLAN FOR ALBANIA 2020 – 2022: Component II
- Digital Governance: Accessibility in Public Services
- By the end of 2020 95% of all applications for public services are provided on the e-Albania portal
- Standardization of procedures
- Project legal act is published on the electronic register for public notification and consultation



# Rule of Law and Fundamental Rights

- Chapter 23: Judiciary and fundamental rights
- Chapter 24: Justice, Freedom and Security
- Judicial System Progress
  - Moderately prepared
  - Functional courts
- The Parliament adopted amendments to ten laws aiming to further strengthen the efficiency of the judicial system and its capacity to tackle corruption and organised crime
- Vetting process has continued to deliver concrete results, under the thorough supervision of the International Monitoring Operation (IMO)
- Magistrates dismissed by the vetting bodies are being prosecuted by the Special Prosecutor Office
- Limited progress was made on the recommendation to improve the case management system



# Homeworks

- ❖ further advance the process of re-evaluating judges and prosecutors;
- ❖ continue to consolidate the capacity of the judicial system and the governance institutions, including by further strengthening the legal education system and by finalising and implementing the new judicial map;
- ❖ take decisive steps towards a roll-out of a new integrated case management system, and ensure its inter-operability across the entire justice system, in line with European Commission for the Efficiency of Justice (CEPEJ) methodology.



# European Commission for the Efficiency of Justice

- The CEPEJ develops concrete measures and tools aimed at policy makers and judicial practitioners in order to:
- Analyse the functioning of judicial systems and orientate public policies of justice
- Have a better knowledge of judicial timeframes and optimize judicial time management
- Promote the quality of the public service of justice
- Facilitate the implementation of European standards in the field of justice
- Support member states in their reforms on court organisations



# Economic Criteria

- some progress and is moderately prepared for developing a functioning market economy
- public debt and deficit increased sharply
- the government declared a state of emergency and applied the escape clause of the organic budget law
- The increasing digitalisation of public services helps to lower the administrative burden on businesses as well as corruption and informality. Albania has continued to facilitate business registration procedures and licensing through the e-government portal.
- Online tax payments reduced opportunities for corruption e.g. by having less face-to-face meetings with tax officials.





## Actions... during 2020

- The adoption of the new Unified Law on Investment, which has been postponed from 2020 to 2021, meant that the expected improvement of legal security of investors has been delayed.
- The implementing legislation for the Bankruptcy Law was completed in 2020
- National Bankruptcy Agency is fully operational
- labour market indicators deteriorated



## To Do:

- foresee in the medium-term fiscal plan a gradual reduction of the public debt ratio starting in 2022 and the return to a positive primary balance as of 2023, and begin implementing the medium-term revenue strategy;
- implement the reform of public investment management procedures;
- develop a comprehensive strategy to tackle all aspects of informality and establish a regular monitoring of informality and of the strategy's implementation.



# Recommendations to improve competitiveness

- develop a Youth Guarantee Implementation Plan and institutionalised tools to monitor skills needs in the labour market;
- establish effective consultation mechanisms with businesses and social partners and enhance business support services to improve access to finance and entrepreneurial know-how;
- re-orient public expenditure composition towards development of human capital and innovation, and incentivise the link between innovative businesses and academia



# Public Procurement, statistics and financial control

- Ch 5: Public Procurement
- Ch 18: Statistics
- Ch 32: Financial Control
- compliance with procedures and prevent corruption in the procurement cycle
- legal framework on public procurement is largely in line with 2004 EU directives
- secondary legislation remains to be adopted to ensure implementation of the new law



# PPPs

- Law on concessions and public-private partnerships (PPPs) is partly aligned with the EU Directive on the award of concession contracts
- procurement procedures were conducted mostly under the rules of competitive procedure, direct award procedure, and negotiated procedure without prior publication alongside instructions to delay or cancel non-essential procurements
- authorities lack the capacity to manage public procurement processes effectively
- integrity and conflicts of interests, the PPA issued instructions on the declaration of conflicts of interest by procurement officials and adopted a regulation on prevention of conflicts of interest in the exercise of public functions in the PPA
- no specialised training courses on public procurement.



## To do:

- adopt the remaining legislation to implement the new public procurement law;
- develop and implement the electronic contract management system and the electronic registry of complaints for improved monitoring and transparency;
- ensure that conditions of intergovernmental agreements concluded with third countries comply with acquis requirements contained in the SAA, notably in the area of public procurement.



# ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

- free movement of goods (Chapter 1)
- freedom of movement for workers (Chapter 2)
- right of establishment and freedom to provide services (Chapter 3)
- free movement of capital (Chapter 4)
- company law (Chapter 5)
- intellectual property law (Chapter 7)
- competition policy (Chapter 8)
- financial services (Chapter 9)
- consumer and health protection (Chapter 28)





# Internal Market

- Common Regional Market
- Law on compulsory insurance in transport and in further aligning its banking legislation
- State Aid Commission
- One Health approach
- Ensure that everyone has quality healthcare coverage



## To do...

- complete the alignment of its legislation with the EU acquis relevant to the quality infrastructure;
- further strengthen the enforcement capacity of the Market Surveillance Inspectorate
- Non-harmonised area Albania still has no action plan for screening national technical regulations for compliance with Articles 34-36 of the TFEU
- new social security bilateral
- agreements and the development of the IT system for mapping job seekers vacancies that is
- preparing the implementation of the European network of employment services (EURES)
- upon accession.
- Albania should:
  - continue the development of the IT system to enable connection to EURES;
  - continue negotiating and implementing new bilateral agreements on social security, notably with EU Member States



# COMPETITIVENESS AND INCLUSIVE GROWTH

- information society and media (Chapter 10)
- taxation (Chapter 16)
- economic and monetary policy (Chapter 17)
- social policy and employment (Chapter 19)
- industrial policy, science and research (Chapter 25)
- education and culture (Chapter 26)
- customs (Chapter 29)



# Inclusive Growth

- progress was limited on the economic and monetary policy, and the customs union
- National Strategy for Cyber Security 2020 – 2025
- no progress was made in implementing the single European emergency number **112**
- Memorandum of Understanding on 5G for digital transformation in the Western Balkans was signed in Tirana on 2 November 2020 by ministers of Western Balkans.
- No further steps were taken to align further the Law on cybersecurity with the EU Directive on the security of network and information systems



## To do ...

- continue to adopt the necessary amendments to the Law on Electronic Communication, in alignment with the new European Electronic Communications Code
- improve the collection of statistical data on digital performance and digital competitiveness
- finalise and adopt the Digital Agenda 2021-2025
- simplify the taxation system to encourage enhanced tax compliance;
- approve a new calendar on tobacco excise with a view to progressively aligning the excise rates to the EU minima
- comply with the agreed repayment schedules for VAT refunds



## Chapter 26: Education and culture

- Some progress was registered with the strengthening of the new National Agency for Employment and Skills, the continued restructuring of the National Agency for Education, Vocational Training and Qualifications
- remote education model imposed by the COVID-19 pandemic



## To do:

- Law on Cultural Heritage and Museums
- adopt the new strategy on education, covering all levels and ensuring the adequate financial protection as well as targeted public spending for the people affected by the earthquake and the COVID-19 pandemic;
- finalise the implementing legislation of the VET Law and implement the Optimization Plan by 2022 to develop services and competences in line with the needs of the private sector at local level;
- adopt the National Youth Strategy for the period 2021-2026
- 7 VET Law is not yet fully adopted





# THE GREEN AGENDA AND SUSTAINABLE CONNECTIVITY

- transport policy (Chapter 14)
- energy (Chapter 15)
- trans-European networks (Chapter 21)
- environment and climate change (Chapter 27)



## TO DO:

- complete and adopt the new National Transport Strategy 2021-2026
- prepare and adopt the new Road Safety Strategy in compliance with the Transport Community Road Safety Action Plan
- implement legislation on the railway sector reform in compliance with the Transport Community Rail Action Plan and ensure full operability of the network;
- accelerate taking concrete measures to improve the performance of maritime vessels under the Albanian flag.



# To do on Agriculture

- set up a farm register by the end of 2021 at the very latest, further improve the animal registers and adopt an implementation plan to establish the farm accountancy data network (FADN) to provide validated data for policy-making;
- ensure administrative capacity required to prepare the IPARD III programme and to submit for entrustment relevant measures available under it;
- complete the legal frameworks on vineyards and wine, for quality schemes and organic production; ensure the institutional and administrative capacity for their implementation.



# EXTERNAL RELATIONS

- external relations (Chapter 30)
- foreign, security & defence policy (Chapter 31)
- It now has 39 such agreements, including 13 with EU Member States. Albania has Bilateral Investment Treaties with 45 countries and seven treaties are under negotiation with Slovakia, Iran, Canada, Morocco, Lebanon, Saudi Arabia and Iceland.
- Negotiations for amending the free trade agreement (FTA) with Turkey continued, with a focus on trade in services and investments, and implementation of rules of origin under the Pan-Euro-Med Convention as well as on further mutual concessions for agricultural products.



## To Do:

- continue implementing the national action plan on trade policy coordination and facilitation, and strengthening the administrative capacity;
- continue aligning the relevant legislation with the acquis in the field of export control of dual-use goods;
- conclude the negotiations and subsequently adopt CEFTA AP 7, continue implementing actions under the Common Regional Market (CRM) action plan 2021-2024 for the development of a Regional Economic Area, including on mutual recognition of professional qualifications, facilitating trade in services provided by travel agencies and tour operators on removal of the requirements of work permits for professional activities 125 under AP6 and promotion of e-commerce, as well as continue implementing the national Investment Action Plan.

# EU promotion of rule of law in Albania through justice reform and judicial vetting

Endri Mykaj, LL.M., M.Sc., Ph.D.(c)

27 January 2022



Universiteit  
Leiden

# Structure of this lecture

Albania and the European Union

The 2016 Justice Reform

Judicial vetting in Albania:

- Legal and institutional framework
- Impact of vetting on the judiciary and Constitutional Court
- ECtHR Decision on Vetting in Albania

Questions



# Albania and the European Union

- Fall of iron curtain
- December 1990 – demonstrations
- March 1991/ March 1992–pluralist elections
- April 1991 “Law on the Main Constitutional Provisions”
- **1991- first diplomatic relations between Albania and the European Communities**
- 1995- Albania becomes a member to the CoE
- 1999 – the Stabilization and Association Process (reaffirming the Copenhagen criteria and more)



# Albania and the European Union

- **2006 – Stabilization and Association Agreement** (potential candidate country)
- 28 April 2009 – Albanian Government submits the application for EU membership
- **June 2014 – Albania was awarded candidate status by the EU**
- April 2018 & May 2019– EU Commission issued a recommendation to open accession negotiations
- Council Conclusions of 25 March 2020 – **in principle decision to open accession negotiations but conditions before the first intergovernmental conference**



# The 2016 justice reform

Why a justice reform in Albania?

➤ European Commission, Commission Staff Working Document Albania 2015 Report, 10 November 2015:

**“the administration of justice is slow and judicial decisions are not always enforced. The professional training of judges is inadequate, and their independence is not fully ensured. There is insufficient accountability of judges and prosecutors and corruption within the justice system is widespread.”**

The independence of the judiciary “[...] is jeopardized by the **highly politicized way** in which High Court and Constitutional Court judges are appointed’.

In addition, the process of appointment of Constitutional Court (and High Court) judges **“has been marred by controversial hearings in parliament’s Legal Affairs Committee and frequent rejection by parliament of presidential nominees”**

➤ **Special Parliamentary Commission on the Justice Reform**, High Level Experts Group “Analysis of the Justice System in Albania, 2015:

Concerns on the quality of legislation in the field of justice; widespread negative perception of the judiciary by the public on the grounds of corruption and lack of professionalism.

## The 2015 “Analysis of the Justice System in Albania” revealed:

- high levels of **corruption** among judges and prosecutors,
- disproportional **influence of politics** over the judiciary,
- absence of clear mechanisms of **accountability and control**,
- **low levels of professionalism** of judges and prosecutors,
- lack of clear division of governing powers.

# What did the 2016 justice reform bring:

- **Judicial Vetting** – conducted by IQC and AC, monitored by IMO
- **Re-organized courts**– Constitutional Court and High Court
- **Created of new justice institutions** – High Judicial Council, High Prosecutorial Council, High Inspector of Justice, Justice Appointment Council
- **Created of anti-corruption structures** – SPAK courts and prosecution



# The 2016 justice reform

- 22 July 2016: Constitutional amendments – related also to the Constitutional Court
- Annex to the Constitution “Transitional Qualification Assessment of Judges and Prosecutors”
- A package of laws implementing the justice reform:

**Law no 94/ 2016 of 30 August 2016 On the provisional reassessment of judges and prosecutors in the Republic of Albania ‘Vetting’**

Law no 95/ 2016 of 6 October 2016 On the organization and functioning of institutions combatting corruption and organized crime;

Law no 96/ 2016 of 6 October 2016 On the status of judges and prosecutors in the Republic of Albania;

Law no 97/ 2016 of 6 October 2016 On the organization and functioning of the Prosecutor’s Office in the Republic of Albania;

Law no 98/ 2016 of 6 October 2016 On the organization of the judiciary in the Republic of Albania;

Law no 99/ 2016 of 6 October 2016 On some additions and changes in law no 8577 of 10.02.2000 On the organization and functioning of the Constitutional Court in the Republic of Albania;

Law no 115/ 2016 of 3 November 2016, On the governing organs of the justice system (inter alia, rules on the establishment and functioning of the Justice Appointment Council)



# Judicial vetting in Albania





# What is judicial vetting in Albania?

Judicial vetting is an **extraordinary** and **temporary** proceeding concerning the re-evaluation of Albania's judges and prosecutors on three pillar assessment:

- **Assets/wealth**
- **Background/integrity**
- **Proficiency**



# The purpose of the Vetting

The purpose of this law is to **determine specific rules for the transitional re-evaluation** of all assesseses, in order to guarantee the **proper function of rule of law** and **true independence** of the judicial system, as well as the **restoration of public trust** in the institutions of such system, according to the provisions of Article 179/b of the Constitution. (Art. 1)

# Judicial Vetting in Albania

- Constitutional amendments adopted in 2016
  - Annex to the Constitution (Transitional Re-evaluation Assessment)
- Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania” (“Vetting Law”)
- Constitutional Court decision on the constitutionality of the Vetting Law (January 2017)
- Judicial vetting bodies commenced operation in late 2017
  - to be completed in **five years** (2022) in the first instance (IQC) and in **nine years** (2026) in the second instance AC
- Assessment of more than 800 judges, prosecutors and legal advisors at CC and HC

# Vetting institutional framework

- Independent Qualification Commission (first instance)
  - 12 commissioners (decides through a 3-member panel)
- Appeal Chamber (second instance)
  - attached to the Constitutional Court
  - consists of 7 judges and decides through a 5-member panel
  - examines appeals against IQC decisions on questions of fact and law
- Public Commissioners
  - represent the public interest and may file appeals against IQC decisions
  - 2 Public Commissioners

# International Monitoring Operation - IMO

An International Monitoring Operation shall support the re-evaluation process by **monitoring** and **overseeing** the entire process of the re-evaluation. It shall include, partners, within the framework of the European integration process and Euro-Atlantic cooperation and shall be **led by the European Commission**. (Art. B(1) Annex to the Constitution)

# International Observers:

- a) They may issue recommendations to the Assembly concerning the **qualification and selection of the candidates** for the position of members of the Commission, the Appeal Chamber judge and Public Commissioners;
- b) They are entitled to have immediate **access to all information**, data on persons and documents necessary to monitor the re-evaluation process at all levels and in all stages;
- c) They are entitled to **file findings and opinions** on issues examined by the Commission and the Appeal Chamber and contribute to the background assessment regulated in Article DH. In those findings, the International Observers may **request that the Commission or the Appeal Chamber consider evidence** or **may present evidence** obtained from state bodies, foreign entities or private persons, in accordance with the law;
- d) They are entitled to submit a **written recommendation to the Public Commissioners to file an appeal**. If the latter decides not to follow this recommendation, the Public Commissioner is required to issue a written report giving the reasons for the refusal. (Art. B(2) Annex to the Constitution)

# Supporting state institutions

- High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (“HIDAACI”)
- Classified Information Security Directorate (DSIK)
- Inspectorate of the High Council of Justice (“IHCJ”); now replaced by the High Judicial Council and High Prosecutorial Council
- \* IQC and AC are the institutions which decide on the final evaluation**



# Principles of Vetting proceedings

The Commission and Appeal Chamber shall exercise their duties as **independent and impartial institutions** based on the principles of **equality before the law, constitutionality** and **lawfulness**, **proportionality** and **other principles**, which guarantee the rights of assesseees for a **due legal process**. (Article 4(5) of the Vetting Law)

# Reverse Burden of Proof

1. The Commission and the Appeal Chamber shall, while examining the case, seek to determine an **objective** and **proportionate** evaluation of the assessee.
2. If the Commission or the Appeal Chamber concludes that the **evidence has reached the standard of proof** under Article 45 of this Law for its report, the **assessee shall have the burden to provide evidence or arguments about evidence against that conclusion.** (Art. 52)

# Albanian judges and prosecutors had to submit in 2017:

- Assets Vetting Declaration
- Integrity Background Declaration
- Proficiency Self-evaluation Form

# Assets Vetting Declaration

The declaration of assets consists of information relating to the person's **assets and their origin**, a description of the **person's income and liabilities**, and a list of other related persons.



SHTOJCA 2

Nr. Indeksi në	
----------------	--

DEKLARATË E PASURISË

Plotësohet nga subjekti i rivlerësimit që mbart detyrimin për deklarim të pasurisë së tij, të bashkëshortit/es, bashkëjetuesit/es dhe të fëmijëve madhorë dhe çdo personi të përmendur në certifikatën familjare, në bazë të ligjit "Për rivlerësimin kalimtar të gjyqtarëve dhe prokurorëve në Republikën e Shqipërisë";

A U T O R I Z I M PËR KONTROLLIN E DEKLARATËS SË PASURISË		
Emri	Atësia	Mbiemri
<input type="text"/>	<input type="text"/>	<input type="text"/>
Funksioni		
<input type="text"/>		
Institucioni dhe adresa		
<input type="text"/>		
Data e emërimit në detyrë	Data e dorëzimit të deklaratës	
<input type="text"/>	<input type="text"/>	
Në bazë të ligjit "Për rivlerësimin kalimtar të gjyqtarëve dhe prokurorëve në Republikën e Shqipërisë";		
A u t o r i z o j:		
Inspektoratin e Lartë të Deklarimit dhe Kontrollit të Pasurive dhe Konfliktit të Interesave, Institucionet e rivlerësimit, vëzhguesit ndërkombëtarë të verifikojnë në të gjitha subjektet private e publike, brenda dhe jashtë vendit, pasuritë, interesat privatë dhe detyrimet financiare, që ekzistojnë në emër dhe për llogarinë time dhe personave të lidhur me mua.		
Deklaroj se të dhënat e pasqyruara prej meje në këtë dokument janë të vërteta dhe nuk kam deklaruar asgjë që nuk është e vërtetë.		
KUJDES ! KY ËSHTË DOKUMENT ZYRTAR DHE PASQYRIMI I TË DHËNAVE TË PAVËRTETA, TË PAPLOTA, E TË PASAKTA E BËN DEKLARATËN TË RREME DHE NDESHKOHET PENALISHT.		
		Nënshkrimi i subjektit
		<input type="text"/>

"Deklarata e pasurisë për procesin e rivlerësimit"1

# Assets assessment objective

The object of asset assessment is the **verification of declaration and audit of assets**, the **legitimacy of the source of their creation**, of **meeting the financial obligations**, including private interests, for the assessee and the related persons. (Art. 30 of the Vetting Law)

# Integrity Background Declaration

The integrity background declaration comprises information relating to the person's particular details, address history, education and other qualifications, employment history and **questions concerning links to organised crime.**



REPUBLIKA E SHQIPËRISË

SHTOJCA 3

DEKLARATA PËR KONTROLLIN E FIGURËS

Ky dokument pranohet vetëm nëse:

- Është plotësuar nga vetë subjekti i rivlerësimit, në dorëshkrim, me shkronja kapitale dhe pa korrigjime.
- Nuk ka rubrika të paplotësuara.
- Subjekti i rivlerësimit shkruan emrin, mbiemrin dhe nënshkrimin në vendin e caktuar në fund të çdo faqeje.

KAPITULLI I – SUBJEKTI I RIVLERËSIMIT

PJESA 1 TË DHËNA IDENTIFIKUESE

Ju lutem plotësoni të dhënat tuaja në mënyrë të saktë ashtu siç është shkruar në pasaportë, kartë identiteti, certifikatë të lëshuar nga gjendja civile.

Emri

Atësia

Mbiemri

Gjinia  Femër  Mashkull

Mbiemër tjetër i papërdorur

Data/Muaji/viti i lindjes \_\_\_/\_\_\_/\_\_\_

Vendi i lindjes

Shteti i lindjes

Shtetësia

Numri Personal (siç është në kartën e identitetit)

1


# Integrity background assessment

The object of background assessment shall be the verification of assessee's declarations and other data with the purpose of identifying the assesseees with **inappropriate contacts with persons involved in the organized crime**. (Art. 34 of the Vetting Law)



# Proficiency Self-evaluation Form

The professional self-appraisal form contains information about the person's **employment history** and questions concerning a description of his or her **duties, statistical figures** relating to the number of cases processed, **training** attended and **qualifications** attained.



REPUBLIKA E SHQIPËRIË

SHTOJCA 4

Formulari i vetëvlerësimit profesional

**A. Të dhënat identifikuese**

*Ju lutem plotësoni të dhënat tuaja në mënyrë të saktë ashtu siç është shkruar në pasaportë, kartë identiteti, apo certifikatë të lëshuar nga gjendja civile.*

Emri: \_\_\_\_\_

Atësia: \_\_\_\_\_

Mbiemri: \_\_\_\_\_

Gjinia:  Femër  Mashkull

Data/muaji/viti i lindjes: \_\_\_/\_\_\_/\_\_\_

Vendi i lindjes: \_\_\_\_\_

Shteti i lindjes: \_\_\_\_\_

Shtetësia: \_\_\_\_\_

Numri Personal (sipas kartës së identitetit): \_\_\_\_\_

Adresa e e-mailit zyrtar: \_\_\_\_\_

Adresa e e-mailit privat: \_\_\_\_\_

Numër telefoni: \_\_\_\_\_ Celular: \_\_\_\_\_ Fiks: \_\_\_\_\_

# Proficiency assessment

- The Proficiency Assessment shall evaluate assesseees according to their **ethical and professional activities** in compliance with this law and the legislation that regulates the status of judges or prosecutors. (Art. 40 of the Vetting Law)
- 3 + 5 legal documents
- Any other case file that IQC considers relevant following public complaints

# Disciplinary measures

At the end of the vetting process, the vetting bodies may decide:

- **Confirmation** in duty,
- **Suspension** from duty for a one year to attend a training program at the School of Magistrates, or
- **Dismissal** from office.

# Dismissal from Office (Art. 61)

1. If it is determined that the assessee has declared **more than twice the amount justified by legitimate income**, including persons related to him or her;
2. If the background assessment has determined that the assessee presents grave concerns to **have inappropriate contacts to persons involved in the organized crime**, which makes it impossible for the assessee to hold the position;
3. If the assessee **lacked full disclosure** during the asset assessment or background assessment under Article 39 and 33 and of this law;
4. If the **proficiency assessment** has determined that the assessee is **Inadequate**;
5. If the **overall assessment** in the sense of Article 4 paragraph 2 of this law finds that the **assessee jeopardizes the public trust in the judicial system** and he is under the circumstances of impossibility for remedying the deficiencies by a training.

# Assets assessment report:

- the **disclosure has been accurate**, in compliance with the law and with lawful financial sources;
- there is a lack of lawful **financial sources to justify the assets**;
- there has been a **concealment of assets**;
- the person being vetted has made a **false declaration**;
- the person being vetted has been involved in a **conflict of interest**. (Art. 33)

# Judicial vetting results to date

Until 24<sup>th</sup> of January 2022, IQC has issued 496 decisions (app. 62%), consisting of:

- 194 confirmation in office (only **39.1%**)
- 183 dismissal decisions
- 75 termination of the process (mainly resignations)
- 34 conclusion of the process (lost of magistrate status)
- 2 decisions on suspension from office (SoM training)

**\*AC has overturned several confirmation decisions.**

# The impact of judicial vetting on the Albanian Constitutional Court

- Vetting of constitutional court judges

Vetting bodies created in late 2017

Three resignations of constitutional court judges:  
September 2016, July 2017, January 2018 [two new full vacancies and one early vacancy]

Five constitutional judges did not pass the vetting and were dismissed

**Only one constitutional judge passed the vetting**

- **Result:** July 2018 – November 2019 **no quorum** in the ACC to decide on the admissibility of constitutional complaints → **impasse of the Constitutional Court**





# ECtHR Xhoxhaj vs Albania

## Facts:

Altina Xhoxhaj was a Constitutional Court judge, **dismissed by the judicial vetting** institutions

Dismissal based on a **negative assessment on assets and proficiency pillars** (no background issues)

- False declaration and concealment of asset
- Inaccurate declarations for several assets
- Lack of legitimate incomes to justify assets
- Conflict of interest in a court case





# Complaint before ECtHR

## ❖ Lack of an independence and impartiality tribunal

(i) the vetting bodies were composed of **non-judicial members** who lacked the requisite professionalism and experience; (ii) the members of the vetting bodies were appointed by parliament **without any involvement of the judiciary**; (iii) **the vetting bodies carried out the preliminary administrative investigation**, framed the “accusation” and **decided on the merits** of the “accusation”.

## ❖ Lack of a fair hearing

(i) claimant had been **denied the right to refute the main reason for her dismissal** and defend herself; (ii) the IQC had shifted an **unreasonable burden of proof** onto her in relation to circumstances which had arisen decades ago; (iii) the Vetting Act had not prescribed any **limitation periods**; (iv) the decisions in her case had **lacked reasoning in relation to her arguments**; (v) the vetting bodies had **applied double standards** compared to other cases; (vi) the Appeal Chamber had dismissed her request to submit **further exculpatory evidence**; (vii) she had not had **sufficient time and facilities to prepare her defence**; (viii) the Appeal Chamber had failed to hold a **public hearing**; and (ix) the vetting bodies had breached the **principle of legal certainty** and legitimate expectation in so far as they had disregarded the positive audit of her assets carried out by HIDAACI.

# ECtHR decision

## *Independence of vetting institutions*

- Vetting bodies were **not subject to pressures from the executive**.
- Sufficient guarantees in law for the **irremovability of vetting members** and the **functioning of the institutions**.
- The limited time period for the vetting bodies members was related to the specific and **extraordinary nature** of the vetting.

According to the Court, the IQC and Appeal Chamber (i) decide the merits of each case **independently**, (ii) have complete discretion in deciding on their **organisational structure and personnel**; (iii) **do not take instructions or directions from the executive**, and (iv) make proposals for an **annual budget allocation by Parliament, free from any intervention by the executive** (para. 314).

## *Impartiality of vetting institutions*

- The mere fact that the **IQC had made preliminary findings** in the applicant's case was not sufficient to prompt objectively justified fears as to its impartiality.

# Fairness of the proceedings

No violation of Article 6(1) of the Convention as regards the **fairness of the proceedings**.

Following the **shifting of the burden of proof** onto the applicant to rebut the IQC preliminary findings, the claimant submitted **extensive arguments** in her defence and **filed numerous written submissions**.

No indication that claimant lacked the **time and facilities to prepare an adequate defence**.

Appeal Chamber's examined point by point the **grounds of claimant appeal** and scrutinised the **findings of fact and law made by the IQC**, thus complying with the requirement of "**full jurisdiction**".

# Public hearing

No breach of Article 6(1) of the Convention as regards the lack of a **public hearing** before the Appeal Chamber.

- There was a **public hearing before the IQC** (proceedings, taken as a whole).
- **No request for a public hearing** was made by the applicant before the Appeal Chamber.
- The **nature of the proceedings did not require a public hearing** on appeal before the Appeal Chamber.
- The applicant had ample opportunity to **present her case in writing** to the Appeal Chamber.

# Legal certainty

No violation of Article 6(1) of the Convention as regards the **legal certainty**.

**Issue:** the examination of assets related transactions that had taken place dating back several years ago or even decades.

The objective of the Vetting Act, considering that **prior verification of declarations of assets** had not been particularly effective in the country.

Claimant's failure to submit supporting documents attesting to the **objective impossibility** to demonstrate income documentation.

Claimant's **failure to disclose the asset at the relevant time** she had acquired it.

# Relevance of the ECtHR decision

## A leading case for future purposes?

Third-party interveners:

- **European Commission**
- Respublica

Council of Europe materials:

- Group of States against Corruption (**GRECO**) evaluation report
- **Venice Commission** reports

United Nations materials:

- The **United Nations Convention Against Corruption**

Case-law of the **Court of Justice of the European Union (CJEU)**:

- Poland cases on the independence of the Supreme and ordinary courts

# Relevance of the ECtHR decision

Judicial vetting proceedings are **sui generis** in nature, despite the similarities that they appear to have with ordinary disciplinary proceedings.

Judicial vetting was adopted in Albania as a response to the **widespread perception of corruption** and a **lack of public trust** in the national judicial system.

- Extraordinary disciplinary process.
- National conditions to be taken into consideration.
- External accountability mechanisms may be justified/necessary in corrupt judicial systems.

**Thank you!**



# Questions?





# Albanian media reporting...

- ‘Fjolla Morina i kthen pergjigje miliardarit iranian: Homoseksual’
- Spiropali i kthehet ashper Vasilit: Zvarranik, laro, specie qe Qazim Ismaili do te sheroje nga ligesia (Shqiptarja.com- 31.03.2020)
- Pa recipeta dhe me duart ne ...Era Istrefi poza seksi (Balkanweb-03.08.2020)
- ‘Protesta Raciste ne Athine, ‘Vritini qente shqiptare’



# Albanian media reporting...

- Uff, me ne fund me djale, Rama jep lajmin e mire (Shqiptarja.com-21.05.2020)
- Kylie Jenner provokon fansat me foto te nxehta
- Upss bukuroshes sa nuk i doli gjoksi pertej bluzes (Syri.net-14.04.2020)
- Lajthit Erjon Veliaj, asnje burre nuk do martohet me policen qe i prene gishtat



<https://www.syri.net/politike/190808/shperthen-dash-shehi-te-rrezojme-ramen-dhe-homoseksualet-e-tij-ne-qeveri/>

<http://www.panorama.com.al/panoramaplus/transgjitorja-linda-rei-persekuton-me-postime-alba-hoxhen-shikoni-ctare-i-shkruan/>

<http://www.panorama.com.al/imami-i-njohur-shqiptar-befason-me-ligjerimin-femrat-i-bejne-meshkujt-hajdute-duan-leke-dhe-makina-te-shtrenjta/>

<http://www.panorama.com.al/video-keshilltari-lici-i-pergjigjet-artan-hoxhes-dhe-e-kercenon-me-burg-mos-na-krahaso-me-nje-magjyp-si-safet-bajri/>



# Neni 10 KEDNJ

Çdokush ka të drejtën e lirisë së shprehjes. Kjo e drejtë përfshin lirinë e mendimit dhe lirinë për të marrë ose për të dhënë informacione dhe ide pa ndërhyrjen e autoriteteve publike dhe pa marrë parasysh kufijtë. Ky nen nuk i ndalon Shtetet që të kërkojnë liçencimin e ndërmarrjeve të transmetimit kinematografik ose televiziv.

(Konventa Evropiane për të Drejtat e Njeriut dhe Liritë Themelore, 1950)



# Neni 10 KEDNJ

2. Ushtrimi i këtyre lirive që përmban detyrime dhe përgjegjësi, mund t'u nënshtrohet atyre formaliteteve, kushteve, kufizimeve ose sanksioneve të parashikuara me ligj dhe që janë të nevojshme në një shoqëri demokratike, në interes të **sigurisë kombëtare, integritetit territorial ose sigurisë publike, për mbrojtjen e rendit dhe parandalimin e krimit, për mbrojtjen e shëndetit ose të moralit, për mbrojtjen e dinjitetit ose të të drejtave të të tjerëve**, për të ndaluar përhapjen e të dhënave konfidenciale ose për të garantuar autoritetin dhe paanshmërinë e pushtetit gjyqësor.

...(neni 14. Ndalimi i Diskriminimit, Kushtetuta e Shqipërisë, neni 15,16,17; Ligji për mbrojtjen nga Diskriminimi, Nr.10 221, datë 4.2.2010; LIGJ Nr. 97/2013 PËR MEDIAT AUDIOVIZIVE NË REPUBLIKËN E SHQIPËRISË )

# Definition



... "hate speech" shall be understood as covering all forms of expression which *spread, incite, promote or justify* racial hatred, xenophobia, anti-Semitism or *other forms of hatred based on intolerance*, including: intolerance expressed by aggressive *nationalism* and ethnocentrism, *discrimination* and hostility *against minorities*, migrants and people of immigrant origin...

Council of Europe, Committee of Ministers on 'hate speech', Recommendation Nr. 97 (20)





# Definition of Hate Speech in the Albanian legislation

“...any form of expression in public, through any means that **promotes or incites denigration, hate or defamation, any concern, insult, negative stereotyping, stigmatization towards a person or group of people** as well as any justification of all forms of expressions based on a non-exhaustive list of causes as foreseen in the first article of this law”.



# Synthetic definition for '*Hate Speech*'

*Hate speech is a form of expression which is designed to promote hate on basis of race, religion, ethnicity, national origin, gender, sexual orientation, social and class belongings, health or mental differences*

*(Mihajlova, et. al, 2013).*



# Ligji për Barazinë Gjinore në Shqipëri (Nr. 9970/2008)

*Media ndihmon në rritjen e vetëdijes së përgjithshme për barazinë e femrave dhe të meshkujve: a) përmes raportimit jodiskriminues mbi baza gjinore; b) përmes përdorimit të terminologjisë neutrale në aspektin gjinor; c) përmes shmangies së stereotipave gjinorë në veprimtarinë e vet. 2. Ndalohet transmetimi, botimi dhe publikimi i materialeve dhe i informacioneve, që përmbajnë apo nënkuptojnë dallime poshtëruese apo fyese, përjashtime apo kufizime të njërës prej gjinive, në bazë të diskriminimit për shkak të gjinisë.*

# WHYs



Why is it being allowed?  
Who is responsible?



# Existing laws on media regulation

- Law 97/2013- On audio-visual media
- Code of Broadcast
- Complaints committee (AMA)- 3 members
  
- Code(s) of Ethics for media



# Anti-Defamation package

- In 2018, amendments to Law nr. 97/2013 & Law nr. 99/08- Antidefamation package:

Regulate activity of electronic publications:

- Fight against child pornography
- The need to protect children in general
- Consideration of national security
- Public order and the fight against terrorism
  
- (example: false rumours that caused panic on the **earthquake 2019**)



# Developments

- 18 December 2019- Parliament adopts draft amendment to Law
- 11 January 2020- President vetoes draft amendments and returns law to the Parliament
- 30 January- The voting in parliament postponed until a Venice Commission opinion is received
- 19 June 2020- Venice Commission sends opinion on the draft law
- ...



# Problems identified and the Albanian context

- Regulatory bodies: AMA and Complaints Committee:
  - Extended scope of work to online media
  - Political independence
  - Independence from big media industry
  - Professional qualification
  
  - How will procedures be enforced?
  
  - The impact on freedom of expression





# Self- regulation?

- Relevant stakeholders in the field of media
- Ensuring effective and respected system of media accountability

- Media Literacy

<https://www.verified-albania.org/>



# Module

**Title: The Governance of Migration  
in Times of Multiple Crisis**

Assoc. Prof. Eda GEMI, PhD

02 February 2022

# Key migration data at a glance



International  
migrants<sup>(a)</sup>

**281 million** — **↑** Up from **272 million**  
international migrants globally in 2020, or 3.6 per cent of the world's population (or 3.5%) in 2019

<b>Females<sup>(a)</sup></b>	<b>135 million international female migrants</b> globally in 2020, or 3.5 per cent of the world's female population	<b>↑</b> Up from <b>130 million</b> (or 3.4%) in 2019
<b>Males<sup>(a)</sup></b>	<b>146 million international male migrants</b> globally in 2020, or 3.7 per cent of the world's male population	<b>↑</b> Up from <b>141 million</b> (or 3.6%) in 2019
<b>Labour migrants<sup>(b)</sup></b>	<b>169 million migrant workers</b> globally in 2019	<b>↑</b> Up from <b>164 million</b> globally in 2017
<b>Missing migrants<sup>(c)</sup></b>	Around <b>3,900 dead and missing</b> globally in 2020	<b>↓</b> Down from almost <b>5,400</b> in 2019

Table 2. Key facts and figures from World Migration Reports 2000 and 2022

	2000	2022
Estimated number of international migrants	173 million	281 million
Estimated proportion of world population who are migrants	2.8%	3.6%
Estimated proportion of female international migrants	49.4%	48.0%
Estimated proportion of international migrants who are children	16.0%	14.6%
Region with the highest proportion of international migrants	Oceania	Oceania
Country with the highest proportion of international migrants	United Arab Emirates	United Arab Emirates
Number of migrant workers	–	169 million
Global international remittances (USD)	128 billion	702 billion
Number of refugees	14 million	26.4 million
Number of internally displaced persons	21 million	55 million

Sources: See IOM, 2000 and the present edition of the report for sources (Chapter 2).

Notes: The dates of the data estimates in the table may be different to the report publishing date (refer to the reports for more detail on dates of estimates); refer to Chapter 3 of this report for regional breakdowns. Data for 2000 may differ to those originally published due to a standard practice of revising historical estimates at the time of each new dataset release. See, for example, UN DESA, 2021. For the purpose of this table, children refers to those aged 19 years or less.

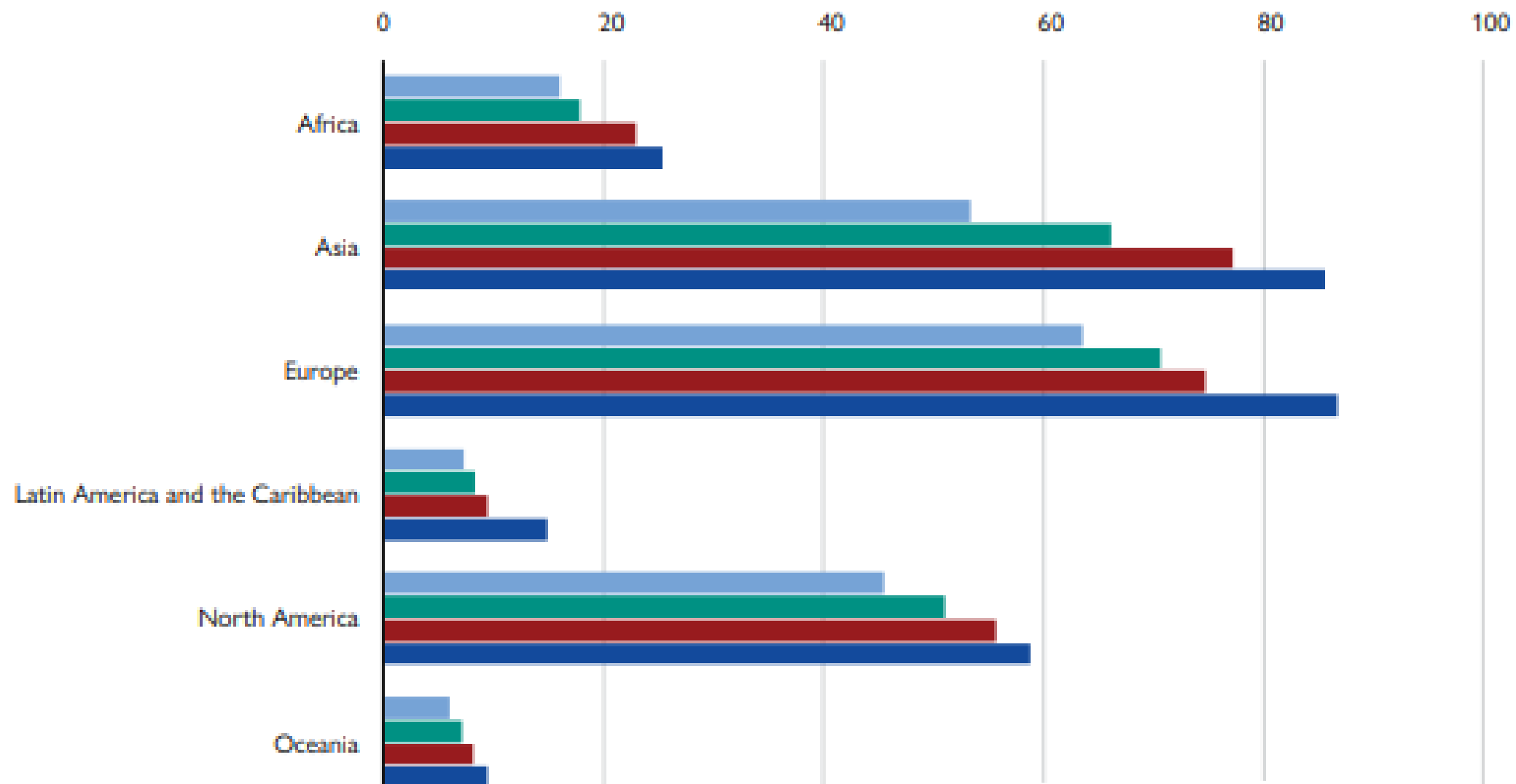


## Displaced persons

**89.4 million** — **↑** Up from **84.8 million** in 2019  
people were living in displacement globally at the end of 2020 (includes refugees, asylum seekers, displaced Venezuelans and IDPs)

Refugees <sup>(e)</sup>	<b>26.4 million</b> refugees globally in 2020	<b>↑</b> Up from <b>26 million</b> in 2019
Asylum seekers <sup>(e)</sup>	<b>4.1 million</b> asylum seekers globally in 2020	<b>↓</b> Down from <b>4.2 million</b> in 2019
Displaced Venezuelans <sup>(e)</sup>	<b>3.9 million</b> Venezuelans displaced globally in 2020 (not including those who were refugees or asylum seekers)	<b>↑</b> Up from <b>3.6 million</b> in 2019
Internally displaced persons (IDPs) <sup>(f)</sup>	<b>55 million</b> IDPs globally in 2020: 48 million due to conflict and violence; 7 million due to disasters	<b>↑</b> Up from <b>51 million</b> in 2019

Figure 1. International migrants, by major region of residence, 2005–2020 (millions)





Over **70 million** people are estimated to have been displaced worldwide.



This amounts to nearly **30 million** refugees and asylum seekers.



Out of those, **2.6 million** have been hosted in the EU (0.6% of total EU population).



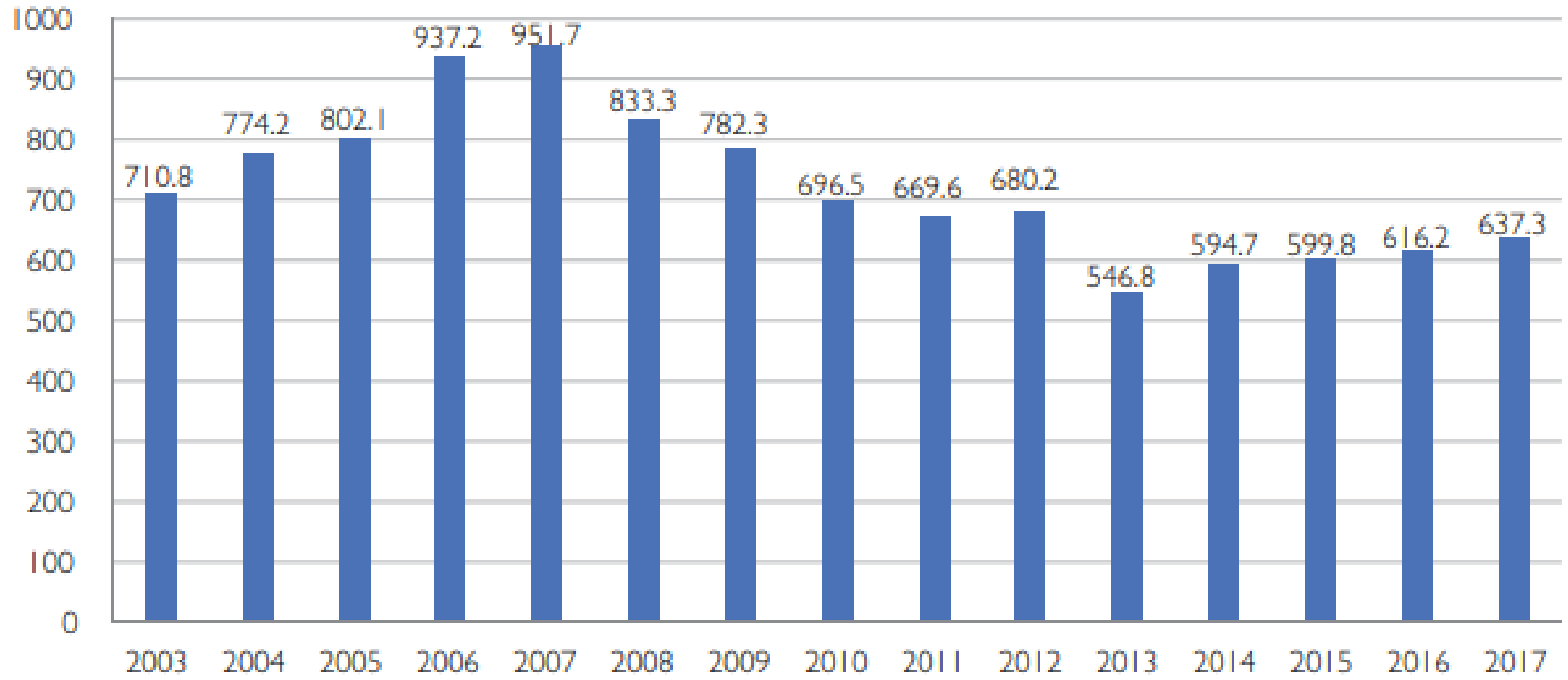
**698.000** new asylum applications were submitted.



**142.200** people tried to cross EU borders without documentation.



Only **1/3** of returns were successfully carried out.





# EU - Western Balkans MS

○ Trajectories of migration 'corridors':

(a) **history of the region;**

(b) **historical relationships/cultural linkages;**

(c) **pre-existence of migrant networks;**

(d)(selective) **migration policies** applied by receiving countries.

# Western Balkans migration patterns

○ WBMP have been shaped by a combination of the following factors:

(a) **Ethnic complexities** and historical controversies that often fuelled inter-ethnic conflicts;

(b) The **economic transformation** that followed the systemic collapse of communist regimes;

(c) **Political actors** who caused the destabilization of the entire region (*i.e. the practices of 'ethnic cleansing' in Bosnia-Herzegovina and Kosovo during the 1990s*).

# 'Old' migration...

- **Migration not a new phenomenon** for the countries of the Western Balkans;
- Almost all countries (*with Albania being an exception*) have traditionally been **source countries of labour emigration to Europe.**
- **Guest-worker recruitment bilateral scheme** (*e.g. with Germany and Austria*) during the cold war era.
- In contrast to Albania the former Yugoslav Federation had granted a relative freedom of movement to its citizens.

# 'New' Migration...

- Beginning of the 1990s, **rapid developments set in.**
- **Large-scale emigration from Croatia and Bosnia-Herzegovina** to Austria and Germany.
- **Albanians to two neighbouring EU countries,** Greece and Italy, assumed the proportions of a 'biblical exodus';
- Developments **reshaping the dynamics of contemporary migration from the Western Balkans to the EU.**

# Types of 'new' migration

- (1) **Forced migration:** war and 'ethnic cleansing';
- (2) **Ethnic migration:** 'voluntary repatriation' to the 'ancient motherland' (*e.g., the case of Albanians of Greek origin 'omogeneis' or 'Aussiedler' in Germany*)
  - ✓ **Special benefits** derived from their 'privileged' status (*such as special pensions scheme*).
- (3) **Human trafficking;**
- (4) **Labour migration:** regular or irregular forms (*i.e. circular migration involving semi-skilled and unskilled persons*)
  - ✓ "Economic asylum seekers": *in 2015, over 130,000 migrants from Kosovo, Albania, and Serbia applied for refugee status in the EU, with Germany being at the top of the preferred destination countries.*

# Immigration in numbers

- Beg of the 1990s, of 2.2 million people who were forced to leave Croatia and BH, roughly 375,000 had emigrated to Central and Western Europe;
- Albania: one of the world's highest emigration rates, in relation to its population, with a stock of emigrants nearly 39% of the total population (UNDESA 2015).
- Around 800,000 Albanian regular migrants live in Greece and Italy (353,826 in Greece and 442,838 in Italy).

# 'Europeanization' of migration policies

- Boundaries between the EU and Western Balkan countries increasingly blurred - **growing complexity of migration system.**
- Western Balkan countries are also EU candidate countries;
- EU migration policy and EU-Western Balkan cooperation on migration - of crucial importance in shaping the migration system.
- EU-Western Balkan cooperation is part of the **Stabilisation and Association Process (SAP)** of EU relations with the Western Balkans;
- **'Europeanization'** of migration policies particularly focused on the control of irregular migration.

# Albanians' Integration Pattern

- Assimilation trajectory - weak bonding and bridging social capital;
- 'Hiding' any sort of difference - becoming 'invisible';
- Assimilation through 'mimesis';
- Asymmetric assimilation: most stigmatized and most integrated - similar to the natives.



# Hybrid Identities

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*In passport my name is Anjeza but I had been baptized as Maria. My brother was baptized Giannis. (GR-05)*

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*My dad's Albanian name is Hysen and he changed it to Ilias. And my mom from Aurela made it Rena. That's how they were called. (GR-06)*

# Second Generation

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*I remember myself, two years old in Chalkida [a small city north of Athens] in my mom's work. I used to go with her since I was two years old. While my mom was cleaning, the landlady took care of me. I always played with her. But then my mom quit the job at this lady ... Then I remember my brother. He was four and I was two years old and he was taking care of me. That is, my mom left us for eight hours alone. Without uncles, without aunts. (GR-01)*

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*Stress, fatigue from the hard work, I was also a little naughty child. I made a fuss at home and my mother when back at home, tired from the hard work, should pick up my mess. I saw my parents very tired, all the time. My father was a classic Albanian, he came home from work, took the remote control in hand, drank beers and watched TV. (GR-10)*

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*I had difficulty in making friends. I did not go out at all. My life was, home, school, and lessons. I also did some housework as my mother was more in Albania than in Italy. (IT-05)*

# Ever lasting Mobility

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*My parents initially went to Bratislava with my sisters and I was born there. Six months later we moved to Taranto, Italy. Eighteen years later, my mother and I returned to Albania and my sisters are married to Italians and live in Taranto. (IT-04)*

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*My brother has remigrated to Germany and lives permanently there with my dad now. They live in Germany with my uncle. My brother has a Greek passport and has signed a contract with a football club. Mom has been left alone in Greece. And my sister has returned to Albania. (GR-03)*

# Typology of return migration, re-integration, and mobility

Category	Type of Return	Level of Preparedness	Level of Re-integration	Mobility	
				Transnational/circular	Re-migration
1	occasional return	Non-existent	Non-existent - refusal	Existent – directed towards other countries	Existent scenario, dependant on legal status or/and social networks
2	periodic/seasonal/circular return	Partially existent depending on circumstances	Partially existent – depending on social networks Lack of access to labour market in country of origin	High level of mobility for seasonal/circular employment in tourism and agricultural sectors	Partially existent - to industrial countries of EU (Germany, UK) and USA - Dependent on age and family composition.
3	Temporary return	Low level of preparedness because of interrupted and incomplete migration cycle	Low level of re-integration because the lack of willingness and preparedness, as well as the structural exclusion in Albania	Not very articulated – transnational activities are limited to family transfers	Re-migration to EU, USA, Canada
4	Permanent return	Medium to high level of preparedness	Low to Medium level mainly due to proper activation of social networks in absence of re-integration policies and opportunity structures	Transnational activities are limited to family transfers, individual projects, study	Re-migration if conditions are favourable

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