

Legal Challenges in the Approximation Process of Domestic Legislation with EU *acquis*: Albanian case

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Abstract

The process of approximation of national legislations with *acquis* of the European Union (EU) is a challenge in the framework of the integrating process for the countries that aspire to join EU. The approximation of national legislation with the *acquis* of the EU means that the country should be prepared to undertake a legal reform in order that the existing and the new laws should be in compliance with the EU legislation.

The Stabilisation and Association Agreement signed between the European Union and its member states and the Republic of Albania on 12th of June 2006, obligates the Albanian state to approximate the domestic legislation with the *acquis* of the EU.

The article aims at describing the complexity of this process by considering it as a challenge for Albania and by focusing on the following directions:

1. The legal reform and the approximation of the Albanian legislation with the *acquis* of the EU.
2. The constitutional framework and the position of Stabilisation and Association Agreement.
3. The drafting of the legal acts by basing on the approximation instruments.

This article will be based on description and also on analysis of the legal acts and different documents to give evidence that the legal reform and the law drafting process should fulfil the European integration needs.

Key words: *approximation, legal reform, Constitution, Stabilisation and Association Agreement, approximation instruments, European Union.*

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1. Introduction

The approximation of the national legislation with the legislation of the European Union, is undoubtedly one of the basic criteria of the membership of an aspirant country in the European family. The core of this process constitutes the adoption of the European legislation, *acquis* of the EU (*acquis communautaire*)¹⁵¹ in the domestic legal system.

The approximation of the domestic legislation with the *acquis* of the EU means above all that the country should undertake a comprehensive legal reform, where the domestic legislation will be approximated with the EU legislation by basing on the adequate legal techniques which implies its drafting in compliance with the approximation instruments.

In the Albanian case, the Stabilisation and Association Agreement¹⁵², signed between the European Union and its member states and the Republic of Albania, on 12th of June 2006¹⁵³, explicitly envisages:

“The commitment Albania should take to approximate the legislation in respective sectors with the legislation of Community and to effectively implement this legislation”¹⁵⁴.

The SAA creates the obligation for the Albanian government to approximate its existing and future legislation with the EU legislation.

In the point of view of this obligation, the article aims at considering three key directions:

First: The National Plan for the Implementation of the Stabilisation and Association Agreement which materialises the legal reform of the Albanian Government needed to fulfil the obligation to approximate the domestic legislation with the EU legislation.

¹⁵¹ The *acquis communautaire* refers the legal corps of the EU, which is composed of primary legislation (Treaties) and secondary legislation (regulations, directive etc), as well as the jurisprudence of the Court of Justice of the European Union which is able to interpret European Union law.

The term *acquis communautaire* will be used as result of the legal acts of that time.

¹⁵² In the framework of the approximation of the national legislations with the EU legislation for the countries that wish to join the EU, the European Union established an agreement for [Western Balkans](#) (Albania, Croatia, Serbia, Montenegro, Bosnia & Herzegovina and the Republic of Macedonia), named the Stabilisation and Association Agreement.

¹⁵³ On June 12, 2006 in General Affairs and External Relations Council in Luxembourg, signed the Stabilisation and Association Agreement (SAA) between Albania and the European Community and the Member States. On July 27, 2006 Parliament of the Republic of Albania ratified the Stabilisation and Association Agreement and the April 1, 2009, after ratification by Member States that entered into force.

¹⁵⁴ Law to ratify the “Stabilisation and Association Agreement between Albania and European Communities and their Member States”, Law No. 9590, signed 27 July 2006, Official Journal (2006) No. 87 (hereinafter “Stabilisation and Association Agreement”).

Second: The legal reform in order to approximate the Albanian legislation with the *acquis* of the EU is closely connected with the position of the SAA in the national legal order from which derives the basic obligation for the approximation process. In this view, the article will consider its impact on the Albanian legislation and the need to adopt new laws due to its direct effect on the institutions and national courts.

Third: The legal reform for the approximation of the legislation is closely connected also with the approximation instruments which imply that the drafting process of the laws by the public administration should also meet some new standards in respect of law drafting in Albania, which derive from the transposition of the European legislation into the domestic legislation.

In this view the approximation process of the Albanian legislation with the *acquis* of the EU means a legal reform which constitutes a challenge for the future membership of Albania into the EU.

2. The legal reform for the approximation of the Albanian legislation with the *acquis* of the EU

The legal reform for the approximation of the Albanian legislation with the *acquis* of the EU is closely connected with the obligations the Albanian state has undertaken in the framework of the SAA. The Council of Ministers of the Republic of Albania through the Decision No. 463, dated on 5.7.2006, "On the adoption of the National Plan for the Implementation of the Stabilisation and Association Agreement" has adopted the National Plan for the Implementation of the Stabilisation and Association Agreement (NPISAA), amended (2010-2014)¹⁵⁵ in order to implement the SAA.

The NPISAA is a governmental document which introduces the legislative program of the Albanian government in which the setting of short term, middle term and long term priorities, has defined the stages of the legislative activity in the function of coherence of the legal system where the laws of a general nature precede the laws of specific nature.

The NPISAA is organized in three parts according to the Copenhagen criteria: political criterion, economic criterion and European standards - Ability to assume the EU accession obligations of the membership into the European Union. This plan contains all short term, middle term and long term priorities of Albania regarding the integration into the European Union focusing especially on the priority of the approximation of the Albanian legislation with the *acquis* of the EU.

¹⁵⁵ Decision "On some amendments to the decision No. 463 of 5.07.2006 of the Council of Ministers "On the approval of the National Plan for the Implementation of the Stabilisation Agreement", No. 812, signed 6 October 2010, Official Journal (2010) No. 148.

In order to ensure the fulfilment of this priority, the NPISAA provides in a detailed way “The legal initiative according to the respective fields - Annex 1”. In this annex are included the whole list of legal initiatives to be undertaken by the respective ministries in compliance with the obligations of the European Partnership and the SAA. This annex provides also information for the compatibility degree of the Albanian draft act with the European legislation (directive, regulation), the respective reference of the act, the responsible institutions and the deadlines for submission to the Council of Ministers and the date of the entering into force of the legal acts.

This annex is drafted in compliance with the article 6 and 70 of the SAA, which provide:

“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. In the field of legal approximation and law enforcement, the aim shall be for Albania to concentrate in the first stage on the fundamental elements of the Internal Market *acquis* as well as on other important areas such as competition, intellectual, industrial and commercial property rights, public procurement, standards and certification, financial services, land and maritime transport - with special emphasis on safety and environmental standards as well as social aspects - company law, accounting, consumer protection, data protection, health and safety at work and equal opportunities. During the second stage, Albania shall focus on the remaining parts of the *acquis*.”

Six years have already passed from the signature of the SAA (12 June 2006) and the first stage of transition period is over. In this framework the following question is rightfully raised: Has the legislation of the above mention period fully approximated?

The answer is given by the Commission Opinion on Albania's application for membership of the European Union in 11 November 2010¹⁵⁶ which highlights as follows:

Albania would be in a position to take on the obligations of membership in the medium term in most of the *acquis* fields [...] Particular attention should be paid to the areas of free movement of goods, intellectual property law, information society and media, agriculture and rural development, food safety, veterinary and phyto-sanitary policy, fisheries, transport policy, social policy and employment, regional policy and coordination of structural instruments, judiciary and fundamental rights, justice, freedom and security and financial control. Full compliance with the *acquis* in the field of the environment could be achieved only in the long term and would require substantial levels of investment; efforts in this area should be accelerated”.

In order to have a correct evaluation about the way the legal reform in Albania has been implemented, it should be based on the number of the draft laws proposed by each ministry

¹⁵⁶ European Commission, *Albania 2011 Progress Report*, Brussels, 12.10.2011, SEC(2011) 1205 final.

and the draft laws adopted by the Parliament in 2011 as well as on the evaluation made through progress reports of the European Commission.

For example: many fields of the Ministry of Economy, Energetics and Trade's activity correspond to important chapters of *acquis* on the EU internal market due to the considerable volume of the European legislation which should be harmonized. Respectively:

- free movement of goods
- consumer protection
- company law
- intellectual and industrial property rights
- rural development
- standards and certification

Based on the NPISAA and the Progress Report of 2011 of the European Commission, the situation is as follows:

“More than 50 % of the laws proposed by the Ministry of Economy, Energetics and Trade about the fields covered by this institution are adopted within the deadlines and 7 out of 12 draft laws are adopted.”¹⁵⁷

Referring to the current situation two important laws can be mentioned in the field of the consumer protection, respectively Law No. 10489 dated on 15.12.2011 “On the trade and supervision of the non-edible products” and the Law No. 10480 dated on 17.11.2001 “On the General Safety of the non-edible products” - which are drafted in compliance with the Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing products and repealing Regulation (EEC) No. 339/93”.¹⁵⁸

If we refer to the commercial companies' legislation, there is a little progress and more legal measures should be taken in order to approximate the Albanian legislation with the *acquis* in the respective field. The same observation is valid also for the industrial property field.

The legal reform on the approximation of the legislation does not represent an easy process because the proposals on new laws require political will, which should be materialised in the Parliament through their adoption. However, in the Albanian case, the long transition, the political deadlock, lack of a constructive political dialog between the ruling majority and the opposition has led to the failure of the Parliament to carry out its activity in the appropriate way.¹⁵⁹

¹⁵⁷ The Plan for the Implementation of the Stabilisation and Association Agreement and its importance in the process of the European Integration of Albania, *Buletin Informativ* No.2, Mars 2012, pp.2-11.

¹⁵⁸ Official Journal of the European Union L 218/30, dated on 13.08.2008.

¹⁵⁹ European Commission, *Albania 2011 Progress Report*, Brussels, 12.10.2011, SEC(2011) 1205 final.

1. The constitutional framework and the position of Stabilisation and Association Agreement

In the case of Albania, which is a potential candidate country for the EU, which has ratified the Stabilisation and Association Agreement and has applied for the status of candidate country, the following questions arise:

1. Which is the position of the Stabilisation and Association Agreement in the hierarchy of legal norms?
2. Does the constitutional framework create the legal basis for the direct effect of SAA and prepare the country for the future membership into the EU?

To answer these questions, it is necessary to analyse the constitutional framework of Albania.¹⁶⁰

Article 5 provides: “The Republic of Albania applies international law that is binding upon it”.

Article 116 provides the hierarchy of legal norms, which are as follows:

- a. Constitution;
- b. ratified international agreements;
- c. laws;
- d. normative acts of the Council of Ministers.

Article 121, point 1 provides:

The ratification and denunciation of international agreements by the Republic of Albania is done by law when they involve:

- a. territory, peace, alliances, political and military issues;
- b. human rights and freedoms, and obligations of citizens as provided in the Constitution;
- c. the membership of the Republic of Albania in international organizations;
- d. the assumption of financial obligations by the Republic of Albania;
- e. the approval, amendment or repeal of laws.

Article 122 of Constitution provides:

1. Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal (*Fletore Zyrtare*) of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement.

¹⁶⁰ The Constitution of the Republic of Albania (Albanian: Kushtetuta e Republikës së Shqipërisë) was adopted by the National Assembly on 21 October 1998. It was approved by a national referendum on 22 November 1998 and entered into force on 28 November 1998.

2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it.
3. The norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.

Article 123 of Constitution provides:

1. The Republic of Albania delegates to international organizations state powers for specific issues on the basis of international agreements.
2. The law that ratifies an international agreement as provided in paragraph 1 of this article is approved by a majority of all members of the Assembly.
3. The Assembly may decide that the ratification of such an agreement be done through a referendum.

Based on these Articles of the Albania Constitution, it is clearly evident that the ratified international agreements which are published in the Official Gazette, in hierarchy of legal norms, have priority over national laws. They come directly after the Constitution.

This approach based on monist concept of a legal system, where the international law and national law are in unity. Accordingly, the ratification by Albania of an international agreement results in this treaty becoming automatically an integral part of the Albanian legal order from the moment of its entry into force.¹⁶¹

Article 122 provides for the supremacy of international agreements over domestic law, excluding accordingly the application of the rule of *lex posterior*.¹⁶²

In order to respond to the first question, it is necessary to highlight that the constitutional provisions do not include any special provision which predicts a different status to the European Agreements, SAA in case of Albania.¹⁶³ SAA is treated in the context of international agreements ratified by the Republic of Albania. The reasoning for that is based on the argument that for the time being Albania is not an EU member state.¹⁶⁴

The answer to the second question is closely linked with the constitutional framework. Article 122, point 3 serves as a legal basis to envisage the direct effect of the EU legislation (SAA) in the Albanian legal order, because it explicitly expresses: If an international

¹⁶¹ EURALIUS Mission, *Law Drafting Manual in Albania. A guide to the legislative process in Albania*, Pegi, Tirana, 2010, pp.134.

¹⁶² Arben Puto, *E drejta ndërkombëtare publike (The international public law)* 9th edition, Dudaj, Tirana, 2010, pp.37.

¹⁶³ Alfred E. Kellermann, 'Legal effects of the Stabilisation and Association Agreement with EU on the citizens of non-member states', *Revista "E drejta parlamentare dhe politikë ligjore"*, No XLI, 2008, pp.49.

¹⁶⁴ Kellermann, *ibid*.

agreement establishing an international organization (*inter alia* the EU) and ratified by the Republic of Albania so, the law established by that organization becomes a directly effective part of the Albania legal order and it is of a higher level than the national laws. This means, that provisions issued by international organization are source of rights and obligations for legal and/or natural persons in Albania and in the case of a contradiction between the provisions of the law of an international organization and a national law, the provisions of the law of the international organization repeal the provisions of the national law. In this sense, the provisions of SAA have the direct effect on the domestic legal order. Some are directly applicable while others are needed to be implemented through the approval of new national laws.

The Article 123, point 1 provides that the Republic of Albania, based on the international agreements, delegates to the international organizations the state competences for certain issues (currently, the above mentioned practice is not put at place). In the concept of ‘competences’ which can be delegated to a foreign organization, Article 123, point 1 of the Constitution can be also considered as the legal basis for the future membership of Albania into the EU. This article allows the transfer of competences of the Albanian state institutions to the EU institutions. In this point of view, this constitutional framework is the necessary legal basis for the future membership of the country into the EU.

The above mentioned arguments are also based in comparative study of the Constitution of the Republic of Albania and the Constitution of the Republic of Poland¹⁶⁵, which is already an EU member state. There is a considerable similarity between these two constitutions in respect of the consideration of the international agreements.

Article 9 provides: “The Republic of Poland shall respect international law binding upon it”.

Article 87, point 1 provides: “The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements and regulations”.

The Article 90 provides:

1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.
2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

¹⁶⁵ The Constitution of the Republic of Poland (Polish: Konstytucja Rzeczypospolitej Polskiej) was adopted by the National Assembly of Poland on 2 April 1997, approved by a national referendum on 25 May 1997. It became effective three months after it was announced - on 17th October 1997.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.
4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

Article 91 provides:

1. “After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.
2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws”.

Based on these articles of the Constitution of Poland, the juridical situation regarding the position that a ratified international agreement has, is the same as in Albanian case. Poland acknowledges the Monist system in which the adopted and ratified international agreements which are published in the Official Gazette, become part of the domestic legislation and have precedence over the domestic laws (art.87, point 1 and article 91, point 1).

The Republic of Poland may by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters (art.90, point 1).

The Constitution of Poland provides the primacy of the law established by an international organization, in the meaning, that this law shall be applied directly and have precedence in the event of a conflict of laws (article 91, point 3).¹⁶⁶

Taking into account that the Constitution of Poland has entered into force in 1997 and the European Agreement between Poland and the European Community and its member states was undersigned on 16 December 1991 and entered into force on 1 February 1994, the polish legislator granted a retroactive effect to the dispositions of the Constitution.¹⁶⁷

Article 241, point 1 provides:

“International agreements, previously ratified by the Republic of Poland upon the basis of constitutional provisions valid at the time of their ratification and promulgated in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), shall be considered as agreements ratified with prior consent granted by statute, and shall

¹⁶⁶ Mariusz Maciejewski, *Legalisation of Public Documents within the EU Member States, Poland*, 18 July 2007, <http://ec.europa.eu/civiljustice/news/docs/study_public_docs_poland.pdf>

¹⁶⁷ Kellermann, *op.cit.* note 12, pp. 30.

be subject to the provisions of Article 91 of the Constitution if their connection with the categories of matters mentioned in Article 89, paragraph 1 of the Constitution derives from the terms of an international agreement”.

Article 89, point 1 provides:

Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:

1. peace, alliances, political or military treaties;
2. freedoms, rights or obligations of citizens, as specified in the Constitution;
3. the Republic of Poland's membership in an international organization;
4. considerable financial responsibilities imposed on the State;
5. matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

This comparative view between the Constitution of the Republic of Albania and the Constitution of the Republic of Poland allows us to come to the conclusion that the Constitution of the Republic of Albania through its legal dispositions has created the necessary legal basis for the upcoming membership of Albania into the EU.

On the other hand, the rights envisaged in the Constitution - article 122, point 3 of the Constitution of the Republic of Albania and Article 91, point 3 of the Constitution of the Republic of Poland about the legal effects of the norms of the international organizations in the event of conflict with domestic laws and the direct effect in respect of their implementation, implies that, the provisions issued by international organizations are a source of rights and obligations for legal and/or natural persons in Albania and Poland and they have the direct effect in the domestic legal order.

The direct effect of SAA means¹⁶⁸:

- direct applicability, which means that articles of SAA are self-applicable by state authorities and the courts;
- a direct effect, which means that in the quality of direct applicability, any person may address himself/herself to the national courts.

The direct applicability of the dispositions of the SAA can be illustrated by the following article:

Article 33, provides:

1. From the date of entry into force of this Agreement no new customs duties on imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in trade between the Community and Albania.

¹⁶⁸ *Case 26/62 Van Gend en Loos* (1963) ECR 1.

2. From the date of entry into force of this Agreement no new quantitative restriction on imports or exports or measure having equivalent effect shall be introduced, nor shall those existing be made more restrictive, in trade between the Community and Albania.

This Article of SAA has a direct effect.¹⁶⁹ According to it, every person and company established in the Republic of Albania could make an appeal before the national courts against the payment of customs duties if the Government would not comply with Article 33 of the SAA.¹⁷⁰ The implementation of this rule is based on the article 122, point 3 of the Constitution of the Republic of Albania (which is quoted above).

Article 34, Prohibition of fiscal discrimination, provides:

1. The Parties shall refrain from, and abolish where existing, any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and like products originating in the territory of the other Party.
2. Products exported to the territory of one of the Parties may not benefit from repayment of internal indirect taxation in excess of the amount of indirect taxation imposed on them.

In the judgment of the case *Commission v. France (Whisky/Cognac)*¹⁷¹, the Court of Justice of the European Union raised the question if these two drinks were the same or similar in order to impose or not the same tax.

The customs duty on Whisky is higher than the customs duty on Cognac and this rule protects the producers of Cognac in France. However, this fact did not help the producers of Cognac to get more incomes because of the higher market request about Whisky in comparison with Cognac. The Court decided in favour of the same fiscal treatment and against any fiscal discrimination.¹⁷²

A considerable part of the SAA dispositions does not have a direct effect, which implies that their implementation will be possible through adoption of new laws. This is clear stated also in the first paragraph of article 70 of SAA, which explicitly defines:

“Albania will try to ensure that its existing laws and the future legislation will be gradually approximated with the *acquis* of the Community”.

¹⁶⁹ *Ibid.*

¹⁷⁰ Kellerman, *op.cit.* note 12, pp.23

¹⁷¹ See *Case C-168/78 Commission v France (Whisky/Cognac)* (1980) ECR.

¹⁷² Kellerman, *op.cit.* note 12, pp.24.

On the other hand, taking into account the SAA constitutes a primary legislation for the EU, its effect will be direct in all EU member states. Therefore articles 46-48 of SAA concerning the free movement of workers have a direct effect.

Article 46, Movement of workers, provides:

1. “Subject to the conditions and modalities applicable in each Member State:
 - treatment accorded to workers who are Albanian nationals and who are legally employed in the territory of a Member State shall be free of any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared to its own nationals;
 - the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral Agreements within the meaning of Article 47, unless otherwise provided by such Agreements, shall have access to the labour market of that Member State, during the period of that worker’s authorised stay of employment”.

Article 46 defines explicitly so that Albanian citizens must be ‘legally employed in the territory of a Member State’. This provision refers to the concrete situation where nearly one million Albanian citizens are legally employed in EU member countries, and may require their rights and equal treatment with European citizens based on article 46 of the SAA.

This approach to direct effect of the SAA in the legal order of Community (EU) is formulated by the European Court of Justice in the *Demirel* case¹⁷³:

“A provision in an international agreement concluded by the Community with non-member-countries must be regarded as being directly applicable when being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject in its implementation or effects, to the adoption of any subsequent measure.”

3. The drafting of legal acts based on the approximation instruments

The legal reform on the approximation of the legislation constitutes a real challenge for the law drafters because it is closely connected with the knowledge and the use of the approximation instruments.

The ministry(ies) of line is/are responsible about this process.

There are two ways to adopt the EU legislation into the domestic legal system in the pre-accession stage:¹⁷⁴

¹⁷³ Case C-12/86 *Demirel* (1987) ECR 3719.

¹⁷⁴ EURALIUS Mission, *op.cit.* note 10 pp. 159.

The first method which is called as the key method is the approximation of the core of the *acquis* (Directive, Regulation¹⁷⁵) by following the usual techniques of law drafting aiming at full approximation. This is the most usual method applied in Albania.

The second method, which is less used although applicable in Albanian reality, is the copying of the parts from *acquis* and their use in the domestic law. This method is applied in case of dispositions of a technical character.

The approximation instruments for the drafting of an act are based in two key documents: Assessment of Compatibility and the Table of Concordance.

The Ministry(ies) of line which propose the draft act should also submit an explanatory report of the act, which should contain the above mentioned documents.

Assessment of Compatibility is a requirement/legal obligation, which should accompany every draft normative act. Its content highlights the scale of the approximation of the proposed draft law with the. The degree of compatibility means that the approximation is realized in partly or whole.¹⁷⁶

‘Fully compatibility’ - the draft law is consistent (no conflicts) with the provisions of primary and secondary sources of the *acquis* and is in compliance with all the principles derived from these provisions.

‘Partially compatible’ - the draft law is consistent (no conflicts) with the provisions of primary and secondary sources of the *acquis*, although not in compliance with all the principles derived but only with the most important.

The scale of partial or impartial compatibility is closely linked with the obligations Albania has undertaken to approximate its legislation with *acquis*.

Based on point 3 of article 70 of the SAA *de jure* Albania should ensure a full approximation of its legislation in the first stage in above mentioned fields in this article, but the Albanian laws in many fields such as: intellectual, industrial and commercial property rights; land and maritime transport - with special emphasis on safety and environmental standards as well as social aspects; health and safety at work and equal opportunities, etc, are not fully compatible with the *acquis*.

Another key requirement/obligation that should be fulfilled is that the draft act should be accompanied by the ‘Table of Concordance’¹⁷⁷.

Table of concordance is filled only when the draft law approximates the concrete provisions of the EU and/or legislation of the Member States of the EU and candidate.

Table of concordance of the provisions are fulfilled based on two approaches:

1. showing compatibility between the provisions of EU legislation with the draft (the act);

¹⁷⁵ The regulations before membership of a state in the EU are not directly applicable, but they must be approximated.

¹⁷⁶ EURALIUS Mission, *op. cit.* note 10, pp.162-163.

¹⁷⁷ EURALIUS Mission, *op. cit.* note 10, pp. 160-161.

2. showing compatibility between the provisions of the draft (the act) and European legislation.

In the Albanian case, the Council of Ministers Decision no.584, dated on 28.08.2003 “On approval of the Council of Ministers Regulation”¹⁷⁸, amended with the Council of Ministers Decision no. 201, on dated 29.3.2006 “On some amendments and annexes to the decision No. 584, dated 28.8.2003 of the Council of Ministers “On the adoption of the Rules of Procedures of the Council of Ministers”¹⁷⁹, provides”:

1. The explanatory report should contain: assessment of compatibility and the table of concordance with *acquis communautaire* about the normative draft laws.
2. The draft acts with normative character, which require the approximation with *acquis communautaire* in domestic legislations, should be submitted to the Minister of Integration for his/her opinion, accompanied by the report on the assessment of compatibility and table of concordance for the verification and confirmation of the scale of their compliance with the *acquis communautaire*.
3. If the draft acts will not be accompanied by the report and the table of concordance with the *acquis communautaire*, the Ministry of Integration will return them back to the institutions that have proposed these draft acts for further completion before the consideration by the Council of Ministers.”

As it was mentioned above, the drafting of legal acts based on the approximation instruments comprises a necessity for the act to be authenticated by the Ministry of Integration and to be passed through the necessary legislative procedure - (1) discussion and the adoption by the Council of Ministers; (2) Parliamentary Procedure; (3) Promulgation by the President of the Republic and the publishing in the Official Gazette (*Fletore Zyrtare*).

Due to the major part of the SAA dispositions does not have a direct effect, the adoption of new laws has accompanied and will accompany its implementation.

The new draft laws will be accompanied by the Assessment of Compatibility and the Table of Concordance, by becoming indispensable elements for every proposed normative act.

Conclusions

The process of approximation of national legislations with *acquis* of the European Union (EU) constitutes a challenge in the framework of the integration process and undoubtedly one of the basic criteria for the membership of the countries that aspire to join EU.

¹⁷⁸ Decision of the Council of Ministers “For approval of the Council of Ministers Regulation”, No.584 signed 28 August 2003, Official Journal (2003) No. 76.

¹⁷⁹ Decision “On some amendments and annexes to the decision No. 584, dated 28.8.2003 of the Council of Ministers “On the adoption of the Rules of Procedures of the Council of Ministers”, No. 201, signed 29 March 2006, Official Journal (2006) No. 33.

In the Albanian case, the Stabilisation and Association Agreement, signed between the European Union and its member states and the Republic of Albania, on 12th of June 2006 creates the obligation for the Albanian government to approximate its existing and future legislation with the EU legislation.

The key challenge the Albanian state faces is the fulfilment of this obligation. The National Plan for the Implementation of the Stabilisation and Association Agreement represents the basic document which envisages the steps the Albanian government should undertake in the process of legal reform. This Plan was drawn in coherence with the legislative program of the Albanian government in which the setting of short term, middle term and long term priorities, has defined the stages of the legislative activity.

All the steps provided in the National Plan are closely connected with the obligations that derive from the SAA. It is important to have a deep understanding of the position of this agreement in the national legal order which enables the stakeholders to apply the appropriate way to meet these obligations. In the Albanian case the SAA constitutes a ratified international agreement. As concerns the hierarchy of legal norms the Constitution of the Republic of Albania provides that the ratified international agreements which are published in the Official Gazette (*Gazeta Zyrtare*) have priority over national laws. In this view the provisions of SAA have a direct effect on the domestic legal order. Some are directly applicable while others should be implemented through the approval of new national laws.

A comparative view between the Constitution of the Republic of Albania and the Constitution of the Republic of Poland allows us to come to the conclusion that the Constitution of the Republic of Albania through its legal dispositions has created the necessary legal basis for the upcoming membership of Albania into the EU.

The legal reform on the approximation of the legislation requires the respective knowledge and the use of the approximation instruments by the law drafters. Each draft legal act should be based in two key documents: Assessment of Compatibility and the Table of Concordance.

Only the act that has accomplished this requirement can be authenticated by the Ministry of Integration and can be passed through the necessary legislative procedure - (1) discussion and the adoption by the Council of Ministers; (2) Parliamentary Procedure; (3) Promulgation by the President of the Republic and the publishing in the Official Gazette (*Fletore Zyrtare*).

The process of approximation of the Albanian legislation with the *acquis* of EU has not proceeded according to the obligations the Albanian State has undertaken in transitional period (ten years, divided into two successive stages). The long transition, the political deadlock, lack of a constructive political dialog between the ruling majority and the opposition has led to the failure of the Parliament to carry out its activity in the appropriate way.

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