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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Commission Opinion on Albania's application for membership of the European Union

{SEC(2010) 1335 final}

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A. INTRODUCTION

a) Application for membership

Albania presented its application for membership of the European Union on 28 April 2009. On 16 November 2009, the Council of the European Union requested the Commission to submit its opinion on this application, in line with the procedure laid down in Article 49 of the Treaty on European Union, which states: *'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national parliaments shall be notified of this application. The applicant state shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.'*

Article 2 states that *'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.'*

This is the legal framework within which the Commission submits the present Opinion.

The Feira European Council in June 2000 had acknowledged that Western Balkan countries participating in the Stabilisation and Association Process were 'potential candidates' for EU membership. The European perspective of these countries was further confirmed by the Thessaloniki European Council in June 2003 which endorsed the "Thessaloniki Agenda for the Western Balkans". This agenda remains the cornerstone of the EU policy towards the region.

The European Council of December 2006 renewed the EU's commitment *"that the future of the Western Balkans lies in the European Union"* and reiterated that *"each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process. A country's satisfactory track-record in implementing its obligations under a Stabilisation and Association Agreement (SAA), including trade related provisions, is an essential element for the EU to consider any membership application"*. At the Sarajevo EU-Western Balkans ministerial meeting on 2 June 2010, the EU reiterated its unequivocal commitment to the European perspective of the Western Balkans and that the future of these countries lies in the European Union.

In line with the Treaty requirements, the current assessment is made in terms of the conditions of eligibility laid down by the European Council. In Copenhagen in June 1993, the European Council concluded that:

"Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required.

Membership requires:

that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;
the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union".

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.

In December 1995, the Madrid European Council referred to the need *"to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment."*

The Stabilisation and Association Process (SAP) conditionality was defined by the Council on 31 May 1999. It includes co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), and regional co-operation. These conditions are a fundamental element of the SAP and are integrated into the Stabilisation and Association Agreement with Albania, which entered into force in April 2009.

In December 2006, the European Council agreed that *'the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement'*.

In the present Opinion, the Commission analyses Albania's application on the basis of the country's capacity to meet the criteria set by the Copenhagen European Council of 1993 as well as the conditionality of the Stabilisation and Association Process. Albania's track-record in implementing its obligations under the Stabilisation and Association Agreement, including trade related provisions, is also examined. The Opinion has been prepared following a methodology similar to that used in previous Opinions with some adaptations reflecting the 2006 'renewed consensus on enlargement'. The Commission organised a number of expert missions in Albania which concentrated mainly in the fields covered by the political criteria. This methodology allowed for a solid assessment of the administrative capacities of the Albanian institutions and of the way legislation is implemented, and helped to better identify remaining challenges and priorities for future action. The Commission has analysed both the present situation and medium-term prospects. For the purpose of this Opinion and without prejudging any future date of accession, the medium-term perspective has been defined as a period of five years.

The report containing the detailed analysis on which this Opinion is based is made public as a separate document (*Analytical Report for the Opinion on Albania's application for EU*

*membership*¹). In line with the renewed consensus on enlargement, the analytical report also provides initial impact estimates with regard to key policy areas and sectors (freedom of movement of workers, agriculture and rural development, regional policy and financial and budgetary provisions). The Commission provides more detailed impact assessments for these key policy areas at later stages of the pre-accession process. In addition, an accession treaty for Albania would involve a technical adaptation of the EU institutions in the light of the Treaty on the European Union.

b) **Relations between the EU and Albania**

Following the establishment of a parliamentary republic in March 1991, the European Community established relations with Albania in June 1991.

In 1992, a Trade and Cooperation Agreement between the EU and Albania entered into force. Economic cooperation was enhanced in 1999, when Albania started to benefit from Autonomous Trade Preferences from the EU and Albanian export products obtained duty-free access to the EU market.

A **Stabilisation and Association Agreement** between the EU and Albania² entered into force in April 2009, superseding the Interim Agreement on trade and trade-related aspects, which entered into force in December 2006. Albania has, overall, smoothly implemented obligations under the Stabilisation and Association Agreement including its trade-related provisions. Whenever problems arose, Albania has been open and constructive to identify means to address them.

Political dialogue meetings at ministerial level between the EU and Albania have been held since 2001. The Joint Committee established under the Interim Agreement met three times between 2006 and 2008. Meetings of the Stabilisation and Association Council took place in May 2009 and 2010. The first meeting of the Stabilisation and Association Committee was held in March 2010. Subcommittee meetings were held in 2009 and 2010.

The first **European Partnership** with Albania was adopted by the Council in 2004³. In February 2008 the Council adopted a new European partnership with Albania⁴.

In the framework of the visa liberalisation dialogue, Albania has made important progress in the different areas of the roadmap. The Commission therefore presented a proposal on lifting the visa obligation for the citizens of Albania on 27 May 2010, which was subject to the fulfilment of outstanding criteria. The proposal was adopted by the European Parliament on 7 October and by the Council on 8 November 2010. An agreement on readmission between the European Union and Albania is in force since 2006.

Albania became a full member of the Energy Community of South East Europe following the signature of the Energy Community Treaty in October 2005 and its subsequent entry into force on 1 July 2006. Albania signed the European Common Aviation Area (ECAA) agreement in June 2006.

¹ SEC (2010) 1335 of 09.11.2010

² OJ L 107, 28.4.2009, p.166.

³ OJ L 35, 7.02.2006, p.1.

⁴ OJ L 080, 19.03.2008 p. 1.

Albania takes an active part in the EU economic and fiscal surveillance and reporting arrangements applying to potential candidate countries since 2006.

The National Strategy for Development and Integration (2007-2013) represents the key strategic policy document of the Albanian Government outlining its long-term national development and EU integration objectives.

The European Union is Albania's most important trading partner accounting for 80% of the total foreign trade volume in 2009.

Albania has been receiving **EU financial assistance** since 1991. Overall, between 1999 and 2010 the EU committed over € 565.7 million to Albania. From 1999 to 2006, Albania benefited from EU CARDS assistance worth €259.6 million. Since 2007, CARDS has been replaced by the Instrument of Pre-Accession (IPA) programme, under which Albania has received assistance worth €306.1 million from 2007 to 2010. IPA aims to support the reform process in the country in the context of European integration with a focus on institution building, introduction of the EU *acquis* and improvement of socio-economic conditions as well as environmental protection and sustainable development. Financial and institutional support is also being provided to civil society.

A Framework Agreement between the European Community and Albania on participation in EU Programmes was ratified in May 2005. Albania so far actively participates in three EU Programmes: the 7th Framework Programme (FP7) for research and technological development (2007-2013), in the Entrepreneurship and Innovation specific Programme (EIP) of the Competitiveness and Innovation Framework Programme (2007-2013), and the Europe for Citizens Programme. IPA funds are used to meet part of the costs of participation in all three programmes.

B. CRITERIA FOR MEMBERSHIP

1. POLITICAL CRITERIA

The present assessment is made on the basis of the Copenhagen criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and the conditionality of the Stabilisation and Association Process.

Albania is a parliamentary **democracy** based on a constitutional and legislative framework, which is largely in line with European principles and standards. There is a general consensus on the goal of EU membership. Yet, the effectiveness and stability of democratic institutions is not sufficiently achieved. Parliamentary institutions and procedures do not function properly. As a result, parliament does not exercise effective oversight and control over the government and its scrutiny of legislative development is weak. Political dialogue is confrontational and unconstructive, not least because of the political stalemate since the June 2009 elections. This obstructs parliamentary work and prevents necessary policy reforms based on consensus. The government together with the opposition share the responsibility for reaching, in a transparent way and in full respect of the constitution, solutions needed for the country to move forward on its EU integration path.. In addition, there are shortcomings in the implementation of legislation. The public administration's legal framework and the civil service system are mostly in line with European standards and practices. However, proper

implementation of the legal framework is a concern, and the public service is very politicised, lacks transparency in appointments and is marked by high turn-over of staff.

The June 2009 legislative elections were assessed by the OSCE-ODIHR as meeting most international standards and as being an improvement over past practices. However, shortcomings were identified and a number of recommendations were made for future elections including addressing the politicisation of processes such as the vote count. Recommendations have not yet been translated into a satisfactory electoral reform, which is needed for upcoming elections.

Albania has in recent years strengthened **rule of law**, in particular by conducting legislative and institutional reforms of the judiciary and in the areas of the fight against corruption and organised crime. Administrative capacity notably of law enforcement bodies has been strengthened. However, reforms remain incomplete, there are substantial shortcomings regarding the independence, transparency and accountability of the judicial system and a solid track record of effective fight against corruption and organised crime is missing.

The reform process of the judiciary is on-going. However, a comprehensive and coordinated judiciary reform strategy is pending as is the adoption of key laws including on the administrative courts and the organisation of the High Council of Justice. Serious concerns remain on the overall functioning, the efficiency and independence of the judiciary. There is a lack of transparency in the appointment, promotion, transfer and evaluation of judges and there are considerable weaknesses in the inspection system of the judiciary. The cases of non-respect of Constitutional Court decisions by government in recent years and the politicisation of the vote on the President's Constitutional and High Court appointments are of concern as they challenge fundamental principles such as the independence of the judiciary and the respect for the rule of law. Human and financial resources, as well as infrastructure conditions, are not adequate and need to be improved to ensure the efficient functioning of courts.

Albania has made efforts over recent years to establish a legal and institutional framework to fight corruption, which is now broadly in place. Despite these efforts, corruption is prevalent in many areas and constitutes a particularly serious problem. Areas of particular concern are corruption in the judiciary and in relation to the system of restitution and compensation of property rights, and widespread bribery in the health sector. Absence of transparency in political party funding, allowing inappropriate influence on politics, is a considerable problem. Albania needs to complete the legal framework in the field of fight against corruption and to address obstacles to effective investigations notably of judges, ministers and MPs related to the unlimited immunity of these public officials. Thorough implementation of the anti-corruption strategy and action plan needs to be ensured and a solid track record of pro-active investigations and prosecutions as well as of conclusive indictments and convictions in corruption cases at all levels established.

In the area of the fight against organised crime, Albania has established a legislative and institutional framework which is largely adequate. Reform of law enforcements authorities, as well as their adequate resources and equipment contributed to counter this phenomenon. However, effective implementation of new legislation and the professionalism of new structures and systems need to further be proven in practice. Proactive investigation needs to be ensured and cases that have been successfully investigated need to be followed by convictions. Activities of organised crime groups in Albania, having impact outside of the

country remain an issue of serious concern. Further strengthening of cooperation at the international level is necessary, including in particular with neighbouring countries.

The Albanian legal and policy framework regulating **human rights and the respect for and protection of minorities** is largely in place and broadly corresponds to European and international standards. The institutional framework is adequate. However, there are some gaps in the legislation and implementation of existing strategies and action plans. Awareness and sensitivity to human rights' standards on the part of the administration, the judiciary and law enforcement authorities need to be reinforced.

Human rights are broadly respected in Albania. However, some concerns remain. Restitution, legalisation and compensation of property is governed by piecemeal legislation and many agencies with overlapping competencies, reaching a level of complexity that puts at risk the effective enjoyment of human rights in this area. There are several judgements against Albania in the European Court of Human Rights for breach of the principle of due process in this field. Another serious concern relates to detention conditions and the treatment of detained persons in police stations, pre-trial detention and prisons. Media independence is put at risk by the prevalence of political influences and business interests. Domestic violence is a persistent phenomenon which affects numerous families and is not systematically addressed. The anti-discrimination legal and institutional framework has been substantially improved, notably with the creation of the Office of the Commissioner for Protection from Discrimination. However, Roma, persons with disabilities and lesbian, gay, bisexual and transgendered persons are still subject to discrimination. Gender equality is not fully guaranteed in practice, in particular in the field of employment and access to economic aid. There are some gaps in the legislation governing human rights, notably since an integral law on children's rights is yet to be adopted. Additionally, the operation of national human rights institutions is hampered by the delays in appointment of a new Ombudsman, which is pending since early 2010.

Although Albania has no framework law on minorities, respect for and protection of minorities are broadly guaranteed. In practice, specific rights of three "national" and two "ethno-linguistic" minorities, as defined by the country, are recognised. However, there are inconsistencies in the application of these rights. The lack of accurate data on minorities impedes the development of appropriate policies. This is expected to be addressed by the conduct of the next population census in 2011 in line with international standards. The level of representation of persons belonging to minorities in public administration and politics needs to be enhanced. The existing policy framework for improving the lives of the Roma is insufficiently implemented. The Roma minority faces very difficult living conditions and limited access to employment, education and social services.

Albania broadly satisfies the **Stabilisation and Association Process** conditions. The country is strongly committed to regional cooperation; it plays a constructive regional role and participates actively in regional initiatives. Bilateral relations with neighbours are overall good. Albania is a party to the Rome Statute. However the country ratified a bilateral immunity agreement with the United States regarding the International Criminal Court which does not comply with the relevant EU Common Positions and guiding principles. The country needs to align with the EU position.

2. ECONOMIC CRITERIA

The present assessment is made on the basis of the Copenhagen criteria related to the existence of a **functioning market economy**, as well as the capacity to cope with **competitive pressure** and market forces within the Union.

There is a broad consensus in Albania on the fundamentals of economic policy as well as a track record in the implementation of economic reforms. Albania achieved a degree of macroeconomic stability sufficient enough to allow economic operators to make decisions in a climate of predictability. The macro policy mix in the past years has been appropriate, generating growth rates exceeding 5% and activity, although slower, remained positive in 2009 despite the crisis. Inflation has remained low. The free interplay of market forces has been developing through privatisation. Prices and trade have been mostly liberalised. Notable progress has been achieved in facilitating market entry. The banking system has rapidly expanded as a result of privatisation and the entry of foreign players. State aid has been reduced. The share of trade and investment integration with the EU remained high.

However, fiscal consolidation has been reversed recently and the high level of public debt remains a source of macro-financial vulnerability. A narrow export base and public investment have led to a significant and persistent current account imbalance. The existence of widespread informal work arrangements continues to severely distort the labour market and unemployment remains high and stood at 13.8% in 2009. Access to finance remains a challenge to small enterprises. Weaknesses in the rule of law hamper the business environment and ownership transfer and recognition of property rights remain a serious problem. The education system remains unable to equip the labour force with the skills needed by the changing job market. Infrastructure requires further investment. Ensuring the reliability of power supply as well as the financial viability of the electricity sector call for further attention. The informal economy remains an important challenge.

3. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

Albania's ability to assume the obligations of membership has been evaluated according to the following indicators:

- the obligations set out in the Stabilisation and Association Agreement;
- progress with adoption, implementation and enforcement of the EU *acquis*.

Albania has overall smoothly implemented the obligations under the Stabilisation and Association Agreement, although due attention needs to be paid to respecting the deadlines for its commitments. Until recently there have also been some gaps in the implementation of certain trade provisions (notably the standstill clause related to taxation of imports).

Albania adopted a National Strategy for Development and Integration (2007-2013) which is a comprehensive and ambitious plan providing for the approximation of national legislation to the EU *acquis*. It has in recent years made significant efforts in aligning its legislation with the EU *acquis*, particularly in some areas of the internal market, trade-related provisions, customs and taxation. However the country faces major challenges in implementing and enforcing legislation. Administrative and judicial capacities remain overall limited and the country will need sustained efforts to strengthen them to be able to assume the obligations of membership in the medium-term.

If it continues its efforts, Albania should, in the medium term, have the capacity to comply with the requirements of the *acquis* in the following fields:

- Taxation
- Enterprise and industrial policy
- Science and research
- Education and culture
- Customs union
- External relations
- Foreign, security and defence policy
- Financial and budgetary provisions

Albania will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term in the following fields:

- Freedom of movement for workers
- Right of establishment and freedom to provide services
- Free movement of capital
- Public procurement
- Company law
- Competition policy
- Financial services
- Energy
- Economic and monetary policy
- Statistics
- Trans-European networks
- Consumer and Health Protection

Further adjustments of the legal and institutional framework and in particular strengthening of administrative and implementation capacities are needed in the above areas.

Albania will have to make considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term in the following fields:

- 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
- Financial control

Considerable adjustments of the legal and institutional framework and significant strengthening of administrative and implementation capacities are needed in these areas.

Regarding environment, very significant efforts will be needed to align with the EU *acquis* and to implement it effectively. These should include substantial investments and strengthening of administrative capacity for the enforcement of legislation in order to achieve effective compliance on the most important issues, including climate change, in the medium term. Full compliance with the *acquis* could be achieved only in the long term and would necessitate increased levels of investment.

C. CONCLUSION AND RECOMMENDATION

Albania has made progress towards fulfilling the criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993, as well as the conditions of the Stabilisation and Association Process. Nonetheless, considerable further efforts are needed.

As regards the economic criteria, Albania has achieved a certain degree of macroeconomic stability. However, to become a functioning market economy, as set out by the 1993 Copenhagen European Council, Albania needs to further strengthen governance, improve the performance of the labour market, ensure the recognition of property rights and strengthen the rule of law. In order to enable it to cope over the medium term with competitive pressure and market forces within the Union, Albania needs to strengthen its physical infrastructure and human capital and pursue further structural reforms.

Albania's track record in implementing its obligations under the Stabilisation and Association Agreement is positive overall.

Albania would be in a position to take on the obligations of membership in the medium term in most of the *acquis* fields, provided that the alignment process continues and that

considerable and sustained further efforts are made to ensure the implementation and enforcement of legislation. 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.

Albania's accession would have a limited overall impact on European Union policies and would not affect the Union's capacity to maintain and deepen its own development.

The Commission considers that negotiations for accession to the European Union should be opened with Albania once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and rule of law. In this regard, Albania needs in particular to meet the following key priorities:

- Ensure the proper functioning of Parliament on the basis of a constructive and sustained political dialogue among all political parties.
- Adopt pending laws requiring a reinforced majority in Parliament.
- Appoint the Ombudsman, and ensure an orderly hearing and voting process in Parliament for constitutional and high court appointments.
- Modify the legislative framework for elections in line with OSCE-ODIHR recommendations.
- Ensure elections are conducted in line with European and international standards.
- Complete essential steps in public administration reform including amendments to the civil service law and strengthening of the Department of Public Administration, with a view to enhancing professionalism and de-politicisation of public administration and to strengthening a transparent, merit-based approach to appointments and promotions.
- Strengthen rule of law through adoption and implementation of a reform strategy for the judiciary, ensuring the independence, efficiency and accountability of judicial institutions.
- Effectively implement the government's anti-corruption strategy and action plan, remove obstacles to investigations, in particular of judges, ministers and Member of Parliaments; develop a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels.
- Strengthen the fight against organised crime, based on threat assessment and proactive investigation, increased cooperation with regional and EU partners and better coordination of law enforcement agencies. Develop a solid track record in this area.
- Prepare, adopt and implement a national strategy and action plan on property rights following broad stakeholder consultation and taking ECtHR case law into account; this should cover restitution, compensation and legalisation processes.

- Take concrete steps to reinforce the protection of human rights, notably for women, children and Roma, and to effectively implement anti-discrimination policies.
- Take additional measures to improve treatment of detainees in police stations, pre-trial detention and prisons. Strengthen the judicial follow-up of cases of ill-treatment and improve the application of recommendations of the Ombudsman in this field.

Albania is encouraged to continue its constructive engagement in regional cooperation and in strengthening bilateral relations with neighbouring countries. The SAA needs to continue to be implemented smoothly; in this context, due attention to the respect of deadlines for its commitments is required. In addition, the country is strongly encouraged to continue strengthening its administrative capacity across the board. Cooperation with civil society needs to be upgraded. Albania needs to allocate appropriate resources to guarantee effective functioning of its human rights institutions and upgrade its efforts in the field of protection of minorities. Strengthening media freedom and its independence, and addressing the prevalence of political influences is required.

The Commission will monitor progress of necessary reforms within the institutional framework of the Stabilisation and Association Agreement and continue to support efforts through the IPA financial instrument. The Commission will present a report on Albania's progress in the 2011 enlargement package. This report will focus in particular on the implementation of the key priorities that need to be addressed for the opening of accession negotiations.