



**MONITORING BRIEF NO 1 / 2012 (PCEI)**

**On the work of the Parliamentary Committee on European  
Integration (PCEI)**

**INTRODUCTION**

For the second consecutive year, IDM Centre for European & Security Affairs launches the Monitoring Report on the activity of the Parliamentary Committee of European Integration (PCEI), published twice a year, in accordance to the working sessions of the Albanian Parliament.

PCEI responsibility and competences under the framework of the country's integration in the European Union, could be seen as a bridging line which filters, monitors, coordinates and improves the outputs of the Executive and all other potential stakeholders

This report covers the activity of the PCEI during January – July 2012 and will be followed by the annual report (January – December 2012), which will be published in January 2013.

**METHODOLOGY**

Monitoring of the Committee's activity is carried out by IDM experts, through direct participation in PCEI's meetings, as well as by analyzing the minutes of meetings recorded during this period of time. The monitoring brief presents the key findings on PCEI's activity based on the following indicators:

1. Presence in meetings of the PCEI members;
2. Presence of MEI representatives;
3. Presence and representation level from line ministries;
4. Formal procedures and Table of Concordance of draft-laws;
5. Involvement of civil society and interest groups in PCEI meetings;
6. Quality of parliamentary review of draft-laws and other acts.

In addition, this report presents the analysis of a draft-law discussed in the first 7-months of this year. The analysis of the draft-law examines the subsequent stages of the parliamentary review, with a particular focus on the European integration process.

**Authors:** Ketrina Çabiri (Monitoring Expert) and Gjergji Vurmo (Editor in Chief)

## **KEY FINDINGS**

The following sessions detail the monitoring indicators set to analyze the work of PCEI for the first 7-months of 2012.

### **PCEI MEMBERS**

During the fourth session of the Parliamentary activity, a new member from the Socialist Movement for Integration (LSI) was added to the PCEI membership. This change deepened the report between **majority/opposition into 6/4 members**.

**PCEI held its meetings after the quorum was set**, having as such respected the article 34/1 of the Rules of Procedure of the Parliament. Nevertheless, based on the direct observations of the meetings, there were cases when PCEI members did not respect the starting time of the meetings, up to 30 minutes of delay. In addition there were other cases when members of PCEI left before the completion of the **meeting**.

Additionally, the phenomenon of frequent and consecutive absence of PCEI members was evident. **Two of the majority members were absent in 46% and 38% of PCEI meetings**, whereas, the phenomenon of the consecutive absence was not that present among members from the opposition. Only 20% of the all meetings have been convened with the presence of all PCEI members.

### **REPRESENTATIVES OF THE MINISTRY OF EUROPEAN INTEGRATION**

Representatives of the Ministry of European Integration have been present in **90% of PCEI meetings** reviewing draft-laws of normative

character aiming at approximating Albanian legislation with the *Aquis Communautaire*.

## **HIGHLIGHTS**

The Monitoring Brief concludes that **PCEI performance has been improved distinctly** during the first 7-months of 2012, compared to the same period of 2011.

During January – July 2012, PCEI has organized 24 meetings, reviewed **15 draft-laws**, organized **hearing sessions** with Ministers and **one meeting with civil society**.

PCEI membership increased by one MP from the Socialist Movement for Integration (SMI) thus deepening the report between **majority/opposition into 6/4 members**.

Repeatedly, **some of PCEI members** do not respect the starting time of meetings (up to **30 minutes of delay**). Furthermore, **two MPs from the parliamentary majority have been absent respectively in 46% and 38% of the meetings organized by PCEI**. Only 20% of the meetings were organized with the presence of all PCEI members.

PCEI has unanimously decided that draft-laws in PCEI will be discussed in the presence of political representatives of line Ministries, accompanied by their technical staff.

There have been cases that the Table of Concordance was not been mentioned at all, nor from the representative of the Ministry presenting the draft-law, neither from the representative of the Ministry of Integration. In other cases, the Table has been submitted **in the English language or was incomplete**.

**Discussions in PCEI were limited to 3 or 4 members, in most of the meetings**. Average **duration** of PCEI meetings has been **45 minutes** long, limiting in this way the in-depth discussions.



During the fourth session of the Parliamentary work, PCEI has paid a special attention to the process of implementation of 12 priorities identified by the European Commission, in regard to the Albanian application to become a member of the EU. According to Article 102, para.2 of the Rules of Procedure of the Parliament, PCEI has organized several meetings and hearing sessions with the Minister of the European Integration.

## **REPRESENTATIVES OF LINE MINISTRIES**

Representatives from the line Ministries and their subordinate institutions have been **present in all meetings** where draft-laws initiated from their institutions were being discussed. During the monitoring of discussions from the line ministries' representatives, it was obvious that representatives from Ministries tended to focus on issues related to the essence of the draft-law and/or the legislative technique and focus less on the approximation of the draft-law with the Acquis.

The Table of Concordance's model of the normative draft-law with the Acquis Communitare<sup>1</sup> offers two important instructions to be followed from the initiator of the draft-law, in cases when it is aimed either a partial approximation to the Acquis, or no approximation at all. Based on that model, the institution in charge should **determine the reasons** which lead to the lack of the full approximation, despite their economic, financial, social approach. The justification should be followed by references of specific analyses, studies or other related documents, not being narrowed in providing general reason. Secondly, a gap analysis should be conducted in order to identify the content of fields that are not subject of approximation as well as the **time span** needed for the full approximation to be addressed. While analyzing the presentation of draft-laws from the representatives of line Ministries, one can realize that the latter do not respect these two criteria.

Another important aspect concerns the level of representation with regard to officials from the line Ministries in the PCEI meetings. Unanimously PCEI members have agreed that draft-laws discussed in the Committee, must be presented at political representative level, minister or deputy minister, accompanied by their technical staff. According to PCEI members' position, this decision ensures the high level of discussion **politically** and **technically**. This decision was taken after the PCEI members unanimously postponed the meeting of 2<sup>nd</sup> of April 2012, where the discussion on the draft-law "On some supplements and amendments of the Law No 9887, date 10.03.2008 "On the protection of personal data" was canceled due to the low level of representation.<sup>2</sup>

## **PROCEDURES AND THE TABLE OF CONCORDANCE**

<sup>1</sup> Annex of the Report on the Table of Concordance of the Normative Draft-Act with Acquis Communitare, point 3, Decision Nr.201, dated 29.03.2006.

<sup>2</sup> Subsequently, PCEI has insisted rigorously that laws must be presented by political representatives (ministers, deputy ministers). As an example, it could be mentioned the subsequent cancellation of the discussion of the draft-law on Fishery. More specifically, there were two meetings canceled on dates 09.05.2012 and 16.05.2012 and finally, it was reviewed on 21.05.2012. All the following meetings have been organized in presence of the Ministers/Deputy Ministers, who have presented and discussed on draft-laws.

According to legislation in force<sup>3</sup>, the Table of Concordance is to be fulfilled only in cases when the normative draft-law approximates concrete dispositions of the EU legislation and/or the legislation of other EU member or candidate countries. In **some cases**, when PCEI has reviewed draft-laws of normative character which need harmonization with the *acquis communautaire*, the **Table of Concordance has not been mentioned or discussed**, neither from the representative of the respective line Ministry nor from the representative of the Ministry of Integration.

Deputies from the opposition have identified other cases when the Table has been submitted **in the English<sup>4</sup> language**, while according to legislation in force, the translation into the official language of the county – Albanian – is obligatory<sup>5</sup>. Other critics regarding the way the Table of Concordance is to be fulfilled, refer to the submission of the **incomplete version** and other cases when **the time span needed for the full approximation<sup>6</sup> is not specified**.

### **INCLUSION OF CIVIL SOCIETY AND GROUPS OF INTEREST**

During the time span of the first 7 months of this year, the contribution of the civil society has been focused only on consultations and suggestions related to the Action Plan on 12 Priorities. PCEI has invited representatives of the civil sector **in one meeting only** (date 15.02.2012), a meeting organized with the participation of the EU Ambassador and representatives from the civil society in Albania, on the Action Plan and Priorities 1-4. The tree-tired contribution from the civil society, the Parliament and the Ministry of European Integration is focused and structured by the working documents prepared by the technical staff of the Parliament for consultations with the civil society.<sup>7</sup> However, despite this sole contribution, the inclusion of the civil society has not been present in none of the other meetings of the Committee.

### **QUALITY OF THE PARLIAMENTARIAN REVIEW**

Based on the direct observation and analysis of the parliamentary review process, the lack of active participation (questions, discussions, suggestions, analyses) of a large number of PCEI members in regard to the discussion of draft-laws it obvious. **Discussions in PCEI are limited to 3 or 4 members**, which are active in most of the meetings of the Committee. Moreover, considering **the average duration** of Committee meetings (around **45 minutes**), and the busy legislative agenda, it can be concluded that in-depth and essential discussions of PCEI members in regard to the analyzed draft-laws, **remain limited**.

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<sup>3</sup> Annex of the Report on the Table of Concordance of the Normative Draft-Act with Acquis Communitare, point 4, Decision Nr.201, dated 29.03.2006.

<sup>4</sup> Refer to Draft-law “On excises in Republic of Albania”

<sup>5</sup> Annex of the Report on the Table of Concordance of the Normative Draft-Act with Acquis Communitare point 3/b,

<sup>6</sup> Draft-law “On some changes and amendments of the Law No. 9917, date 19.05.2008 “On prevention of money laundering and financing of terrorist”, amended”. Refer as well to Mr.Balla (page 10) and Mr. Bushati (page 13)

<sup>7</sup> Minutes recorded on 15.02.2012, during the meeting with the EU Ambassador, Mr. Ettore Sequi and civil society on the Action Plan and priorities 1-4.



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During January – July 2012, PCEI has organized 24 meetings, where **15 draft-laws** have been analyzed. PCEI has organized three hearing sessions with Ministers: respectively, one with the Deputy Prime Minister and the Minister of Foreign Affairs, one with the Minister of Interior, and one with the Minister of Integration. Other meetings with the Minister of Integrations have been organized focused on the analysis of the Action Plan and suggestions of the civil society and other parliamentary Committees. In addition, one meeting has been organized with the EU Ambassador and representatives of the civil society on the Action Plan (Priorities 1-4).

Another phenomenon faced when analyzing the discussion on PCEI meetings, is that during the review of a draft-law, the PCEI members tend to focus at about  $\frac{3}{4}$  of the time of discussions in the essence of the draft-law as well as at the technical legislative procedures. Actually, discussions on these subjects are under the responsibility of the Legislation Committee and the respective responsible Committee. In this vein, the work of **PCEI should be focused on providing expertise regarding the formal procedures linked to instruments and parameters of approximation with Acquis, accomplishing thus its function as the Parliamentary Committee of European Integration.** One of the cases chosen to illustrate this approach is the discussion of over three different draft-laws, referring the transfer of subordination of INSTAT,<sup>8</sup> Public Procurement Commission<sup>9</sup> and Classified Information Security Directorate<sup>10</sup> from the Council of Ministers to the Prime Minister. Discussions on these draft-laws were focused mostly on political arguments about the transfer of these competencies to the Prime Minister, lagging behind the essence arguments concerning the approximation level of these legal initiatives. This tendency was noticed and criticized during the meetings even by the PCEI members themselves<sup>11</sup>, however the tendency still remains a concern.

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<sup>8</sup> Amendment of Law No.9180, date 05.02.2004, “On official statistics”

<sup>9</sup> Draft-law No.9643, date 20.11.2006 “On Public Procurement”, amended.

<sup>10</sup> Draft-law “For a change on the Law No. 8457, date 11.02.1999 “On classified information “State Secret”, amended”.

<sup>11</sup> Refer to the speech of Ms. Doda, minutes dated 20.02.2012, “For a change in the Law No.9180, date 05.02.2004, “On official statistics”



## **RECOMMENDATIONS**

Even though the Parliamentary Committee on European Integration has improved significantly in comparison to the previous year, there are still some concerns to be addressed, given that they influence significantly the activity and the qualitative scrutiny process of this Committee. In this context, considering the findings of this Report during the period January - July 2012, and analyzing the progress from 2011, there are some recommendations provided in order to encourage the consolidation and contribution of PCEI activity.

- To encourage regular and active participation of PCEI members in meetings as well as to provide the necessary time span for preparation (before meetings) and for discussions on draft-laws during the Committee's meetings. Special attention should be paid also to the variety of alternatives and to limited expertise at the PCEI members.
- To increase the attention and time of consideration of PCEI members toward the instruments and parameters of approximation in comparison to the issues of the essence of the draft-law and the legislative technique;
- All representatives of the line ministries should respect the conditions, laid out by PCEI, regarding the political and technical representation in PCEI meetings, in order to provide a thorough political and technical examination of draft-laws. To strictly respect the procedures of Table of Concordance's fulfillment.
- In order to ensure the increasing number of consultation with the CSOs, new initiatives should be undertaken, whereas existing ones should be consolidated, aiming at encouraging the latter's suggestions, with regard to the scientific researches and the experience in the field. In this context, PCEI should explore other alternatives also aiming to increasing, as much as possible, consultations about integrating reforms, based on the experiences of other countries like Croatia and Macedonia.

**PARLIAMENTARIAN REVIEW OF THE DRAFT-LAW “FOR SOME AMENDAMENTS AND CHANGES OF THE LAW NO 9887, DATE 10.03.2008 “ON THE PROTECTION OF PERSONAL DATA””**

**KEY INFORMATION FOR THE DRAFT-LAW**

<b>Draft-law under review<sup>12</sup></b>	On some amendments and changes of the law No. 9887, date 10.03.2008 “On the protection of personal data”.
<b>Initiative</b>	Initiative of the Council of Ministers (date 15 <sup>th</sup> of Feb 2012). Amendments were presented by the Committee of Protection of the Personal Data. Draft-law was presented at the Council of Ministers by the Ministry of Innovation, Information Technology and Communication.
<b>Committee where the draft-law was reviewed</b>	The Committee for Legal Issues, Public Administration & Human Rights (responsible); The Committee for National Security; The Committee on European Integration;
<b>Date when the draft-law was reviewed</b>	Parliamentary Committee on European Integration, date 02-04-2012 and 09-04-2012 Parliamentary Committee for National Security, date 03-04-2012 and 06-04-2012 Parliamentary Committee for Legal Issues, Public Administration & Human Rights, dates 23/24/25-04-2012 Plenary Session - date 26-04-2012, Sixth Session of the Legislature XVIII
<b>Documents analyzed</b> <b>Legal references concerning the draft-law</b>	<ul style="list-style-type: none"> <li>- Minutes of the Committee on European Integration meetings, dates 02/09-04-2012</li> <li>- Minutes of the Committee for National Security meetings, dates 03/06-04-2012</li> <li>- Minutes of the Committee for Legal Issues, Public Administration &amp; Human Rights meetings, dates 23/24/25-04-2012</li> <li>- Minutes of the plenary session, date 26-04-2012 Sixth Session of the Legislature XVIII</li> <li>- The Constitution of the Republic of Albania</li> <li>- Parliamentary Rules and Procedures</li> <li>- Association and Stabilization Agreement</li> <li>- Directive 95/46/EC of European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data</li> <li>- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28.I.1981</li> <li>- Brussels, 25.1.2012 , COM(2012) 11 final , 2012/0011 (COD) ‘Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data</li> </ul>
<b>Draft-law Goal</b>	The goal of this draft-law is to approximate the domestic legislation with the European one, in regard to the country’s integration to the European Union. In addition, this draft-law aims at enhancing effectiveness and protection of the personal data. The attention, in this vein, is paid on definitions and specifications according to the Directive, adding regulations for personal data processing and the competencies of the Commissioner of Personal Data.

<sup>12</sup> This Law has No.48/2012 and was published in the Official Gazette No.53, Page 2692



## **THE ANALYSIS OF THE DRAFT-LAW IN THE PARLIAMENTARIAN COMMITTEE OF EUROPEAN INTEGRATION**

PCEI was convened twice to review this draft-law. The reason for organizing two meetings is not related to the agenda of the Committee, but because of the problems faced during the presentation of this draft-law during the first meeting. The first meeting, which took place on 2<sup>nd</sup> April 2012, was interrupted and unanimously decided to be postponed. PCEI asked the representative instance in this meeting<sup>13</sup> to shortly list the week points faced since 2008, when this law came into force, focusing on issues of approximation of the legislation with the European Union standards, obligations deriving from the Stabilization and Association Agreement, as well as different recommendations issued by the EU in the framework of the Committee, the Council of Stabilization and Association and the respective subcommittee of the Working Group. During the discussions of representatives from the line Ministries, PCIE members unanimously noticed an inadequate level of both preparation and presentation of the draft-law. The PCEI members required for the draft-law review to be postponed in another meeting, in order to ensure a higher level of representation (commissioner, deputy minister) whereas the technical staff was asked to accompanying the latter. Next meeting took place on 9<sup>th</sup> April 2012, and according to the PCEI members' request, the Commissioner and the Deputy Minister of Innovation, Information Technology and Communication participated in this meeting.

After analyzing debates during the meetings of PCEI, it's important to highlight the two following phenomena:

1. Debates of political character

One feature of discussions in the PCEI meetings is related to the political character of debates, having no connection with the defined subject of the meeting and European integration process. This situation forces participators in the meeting to hold political positions during their discussions<sup>14</sup>, misbalancing as such the technical arguments they were supposed to give.

2. Incorrect references

During their discussions, PCEI members mention references and facts which they claim to be the substance of named Directive, however, the former do not represent the content of the Directive they mention. As an example of this situation, is the discussion upon the approximation with the level and

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<sup>13</sup> Justice and Internal Issues Directorate, in the Ministry of Integration (specialist), Directorate on Legal Procedural Issues at the Commissioner for Protection of Personal Data (specialist), General Directorate of the State Police (specialist), Judiciary Services Directorate in the Ministry of Interior (chief of sector), Ministry of Inovation, Information Technology and Communication (adviser).

<sup>14</sup> Refer to the speech of Mr. T.Balla on the usage of personal data during the electoral campaign, by the candidate for the Mayor of Tirana (minutes of the PCEI meeting, dated 09.04.2012, page 7-8). This concern was also presented in the Committee for National Security (see minutes of the Committee for National Security meetings, dated 03.04.2012, I.Gjoni, page 7)



structure of the European penalties<sup>15</sup>. Referring to that discussion, changes and approximation of the draft-law, which in the main part are in full conformity with the Directive No.95/46, have still avoided the most important part of the law, i.e. punishment against violations of personal data protection. In all cases, homologue institutions use “turnover” percentage, while the reference of the Directive in this case is 0.5%-2%.

In fact, the related Directive (95/46/EC) does not mention these figures and the article 24<sup>16</sup>, which consists on sanctions, does not mention concrete figures as well.

This analysis refers to ‘Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data’<sup>17</sup>.

On 25<sup>th</sup> January 2012 the European Commission announced the initiative for a radical change on the data protection in EU. While drafting the new regulation, the Commission aims to build a unified and coherent law in this regard. The new law on personal data protection is expected to come into force through a regulation, which is going to abrogate the actual Directive (95/46/EC). Nevertheless, the draft-regulation will take up to 2 years until reaching the final text format and being published in the official gazette. What is to be considered, is the fact that the new regulation lays down penalties related to the turnover percentage (fixed scale) or fixed charges, as follows:

0.5% of total turnover	or	€250,th000
1.0% of total turnover	or	€500,000
2.0% of total turnover	or	€1 million <sup>18</sup>

### **Full but delayed approximation**

The first problem<sup>19</sup> is related to issues of legislative technique and the way the work on the *level of approximation* is conducted. The related law dates at 2008, time when Albania had ratified most of the conventions on protection of the personal data. The fact is that the Directive 95/46 EC was into force in that time however, the Albanian Parliament did not make a full approximation with this Directive.

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<sup>15</sup> Refer to Mr. Balla speech

<sup>16</sup> Original: Article 24, Sanctions: The Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down the sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Directive

<sup>17</sup>Original: Brussels, 25.1.2012 , COM(2012) 11 final , 2012/0011 (COD) ‘Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

<sup>18</sup> In short we notice that references of Mr.Balla on practices of fine punishment based on percentage of annual global turnover (1.5%-2%) first, belong to a Draft/Proposal Regulation, yet to be approved and not to the actual Directive in force, second, this Regulation gives two forms of fines execution, in percentage or fixed charges, differently than the declaration of Mr.Balla, who claims that practices of the Directive (in fact draft-regulation) penalties are determined as a percentage of the annual global turnover.

<sup>19</sup> Noticed by Mr. Hysi in the Committee and plenary session



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After four years, the Albanian Parliament discussed about the full approximation of the law. Another important issue to be considered is that 35 articles are being amended/changed out of 44 articles of the draft law. The Committee for Legal Issues, Public Administration & Human Rights has changed 25 articles out of 35 proposed by the Government<sup>20</sup>.

Secondly, Albania is approximating its legislation in delay<sup>21</sup>. On the same date that the meeting of PCEI takes place, the full reforming of the Directive 95/46 EC is submitted to the European Parliament in the form of a full draft reaching, targeting changes on issues related to technology. This means that Albania should be more attentive in regard to laws which protect personal data and should keep the track on changes and development in the technological field. This fact shows that Albania is not in line with progressive trend of the internal legislation with the one of the EU. Whereas Albanian Parliament was approximating internal legislation with the Directive of the year 1995, the European Parliament was processing a reformed version of year 2012<sup>22</sup>

### **REVIEW OF THE DRAFT-LAW IN THE PLENARY SESSION**

According to Article 70, paragraph 4 of the Rules and Procedures of the Parliament, "The Report of the responsible Committee and other Committees or the Report of the Committee for Legal Issues, Public Administration & Human Rights, should be multiplied and disseminated to all members of the Parliament and the Council of Ministers, *at least 2 days* before the date of the draft-law review in the plenary session".

In the case of the review of the related draft-law, the Committee for Legal Issues, Public Administration & Human Rights, which acts in the capacity of the responsible committee, finalized its review only 1 day before the plenary session (respectively, the Committee for Legal Issues, Public Administration & Human Rights concluded the revision of the Draft-Law on 25th of April, while the Parliament was convened in the plenary session to review this draft-Law on 26th of April). These presented dates show the violation of article 70 paragraph 4 of the Rules and Procedure of the Parliament.

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<sup>20</sup> This concern is raised also in the Committee for National Security (see minutes of the Committee for National Security, dated 03.04.2012, G. Bizhga/G.Oketa/P.Sterkaj, page.8-9)

<sup>21</sup> Noticed by Mr. Balla

<sup>22</sup> This concern is raised in the Committee for National Security (see minutes of the Committee for National Security meeting, dated 03.04.2012, I. Gjoni, page 7)