



Institute for Democracy and Mediation

Policy Brief 3^o

TIMING ALBANIA'S APPLICATION FOR EU MEMBERSHIP

*Making the right choice between the French, the Czech and the Swedish
EU Presidencies*

Authors: Gjergji Vurmo and Steven Blockmans***

October 2008

* Gjergji Vurmo is IDM Programme Director. This policy brief is part of a series of policy documents prepared by the Institute for Democracy and Mediation through the support of the Think Tank Fund, Program of Open Society Foundations Network (Budapest, Hungary). The opinions expressed herein are those of the author and do not necessarily reflect the views of the donor.

** Dr. Steven Blockmans is a senior research fellow at the T.M.C. Asser Institute (The Hague) and is currently working as the key legal expert in the EC sponsored project aimed at 'Strengthening the Ministry of European Integration' of Albania. The views expressed herein are the author's and do not necessarily reflect those of his employers.

EXECUTIVE SUMMARY

Almost two years after the signing of the Stabilisation and Association Agreement (SAA) and the entry into force of the Interim Agreement (December 2006) Albanian political actors are seriously considering the possibility to submit an application for EU membership. This issue was in fact raised earlier this year through individual political statements urging the Government to submit an application by the end of 2008.¹ Yet, the public debate was not triggered, due to the weak involvement of political actors, opinion makers and experts. In fact, the absence of a debate revealed the lack of a structured approach to the issue by political actors. Experts and opinion makers are also at odds over the timing of an application for membership. Three scenarios are being considered. The first foresees the application for EU membership to be submitted under the French EU Presidency;² the second under the Czech EU Presidency, in the first half of 2009, and the third after the parliamentary elections in Albania, thus under the Swedish EU Presidency in the second half of next year.³ It is our firm belief that Albania's application for EU membership should be submitted under the Czech EU Presidency for it to be successful and timely processed. This position is backed by a comprehensive analysis and balanced approach of the dynamics of Albania's political and EU integration processes, as well as developments in the region and EU.

A realistic approach and balanced analysis of the dynamics of Albania's political and EU integration processes, as well as developments in the region and EU, leads to the conclusion that Albania's application for EU membership should be submitted under the Czech EU Presidency for it to be successful and timely processed in order to attain the **candidate country status by mid 2011**. As such, Albania's overall goal at this stage should not be limited to the application *per se*. Rather, setting clear deadlines as regards the post-application process and working towards meeting the requirements represent the key elements which should guide the whole process. Accordingly, a **realistic timeframe** of the process to which political actors should commit themselves includes:

Reaching a wide political consensus in Albania	Before the end of 2008
Submitting the EU membership application	March - April 2009
Council requesting an <i>avis</i> from the Commission	October or December 2009
Answering the EC Questionnaire	2010
Positive <i>avis</i> from the Commission to the Council	End of 2010 or early 2011
Council decision granting candidate country status	Mid 2011
Opening of accession negotiations	End of 2011 or early 2012

The attainment of this goal requires adequate attention on a set of **key measures** which are thoroughly described in the subsequent parts of this policy brief.

¹ In March 2008 the leader of opposition Mr. Edi Rama urged the Albanian Government to submit an EU membership application by the end of 2008. On the other hand, the Albanian Government has not yet announced a clear date for the application but has made some ambiguous statements that link this step with the eventual completion of the SAA ratification process.

² As urged by the leader of the opposition earlier this year and also backed by the European Stability Initiative ("The Adriatic push for enlargement", at <http://www.esiweb.org/index.php?lang=en&id=312>) and by a policy brief of Agenda Institute (see "The Cost of Delay - Why Albania should submit an Application for EU Membership this Year", at <http://www.agendainstitute.org/index.php?faqe=detail&id=60>).

³ As suggested by Albanian and European sceptics of a swift accession of Albania to the EU.

I. TIMING ALBANIA'S APPLICATION FOR EU MEMBERSHIP

1.1. European conditions and Albanian commitments

Submitting a membership application is without any doubt the most important step in Albania's relatively short history of relations with the European Union. As such, it requires serious preparations. Of course, these preparations must be guided by a strategic goal that is not limited to the application itself, but one that extends to ensuring a positive consideration thereof, to gaining candidate country status and to successfully conducting accession negotiations. In this context, the need for an informed debate appears particularly important, not only as regards the political actors and the public administration which must prepare itself for a long process which will only start with the invitation extended by the European Commission to fill out the so-called '*questionnaire*', but also for the general public and key non-public stakeholders. So far, a real debate has not taken place. Yet, the answer to the question "When should Albania apply for membership?" constitutes one of the very few EU integration-related issues on which Albanian political actors fail to reach consensus. The same applies to experts and opinion makers.

Over the years, the content of EU membership conditionality, the key instrument geared towards reform and integration of EU candidate countries, has developed in parallel with the evolution of the body of EU law (the so-called '*acquis*'), a decreasing level of preparedness on the part of candidate countries and growing opposition in Member States to further enlargement. Since 1999, the Treaty on European Union includes a reference in Article 49 for 'any European State' applying for EU membership to respect the Union's founding principles of liberty, democracy, human rights and fundamental freedoms and the rule of law. In the same year, the Commission initiated the Stabilisation and Association Process, which turned the concept of EU membership conditionality into a multi-dimensional instrument aimed at reform and integration of the states of the Western Balkans. In its annual reports, the European Commission closely monitors progress made by the pre-accession countries in fulfilling the membership conditions. The Commission identifies the main weaknesses and technical adaptations needed by the (potential) candidate countries, sets out priorities and benchmarks accordingly, and directs EU funds towards relevant reform projects.

Although the decision to grant a country candidate status is above all a political decision which is unanimously adopted by the EU member states, the applicant has to demonstrate a solid track record of its accomplishments, as well as to provide evidence that it possesses the necessary capacities to fulfil the above mentioned political conditions for EU membership. Gaining the support of member states and identifying among them the key "benefactors" who will firmly place Albania's membership application on the EU's political agenda is essential in this context, even if this endorsement will be mainly based on the abovementioned criteria – track record and sound capacities. In short, Albania will have to:

- Upgrade its **administrative capacities** and prepare the **institutional setup** that will deal with the application procedure and, later on, the *questionnaire*, the 'screening' process of its legislation and the membership negotiation process;

- Undertake a **diplomatic tour** (especially among the key players in Brussels, Prague, Stockholm, Berlin, Paris and London) to lobby for Albanian candidate country status and EU membership.

While it would be unrealistic to speculate about accession dates at this point, setting a target date for obtaining the candidate country status is undoubtedly a key element that should drive Albania's EU integration efforts, in particular the approach towards the membership application. From this perspective, the second term of the current EU Troika – the Czech Presidency – provides the best timing for submitting Albania's EU membership application, because it offers the Albanian administration enough time to prepare and successfully carry out the application process domestically and because it will give the two EU Presidencies in 2009 (Czech and Swedish) the necessary time to constructively follow on from the membership application. Of course, timing the membership application procedure represents only one element that influences the eventual attainment of candidate country status and the EU's decision on this matter will largely depend on the progress made by Albania. However, given the complexity of the membership application procedure, the political and pre-accession dynamics in Albania and the developments at the EU level, the second scenario provides the best setting to guarantee a smooth and timely process towards obtaining candidate country status by mid 2011.

1.2. A realistic approach: internal vs. external dynamics

It seems that Albania has finally left behind the consequences of the Sisyphus syndrome (of progress followed by serious setbacks) and is now firmly moving forward in its EU integration process. SAA negotiations were concluded more than two years ago, and pending the full ratification of the SAA, the Interim Agreement has activated its trade-related provisions and has intensified the process of approximation of the Albanian legislation to the *acquis*. While this certainly constitutes progress, it is important to note that the EC progress reports have repeatedly underlined the fact that implementation capacities and the enforcement of laws remain weak in many areas. Adding to that the elongated reform processes of the judiciary, the electoral code, the property law and the fight against corruption and organized crime, one would be forgiven for concluding that this is *not* the right moment for the next major step of Albania towards the European Union. On the other hand, there are a number of other reasons and arguments that support the opposite conclusion. Accordingly, the eventual decision on the timing aspects of the membership application must be based on a rational and realistic analysis, beyond the emotions of the day, on both the internal and the external dynamics of the process.

The *internal factors* that will affect the reception and outcome of Albania's membership application appear at this point particularly important. Namely, EU Member States will test Albania's 'political' credentials with specific reference to: the stability of institutions and the respect for human rights, democracy and the rule of law. This means that the key factors which will largely influence the EU's eventual decision on the application and on which Albania can not afford to fail, include:

- Holding free and fair parliamentary elections, which are almost certain to take place in June 2009. To that end, Albania should finalize the reform of its Electoral Code and introduce a system of registration based on new identity cards;

- Concluding the judiciary reform through wide consensus and ensuring increased efficiency of the judicial institutions in full respect of their independence;
- Improving the performance in the implementation of actions to fight corruption and organized crime;
- Showing a solid track record in implementing the Interim Agreement and, when it enters into force, the SAA;
- Continuing the approximation of its legislation to the *acquis* and paying particular attention to the capacities to implement the aligned legislation;
- Further improving its administrative capacity to guide these processes.

In support of the above mentioned factors, the political approach would be significantly improved if a well-structured dialogue – not simply an information campaign, but rather a partnership – is put in place with non-public stakeholders (business, civil society, interest groups, academia, etc).⁴

While the appropriate consideration of the internal key developments remains central for a successful membership application, the *external dynamics* represent an additional element that influences the chances of success. Considering the fact that dealing with a membership application is a political decision to be taken by EU member states, it is important to ensure that the political context in which the decision is taken is likely to increase the chances for a favourable outcome.

In this context it is important to keep in mind that six rounds of enlargement have taken a toll on the functioning of the EU 27 and the further expansion of the Union. Although early impact assessments suggest that decision-making in the EU's main institutions has not suffered from the 2004 and 2007 waves of enlargement, the difficulties encountered when trying to reach a common position on EU policies, especially in the domain of external relations (cfr. Russia, Kosovo), and when pursuing the evolution, implementation and enforcement of the *acquis*, can be explained as being primarily the result of 'institutional overstretch'. Moreover, in the wake of the 'big bang' enlargement of 2004 and the – what many in the 'old' member states see as the premature – accession of Bulgaria and Romania in 2007, the populations and political elites of some member states seem to suffer from both 'enlargement blues', i.e. the impact of the last rounds of accession, and 'enlargement fears', i.e. the prospect of the further expansion of the Union, in particular with Turkey. Since the 'No' votes in France and the Netherlands on the ratification of the Treaty establishing a Constitution for Europe, the EU's enlargement plans became snarled up in a much bigger argument between rival groups of member states that disagree about the long-term objectives of the Union, its shape and final borders. While the conclusion of the Lisbon Treaty brought a temporary end to the political wrangling over institutional reform, it did not unify competing visions on the future size and shape of the European Union. Moreover, the Irish 'No' against the Lisbon Treaty has thrown its fate (or, at least, its date of entry into force) into doubt. It is probable that the EU institutions will have to 'make do' with the old institutional framework also after the elections of the European Parliament in June 2009.

⁴ It seems that Albanian citizens' support for EU membership will continue to remain at high levels in the coming years. Accordingly, the governmental and civil actors' efforts should continue to promote an informed public debate, particularly on issues reflecting the present and the forthcoming stages of the integration process.

Despite the uncertainties about the ultimate size of the EU, the Commission continues to repeat that this is not and should not be the end of the road for EU enlargement. The rationale behind this assertion is simple. The EU has already started accession negotiations with Turkey and Croatia and it has granted candidate country status to the Former Yugoslav Republic of Macedonia. Albania, Bosnia-Herzegovina, Montenegro, Serbia (and implicitly also the territory of Kosovo, albeit when it was still a part of Serbia) have also been promised a membership perspective and (apart from Kosovo) have been granted ‘potential’ candidate country status. With Serbia having been ‘promised’ candidate country status in 2009 and Montenegro eager to launch its membership bid around about the same time, it seems logical to expect that the EU will group these countries together, including Albania’s membership application when launched in 2009. A certain degree of coordination among Tirana, Belgrade and Podgorica would certainly send a strong message to Brussels and increase chances of prompt handling.

On the basis of the foregoing it is clear that the timing of Albania’s application for EU membership must be based on a *balanced analysis* of internal and external dynamics related to the EU integration process. A balanced analysis is the only realistic mechanism to identify a favourable approach to the pros & cons, not only in the applicant state but also among EU members, institutions and influential stakeholders. It would avoid both hasty decisions for an early application and unnecessary delays in the process.

1.3. Applying under the French and Swedish EU Presidencies - The “traps” of over-ambitious zeal and lack of self-confidence

In spite of the fact that this scenario is quite improbable at this point – with only two months left for the *French EU Presidency* and an almost inexistent debate in Albania on the eventual application for membership – it is important to understand why this option was unrealistic even at the time when it was suggested earlier this year (March 2008). As argued above, Albania’s progress in the key areas of reform will be of decisive importance for any shift in the current pace of its EU integration process. More specifically, a short list of such reforms would include at least the following: completion of electoral code reform (including the security of identification documents); parliamentary elections in line with international standards; consensual judiciary reform; and results in anti-corruption measures.

On the EU side, a membership application submitted under the French Presidency would most likely have been left untouched until after the June 2009 general elections in Albania in order to avoid any misuse (for electoral purposes) of the Council’s eventual reaction on the application. Arguably, such a “silent approach” would have been equally embarrassing if exploited by Albanian political actors during the electoral campaign. Another argument that would have directly hindered the appropriateness and thus the chances for a timely processed application for membership is the Albanian administration’s readiness to process the EC *questionnaire* during an election year. While the quality of efforts dedicated to this process in such a period remains questionable, it is certain that such plans would have negatively affected the perception of Albania as a serious partner in its relations with the EU. This on

the other hand would have set hurdles also for the efforts to ensure support among member states and the European Parliament.⁵

Accordingly, it is clear that submitting the membership application under the French Presidency would have harmed the process and certainly not accelerated the pace of the application's processing. In the best case scenario, such a move would have placed the process under the same timeframe as if the application would have been submitted under the Czech Presidency. In the worst case scenario, this would have undoubtedly led to the main fear of the supporters of the French scenario – a delayed process that lacks a clear perspective of the application's timeframe.⁶

Neither would a decision to apply for membership under the *Swedish EU Presidency* seem to be based on a balanced approach and analysis of the internal and external factors that would influence this major step of Albania's EU integration process. While applying under the French Presidency would have responded mainly to the internal needs and ambitions for an accelerated accession process, the Swedish Presidency scenario would appear mainly as a choice that is largely conditioned by external factors. Needless to say, a prospective EU member can not afford to employ a passive approach as regards its membership application (as indeed during the accession talks). The EU has never extended an invitation to apply for membership to any state and most likely it will never do so. Therefore, it is up to the applicant state to take a proactive approach in persuading the Union on the basis of concrete evidence that it is ready to deal with the obligations and challenges of the subsequent phase.

The main concern regarding the eventual plans to submit an application under the Swedish Presidency is related to the aspect of timing. Namely, the Albanian application would be delayed not only due to the national parliamentary elections, but also due to the elections of the European Parliament and the appointment procedure of a new Commission. The absence of Albania's application for membership as an issue in the Swedish Agenda would therefore cost the country at least one additional term of the EU Presidency at the early stage (submitting the application) and one additional year at the final stage (decision on the candidate country status).

Accordingly, the French and Swedish Presidencies as possible scenarios for Albania's application display two major problems – the first one with the lack of evidence (on internal track record) while the second one with the lack of self-confidence (passive approach) which may lead to a decelerated integration pace.

⁵ These represent only part of the arguments that do not favour an Albanian membership application under the French Presidency.

⁶ In fact, one of the main concerns of the "French scenario" supporters is to avoid a delayed application process and more important, any eventual association of Albania's integration process with the EU prospects of the least advanced countries of the Western Balkans (Bosnia-Herzegovina and Kosovo). While this fear can be barely justified for the second option (i.e. submitting an application under the Czech Presidency), given the upward pace of Albania's reforms under the SAP, it may partly prove true in case the country's membership application follows under the Swedish Presidency (and if its SAP performance falls below expectations).

1.3. Making the right choice: A membership application under the Czech Presidency

So far, the analysis has provided only partial and indirect evidence in support of this policy brief's recommendation – i.e. the first half of 2009 is the right moment for Albania to submit its application for EU membership. After all, two wrong don't make a right. Let's now see why the remaining scenario is not only a favourable but also a realistic option for a timely and positive outcome.

A membership application under the Czech Presidency would best respond to the abovementioned concerns over the country's readiness and sound track record of accomplishments (internal factor's analysis) as well as to those related to the EU dynamics and attitudes towards Albania's integration process (external factors' analysis). It should be emphasized that the Council will most likely wait for the assessment of the Albanian parliamentary elections before it takes any kind of action as regards the membership application, i.e. asking the Commission to prepare its *avis*. By that time, Albania must provide evidence of proven results in the key areas of reform which are considered as crucial for the EU integration process. Furthermore, this circumstance would allow the Albanian Government and particularly the Ministry of European Integration to develop the institutional settings and put in practice the administrative framework that would directly deal with the EC *questionnaire* and, at a later stage, the accession negotiations.

As argued before, progress in the most problematic areas – such as the reform of the electoral code, conducting parliamentary elections in compliance with international standards, consensual judiciary reform, successes in the fight against corruption and organized crime – will be the main factor that will influence the EU's approach and action on the membership application, including an eventual positive consideration. At this point, the minimum set of conditions to be met by Albania in order to ensure the follow-up of its application under the Swedish Presidency would include tangible progress on electoral code, parliamentary elections, consensual judiciary reform, anti-corruption measures and fight against organized crime. While it is crucial (for the prospects of the membership application) to provide concrete evidence in these areas by autumn 2009, the country must in addition obtain a general positive assessment of the European Commission in its 2008 and 2009 progress reports.

On the level of external factors' analysis, the Albanian application for EU membership must also take into consideration the focus (agenda) of the respective EU Presidency, its abilities and readiness to push for and take ownership of the processing of Albania's application. In this context, the priorities in the Czech EU Presidency programme⁷ appear to be better focused on the EU's relations with the Western Balkans than the French agenda,⁸ which has so far proved to be devoted to other major priorities (progress on the ratification of the Lisbon Treaty, the EU's role in the world and, recently, the global financial crises). Yet, considering the position and capacities of the Czech Republic (taking on the daunting task as the EU Presidency for the first time ever) no major developments are expected in relation to Albania's application for EU membership. However, submitting the application in the first quarter of 2009 will not only enable the Czech Presidency to put the matter on the agenda of

⁷ Available at http://www.vlada.cz/assets/en/eu/mvez/predsednictvi/cz_pres_priorities_-_oct_07.pdf.

⁸ Available at http://www.ue2008.fr/webdav/site/PFUE/shared/ProgrammePFUE/Programme_EN.pdf.

the Council, it will also enable the Swedish Presidency to reinforce its priorities vis-à-vis the EU's eastern and south-eastern neighbours in its own agenda,⁹ thereby avoiding any delays in the subsequent stages as described above.

Assuming that all key conditions (internal and external) are met as regards an eventual membership application under the Czech Presidency, the deadlines for each stage and the timeframe of the process to which Albania should commit itself would include the following:

Reaching a wide political consensus in Albania	Before the end of 2008
Submitting the EU membership application	March - April 2009
Council requesting an <i>avis</i> from the Commission	October or December 2009
Answering the EC Questionnaire	2010
Positive <i>avis</i> from the Commission to the Council	End of 2010 or early 2011
Council decision granting candidate country status	Mid 2011
Opening of accession negotiations	End of 2011 or early 2012

It is important to emphasize that the approach which Albania should employ and the measures it should take for a smooth process, must be guided by an ambitious and yet, attainable goal – i.e. opening of membership negotiations by 2012. A firm position by the Albanian political actors on a target date for accession negotiations will strengthen the country's profile as a reliable partner that is profoundly committed to speed up its EU integration process. To this end, submitting a membership application under the Czech Presidency would only partially support the achievement of this objective which remains largely dependent on the tangible progress and proven results.

⁹ A summary of the key themes of the Swedish EU Presidency is available at the official website of the Swedish Government and its Offices website: <http://www.regeringen.se/sb/d/10302/a/112407>.

II. WALKING THE ROAD AHEAD: RECOMMENDATIONS

In order to set in motion the application scenario which is proposed by this policy brief, there are a number of measures which should be designed and implemented within clearly defined timeframes. Albania's overall goal at this stage should not be limited to the application *per se*. Rather, setting clear deadlines as regards the post-application process and working towards meeting the requirements represent the key elements which should guide the whole process.

Hence, meeting the deadline of 2012 as a target date for accession negotiations requires:

1. At the application stage:
 - ❖ Ensuring tangible progress in key areas of reform:
 - a. Finalizing the electoral code
 - b. Finalizing the process of issuing identification / travel documents
 - c. Holding free and fair parliamentary elections (2009) in compliance with international standards
 - d. Finalizing the consensual reform of the judiciary
 - e. Further progress in anti-corruption measures
 - ❖ Upgrading administrative capacities and setting up the institutional framework for handling the EC *questionnaire*
 - ❖ Maintaining an upward pace in the implementation of the Interim Agreement and the SAA (once it enters into force)
 - ❖ Undertaking a diplomatic tour to lobby the benefactors (and opponents!) among EU members and promoting Albania as a positive example of the SAP
2. At the post-application stage
 - ❖ Ensuring progress in the implementation of the SAA
 - ❖ Showing concrete results in problematic areas (corruption, organized crime, border management, illegal migration, economic development, etc.)
 - ❖ Advancing administrative capacities at both, local and central level
 - ❖ Ensuring an upward pace in the reform of other key areas (part of the economic and political criteria, and European standards)

III. APPENDICES

Appendix I - Applying for EU membership: Procedure and practice

There is no particular standard format required for the application. The main requirement is an official letter which clearly states the applicant country's request to obtain EU membership, its willingness to meet all membership criteria and its intention to carry out the relevant obligations that flow from EU membership. As an example of such an application, one could think of a letter from the Head of Government addressed to the Head of the EU Council of Ministers expressing the state's desire to become a Member State of the EU or an application letter with different kinds of memoranda enclosed. In this case the letter portrays historic, cultural, political, economic and other grounds of belonging to the European family, characterizes its successes in implementing reforms during the last years, etc. Generally, the countries more prepared for joining the EU submit brief letters while the countries less prepared attach comprehensive memoranda.

The procedure of application for EU membership is based upon the legislation and division of competences, both within the applicant state and the EU. Within the applicant state, parliamentary approval should be sought for a proposal by the government to apply for membership of the European Union. The application should be submitted by the Head of Government of the 'applicant for EU membership' (the term 'applicant' should be differentiated from the term 'candidate' until the official decision from the European Council) in the name of the Head of the Council of Ministers, i.e. the Minister of Foreign Affairs of the Member State holding the EU Presidency at the time of the application.

Upon receiving the application, the EU Presidency adds the subject to the agenda of one of the meetings of the General Affairs and External Relations Council, and its relevant committee(s) – in the case of the Western Balkans: COWEB. There is no defined timeframe between submitting the application and its consideration by the Council, but to avoid that the application could be taken over by the next presidency, the applicant state could be advised to time its submission at the beginning of a new Presidency. According to the internal decision-making procedure, the Council has to consider the application and request the European Commission and the European Parliament to express their opinion on the issue.

Having the key position, the European Commission, prepares its opinion (better known by the French term '*avis*') in a period up to one year, holding closed unofficial consultations with the most influential EU members interested in the issue. It is reckoned that the Commission's opinion, that is formally independent from the Member States, depicts first of all the French-German tandem, as well as particular Brussels' political and bureaucratic elites.

The European Parliament expresses its approval or disapproval on the application in the so-called 'assent procedure'. If the EP disapproves the application, then further consideration is blocked. Referring to the official position of both EU institutions, the Council considers the application again and adopts its decision. Usually, such decision is processed on the eve of a European Council summit and included into the Conclusions of the EU Presidency adopted during the summit.

Appendix II - Timing the Application: Useful experiences

In anticipation of the EU's probable answer to Albania's future application for membership, the most useful examples to be considered are the following:

The *CEE (Central and Eastern European) countries* submitted their applications for EU membership during the period 1994-1996. It happened after the European Council Summit at Copenhagen in 1993 adopted a principle decision that 'those CEE countries wishing to join the EU can do so' on the basis of political, economical and institutional criteria defined during the Summit (the so-called 'Copenhagen criteria'). By submitting their applications, the CEE countries officially declared their wish to gain EU membership and requested the EU to officially consider their candidatures. Poland, for example, signed its Europe Agreement on association with the EU on 16 December 1991. The Europe Agreement entered into force on 1 February 1994. On 5 April 1994 the Polish Republic addressed its application for membership to the EU. The Council of the EU sent an appeal to the European Commission to express its opinion on the Polish application on 18 April 1995. The European Commission announced its favourable *avis* on 15 July 1997. The final decision on the CEE countries' application was adopted in December 1997 in Luxembourg, where the European Council recognized all 10 CEE countries, Malta and Cyprus as candidates for membership and recommended to launch accession negotiations with 6 of them. The other 6 were recommended to intensify reforms aimed at meeting the Copenhagen criteria for EU membership. The European Council Summit in Helsinki in 1999 adopted the decision to start negotiations with the rest of the CEE countries and granted candidate country status to Turkey. If in the Polish case the application was submitted two months after the Europe Agreement had entered into force, in the other cases it was different. It must be emphasized that submitting the application officially does not necessarily foresee signing or taking effect of the Europe Agreements or other agreements on association with the EU. Examples of countries obtaining EU membership without such agreements (Austria) are only confirming the fact that countries' eligibility for candidacy is the political will of the EU Member States.

The experience of *Croatia* is fundamentally different from the previous group of countries but instructive for Albania. Like Albania, Croatia was included in the Stabilisation and Association Process (SAP) as a 'potential candidate' only. Like the other SAP countries, Croatia was offered the prospect of the conclusion of a Stabilisation and Association Agreement (SAA) which, until fully ratified, would be implemented – partially (i.e. for the trade provisions) – by an Interim Agreement. However, the Croatian authorities adopted a political decision to strive for EU membership apart from the other SAP countries, in an attempt to jump the queue and get into the enlargement wave together with Bulgaria and Romania. Croatia even announced its decision to submit the application for membership and not to sign the SAA, as it should be granted a Europe Agreement. The Commission's feedback on this suggestion was negative and Croatia was urged to avoid such actions. Even officially, EU representatives warned the Croatian authorities that 'the application can be submitted only once and if you insist on submitting the application earlier than you'll be ready for it, the application might be rejected, bringing up negative consequences for the European integration of Croatia'. In the end, Croatia signed its SAA on 29 October 2001. The SAA took effect on 1 February 2005. In spite of the negative attitude of the European Commission and some Member States, Croatia submitted its application for membership on 21 February 2003, simultaneously lobbying, in Brussels as well as in the capitals of the Member States, in an effort to obtain a positive answer of the Council of Ministers.

Appendix III - Process of accession negotiations: The case of Croatia

On 14 April 2003, the Council of the EU considered the application and requested the European Commission to prepare its *avis*. On 10 July 2003, the Commission send a *questionnaire* with 4560 questions to Zagreb. Croatia submitted its answers barely three months later, on 9 October 2003. The European Commission then took six months before it announced its positive *avis* on 20 April 2004. In those six months, the Commission sought clarifications on many questions which the Croatian administration has answered vaguely or in an evasive way.

It is worth noting that, at the time of its positive *avis*, the European Commission considered Croatia not to meet the political criteria in general. Croatia was recognized as an acting democracy with stable institutions guaranteeing democracy and without noteworthy problems in the field of fundamental human rights. But certain improvements were still required: the return of refugees, consensual reform of the judiciary, the fight against corruption, the protection of ethnic minorities, etc. Economically, Croatia was considered to be an acting market economy able to function within the EU's sphere of competition. Crucially, the European Commission was satisfied that Croatia had the capacity to work towards fulfilment of the required obligations for EU membership.

In its *avis*, the European Commission proposed the Council of Ministers to grant *candidate country status* to Croatia and to start negotiations for EU accession. At the same time, the Commission proposed that Croatia was offered full-scale pre-accession assistance, both financial and technical (the latter for, e.g., the screening of its legislation). On 18 June 2004, the European Council decided to follow-up on the Commission's positive *avis* on Croatia's application for membership and grant candidate status to the country, thereby opening it up to increased financial and technical assistance.

At its Brussels summit in December 2004, the European Council requested the Council of Ministers to agree on a *framework for accession negotiations* with a view to opening accession negotiations with Croatia on 17 March 2005, thereby rewarding Croatia's ongoing preparations for membership with a firm date for starting accession talks. The opportunity, however, was subject to an equally firm condition: full and unequivocal cooperation with the ICTY. Croatia was given exactly three months to arrest and extradite the indicted war-time general Ante Gotovina.

Despite strong eleventh-hour lobbying by Croatia to prevent the consequences of its failure to arrest and extradite Gotovina, 'the absence of a common agreement' among the 25 EU Member States on the issue of full cooperation with the ICTY led the Council to take the unprecedented decision to postpone the start of membership talks. The Council was careful, however, to underline that accession negotiations with Croatia could open as soon as there was proof that Croatia was fully cooperating with the Tribunal. To prove its point, but without offering an early resolution of the standoff, the Council adopted the negotiating mandate for the Commission and created a special task force to monitor Zagreb's cooperation with the ICTY.

Just hours ahead of the crucial 'enlargement' meeting of the Council of Ministers on 3 October 2005 in Luxembourg, the task force gave its positive opinion after it was informed by the Chief Prosecutor of the ICTY that, despite the fact that Gotovina remained at large, Croatia was 'fully cooperating' with the Tribunal. Noting the clear commitment by the Croatian Prime Minister that full cooperation would be maintained until the last remaining

indictée was in The Hague and as long as required by the ICTY, the Council of Ministers concluded that Croatia had fulfilled the outstanding condition for the start of accession negotiations.

Immediately following the political decision by the Council of the EU, the *bilateral Intergovernmental Conference on accession* was convened. Thus, accession negotiations were formally opened on 3 October 2005, at the first session of the IGC between EU Member States and the Republic of Croatia. At this first meeting, the exchange of General Positions of the European Union and Croatia took place.

The formal opening of the negotiating process was followed by the analytical overview and evaluation of the degree of harmonisation of national legislation with the EU's *acquis*, known as '*screening*'. The main purpose of the screening process is to determine the differences that exist between the national legislation and the *acquis* for every chapter with which the national legislation needs to be harmonised by the date of accession. On the basis of the conducted analysis, the candidate country is required to state whether it will be able to fully harmonise national legislation with the *acquis* in individual chapters or if it will require transition periods for complete harmonisation with, and implementation of, the *acquis*. Screening is conducted for every chapter individually. The duration of the screening process for individual chapters depends on the extent and the amount of the *acquis* for the respective chapter and can last from one day to several weeks. Overall, the screening process usually lasts for a year.

After screening is completed, the decision on the opening of *negotiations for individual chapters*, depending on the evaluated readiness of the candidate country, is made by the Member States within the Council of Ministers. With the opening of negotiations for individual chapters, the substantive phase of the negotiations begins. During this phase, the subject of negotiations is the set of conditions under which the candidate country will adopt and implement the *acquis* in the respective chapter, including *transitional periods* which the candidate country might have requested.

Negotiations are conducted on the basis of the *negotiating positions* of the EU Member States and the candidate country. These positions are prepared for each negotiating chapter after the screening results. Following the revision of the procedures by the European Council of December 2004, the negotiating positions of the Member States may contain pre-conditions on the opening *and/or* the closing of individual chapters – the so-called *benchmarks*. While Croatia is firmly on track in the negotiating process, it nevertheless had the dubious honour of being the first candidate country ever to experience the discomfort of the revised accession negotiations procedure: Slovenia briefly blocked the opening of EU-Croatia negotiations on a next chapter of EU legislation by not giving its approval for a European Commission screening report on the extent to which Croatia's fisheries legislation conforms to the *acquis*. Slovenia argued that Croatia had failed to implement a bilateral border agreement on the basis of which Slovenian fishermen (operating from the Bay of Piran, Slovenia's sole outlet to the sea and the object of a dispute between the two countries since their secession from the SFRY in 1991) should be able to enjoy their rights of passage through Croatian waters. The blockage by Slovenia served as a brief beating of the drums to raise awareness among EU members of the country's remaining land and sea border disputes with Croatia and to warn the latter to solve the matter or risk a real interruption of the accession negotiation process.¹⁰

10 Far more serious, however, was the decision of the December 2006 EU General Affairs and External Relations Council that "the Member States within the Intergovernmental Conference will not decide on opening

During the whole negotiating process, the European Parliament and the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union are regularly briefed on the course of the negotiations and the progress made.

After agreement has been reached between the EU and the candidate country on the individual chapter of the negotiations, and once the set benchmarks have been met, the respective chapter is considered *temporarily closed*. The formal decision is made by the Intergovernmental Conference at ministerial level. If new provisions for a specific chapter of the *acquis* are adopted before the Accession Treaty has been concluded, or if the candidate country fails to continue to meet the set benchmarks or obligations assumed under the respective chapter, negotiations for the chapter in question can be reopened.

When the negotiations for all chapters of the *acquis* have been temporarily closed, the European Council, in its conclusions, usually marks the end of the negotiating process with a candidate country. The results of the negotiations are then incorporated in the provisions of the ***draft of the Accession Treaty*** which is drawn up jointly by representatives of the EU Member States, representatives of EU institutions and representatives of the candidate country.

After agreement has been reached on the text of the Accession Treaty between the EU and the candidate country, the draft of the treaty is referred to the EU institutions, EU Member States and the candidate country, where appropriate procedures regarding the ratification of the document take place.

Prior to the ***signing of the Accession Treaty***, the European Commission needs to deliver its final opinion on the application for membership of the candidate country on the basis of the draft Accession Treaty. Additionally, the European Parliament needs to give its consent and, finally, the European Council must reach a unanimous decision on acceptance of the new candidate country and its application for EU membership. From that moment on, the candidate country is regarded as an *acceding country*.

The Treaty is signed by the highest officials of the EU Member States and the acceding country. The document is then referred to signatories for ratification in accordance with their domestic constitutional provisions.

Following the signing of the Accession Treaty, the acceding country has the right to participate in the work of the European Council and the European Parliament as an active observer. Prior to the ***ratification of the Accession Treaty*** by national parliaments of the EU Member States, most of the acceding countries hold a referendum by which they allow their citizens to make a final decision on the accession of the country in question to the European Union. Otherwise, the parliament of the respective acceding country can ratify the Accession Treaty. In order to enter into force, the Accession Treaty needs to be ratified by the national parliaments of the EU Member States. Whereas Ireland holds an obligatory referendum, most Member States confine themselves to a parliamentary majority, sometimes requiring a special quorum. In France, the Constitution was recently amended to include a provision

chapters covering policy areas relevant to Turkey's restrictions as regards the Republic of Cyprus until the Commission verifies that Turkey has fulfilled its commitments related to the Additional Protocol," i.e. opening its ports and airports to Greek Cypriot ships and aircraft. In an unprecedented move in the history of EU enlargement policy, eight chapters were suspended: free movement of goods (Chapter 1), the right of establishment and the freedom to provide services (Chapter 3), financial services (Chapter 9), agriculture and rural development (Chapter 11), fisheries (Chapter 13), transport (Chapter 14), customs union (Chapter 29) and external relations (Chapter 30). The European Council some days later endorsed the conclusions: "Turkey has not fulfilled its obligation of full non-discriminatory implementation of the Additional Protocol to the Association Agreement."

which prescribes the organisation of referenda for every enlargement of the EU-28, i.e. after Croatia has joined the Union. Unless modified or withdrawn, Albania's future accession will be the subject of a French referendum. The assumption that the ratification process of the Accession Treaty with Albania will go unhindered is not a foregone conclusion when one considers the lukewarm response which the Accession Treaty with Bulgaria and Romania has received in the national parliaments of some enlargement-wary Member States.

The acceding country becomes a member of EU with the entry into force of the Accession Treaty, usually on a predetermined date, under the condition that the ratification process has been finalised.