



Institute for Democracy and Mediation
Instituti për Demokraci dhe Ndërmjetësim



STILL A "WORK IN PROGRESS" CASE

COUNTRY ANALYSIS | ALBANIA

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STILL A "WORK IN PROGRESS" CASE



The 2016 European Commission's report on Albania could be considered as one of the most important reports since the European Union granted the country the candidate status in 2014. For the first time, the Commission recommended the opening of accession negotiations with Albania, subject to credible and concrete progress in the implementation of a justice reform and in particular, the re-evaluation of judges and prosecutors, known as the 'vetting law'.

The justice reform triggered the cross-party dialogue in Parliament until pivotal constitutional amendments were unanimously adopted in July 2016. Thus, launching a thorough and comprehensive reform process of the judicial system.

Similar to the 2015 report, Albania continued to mark steady progress towards fulfilling all of the five key priorities, namely: public administration reform, strengthening of judiciary, fight against corruption, combating organized crime, and protection of human rights. Yet, more efforts are required, particularly in the fight against corruption, organized crime and drug smuggling.

The Head of the Delegation of the European Union to Albania, Ambassador Romana Vlahutin, praised the significant progress made by the Albanian government on the reform agenda, and sustained the European Commissions' decision to recommend opening negotiations for accession with the EU.¹

In addition, the European Commissioner for Enlargement and European Neighbourhood Policy, Mr. Johannes Hahn also underlined the solid progress marked on the key priorities. However, he also reiterated the need for further improvements, especially in the implementation of the justice reform'.²

Civil society, on the other hand, was significantly more reserved regarding the recommendations of the 2016 Country Report for Albania, noting that many recommendations continue to emerge either as unimplemented or repeated from the 2015 report.

In conclusion, compared to previous years, the 2016 report failed to produce significant news apart from the usual parliamentary debates and some official news media.³

1 <http://rtsh.al/lajme/dorezohet-progres-raporti-2016/>

2 https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/speech-johannes-hahn-press-conference-eu-enlargement-package-2016_en

3 <http://www.oranews.tv/opinion/raport-progres-per-politiken-per-qytetaret-apo-per-shqiperine/>

KEY FINDINGS

POLITICAL CRITERIA

2016 was a decisive year for Albania's progress on rule of law and judicial reform, a fundamental principle of the European Union. Following a long period of parliamentary polarization throughout 2015, the Albanian political parties paved the way to the much awaited reform by adopting constitutional amendments related to the organization and functioning of the judicial system; the exclusion of criminal offenders from public administration; the creation of the National Council of Civil Society, etc. In addition, the political consensus, together with relevant constitutional amendments that were carried out during the second half of the 2016 year, addressed the EC recommendations voiced in the 2015 Report.

During the intensive period of the justice reform adoption, an important role was also played by civil society. Albanian CSOs representatives expressed their support for the adoption of the draft constitution by a broader consensus and declared their commitment to support the EU integration and other development reforms. However, a more inclusive approach between the Albanian government and relevant state and non-state actors is still required, to ensure properly and timely implementation of these reforms.

Despite government commitment to finalize core reforms in 2016, the electoral reform was insufficient ahead of the next round of general elections, held in June 2017. Shortcomings such as lack of impartiality and politicization of the electoral administration, lack of transparency of campaign finances and the need of an effective electoral dispute resolution were also not properly addressed in 2015. EC Recommendations aiming to improve the electoral system, continue to be persistent on the 2016 report as well.

Parliament

With regards to the state of affairs of the Albanian parliament, the Commission has acknowledged some progress in 2016 with the establishment of an ad hoc parliamentary committee on electoral reform, based on the 2015 OSCE recommendations. However, this parliamentary committee failed for over a year to draft amendments to the Electoral Code as per the OSCE/ODIHR recommendations and international standards. Despite the cross-party consensus reached at the Parliament for the constitutional amendments political polarization remains a concern according to the European Commission's reports in 2015 and 2016.⁴ Additionally, the Parliament still faces difficulties in terms of performance and transparency.

As regards to the EU integration process, the overall Parliament's capacity to monitor the implementation and compliance of new legislation with the EU Acquis remains limited and further coordination with the executive branch continues to be a prerequisite.

In conclusion, the report points out that parliamentarian ethics failed to meet regu-

⁴ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

latory provisions, as well as fulfill the expectations of the Albanian citizens. In this respect, the code of ethics, which has been in parliamentary procedure since early 2016, is yet to be approved.

Governance

The overall governance assessment for Albania in 2016 was positive. The government continued to work on the reform agenda, which focused mainly on addressing the five key priorities for the opening of accession negotiations and stabilizing the economy. In May 2016, the government approved the 2015-2020 National Strategy for Development and Integration. The territorial and administrative reform and the law on local self-governance represent an important milestone for the local governance and decentralization.

Following the approval of the law No. 115/2014 on the ‘territorial and administrative division of local governance units in Republic of Albania’, local government units faced challenges over the restructuring and concentration of functions at the municipal level.⁵ As a result, better services were recommended by the 2015 report to guarantee access to all citizens regardless of their geographical distance from the new municipalities. In this regard, the Commission in 2016 highlights that positive achievements were noticed with regards to the establishment of one-stop shop electronic system, introduced under the territorial planning framework. However, specific recommendations for further implementation were not indicated in this last report. Another recommendation inherited from the previous EC report is related to the decentralisation strategy’s medium-term financial sustainability, which continues to be incomplete.

Under the ‘Governance’ area, the 2016 EU report highlights also some new recommendations related to cooperation and coordination of all relevant state and non-state stakeholders dealing with EU integration matters, which remain unaddressed.

Civil Society

The civil society’s role continues to be voiced as crucial both on the 2015 and 2016 EC Report’s on Albania. The report for 2016 underlines the participation of the civil society in policy processes and its involvement in the Parliament’s activity to ensure democratic means of public participation. The Albanian legal and regulatory framework on freedom of association, on the other hand is viewed to be “generally in line with the international standards”. However, the process for registration is still inconvenient and characterized by high costs, lengthy procedures and lack of expert judges dealing with civil society organizations’ legal issues.

During 2015, several policy and legislative initiatives, such as The Road Map for Albanian Government Policy towards a More Enabling Environment for Civil Society Development were taken to regulate the cooperation between CSOs and state institutions. In addition, the Parliament adopted the law for establishing the National Council for Civil Society with the aim of institutionalizing the cooperation and permanent dialogue between the government and CSOs.⁶

⁵ <https://www.reformateritoriale.al/en/>

⁶ https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf

In 2016 two additional significant laws were adopted by the Albanian parliament. The Law on Volunteerism, fulfilling therefore one of the nine priorities identified in the 2015 road map for Albanian Government Policy towards a more enabling environment for Civil Society Development and Law 65/2016 on Social Enterprises in the Republic of Albania, aiming to create an enabling environment for the establishment and operation of social enterprises. According to the 2016 CSO Sustainability index, ‘CSOs sustainability remains stagnant. CSOs continue to make efforts to improve their strategic planning, constituency and coalition building, advocacy, and use of modern technologies; however, these initiatives have been insufficient to make significant and sustainable changes to the CSO environment in Albania’.⁷

Moreover, the financial sustainability continues to be a problem. The sector is generally ‘fragmented, overly dependent on foreign donor funding, and lacking a diversified funding base’.⁸ Following the entry into force of the new national accounting standards for non-profit organisations in January 2016, the legal and regulatory framework on the tax regime for CSOs needs to be further improved and tax inspectors’ capacity strengthened. The current procedure for VAT reimbursement of expenses under Instrument for Pre-accession Assistance funded grants is not functional. The Agency for Support of Civil Society (ASCS) is the main source of government funding to the sector. However, public funding remained limited. The current legislation does not provide for any tax incentives for individual or corporate donations to CSOs. The fiscal framework regulating the activity of civil society organizations still needs to be revised. Private donations continue to be limited because of non-conducive fiscal tax rules and other regulations discouraging individual donations and poorly incentivizing corporate ones.⁹

Despite the various challenges, civic activism in Albania however, has experienced some noticeable revitalization during 2016. Civic activism and advocacy efforts addressed a wide range of issues in 2016, including environmental protection, women’s and children’s rights, education reform, and rule of law and good governance. Several citizen movements, online social networks, civil society organizations, business associations, became more active and vocal about these issues. They voiced their concerns through discussions with policymakers, proposals for legal amendments, calls for swift approval of the justice reform, petitions to the president, filed requests to the Constitutional Court against certain legal initiatives, protests, and even confrontation with the police.

Environmental organizations and CSO coalitions intensified their public awareness and advocacy efforts in 2016. During this period, they worked to build and mobilize support bases, with different degrees of success. In February, civil society activists such as “Thurrje” Initiative, the informal groups “Citizens for the Park” and “Plant Your Tree,” protested against a government plan to construct a children’s playground in the Lake Park of Tirana. However, regardless of the protests, the playground was built and opened in June 2016.

In July 2016, a grouping of civil society representatives named ‘Group of Citizens Pro Justice Reform’, addressed the political forces and led a series of manifestations to

7 https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf

8 Ibid

9 Ibid

urge the adoption and implementation of the judicial reform. While the judicial reform plan was passed in July, there are still concerns about the plan's implementation.

In addition, during the period March- June 2016 civil society organization played an important role in the process of drafting Albania's third Open Government Partnership (OGP) national action plan for 2016-2018. CSOs provided concrete recommendations for commitments that promote transparency, accountability, and citizen engagement, based on their areas of expertise. On this note, three out of seventeen adopted OGP national commitments were CSOs commitments.

In May 2016, under the slogan Courage, the Alliance against the Discrimination of LGBTI and Pro LGBTI organized the fifth pride event in Albania requesting amendments to the Family Code to provide same-sex partners with the legal right to marry and to be included in the legal definition of cohabitation. However, so far there are no concrete developments in this regard.¹⁰

Public administration reform

Albania has started to implement a more transparent recruitment process for a depoliticized, professional and merit-based civil service through standardized procedures and increased transparency. However, recommendations of the 2016 EC report continue to state that further commitments are needed to improve the image and accessibility of public sector as an employer of reliable and qualified staff that are able to provide quality services to citizens and businesses in a transparent, effective, and efficient manner.¹¹

The report once more highlights the areas where more progress is needed to further align the annual budget and the medium-term budget programme with one another and with the ongoing reform strategies and the priorities of the government. In this regard, recommendations to ensure implementation of the Law on Civil Servant for transparent, fair and merit-based recruitment; guarantee transparent public policy development process; ensure budget transparency and make progress in implementation of the arrears prevention strategy, continue to be repeated thought the 2015 and 2016 EC report, aiming to improve public administration in Albania.

Further efforts are needed also in the areas outside the scope of the key priority, especially on improving policy development and coordination, and the capacity of administrative court system, which have been repeatedly on the EC focus in 2015 and 2016 report.

Last but not least, the civil society and the business community engagement in the process is regarded by the European Commission as requesting improvement. According to the 2016 report, Albanian CSOs lack sufficient contribution when it comes to the public administration reform. The Commission urges citizens, research institutes and other non-state actors to play a more active role in order to create a more knowledgeable society and a more accountable public administration.

¹⁰ https://www.usaid.gov/sites/default/files/documents/1866/CSOSL_Report_7-28-17.pdf

¹¹ https://eeas.europa.eu/delegations/albania/17634/eu-rewards-progress-albania-employment-and-skills-and-public-administration-reforms_en

Rule of Law

Functioning of the judiciary

Over the last three years, the Albanian government has achieved some moderate results on key priorities highlighted by EU institutions, with the judicial reform still being considered as one of the major barriers for the country.¹²

In July 2016 Albania's Parliament adopted a constitutional amendments package, deemed crucial for opening accession talks with the EU. These constitutional amendments aim to make the justice system more independent, accountable and efficient. The implementation of the Law on Transitional Re-evaluation of Judges and Prosecutors, often referred to as the 'Vetting' Law, is of paramount importance. However, additional measures are needed in order to ensure full implementation and effectiveness of the reform.

Regarding the level of professionalism in the courts, Albania is still facing low efficiency and ineffective administration, as well as nepotism, corruption inadequate system of dismissal and promotion of judges, lack of accountability, broad public distrust, and lack of adequate training.

Professionalism and integrity of judges is not sufficiently reflected in the existing criteria for appointing judges.¹³ Judges evaluation system is weak and the careers of judges are not always fully transparent, assessed on their merits or objective criteria. As part of measures to fight corruption and re-establish public trust in the judiciary, the reform provides for the re-evaluation of all currently serving judges, prosecutors and legal advisers. However, regardless of the new strategies and judicial reforms being adopted, their implementation is still to be effective.¹⁴

Fight against corruption

The fight against corruption continues to be one of the main challenges for Albania, with institutions in charge of the fight against corruption still being politicized and possessing gaps in administrative capacities.

The vetting law is designed at cleansing the justice system through a detailed examination of the assets, professionalism, and possible ties with organized crime of all judges, prosecutors, and candidates for posts in the new judicial system. The newly adopted law on the "Organization and functioning of institutions in the fight against corruption and organized crime" also known as the Special Prosecution Against Corruption (SPAK), is an important instrument against grand corruption. Additionally, SPAK has a broader anticorruption goal. It aims to investigate and adjudicate all corruption and organized crime offenses by former and current senior officials, including political leaders. Prior to their appointment, all prosecutors will be subject to a rigorous investigation that will follow periodic financial examinations and inspections of their communications.

¹² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

¹³ Ibid

¹⁴ https://eeas.europa.eu/headquarters/headquarters-homepage/3580/judicial-reform-european-path-stressed-mogherini-visit-albania_en

Further progress, however, is needed to establish a solid track record of investigations, prosecutions and convictions, and more efforts are required to tackle corruption at high level. Proactive investigations, systematic risk assessments and inter-institutional cooperation need to be improved.

In December 2015, the much awaited ‘decriminalization’ law, aiming to ban convicted criminals from public office was passed with strong cross-party support.¹⁵ In accordance to the law, public officials submitted self-declaration forms in 2016 that were then referred to the Prosecutor’s Office for review by its Integrity Verification Office established in March. Consequently, Socialist Movement for Integration MP, Shkelqim Selami, Party for Justice Integration and Unity MP, Dashamir Tahiri and Socialist Party, Kavaja Mayor, Elvis Roshi had their mandates removed after the general prosecutor’s office identified non-disclosure of criminal offences while abroad in their self-declaration forms.¹⁶

During 2016, several other public officials were suspended or removed from office due to corruption allegations. Socialist MP in Albania, Koço Kokedhima, lost his mandate in May after a year-long legal battle in the Constitutional Court over public procurements won by a company that he previously owned.¹⁷ Whereas, in September 2016 the former DP minister of labor and social welfare, Spiro Ksera, was charged on abuse of office and sentenced by the Tirana District Court to 20 months in prison.

In addition, a law on whistleblower protection was adopted in June 2016 in order to protect public and private sector employees from being exposed and retaliated against for disclosing misconduct. The adoption of the law was the result of a concerted approach by EU and national institutions, supported by substantial advocacy and input from civil society.¹⁸

However, since the entering into force of the law the implementation appears to be modest. Even though the media reports almost daily on cases of corruption and wrongdoings by different public officials and public institutions there are no official whistleblowing case registered yet.¹⁹

Fight against organized crime

Albania has been identified for many years as a country facing serious problems with regards to organized crime. Over the past year some progress has been noticed on identifying and eliminating cannabis plantations. However, according to the EC report, police and prosecutors have failed to identify the criminal drug trafficking groups. Despite the modernization of police forces and the intensification of international police cooperation through Europol, there is still a critical need for strength

ening cooperation between Albanian police and prosecutors in order to dismantle criminal networks more effectively. Overall, Albania continues to have a poor track record on investigating, identifying, prosecuting, and convicting key figures of drug

15 <http://www.balkaninsight.com/en/article/albania-adopts-decriminalization-of-politics-law-12-18-2015>

16 https://freedomhouse.org/sites/default/files/NIT2017_Albania.pdf

17 <http://www.balkaninsight.com/en/article/albania-court-cuts-mp-mandate-short-05-09-2016>

18 <https://see-whistleblowing.org/albanias-new-whistleblower-law-has-great-promise-to-curb-corruption-but-will-it-deliver/>

19 <https://see-whistleblowing.org/albanias-new-whistleblower-law-has-great-promise-to-curb-corruption-but-will-it-deliver/>

trafficking and other organized crime activities.²⁰

Allegations regarding connections between government officials and organized crime top figures continued to be present throughout 2016, especially during the collection and publication of the decriminalization self-declaration forms. Several MPs and mayors from major political parties were found to have had problems with the justice system in the past.

Human rights and the protection of minorities

Albania has ratified most international human rights conventions and its legal framework can be considered broadly in-line with European standards. However, enforcement mechanisms and further efforts are still needed for the implementation of these legal frameworks, especially on issues related to property rights, social exclusion, protection of children rights, gender equality and discrimination of vulnerable communities. On this note, institutional responsibilities and mechanisms should be in place to protect the rights of the children and tackle gender-based discrimination and domestic violence.

Access to justice continues to be a problem and further efforts are needed for the development of effective guarantees to ensure access. The lack of access becomes more visible, given that the majority of cases involving vulnerable groups are still carried out by civil society organizations, with donor support, highlighting the lack of institutional mechanisms to protect the rights of the child and to tackle gender-based and domestic violence.²¹

When it comes to freedom of expression, the Albanian constitution provides for freedom of speech and press, and in general the government respects these rights. A press law, a law on audiovisual media as well as the law on access to information function as additional guarantees for media freedom.²² Unfortunately, Albania's media environment has worsened in some respects. Editorial independence of media outlets is not fully established in Albania, with private media outlets typically taking an editorial line that suits the interests of their owners, who are often involved in politics or other industries rather than of citizens. Therefore, there is still need for improvements.

20 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

21 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

22 <http://www.kas.de/wf/en/71.13549/>

ECONOMIC CRITERIA

The Commission assessed that Albania is moderately prepared when it comes to developing a functioning market economy. During 2016, Albania has experienced a gradual economic growth. Some progress was achieved in improving the budget balance, fighting informality and implementing structural reforms in the electricity sector. Progress has been noticed also on higher and vocational education. However, unemployment continues to be high. In this context, it is essential to match labor market demands with qualification and education of young people in the country, in order to reduce inefficiencies and provide more job opportunities.

Fiscal consolidation has reduced the budget deficit, and public debt is expected to further decrease as a share of GDP in line with the recently adopted fiscal rule. However, challenges are still faced with regards to the impact of the rule of law on the investments.

Other reforms related to property rights, resolution of nonperforming loans, the judiciary, and governance essential for improving the business environment are not advancing with same speed. The ratio of non-performing loans (NPL) stayed high despite the partial implementation of the resolution strategy and the introduction of mandatory write-offs.



ACQUIS



Albania legislation is generally in line with the *acquis* and the provisions of the Stabilisation and Association Agreement, increasing therefore the country's capacities to take on the obligations of EU membership.

When it comes to preparedness, the country is considered as moderately prepared on a number of fields, such as the case of financial control. On other areas, however, such as public procurement and statistics, it marks some level of preparation. As a result, the 2016 report points out that further efforts are needed for the overall preparations for the adoption and implementation of the EU *acquis*.


The Parliament continued to strengthen its reviewing role regarding the control of compatibility of the proposed draft-laws with the EU *acquis*, thus ensuring a better quality of the aligned legislation. An important role in this process was played by the Committee on European Integration, which reviewed 29 draft-laws and proposed 85 amendments during the period 2015-2016, adopted in plenary sessions. Improvements have been also noted in rural development and agriculture, as well as on transport policy.²³

The administrative capacity and professional standards of bodies charged with the implementation of the *acquis* need to be strengthened and the independence of regulatory bodies safeguarded. Enhancing transparency and accountability, in particular to ensure effective, efficient and transparent functioning of the public procurement system and public finance management, remains essential. Based on the monitoring report of the Albanian Strategy on Public Procurement presented by the Ministry of Finance in 2016, progress has been noticed in this area regarding the harmonization of the legislation with the EU *acquis*. However, additional amendments to the Public Procurement Law are necessary in order to achieve further compliance.

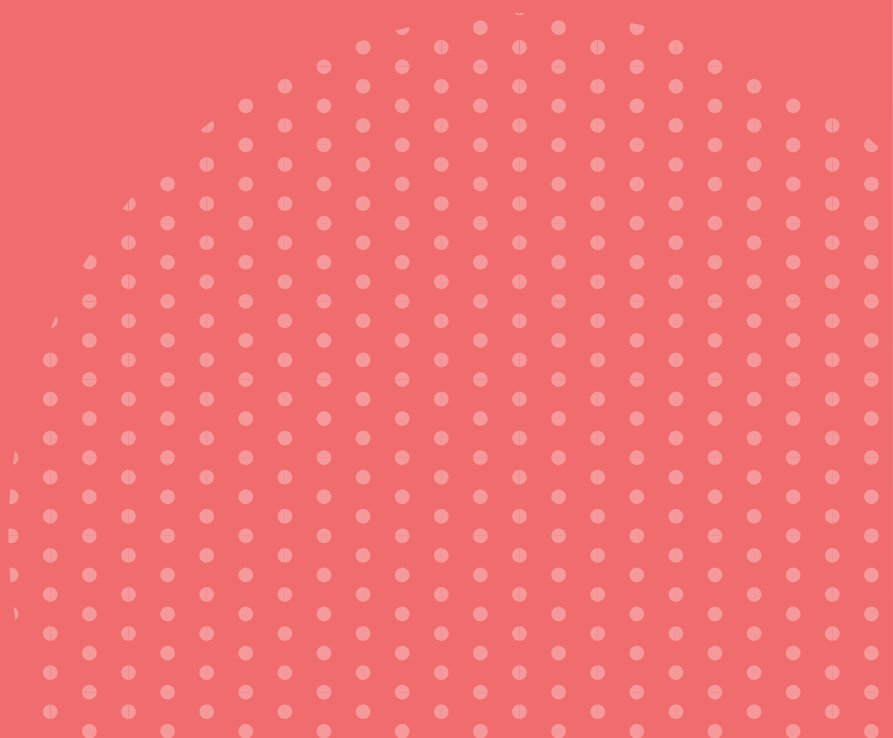
Moreover, Albania continues to fully align with all EU common foreign and security policy positions and declarations. However, further steps are needed to address the issue of the number of unfounded asylum applications lodged by Albanian nationals to EU countries. In this framework, the report recommends that immediate and determined actions, including the post-visa liberalization monitoring mechanism, should be taken by the Albanian government in order to effectively address this phenomenon.²⁴

23 Annual Report Of European Commission 2016, Albanian Contribution – Input I, September 2015 – May 2016

24 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf



CONCLUSION AND RECOMMENDATIONS



The 2016 report shows that overall Albania may have a good opportunity to open negotiations with the EU in the not to-distant-future. Our assessment methodology indicates that the country progress was good (score: 0.97 on a scale to 3) and has achieved moderately preparedness (score: 2.394 on a scale to 5). However, to achieve opening of the negotiations, Albania should be able to successfully implement the judicial reform, especially the re-evaluation of judges and prosecutors. In addition, the country should show a sustainable track record in fighting corruption, in particular high-level corruption.

The Albanian government remains committed to fulfilling the five key priorities set by the EU. However, additional efforts are needed to implement a more transparent recruitment procedures of civil servants, as well as the implementation of the public administration reform and public financial management reform strategies. Further progress is also needed for consolidating achievements towards a more efficient, depoliticized, and professional public administration. With regards to the Public Administration reform, the 2016 report assesses that Albania has faced regression in comparison to previous year. Whereas, evidence of progress between both reports is noticed in the Judiciary System – previously evaluated as “some progress” in 2015 to “Good progress” in 2016. The other three key priorities remain at the same progress level, as shown in the table below:²⁵

| KEY PRIORITIES | Progress from report 2015 | Progress from report 2016 |
|-------------------------------|---------------------------|---------------------------|
| Public Administration Reform | 2 | 1 |
| Fight against corruption | 1 | 1 |
| Fight against organized crime | 1 | 1 |
| Judiciary system | 1 | 2 |
| Fundamental rights | 1 | 1 |

Despite the positive tone of the report, Albania is still moving slowly towards meeting the EU standards. As a result, the reforms recommended by the EC demand further changes of the legal and institutional frameworks, as well as appropriate implementation. Building on the 2016 EC recommendations, this report suggests the following actions:

- A more inclusive approach of Civil Society should be carried out on every level of policy making. A clear role of CSOs should be given within strategies and respective action plans, in order to ensure the proper implementation of strategic policies related to the five key priorities of EU integration.
- Consolidation of inter-ministerial working groups to ensure coordination and timely alignment of EU acquis across line ministries and other relevant authorities. Improve systematic publication of documents and relevant information by in

²⁵ Coding of the progress assessment: No progress 0; Some progress 1; Good progress 2; Very good progress 3.

line ministries regarding the preparation of EU integration chapters. Additionally, inclusion of civil society to inter-ministerial working groups should be guaranteed.

- Following the current developments related to the EU integration at national level, focus should also be given to the capacities and role of the local actors, including local government units and local civil society.