THE PERSPECTIVE OF ALBANIA’S ACCESSION INTO THE EU AND THE HARMONIZATION OF FOOD SAFETY & VETERINARY LEGISLATION

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ABSTRACT

The process of integration of Albania towards the EU is a long way to go, where a primary key role will be the approximation of Albanian legislation with the acquis communautaire (EU legislation). Albania’s accession into the EU requires a significant redefinition of the relationship between its domestic law and the acquis. Currently, Albania is undergoing the process of harmonization, approximation and transposition of the acquis to the domestic legislation. As a candidate country to EU, Albania has made serious efforts towards a better alignment with the member states’ standards. Over the recent years, the institutional structure for food safety and veterinary services has changed significantly to meet the new adequate standards and requirements of acquis communautaire (EU legislation). Following a progressive update of EU food safety regulations addressing several deficiencies, Albania has adopted new legislation in a systematic way. In addition to adequate policies to better enforce the current food and feed legislation, it is worth mentioning a full reforming and streamlining of institutions in the framework of functional food safety. It has established new standards and core legislation on food safety, feed, veterinary and animal health. This article explores the role of the EU as a global actor in food safety issues and a promoter of its own standards and values abroad.

KEYWORDS: Food Safety, Veterinary Services, Integration, Harmonization, Approximation, Acquis, Legislation, Domestic Law, European Law

1. INTRODUCTION

Belonging to Europe encompasses not only the geographical criterion, but the European cultural identity criterion as well, which touches upon the European traditions and values (Detrez, 2003). The economic reforms in Albania after the ‘90s were accompanied simultaneously by, undoubtedly, the adoption of a new important and stable legislation regarding the political, social and economic orientation of a country (Bianku, 2003).
An important moment for these Western Balkans countries was the White Paper adopted by the European Commission in Essen, in December 1994, which created the legal framework for the achievement of the economic and social results of the countries that wanted to join the EU. In its preamble it is highlighted that: “The Commission has presented the core purpose of the Community legislation in each area, has explained the organizational and administrative means, how the legislation must act and recommends a clear line which should be applied to the task of approximating the legislation of the countries associated. This detailed presentation is aimed at understanding more deeply the Community legislation by the countries concerned and facilitating the work for the approximation of legislation in the first phase of admission into the European Union” (White Paper, 1995).

During the Stabilization and Association Process with the Southeastern European countries, the EU as a “new contractor instrument” created the so-called Stabilization and Association Agreements (hereinafter SAA) with five Western Balkans countries including Albania. In respect of the legal system these countries have, the SAAs do not require by the candidate country to adopt immediately the whole acquis of the EU (Zajmi, 2003). SAA between Albania and the EU entered in force on 1st April 2009, and immediately Albania applied to become an EU candidate country. The candidate countries should adopt the whole legal framework of the EU known as “acquis communautaire”.

The process of exporting the acquis (Mahen, 2007:382) into legal orders of third countries is an indispensable part of the challenging role of the EU as a global actor. Indeed, the adoption of the acquis encourages Albania to revisit the compatibility of their national rules and standards to those of the EU, in order to share ‘the Union’s common values’ (Cremona, 2004). In general, the adoption of the acquis contributes to the establishment of a friendly legal environment between the EU and Albania, therefore we endeavor to highlight only fundamental features of this highly interesting process.

The export of the acquis communautaire into the legal orders of third countries including Albania is supported by technical and financial assistance packages on behalf of the EU. The EU provides technical and financial aid through more than 30 different legal instruments. Most of them are geographical, such as the European Development Funds, or purposefully tailored technical and financial assistance programmes (PHARE, Community Assistance for Reconstruction, and Development and Stabilization (CARDS). The objectives and scope of the EU technical and financial assistance packages may have common elements, but they differ in substantive issues, in line with the objectives of either EU external
agreements or the status of political and economic relations between the EU and the third country. Technical assistance is provided under the auspices of EU-funded assistance programmes, encompassing a variety of activities, ranging from investment in infrastructure to assistance in legal drafting and education. In general, EU technical and financial assistance targets the creation of good governance (Metcalf, 2003). However, there is a serious criticism of shortcomings within the technical assistance itself. Some projects are ineffective, since they have not been adapted to local needs and specifics, and consultants are not sufficiently qualified. As some commentators correctly note, this situation hampers the promotion of EU values to the wider world (Petrov, 2008). Objectives of EC partnership, cooperation and development agreements envisage candidate countries to import the fixed and dynamic acquis communautaire as widely and as soon as possible, as well as to embark upon a process of voluntary harmonization through the gradual adoption of the relevant acquis. Indeed, the EU inspires third countries to adopt as much as possible of the dynamic acquis in order to create a comparable and friendly legal environment beyond existing and potential EU boundaries (Evans, 1996).

2. The Approximation of domestic legislation with the EU Acquis

‘Acquis communautaire’ is a French term which means ‘that which the Community has acquired’/‘that which the Community has achieved’. It is the concept of the «acquis communautaire» which permits the EU to maintain its cohesion and to proceed with its objective of deepening, despite its increasing number of members resulting from its successive enlargements. All that has been achieved with respect to European integration up until the date a new member state accedes to the Union, constitutes an indivisible whole, the acquis communautaire, that each new member state is obliged to accept and effectively implement (Çaushi, 2013).

The approximation of domestic legislation with the acquis constitutes one of the challenges of Albania in the process of EU membership. It is one of the basic criteria of the so-called Copenhagen criteria of 1993 for Western Balkan Countries. The comprehensive incorporation of the acquis in the national legislation is absolutely an indispensable obligation. It requires the commitment of all resources and potentials of the all government and non-government actors. This process should follow and adhere to the European standards, since it does not mean solely a mechanical approximation of legal texts, but above
all it requires an approximation of the way of their implementation, by insuring the elimination of the standards’ differences (Daci, 2010:169).

On the other hand, this is a continuing process that necessarily requires the establishment and functioning of necessary administrative structures that would practically realize the approximation of legislation. In other words, the approximation process means more than the writing of legislation; it requires that special attention be paid during the phase of policy making, in order to adopt well-thought decisions and produce high quality legal texts (Manual, 2006:82). The obligation of Albania to approximate its domestic legislation with the EU law is foreseen in the SAA, which expresses its aspiration to be a full member of EU.

The process of EU integration is specifically elaborated in Article 70 of the SAA, which provides that: “The Parties recognize the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community Acquis. Albania shall ensure that existing and future legislation shall be properly implemented and enforced. This approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the Community Acquis referred to in this Agreement by the end of the transitional period as defined in Article 6.” The Article 1 of the SAA also envisages: “…One of the aims of this Association is to support the efforts of Albania to develop its economic and international cooperation, also through the approximation of its legislation to that of the Community.” On the other hand in Article 6, the SAA envisages that “the Association shall be implemented progressively and shall be fully realized over a transitional period of a maximum of ten years, divided into two successive stages.” And specifically speaking, in the field of approximation and implementation of laws, it is aimed that Albania to be focused during the first stage on the basic elements of the acquis.

The Albanian Assembly has foreseen in a specific regulation that the content of each harmonized law proposal should also include data on EU source acts as a distinguishing sign differentiating it from the others. A methodology on structured harmonization of the domestic legislation with the EU acquis is prepared for the purpose of successful alignment as well as for consistency, coordination, clear overview and monitoring of the legislation approximation process.
The approximation process itself, as mentioned above, is not a simply mechanical process, but it first requires fundamental changes on how to understand and implement legal norms in general and especially those norms that will be approximated with EU acquis. Indeed, with the beginning of the approximation process, the Albanian domestic law will undergo an essential change that includes the largest part of norms as well as court practice that shall be under the impact of the EU Court of Justice, in the same manner as norms of acquis impact on the Albanian domestic law (Mistelis, 2001).

Approximation and EU membership leads to a hierarchical relationship between domestic law norms and the EU acquis. Thus, as a result of approximation and EU membership processes, the content of the Albanian domestic legislation is defined by the acquis in the same way as the content of future laws is defined by a constitution (Daci, 2011:171). The Constitution of the Republic of Albania does not envisages anything regarding the community legislation, which means that the legal status of the community legislation is not defined. While not being an EU member state Albania does not make any differentiation or distinction between legal rules of the international legislation and the legal rules of the community legislation. Regardless this extended interpretation it is necessary to realize the legal authority and to explicitly mention the supremacy and the possibility of the direct effect of the community legislation at the moment Albania will be EU member country (Kellerman, 2008).

Thus, the Constitution considers the SAA as an international act, and the obligation to respect the norms of the acquis, even in cases when they conflict with the norms of domestic law is based in Article 122(3) of the Albanian Constitution (Omari, 2008). On the other hand, the Constitution of the Republic of Albania does not have dispositions that contradict the Albania’s membership to the EU, what means that there are no legal obstacles for Albania to ratify the European Community and Euroatom Treaties once becoming EU member. However it is crucial that the Constitution of the Republic Albania should be in conformity with the acquis communautaire, which means that some of its articles leave room for interpretation and are in contradiction with the acquis itself (Latifi, 2009).

The National Plan for the Implementation of Stabilization-Association Agreement 2012–2015 had a dual purpose; definition of priorities, planning, coordination, monitoring and evaluation of activities regarding the implementation of the SAA from all Albanian public institutions, as well as the full approximation of Albanian legislation to the EU acquis...
as a prerequisite for Albania’s membership in the EU. The final deadline for the fulfillment of obligations of the SAA is 31 March 2019 (Çaushi, 2014).

3. The Development of Albanian food and veterinary legislation

During the process of candidate country integration, special importance is attached to recognition, adaptation, approximation and harmonization of the veterinary legislation to the EU one. In this respect, Albanian veterinary services were focused on an irreversible and radical transformation under the principles of free market economy. After various food and feed crises and the complete revision of EU legislation on food safety, Albania continued to adopt that new legislation in its own domestic laws. EU has approved the basic legal and technical principles and conditions which are compulsory for the veterinary services of each country aiming to accede to the community structures, to gradually meet them according to integration phases. They are formulated and summarized in two key documents, White Paper and veterinary Acquis Communautaire in order to provide the consumer’s protection security, public health, animal health and welfare, establishing common rules on the movement of live animals and food products of animal origin for human consumption. The core principle that unique market is also extended to the associated countries in the veterinary field, in addition to the approximation of legislation, aims at sustainable and well-trained administrative structures.

The key piece of EU legislation implementing the White Paper's recommendations, Regulation EC 178/2002, also called the general food law became part of domestic legislation. Under this legislation, food may not be placed on the market which is (a) injurious to health or (b) unfit for human consumption. While risk assessment of food and feed is to be primarily based on scientific evidence, societal, economic, ethical and cultural factors may also be taken into account. The principle of traceability is extremely important and is to be applied at all stages of the food chain. Labeling and packaging must not mislead consumers. The rules are to apply equally to food being exported from and imported into the EU. Finally, it established the EFSA in order to provide independent scientific advice on risk assessments of food and feed as well as to collect data and oversee a rapid alert system.

Other EU instruments of direct relevance to the feedstuffs industry that have been transposed into the domestic legislation include: 1. Directive 90/167/EEC on medicated feeding stuffs; 2. Regulation 999/2001 on certain Transmissible Spongiform Encephalopathies; 3. Regulation 1069/2009; 4. Regulation 1069/2009 laying down health
rules as regards animal by-products and derived products not intended for human consumption; 5. Regulation 197/2006 on transitional measures under Regulation 1774/2002 as regards the collection, transport, treatment, use and disposal of former foodstuffs; 6. Regulation 470/2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin; 7. Directive 97/78/EC laying down the principles governing the organization of veterinary checks on products entering the Community from third countries.

A new food inspection unit was established in Albania, the National Food Authority (NFA) representing a major step ahead to the European integration and following the example of its sister institution EFSA seated in Parma. The NFA became fully operational in its efforts for the strengthening of food safety and consumer’s protection. The Law “On Veterinary Service” was promulgated in 2011, bringing a better new climate and launching some steps ahead toward the approximation. Presently we may classify the Albanian veterinarian legislation in two groups: a. Package of legal acts with 4 mainly approximated laws, & b. Package including a wide range of sublegal instruments such as the hygienic food package, new package of food quality and safety, package of veterinarian inspection at cross-border points, PMV package, package of hygienic-sanitary inspection of specific food products of animal origin for public consumption and of foods for animals such as milk, meat, eggs, fish and marine products, package of main diseases of animals and zoonoses according to OIE list etc, thus constituting a solid foundation for the veterinary activity. These legal instruments are partly approximated; some are fully approximated and harmonized as well (Çaushi, 2013).

4. Conclusions

The membership of Albania in EU is associated with the community supremacy legislation over national legislation, which not only must be approximated with this legislation, but in case of non-compliance, the community legislation shall be the applicable law. The domestic law shall be drafted into compliance with the community legislation.

Albania cannot be fully nor partially integrated into EU without pre-accepting to unconditionally implement the EU acquis, which on the other hand means above all to accept its prevalence over domestic law. However, the introduction of necessary legal amendments should be taken in parallel with the process of approximation or harmonization of Albanian legislation with the European acquis.
So far, this process has been limited solely to a mechanical approximation, but has not been extended to include any approximation on the way how legal norms are understood and enforced. This means that the process of EU integration is defined by the approximation of legislation and direct and indirect acceptance of acquis prevalence over domestic law. The acceptance of the acquis prevalence and its direct application means also a change of courts which with the approximation of legislation as part of country pre-accession obligations and latter on with the country EU membership, shall be obliged to directly apply the acquis even in cases when the latter conflicts with domestic law up to a considerable extent.

Based on the arguments presented above, we can conclude that the process of EU integration of Albania first means a redefinition of the relationship between Albanian domestic laws with EU law. The constitutional framework in the Republic of Albania guarantees the prevalence of the EU law over domestic law, and Albania should redefine the relationship between the acquis and domestic law by ensuring an unchallenging prevalence of the acquis as a directly applicable law.

The SAA, and in particular Article 70, foresees the adoption of the acquis communautaire in the domestic legal system of Albania. The approximation of legislation is the establishment of a legal and institutional framework which will allow the Albanian market to integrate with the internal European market. The approximation of legislation is expected to take place through a detailed programme, which is updated taking into account the realization of objectives as well as changes in Community law itself. Meanwhile, Albania should improve the legislative preparation process, including the increase of capacities and their professional consolidation, increased attention to the acquis communautaire with the aim to prepare good quality legal texts, and acceleration of the approximation of legislation process.

Albanian food safety and veterinary services are focused on an irreversible and radical transformation. The key piece of EU legislation implementing the White Paper's recommendations, Regulation EC 178/2002, is part of domestic legislation. The National Food Authority represents a major step ahead to the European integration following the example of EFSA. The Law “On Veterinary Service” has brought a better new climate, by launching further steps ahead full approximation. The core principle that unique market is also extended to the associated countries in the veterinary field, in addition to the approximation of legislation, aims at sustainable and well-trained administrative structures.
5. References

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