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# Explaining Policy Implementation: Challenges for Albania in preparing for EU Membership

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### Statement of work

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of another degree.

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## Summary

The objective of this research is to understand and explain the implementation process of transposed EU legal acts in Albania. As the country gets closer to EU membership, implementation challenges have increased, representing a major obstacle. The contribution of the analysis and findings of this study are both practical and theoretical. On one hand, it aims at reaching some sound conclusions on the factors that affect implementation performance and attempts to formulate possible recommendations for the Albanian case. On the other hand, it also contributes to the vast area of implementation studies by enriching it with an unexplored case, that of Albania.

The study explores the policy implementation process by analysing the policy design stage and its shortcomings as the main argument. More specifically, it is focused on understanding the role of three factors when policies are drafted: administrative and coordination capacities, the effectiveness of involvement of non-state actors, and the contribution of EU representatives and expertise. Because of the theoretical propositions and the nature of the variables, the type of approach adopted is qualitative research. The strategy of inquiry, a single case study, makes use of two main methods: triangulation and process tracing. Accounts from participants are triangulated in order to grasp differences in their understanding of the process and the formal procedures followed. Process tracing is used to analyse and understand the policy from the drafting stage to its practical implementation.

Four policy areas or *acquis* chapters were selected for the study: free movements of goods, competition policy, food safety, and environment. For each sector, specific EU legal acts were chosen as a sample to be explored in depth throughout the policy cycle. Based on the findings from all four areas, the study draws broader conclusions and implications on the policy implementation challenges facing the country.

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## List of abbreviations

ACA	Albanian Competition Authority
CEE	Central and Eastern Europe
CMD	Council of Ministers Decisions
DM	Directorate of Metrology
EC	European Commission
EIA	Environment Impact Assessment
EIU	European Integration Units
EU	European Union
FSA	Financial Supervisory Authority
FSVI	Food Safety and Veterinary Institute
GDFSCP	General Directorate of Food Safety and Consumer Protection
GDTP	General Directorate of Trade Policies
ICCEI	Inter-institutional Coordinating Committee for European Integration
ICEI	Inter-ministerial Committee for European Integration
IWGEI	Inter-institutional Working Groups for European Integration
LP	Labour Party
MAFCP	Ministry of Agriculture, Food and Consumer Protection
MEFWA	Ministry of Environment
MEI	Ministry of European Integration
METE	Ministry of Economy, Trade and Energy
MO	Ministerial Order
NCCB	National Consultative Council of Businesses
NFA	National Food Authority
NPAL	National Plan for Approximation of Legislation
NPISAA	National Plan for the Implementation of the Stabilisation and Association Agreement
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
TFEU	Treaty on the Functioning of the European Union

## CHAPTER 1 INTRODUCTION

Albania was the last European country where communism collapsed after the fall of the Berlin Wall. The wind of change that spread throughout Central and Eastern Europe (CEE) arrived in late 1990 in Albania, when students took to the streets and started protesting.

In this general atmosphere, Western Europe and the United States were seen as the future and at the heart of the Albanian people's ambitions. What the regime had prohibited now became the aspiration. The European model was so attractive for Albanians that the most famous slogan in the 1990s' protests was "we want Albania to be like Europe".<sup>1</sup> The communist and post-communist elite opened the country up to the world and started establishing diplomatic relations with European countries once again. However, it was only after the Labour Party<sup>2</sup> (LP) lost the election in 1992 that the country started its path towards the European Union (EU). Albania engaged in diplomatic and economic relations with the EU by signing an agreement for economic and trade cooperation with it. This agreement aimed at increasing trade flows between the two and at laying the foundation for a political orientation of Albania towards the establishment of a functioning democracy and free market economy by harmonising its legislation.

In the first half of the 1990s, Albania continued to successfully profit from EU assistance, and its institutions engaged in numerous urgent reforms. However, the events of 1997, the civil unrest caused by the collapse of fraudulent financial companies, represented a major step back for the country on its European path.

Since the 2000s, Albania has been back on track in the European integration process thanks to the Stabilisation and Association Process (SAP). After the Thessaloniki summit (2003) declared a clear membership perspective for the Balkan region, Albania signed a Stabilisation and Association Agreement (SAA) with the EU in 2006. This new structural agreement implied considerable assistance from the EU side and progressive alignment with the EU legislation and standards from the Albanian side. Since then, the country has moved forward with adopting and transposing the *acquis* in its domestic legislation. In June 2014, Albania became officially a candidate country for EU

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<sup>1</sup> In Albanian "*E duam Shqipërinë si gjithë Europa*".

<sup>2</sup> The ruling party during the communist regime in Albania was called the Labour Party.

membership. However, in spite of the progress made, the country has encountered several difficulties in its integration process with the EU, especially in relation to the implementation of transposed legal acts.

### 1.1 Scope of research

This study seeks to explore and explain the implementation process of EU legal acts in Albania. Albania has engaged in the European integration process for many years now, and its legal approximation agenda has developed quite quickly since 2006. The country has recorded a satisfying performance in terms of the alignment of legislation with the EU *acquis*, but full implementation has not always been effective. Although the country now has some years of experience in adopting EU legal acts, implementation has been a major problem and a real obstacle to the advancement of the EU integration agenda. This research project aims to analyse the implementation of the *acquis* and explain its patterns in Albania, focusing on the process from adoption to implementation.

Implementation theory has developed extensively in recent decades and has occupied a major place in the policy analysis field. Different approaches and theoretical conclusions have been explored within this area of study. The field was enriched and became more complex when EU compliance and enlargement studies crosscut with studies of the general implementation framework. The specific characteristics of EU functioning, the top-down approach adopted, and the increased number of actors involved in the process have made policy implementation in the EU more challenging to understand and explain. A further difficulty is represented when the analysis involves countries with considerable obstacles in terms of institutional capacities for implementation, such as post-communist countries in general and Albania in particular. This is why it is really important to use findings and theoretical work from other experiences in order to understand and explain ongoing processes in these countries.

The study analyses in depth the case of Albania's challenges deriving from EU integration process commitments in terms of adopting the *acquis*. Based on theoretical conclusions from previous similar studies and adapted to the Albanian case, it aims to provide an account of the adoption and implementation cycle of EU legislation, with a particular focus on patterns and the interaction of the institutions and actors involved. As mentioned earlier, since the number of actors involved in the process is quite high,

the study aims to construct an institutional mapping and tracing that can help to better understand Albania's specific characteristics. It also explains interaction procedures and practices and how they influence the quality of the process and its outcome in terms of implementation. By exploring different policy areas, the study's results aim at representing broader conclusions on compliance and implementation patterns in Albania.

This topic is important in different respects. First, as mentioned earlier, an implementation deficit has become a major obstacle for Albania in its aspiration for EU membership. In spite of the training, assistance, and commitment of the actors involved, implementation challenges are increasing. The country's agenda of legislative alignment with the EU will become very intense in the coming years, when accession negotiations will be opened. Therefore, this research and its findings can assist decision-makers who are in charge of ensuring the smooth and proper implementation of EU directives in general. Second, understanding implementation in the Albanian context can help in addressing shortcomings, especially in the most problematic policy areas. Since the content of the research is related to some specific important fields, it can be further followed up on with interested actors for research and policy purposes. The study can become a reference point in such an unexplored though very important topic. Third, this project is important because of the importance that implementation has gained in public debate in Albania. Implementation is one of the most frequently mentioned concepts in reports, analysis, and public discourse in the Albanian public sphere in general. Politicians, EU representatives, journalists, etc., constantly refer to the implementation of legislation and its importance. However, most of the arguments used for explaining implementation performance are often based on common knowledge, personal experiences/perceptions, or monitoring reports (which state the situation but do not explain the reasons). Research projects and studies that explore the topic in depth have not been developed, so this topic and this thesis are important for understanding more about the process in Albania by using theories explored in other similar countries. If discussed and disseminated adequately, the results and conclusions from this study might help by shedding light upon the main challenges that Albania faces in the process of implementing EU legal acts and building a discussion on how to overcome the obstacles.

The main sources used for this project included policy implementation literature, studies on EU accession and enlargement, official documents from Albanian and EU

institutions and organisations, in-depth interviews with relevant actors, etc. A more detailed explanation of the research framework and methods used in the study is provided in Chapter 3.

## 1.2 The implementation problem and the main argument of the thesis

Albanian governments have consistently included the European integration agenda in their political platforms, and a broad national consensus has always been strong on this matter. Despite the commitment and political will displayed, however, the process has been slow and often undermined by domestic factors. This is why Albania is often reported to be lagging behind in the integration process, especially in the implementation of the *acquis*. The bigger problems at the beginning of the process were mostly related to poor institutional capacities. This became more visible after the SAA was signed and commitments increased. What followed was an intense period of adopting EU legal acts but very slow and difficult implementation. This is why the implementation deficit deepened, especially after 2006. This has been particularly acute in areas such as environment, transport, agriculture, food safety, intellectual property rights. These areas are characterised by intense work in aligning legislation but have achieved poor results in terms of practical and effective implementation. Despite technical and financial assistance from the EU and other donors, the implementation and enforcement of legislation have been major problems for several years now. The progress report issued by the European Commission (EC) each year stresses repeatedly the need to improve implementation and strengthen the capacities involved in the enforcement of legislation. In the 60 pages of the 2013 progress report for Albania, the word “implementation” is used approximately 140 times.

This tendency increased especially after the SAA entered into force in 2009. Previously, the EU, in its recommendations, was more focused on the need to adopt EU acts and to align legislation. This was also reflected in the first National Plan for Approximation of Legislation (NPAL) in 2005. Later, when the adoption of legislation was going quite smoothly, the gap between adopted acts and implemented ones increased, so focus of the EC shifted towards monitoring implementation. This is why, after the SAA was signed, the new plan, the National Plan for the Implementation of the Stabilisation and

Association Agreement (NPISAA),<sup>3</sup> focused more on implementation. Thus, after producing good amounts of legislation, the need to implement them was urgent. This problem has been identified not only in relevant reports, such as the EC progress report on the country, but also in political and public rhetoric and discourse. In the Albanian public debates, an expression used quite often to describe the situation is: “*the quality of laws adopted is good, but implementation is bad*”. This expression is frequently used in the media by analysts, politicians, and citizens in interviews, and it has become a broadly accepted fact. But is this general observation correct? It is true that “implementation is bad”, as explained earlier. The application and implementation of laws are of course affected by many factors, from political stability to capacities and resources. However, there is a widespread perception, as implied in the statement above, that the quality of the legal drafts is not one of the factors and thus not an issue for implementation. This opinion is mainly based on the fact that transposition is seen as a sort of “copying and translating” legislation from the EU and therefore the quality is somehow ensured by the standards that EU countries adopt for themselves.

The central argument of this thesis is that the key to understanding implementation failure lies in the stage of designing the policies and legal acts that aim at the transposition of EU legislation. Tracing and studying the policy process from the inception phase until its official approval can reveal important elements for explaining what determines implementation outcome. The fact that this legislation is adopted from the EU *acquis* does not guarantee the quality of the process from translation to drafting and approving. Several factors have an impact on the outcome of the final proposed draft. The capacities of the actors involved, their understanding of the process and the legal act, their coordination and interaction with other institutions, and the different stakeholders involved in the relevant field are just some of the elements that can directly affect the implementation stage. Based on the procedures, performance, and characteristics of the policy design process, the result might be a badly drafted legal act with weak provisions and planning for the implementation stage. Therefore, as the central argument of this study claims, it is essential to study and understand the process before adoption of the legislation to properly explain its implementation.

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<sup>3</sup> The NPISAA covered the process until 2014.

### 1.3 Structure of the study

The study comprises eight chapters, excluding the introduction, and its structure reflects the approach assumed in terms of the research strategy and cases chosen.

Chapter 2 explores literature that covers implementation analysis and related theories. It starts with early scholars of implementation studies in the 1970s and moves on to the main debates that followed in the 1980s. In particular, the chapter discusses the top-down and bottom-up perspectives and tries to explain the different theoretical positions in the field and how they have shaped the main arguments of later authors. At the end of the chapter, I focus more on implementation related to the EU accession context and then, more specifically, on literature on the Albanian case.

Chapter 3 is the core part in terms of explaining the research framework of the study because it focuses on the research approach and design adopted. The first part discusses the theoretical framework used, drawn from the literature review chapter, and formulates the respective theoretical proposals to be explored in the Albanian case as the main guiding independent variables. This is followed by a detailed outline of the strategy of inquiry and of how the research project has been organised in terms of policy areas and participants. It concludes with a detailed account of the methods used and the difficulties faced during the development of the project.

Before moving to the analytical part of the thesis, Chapter 4 describes and analyses the institutional organisation of the European integration process in Albania, which is necessary to better understand the context. It starts by explaining the main institutional framework for bilateral engagement between EU and Albania and then enters into the description of the domestic side of the organisation. First, it explains which are the main domestic institutions involved and what are their competences in relation to the process. It follows with an explanation of the organisation of the inter-institutional coordination, which is key to the core argument of the thesis. Thus, joint structures and the coordination system are explored by giving brief descriptions of the work of this framework. Last but very important, the chapter analyses institutional involvement in the adoption and transposition of EU legal acts by tracing the formal process from one institution to another and by explaining the formal steps of adoption.

After Chapter 4, four analytical chapters follow, based on the policy areas selected and explored: free movement of goods (Chapter 5), competition policy (Chapter 6), food safety (Chapter 7), and environment (Chapter 8). All the chapters have very similar

approach and structure. They start with a brief general background of the sector, by analysing developments regarding the *acquis* adoption and implementation situation in Albania. Although the general methodology used is common to all policy areas, as will be explained in Chapter 3, what follows is an account of peculiarities and distinctive elements concerning the methodology and the research process for each field. The core part on the findings and analysis follows, where the gathered data on the selected case studies and the theoretical propositions formulated in Chapter 3 are discussed. In each chapter, the last section draws conclusions on implementation based on findings and discussions concerning the research outcome in the selected area.

Chapter 9 develops the overall conclusions of the study. It considers the findings of each policy area by discussing the more general and final conclusions of the research project. It explains the outcomes on the basis of the theoretical propositions in the Albanian case and spells out the consequences of the findings of the study for a better understanding the process. It elaborates some implications that this study might have for the field of study and the related theories. In addition, it assesses the experience of implementation in Albania and gives some concrete recommendations that can help with the process. The chapter concludes by giving some suggestions on potential directions for further research regarding the implementation literature in general and the Albanian case.



## CHAPTER 2 LITERATURE REVIEW ON IMPLEMENTATION

The implementation of legislation and policies is a complex process. It becomes even more difficult when pre-designed agendas, suggested by external actors, are adopted in countries with limited institutional capacities and difficult legacies in terms of lack of stability and democracy, such as Albania. As Smith (1973) has argued on this point, developed countries have an incremental nature to their policies, meaning that they do not require drastic change when introducing new policies and legislation. Developing countries do not have that kind of basis to start with. They lack constructive legacies and patterns; they have little time and an overloaded agenda when major change is aimed at (Grindle and Thomas 1991). All these elements constitute the background of the patterns that implementation faces in Albania as well.

In this chapter, I will explain the main theoretical background and framework of the study, by reviewing the most relevant theories and literature where the thesis is based. I start with the policy implementation theory since its beginning, in the 1970s, which has influenced all following works on implementation. The top down and bottom up debate follows. This discussion and its main contributors help in creating the framework for this study, since most of its variables are extracted from it. Matland's model, which follows, is also very useful for framing the approach assumed by the study. Its main characteristics are explained and a discussion on adapting it to the Albanian case follows. At the end of the sub chapter there is a discussion on new approaches of implementation studies, which focus on institutions, agencies and governance. The chapter continues into the EU policy implementation and compliance research. After the general conceptualisation and the explanation of EU's role in non member countries, the focus is on domestic changes influenced by EU pressure and about how these factors can influence implementation. This section focuses on the organisation of the transposition process, on administrative capacities and the role of non-state actors. A brief review of compliance literature on Albania concludes the chapter.

## 2.1 Policy implementation theory and analysis

### *2.1.1 The first wave of implementation studies*

Implementation studies began to rise and expand in the 1970s, when they were mainly concentrated around the Pressman and Wildavsky findings of 1973 and the later editions. In their study, they tried to analyse why a labour policy of the American federal state was not implemented efficiently in Oakland, despite broad political support. They argued that effective implementation is impossible in most cases because it requires the cooperation of a large number of actors in the process. All these actors try to influence implementation according to their interest. This work on implementation analysis represented a new approach within this little-developed field. The degree and strength of veto players' presence, the complexity of policies, the administrative capacities of bureaucratic officials, and the level of information available were some of the main variables considered of great influence in the implementation process. These factors have been developed further and have been expanded and used in the later models. Apart from being the pioneers of the field, Pressman and Wildavsky (1973) are most known for the emphasis given to the difficulties of reaching agreements between multiple actors at the top of the policy process. The complexity of coordination in the design and implementation of policies is a crucial aspect, which has been inherited in the other models that followed. This specific aspect of implementation affects all the process and might determine the policy outcome as well. It is considered as one of the most important variables when studying implementation. In the same line, according to Jackson (2001), implementation theory is about studying the relationship between the structure of the institution through which individuals interact and the outcome of that interaction. In the process of interaction, different patterns might affect the result, in terms of designing and implementing public policies. In order to study these patterns, institutional coordination and relationships between the actors involved in the chosen case study or context, need to be explored and understood. This part concerns my research work as well, since it is necessary for understanding implementation performance even in the Albanian context. As will be explained in the following sections, coordination between the different actors involved in the process has been a constant variable for implementation since the beginning of the research work for this field and it continues so even in the more recent models on implementation and compliance with the EU.

Not only does the study of relations between involved actors help in understanding the design of the policy, but it explains also policy effectiveness in terms of implementation. Smith is another early scholar who has initiated the exploration of the field, especially in this direction. In his work, Smith (1973) has argued about the importance of the consultation process with the interested or affected parties in the policy process. His point is related not only to the effectiveness of a policy depending on consultation, but also on how this affects the legitimacy of decision making (which again would influence the effective implementation, going around in a sort of circle). According to Smith, each policy in itself is an attempt at inducing change in patterns of interaction between individuals, groups and institutions. Therefore, apart from coordination, interaction and consultation with interested parties have been included as important variables since the early days of implementation studies.

Smith managed to structure all his claims in what became a well-elaborated model and an important reference in implementation studies. Despite the criticism towards his model in the following decade, it remains one of the first attempts to give some structure to this vast field. In his model, Smith (1973) described four main components of the policy implementation process, which determine the performance of implementation and which need to be explored in order to explain its patterns:

*first*, the idealised policy, which is about the content of the policy and its goals, focusing mainly on the design of the policy;

*second*, the implementing organisation, which considers the institutions and actors directly involved in the implementation process. This factor was further elaborated by other authors, shaping what has been called administrative studies;

*third*, the target group, objective of the policy. Smith elaborates the importance of this component in terms of the degree of organisation, institutionalisation, experience, etc. of the interested group;

*last*, environmental factors, which are related to the context and the specific conditions and characteristics of the country.

These categories helped to structure and develop further what Pressman and Wildavsky had started. Most of the authors of implementation studies based their work on this model and its components. The added value of Smith's work in the field is not limited to structuring and describing these variables, but also suggests how to focus research on the tension between these four components. He claimed that in order to understand and explain policy implementation, it is necessary to study how these four elements are also

related to each other and how they interact with each other, in terms of fulfilling necessary conditions for a policy to succeed in implementation. Despite the fact that Smith's model has been criticised for assuming a rather simplistic and linear approach, this last point about the tension between the factors and interests involved, suggest a more complex view of his model.

### *2.1.2 The top-down and bottom-up debate*

After Pressman and Wildavsky's debut in the field and Smith's model, one of the most prominent scholars of implementation is O'Toole. During the early 1980s, implementation studies expanded considerably. In his work of 1986, which is considered to be one of the main assessments of the implementation literature, O'Toole (1986) reviewed more than 100 hundred implementation studies. In these works, he collected references to over 300 key variables related to implementation. O'Toole's account confirms the width of this field and the vast amount of theories and models developed. This is why, Matland (1995) claims in his work, that in implementation studies, no more variables are needed and that this literature needs structure.

As mentioned, this field of study had already known some structuring previously (Smith, 1973), but it was only in the 1980s that it could finally be concentrated, thanks to the division of most of the relevant scholars into two main schools of thought: the top-down and bottom-up. After this, different approaches and variables gained new perspective. A third group developed later, as an attempt to combine the first two. The top-down and bottom-up approaches seem to structure the explanation of implementation in different ways by setting up different clusters of independent factors and variables.

Top-down models (Van Meter and Van Horn, 1975; Mazmanian and Sabatier, 1981; 1983) see the starting point of the process in the authoritative decision-making of mainly central and high official actors. This has led to the concentration on variables that can be manipulated at the central level. More specifically, Van Meter and Van Horn (1975) have developed 6 clusters of variables that need to be explored in order to understand and explain implementation: policy standards and objectives; the resources and incentives available; the quality of inter-organisational relationships; the characteristics of the implementation agencies, organisational control; the economic, social and political environment; the disposition or 'response' of the implementers,

involving three elements: their cognition (comprehension, understanding) of the policy, the direction of their response to it (acceptance, neutrality, rejection) and the intensity of that response. These variables are largely used in other later models as well, especially in those dealing with top-down theory. As Matland (1995) sums it up, top-down explanations for analysing and improving implementation performance can be synthesised in four simple suggestive elements or rules:

*first*, policy goals should be clear and consistent (Van Meter and Van Horn, 1975). This is entirely linked to the policy design stage, where, according to this model, elite's and policy makers' discretion and influence plays the most crucial role;

*second*, the number of actors should be minimised (Pressman and Wildavsky, 1973). Following the early studies suggestions, the less people are involved in the process, the more successful implementation will be. The top-down approach considers this an important element, which has been developed further in terms of veto players and their role in implementation;

*third*, the extent of change necessary should be limited (Mazmanian and Sabatier, 1983). In order to avoid tension and obstacles to implementation, top-down scholars suggest focusing on the policy by limiting any structural or related change;

*fourth*, implementation responsibility should be placed in an agency sympathetic to the policy's goals (Matland, 1995). Institutions sometimes resist policies and try to maintain the same patterns and advantages. This becomes even sharper when agencies have a different vision and point of view to those of the policy makers and political elite. For this reason, the top-down approach recommends avoiding possible deviations in implementation by preparing ahead the process on the top and engaging friendly agencies.

This group of suggestions, derived from Matland's account of top-down works, tries to address implementation issues focusing only at the top. This model has been criticised for different reasons. First, top-downers do not deal with the policy-making process as a whole. By neglecting the initial phases of the policy formation they fail to capture the many barriers that implementation carries on from early stages, such as coordination, participation of interest groups, street level bureaucrats, etc. Second, the top-down approach considers implementation as a purely administrative process. With emphasis on clarity of rules, they tend to divide administration from politics. They assume that once the input exists, everything is purely administrative and the process rolls smoothly. Third, top-downers see low level actors as obstacles to successful implementation,

elements to be controlled, and not as active participants to the process. This narrow point of view fails to capture the larger picture of implementation, especially when dealing to complex policies (Hjern and Hull 1982; Lipsky 1978).

By contrast, the bottom-up model argues that a more realistic understanding of implementation can be obtained by looking at a policy from the viewpoint of the target population and the service deliverers (Berman, 1978; Hjern and Porter, 1981; Hjern and Hull, 1982; Lipsky, 1978). Most advocates of this approach argue that implementation problems result from the interaction of a policy with the micro level institutional factors. The central actors cannot impose any direct influence at this level. Therefore, environment and contextual elements might dominate the rules created at higher levels, and policymakers will be unable to control the process. Once they have designed the policy, implementation can be explained only by exploring the lower stages. The bottom-up approach theorists have also reached a conclusion that, if local, or the so-called street-level, implementers do not have the freedom and possibility to adapt policies to domestic conditions, implementation is likely to fail. They argue that there cannot be a theory of implementation which is “context free” (Palumbo, Maynard-Moody and Wright, 1984). Since it is at the micro level that policy affects people directly, then street-level bureaucrats must be involved in order to understand and interpret goals, strategies and expected outcomes of policies. Lipsky (1980), in his book “Street-level bureaucracy”, discusses how the discretion of street-level bureaucrats, their autonomy and resources can play a major role in implementation, as proper policy makers in the field. Lipsky claims that the decisions of street level bureaucrats, the routines they establish, and the instruments they invent to cope with uncertainties and pressures, effectively become the public policies they carry out and are crucial to understanding the policy process.

As we can see, while the top-down model has a tendency to present suggestions and advice in terms of managing the process, the bottom-up version is more oriented towards the factors that have caused difficulties in pursuing successful implementation. For this reason, bottom-up research usually has a strong inductive nature. Its main finding or recommendation is the need for a flexible strategy that permits adaption to local realities and contextual factors (Maynard-Moody, Musheno, and Palumbo 1990 in Matland 1995). This model offers a more comprehensive framework for understanding the implementation process in depth. The importance of the role of street level bureaucrats in interpreting and adapting policies to the context, seems an interesting

variable to be explored in the Albanian efforts for implementing EU legislation. However, there are some shortcomings in its assumptions as well.

There are two main groups of criticisms to bottom-up models. The first one deals with legitimacy issues. Since street level actors are not elected and not vested with popular mandate, their discretion and flexibility in the implementation process should not serve as a focus for designing policy. They are not entitled to interfere with the process, especially when altering the policy goals. As Matland (1995) points out, this autonomy might be adequate when the goals of the policy designers and the implementers are the same, but if they differ in a considerable amount, flexibility might lead to policies which fall short of official goals. Therefore, the role of street level bureaucrats needs to be explored widely, in terms of easing implementation from one side, but also in terms of the degree of the shift in policy goals, due to the level of flexibility.

The second criticism is about methodology. Bottom-up authors try to capture perceptions and therefore rely on different interpretations of the actors involved for explaining implementation performance. This neglects the fact that central actors structure the goals and strategies, available resources, etc. Thus the decision to give space and flexibility belongs anyway to central actors. This suggests that the bottom-up approach is not sufficient for explaining the process and its outcome, since it dismisses the central actors, even regarding the role and influence they have upon lower levels.

Although these approaches seem to cover the main features of implementation, there has been wide discussion and criticism of them, mainly based on their simplifying tendency and rejection of each other's assumptions. Despite the fact that they both offer interesting explanatory factors, a combination of the two perspectives seems to reach a better position in terms of explanatory power (Elmore 1982). Reconciliation of the two approaches has been attempted by either specifying in advance the policy objectives, detailed means and goals, and outcome criteria, called 'forward mapping' by Elmore (1982) or specifying the behaviour needed to be changed at the lowest level, named 'backward mapping' (Matland, 1995). This allowed the consideration of the views of the target groups and local implementers. A combination of the two approaches was also seen when interest groups were made the unit of analysis. Advocacy coalitions are groups of policy advocates who share the same set of beliefs and goals (Sabatier 1986). When scholars tried to study their impact in implementation processes, it was unavoidable to include both approaches in the analysis, since they interact with both levels.

Elmore's forward and backward mapping approach, mentioned above, includes the analysis of both levels – high and low (Elmore, 1982). Beyond mixing up the two schools of thoughts and claiming the importance of micro implementers and target groups, Elmore's model has been criticised for lack of explanatory power. It has not been considered a theoretical model in the traditional sense. There are no causal relationships involved or hypothesis formulated in his work and thus, it can only offer an interesting discussion about the two models.

Another attempt to mix the two main models has been pursued by Goggin et. al (1990). They have elaborated a communication model of intergovernmental policy implementation that considers implementers as part of a communication network. They refer to three main variables: constraints from the top, constraints from the bottom, and specific factors dependent on decisional results and state capacity. Goggin et al put communication at the core of this model and state that information is perceived differently. If there is distortion, these contextual specific conditions can affect interpretation. Grindle (1980) also puts emphasis on the importance of context when analysing the policy process. This approach is very useful for explaining the Albanian case, especially in terms of communication, understanding and interpreting rules and procedures within and between different institutions and actors.

### *2.1.3. Matland's model*

One of the most important and relevant approaches for this study has been formulated by Matland (1995). He has done an interesting work in synthesising and structuring the main aspects of the two models and in developing his own model. From my perspective, his 'ambiguity-conflict model' is a very useful framework for exploring implementation in different contexts, since it offers a valuable structure in terms of variables and explanations. He has developed a mixed model, based on two pillars: policy conflict and policy ambiguity.

Policy ambiguity refers to the quality of the design process of policies and its outcome. Ambiguity can be about goals and means. This relates directly to administrative capacities and other variables that affect performance of institutions. Top-down approaches have a clear position in this point: policy goals should be clear, otherwise they lead to misunderstanding and uncertainties, which might cause implementation failure. However, this approach might be misleading. As Matland argues, quoting from



Regan (1984), in the policy formulation stage of a policy, goal conflict and ambiguity can often have a negative correlation. Ambiguity can limit conflict – the clearer the goals at the upper levels, the higher the probabilities of conflict at the lower levels. Matland explains this point further by claiming that:

*“As the policy became more explicit, existing actors became aware of threats to their turf and acted to limit the scope and range of proposed policy changes to maintain existing patterns of bureaucratic power and structure. Under other conditions, ambiguity is often a prerequisite for getting new policies passed at the legitimating stage. Many legislative compromises depend on language sufficiently ambiguous that diverse actors can interpret the same act in different ways”* (Matland 1995, p. 158).

As related to policy means, ambiguity exists especially when there are uncertainties about the role and competences of the different actors involved in the process or when the complexity of the context makes it difficult to identify instruments to be used (Matland 1995). Even in this case, it is not clear whether ambiguity can be eliminated in the policy design process and if this elimination would produce better results in terms of implementation. Exploring this matter in the policy process of Albanian context becomes necessary for understanding in depth implementation, especially at the policy design stage. There is no doubt that ambiguity affects the implementation process. According to the degree of ambiguity, several variables might be altered, such as the possibility of monitoring lower levels' activities, the uniform understanding of the policy in the different stages, the role of environmental factors, the number and nature of actors involved, etc. (Matland, 1995).

Policy conflict is linked to resistance towards a certain policy, where veto players, interest groups and other actors cause tension and conflict which can serve as obstacles to the implementation process. As Matland (1995) puts it, conflicts arise when actors or organisations that see a policy relevant to their interests, have different views on policy goals or planned activities for the implementation of that policy. The degree of the conflict depends directly on the degree of incompatibility of views and on how actors perceive their stake in the process. Policy conflict would affect even the cases when there is delegation to sympathetic agencies, if there is clash with their goals, which might result in little support for implementation. There is an ongoing debate between top-down and bottom-up scholars about whether conflicts in implementation can be manipulated or not. While the top-down approach sees manipulation of conflict as possible, bottom-uppers see conflict as an independent variable or as a given (Berman,

1978). Despite this debate, some policies are inevitably contentious due to their nature and discordance they bring in terms of values. This might become relevant in processes where policies are adopted from outside normative powers, such as the EU, and transposed in challenging environments, when there is resistance.

By combining these two elements in their respective degrees (high and low), Matland (1995) has generated four implementation perspectives/scenarios. Based on the degree of ambiguity and conflict involved in the policy process, the four types of approaches to implementation that can explain different contexts, according to Matland, are:

*the political approach* is used when conflict is high and ambiguity is low. In this case, outcomes and implementation are entirely determined by the central actors and the power. Policies are clear, but political conflicts do not permit their implementation and enforcement. This pure top-down approach helps in explaining implementation in countries with developed administrative capacities, but with political tensions between different groups or institutions;

*the symbolic approach* is used when both conflict and ambiguity are high. The outcome in this scenario depends on the strength of local coalitions and local actors. Implementation can succeed depending only on the strength of the different groups involved in the process;

*the administrative approach* is used when both conflict and ambiguity are low. The result in this model is determined by the resources. Other than that, there is no obstacle to successful implementation;

*the experimental approach* is used when ambiguity is high and conflict is low. This is similar to a mix model of top-down and bottom-up approaches, where outcomes are decided by the contextual conditions.

Matland's model offers interesting points which will be used in this study, as a framework with potential explanatory power. Drawing also from his model, theoretical propositions will be used for exploring the Albanian policy process and for explaining implementation patterns, as described in Chapter 3.

#### *2.1.4. Other main developments in implementation studies*

In the previous sections, the core theories and models on implementation were reviewed. As Gunn (1978) claims in his book "Why is implementation so difficult?", there is no prescriptive or perfect model for implementation. However, by exploring the

main views and variables focused on explaining the implementation process, it is possible to build a theoretical framework for different cases and contexts (Barrett and Fudge 1981). The theoretical approach of the study will draw some of its structure from the theories reviewed in the previous sections. Implementation theories evolved further during the 1980s and after, thus bringing into the wider picture some new features, related especially to organisational elements is necessary for completing the design of the study. Although a good part of these recent elaborations have just developed further the notions explained above, others offer new approaches to implementation, especially in terms of institutional mechanisms. In this section, I will explain three other ‘minor’ approaches to implementation, which have tried to enrich the body of literature and which are useful for my research design as well.

*First*, Ruhil and Teske (2003) have based their work on explaining the role of institutions in shaping policy and claim that different institutional structures and rules are likely to generate different public policy outputs. Ruhil and Teske’s position points out the importance of regulatory decisions within institutions and how they can have direct impact on the policy process. These decisions are made by institutional actors and thus their involvement in this stage needs to be explored. In the regulatory approach, more recently, Staronova (2010) has contributed by focusing on new mechanisms that help the policy process, such as Regulatory Impact Assessments (RIA). Staronova, by looking into the institutionalisation of this practise, explains three fundamental dimensions of the RIA: a) Regulatory issues addressed, such as identification of the problem, of objectives of the intervention, policy options available, monitoring and evaluating; b) Identification of the impact in the related areas, which means quantification of costs and benefits, eventual mutual tradeoffs; c) Consultation process, concerns the modalities in which affected parties are identified and then involved into the policy making process (Staronova, 2010). The study of these elements and how they are adopted in each context is important for understanding institutional processes and policy mechanisms.

Zubek and Goetz (2010) point out also the importance of resources, especially when adopting complex policies. They claim that rules and institutional effects are dependent on resources. In elaborating this ‘resources dependency theory’, the authors discuss the link between the successful quest for resources and an organisation’s power. March and Olsen (2006) have explained institutions as ‘a relatively enduring collection of rules and organised practices, embedded in structures of meaning and resources’. Thus, apart

from the other parts of this definition which have already been explored, these new approaches towards the policy process bring a new perspective on the role of resources. This becomes even more evident in poor countries, lacking of financial and human capacities. The types of resources that Zubek and Goetz (2010) refer to are multiple, such as human, financial, physical, informational, organisational trust, organisational legitimacy, etc. It is difficult to quantify each of these, and more difficult to analyse their impact in the policy process. However, they are part of the explanatory variables that constitute implementation studies in general.

*Second*, agencies and networks have been included in the research literature as an important piece of the implementation puzzle. As Montjoy and O'Toole (1979) have observed, policies are implemented by organisations and thus, we need to study different scenarios where mandates for implementation are given to a single agency or different ones. What they suggest is a well structured approach, related to inter-organisation aspects of the policy process.

As Scharpf (1978) has argued, policy formulation and policy implementation are inevitably the result of interaction between a plurality of separate actors with different interests, goals and strategies. He has developed an approach in which coordination and collaboration are given a central role (inter-organisation theory). In this context, the focus that Scharpf's work on the need for specific type of coordination and the examination of factors facilitating or impeding it, is part of the theoretical design of the study. Coordination and interaction between different structures and actors is key for explaining implementation as well. Following up Scharpf's point on the importance of networks, Smith (1993) has elaborated further the concept and has explained why networks are crucial to the policy process. Networks facilitate the establishment of a consultative style of government. The presence of consolidated networks of involved actors reduces policy conflicts and encourages compromise. In addition, this approach will help in predicting policy making and knowing in advance policy interventions by the stakeholders. In return, this will help the institutional organisation of the government itself, by improving its coordination. This is what Bardach (1998) also supports, when he argues on the role of cooperation between agencies and different networks. He claims that one of the most difficult tasks in the policy process is getting agencies to work together. Each of them represents different interests, backgrounds and informal aspects.

With reference to implementation agencies, Hogwood and Gunn (1984), in their work *“Policy analysis for the real world”*, have argued on how agencies’ coordination can be an obstacle to implementation success. In the presence of a single implementing agency, in order to succeed, it needs not to depend on other institutions in its activities. If other institutions are involved, then the dependency relationships should be reduced as much as possible. This approach based on dependency has been developed by the authors exploring four different views: structural, procedural, behavioural and political. In all these approaches, the nature of agency involvement in the process is seen as one of the crucial variables that explains implementation.

*Third*, new directions in implementation research have pointed to governance implications. The last approach I have chosen to consider is a relatively new field, derived from implementation theories, which is the concept of governance in the context of implementation. Hill and Hupe (2009) are two of the most prominent scholars that have developed a theoretical framework for governance. First, they base and focus their work on the differences in policy styles and organisation of administration. Although this looks more useful for cross country comparative works, there are some interesting elements that relate to my study as well. They claim that the so called public-administrative style of a country or institution needs to be explored in order to understand implementation and the type of governance ruling the policy process. This investigation needs to include especially an analysis of the differences in terms of approaches that institutions have towards regulatory policies. Hille and Hupe have elaborated a very interesting framework that tries to structure operational governance responses at the different stages, based on the differences between inputs, outputs and outcomes. Table 1 offers an interesting summary of the authors’ conceptualisation of governance and how activities can result in terms of management for each stage.

Hille and Hupe’s scheme is very clear when looking into the first stage, but it is a bit vague in the other two stages, especially in terms of the result of operational activities. The ‘management via inputs’, which is the most relevant for this study, creates an opportunity for completing further the research design by including these (already mentioned) variables in a more structured way, directly connected to governance and implementation performance.

Table 1 Modes of operational governance (adapted from Hill and Hupe 2009)

<b>Operational activities</b>	<b>Enforcement (Management via inputs)</b>	<b>Performance (Management via outputs)</b>
Managing policy processes	Making mandates explicit	Creating interfaces
Managing inter-organisational relations	Creating clarity on tasks and competences. Taking care of sufficient resources	Enhancing contract compliance
Managing (external and internal) inter-personal contacts.	Enhancing motivation and internalisation. Realising compliance to standard operating procedures,	Enhancing and maintaining service orientation. Rewarding target compliance.
Central management mechanism	Rules	Contract

Policy processes, inter organisational relations, inter personal contacts and the type of central mechanism have been mentioned and discussed above, but in Hille and Hupe's work these are explained more thoroughly and related directly to their implications. When it comes to the outputs and outcomes stages, the authors' suggestions do not offer a consistent mode of explanation, since the impact described is rather unclear and does not always relate directly to the operational activities. However, their work offers a good path for this study and generates some interesting trajectories for its research design.

## 2.2. Implementation and Compliance with the EU

As we have seen in the previous section, implementation theory has changed through decades, by including new elements that are related to society and institutional developments. In this context, the increase of the European Union's role in shaping institutional dimensions of the European countries, has further contributed in enriching the field by creating a new 'branch', namely, EU compliance literature. This area has become important in an incremental mode: the more the EU legislation expanded, the more focus scholars have given to compliance and implementation in the EU. The expansion of research in this direction has had a useful impact for practitioners too, because, as has been argued by Knill (2006), 'from analysing potential implementation deficits, it becomes possible to draw conclusions about improving the design of future

policies (concerning policy objectives, allocation of resources, structures of coordination, control of subordinate administrative agencies)' (Knill 2006, p. 361).

In this section I will explain how implementation studies have been used in the EU context and the main theoretical works and variables used by scholars. In addition, I will look into the role of the EU itself in this process and the specific involvement of its institutions in pressuring for effective implementation in non member states. The section also explores the domestic responses to compliance and the internal factors that influence practical implementation of EU legislation, especially in terms of institutional framework, administrative capacities and regulatory approach adopted in a country. The last part of the section is more focused on the role of domestic non-state actors in the process of compliance and implementation.

### *2.2.1. Implementing the *acquis**

Before looking into the factors and patterns of EU policy implementation, it is necessary to discuss and define what compliance with the EU is and, more specifically, what is implementation in the context of EU policies. Many times we find ambiguity in this area and different concepts are confused, such as transposition, adoption, approximation, compliance and implementation. The purpose of this section is to distinguish between the different meanings and uses, based on the main debates in the literature, and then explain the concept used for this study.

As Bardach (1977) has explained it in his work, *The implementation game*, 'Implementation is a process of assembling the elements required to produce a particular programmatic outcome'. With specific reference to EU accession, Bursens (2002) has identified four consecutive stages that the implementation of European regulations encompasses:

1. Formal transposition (or adoption)
2. Practical application (implementation)
3. Enforcement/control
4. Outcome/results

Most of the scholars in the beginning of EU policy implementation studies have focused on formal transposition of the *acquis*. As Grabbe (2006) has pointed out, 'formal alignment with the *acquis* in legal and institutional terms was the most measurable dimension of the accession process, because observers could count how many laws had

been rewritten or introduced' (Grabbe 2006, p. 32). For this reason, implementation is often used as synonymous with transposition, but, as Giuliani (2003) argues, this does not explain whether we are looking at the legal aspects of incorporating the *acquis* in the national legislation or to the actual achievement of the goals of the original EU policy. However, the dichotomy presented by Giuliani is also misleading. He tries to depict compliance as 'achievement of the goals', which suggests a discussion on the outcomes and results of a particular policy, whereas we will see that compliance is the in-between stage.

Cini (2003) makes a distinction, which is useful for this study, between legal implementation and practical implementation. She associates legal implementation with the formal process of transposition, while, on practical implementation she claims that it is about 'ground or street-level implementation, involving direct application of the legislation, and not just its translation into domestic law' (Cini 2003, p. 353). In her work, Cini has explored further the implementation issue, enriching the debate between top-down and bottom-up approaches in the EU context, and by offering a useful distinction between three different conceptions: indirect implementation, direct implementation, and executive rule making. Although these concepts are mainly developed for the EU (member states) context and, therefore, are not directly relevant for this study, the conceptual explanations she gives are important for understanding the complexity of "multi-level exercises", such as in the case of EU policy making. Cini (2003) has pointed out that the complexity of EU directives provides one of the keys to understanding implementation, when transposed to national level. Complexity, without adequate information and explanation of implementation mechanisms, can lead to implementation failure.

In relation to complexity, Falkner et al (2005) have also argued that 'the multitude of actors involved at various levels and stages of an EU Directive's life cycle offer numerous possibilities for shortcomings in implementation and application' (Falkner et al 2005, p. 11). It does not relate to only one stage, it is the outcome of a multi-phase process, including law-making at domestic level (which may involve adopting new rules or adapting existing ones) and control of these laws with regard to their application in practice (Falkner 2010). This approach has made Falkner one of the main contributors to EU policy implementation studies. She considers the implementation process as divided into two major phases: transposition into domestic law, and enforcement, encompassing monitoring and application. The second phase needs more attention,



since legal transposition is not followed up properly in many cases. More specifically, Falkner et al (2005, 2007) have focused their work on the lack, or distortion, of compliance, which is an important aspect that explains the deficit. According to Falkner et al, non compliance can be due to domestic opposition (intentional non compliance) or inability (unintentional non compliance). For the second case, she concludes that the main factors that explain non compliance are the different interpretations of the *acquis*, administrative problems and political instability.

More specifically, Falkner et al (2005; 2007) elaborated an explanatory framework for transposition and implementation failures of EU Directives. They argue that non-transposition can happen due to inertia or stalemate. The first one is linked to two issues: inefficient public implementation structure and lack of societal activism. An inefficient or paralysed (as Falkner et al call it) public implementation structure can be due to general lack of capacities, misunderstanding or misinterpretation of directives, administrative overload during the time of transposition, lack of proper monitoring, etc. Lack of societal activism of private actors (who are important for pressing for successful transposition and implementation) can be linked with lack of capacities of these actors or because of lack of access to relevant authorities or structures. This would leave them reliant on the national or European courts' decisions as the only option for influencing correct implementation and enforcement of EU directives.

Falkner et al (2005) point out some minimal requirements that countries need to fulfil in order to guarantee proper implementation and enforcement of directives. First, coordination and steering capacities are crucial. The number of actors involved, their organisational form, hierarchical framework, etc., are important elements that can determine the outcome in terms of implementation. The second minimum requirement is pressure capacity. On this second element, Falkner et al (2005) focus more on resources for pressure and sanctions. The important thing is the probability of non compliers being punished and thus the focus is on number of inspections, resources of inspectors, fines applied, etc. The third element concerns availability of information. Here non-state actors play an important role. They can fill in the information gap for citizens, where state actors fail to do so. Implementation is uncertain in countries with weaknesses in information provision (Falkner et al 2005).

Knill (2006) has elaborated further the concept of implementation referring to the differences between the stages of compliance with the EU. He distinguishes between formal transposition and practical transposition. In formal transposition, the focus of the

study is about the legal and administrative provisions of European law into the national legal and administrative problem. Thus, this perspective considers more the formal adoption of legislation without looking into the implementation. The criteria used for studying this process are mainly the timeframe of adoption, completeness of the transposition and the correct integration into the regulatory context of the case study (Knill 2006). On the other hand, the study of practical transposition, according to Knill (2006) tries to reveal and explain the process in the next stage, by focusing on the national regulation practice which includes mainly the regulatory style and the study of organisational and administrative structures. In this case, other criteria are used for exploring the process, such as the correct application in practice and the adherence to legal guidelines (Jensen 2007).

Another important concept which is directly related to compliance is 'rule adoption', elaborated by Schimmelfennig (2008) Schimmelfennig and Sedelmeier (2004, 2005), other relevant contributors to this field. What Schimmelfennig and Sedelmeier call 'rule adoption' is also a complex process of transposition of EU law into domestic law, which requires the restructuring of domestic institutions according to EU rules or the change of domestic political practices according to EU standards (Schimmelfennig and Sedelmeier 2005). In their work, they analyse main factors that link conditionality and policy implementation.

When arguing about new modes of governance in the EU compliance field, Tanja Börzel considers EU policy effectively implemented only when certain conditions are met. First, the directive has been incorporated correctly into national legislation, by resolving possible clashes with national rules (formal implementation). Second, the administrative resources have been provided to meet the policy objectives and to put them into practice (practical application). Third, when effective monitoring of authorities has been set up (Börzel et al, 2007).

These different views and conceptualisations of EU policy implementation point to a very similar ground in terms of definition. For compliance with the EU, the legal act needs to be translated into practical implementation of EU policies and not stop at the legislative transposition stage. Therefore, in order to understand and explain implementation, it is necessary to explore the phase between formal adoption of EU policy into the national legislation, to actual enforcement in practice.

### 2.2.2. *The EU's impact on accession countries' implementation performance*

In the process of EU integration and compliance of non member countries, the role of EU institutions is particularly relevant. Many authors (Epstein and Sedelmeier 2008; Featherstone and Radaelli 2003; Grabbe 2001; 2002; 2006; Haughton 2007; Hughes et al 2004, 2005; Lavenex and Schimmelfennig 2010; Linden 2002; Pridham and Agh 2001; Schimmelfennig 2008; Trauner 2009; Vachudova 2002; 2005, etc.) have elaborated the concept of conditionality and how it operates in exercising pressure for change in non member countries. There are several ways in which the EU assists and influences in these cases. First, it works by providing models in terms of legislative and institutional templates that the country needs to adopt (Aggestam et al 2008; Bagenholm 2006). Second, the EU provides generous financial aid through its programs, which include technical assistance as well. Third, EU institutions have elaborated a well-structured framework of benchmarking and monitoring of the process in the specific country. Other programs include advisory services and twinning projects, which have proved to be efficient in previous enlargements. Last, but not least, conditionality is exercised by allowing the EC to function as gate keeper for the accession to negotiations and the advancement to the later stages towards membership (Grabbe 2005). Related to this last point, Mayhew (2000) has argued that "the best way to achieve implementation of the *acquis* in the candidate countries is to give a clear perspective on accession rather than the confused messages, which are being sent today. If it is not clear that accession is going to take place in the near future, there will be less enthusiasm to implement parts of the Community *acquis*, which are not in the interests of the candidate country while it is outside the EU" (Mayhew 2000, p. 11). With the help of these mechanisms, the EU Commission has increasingly stressed the need for effective implementation of EU policies, not just formal adoption. As Grabbe (2005) has observed:

*"The implementation stage is critical to understanding how the EU affected policy and policy-making in CEE: it is the interface between domestic and foreign policy, and it determines the impact of conditionality. The EU's influence on detailed policy formation and implementation is mediated by domestic actors; determining the manner and the extent of this mediation requires empirical enquiry"* (Grabbe 2005, p. 63).

Grabbe's model argued for an expansion of the framework by including the implementation phase, moving beyond its current focus and shifting to the phase between process and outcome. This shift of the focus towards implementation has

brought more detailed attention to technical issues and has raised the awareness on the complexity of EU policies and how to simplify the process and assist non member countries.

Schimmelfennig and Sedelmeier (2005) have enriched this debate on EU influence in the policy compliance process by elaborating the models of external incentives and lesson drawing. There are different opinions on the direct impact that incentives given by the EU have on policy implementation, especially in the different stages of accession. However, Schimmelfennig and Sedelmeier's model points out the role of external incentives as a major driving force towards compliance, when other conditions are met (capacities, no veto players, etc.). Andonova (2005), in a paper on Europeanisation of environment policy, has developed further Schimmelfennig and Sedelmeier's point and has explored the role of external incentives in adopting and implementing environment policies. According to Andonova, especially in the accession stage, lesson-drawing attitudes and social learning of the national administration play important roles in terms of successful implementation. Following this argument, research has shown that the social learning-type impact that EU policy mechanisms bring is important in smoothing the accession process and improving the efficiency of massive rule adoption in the accession countries (O'Hagan 2004).

These arguments vary across policy areas. As Toshkov (2008) has explained, sectoral differences in transposition lead to asymmetric adaption. Areas of negative integration, such as Internal Market, adapt faster to EU rules, whereas areas of positive integration, such as environment, lag behind. Transposition of trade directives is considered 'negative' integration because it is about removing existing barriers rather than applying a new regulatory regime (Toshkov 2008). This is an important difference, which needs to be taken into consideration especially when building the analytical framework and research design of a research study.

Another interesting analysis on how the EU influences compliance in non member states has been offered by Börzel (2002). She has conceptualised an 'EU push and pull' model that can explain the direct and indirect role of the EU in the implementation process. According to Börzel, the EU interacts with three different types of actors in a non-member country which need coordination: administration, non-state societal actors and companies. The EU provides all three groups with legitimacy (by supporting them in the public opinion and recognising them), financial and technical assistance (available for the groups in different modalities) and twinning programs (which vary

between the groups). At the same time, by offering these instruments, the EU influences policy implementation indirectly by improving policy makers' work, through societal actors and companies. According to Börzel, apart from what the EU provides for public administration, the latter receives services from societal actors and companies as well (information, expertise, and legitimacy).

### *2.2.3. Domestic factors and responses to compliance*

Domestic reaction and adaption to the changes required from transposition and implementation process has attracted considerable focus in recent years. Risse and Börzel (2003) have discussed possible 'misfits' between European level and domestic processes, policies and institutions. They argue that the degree of this misfit is translated in adaptation pressures, which is positive for policy compliance. However, certain conditions need to be fulfilled in order to have the expected results from adaption pressures. There should be appropriate institutions that can facilitate change by responding to these pressures. The degree of adaption pressure determines the extent to which domestic institutions will have to change in order to comply with transferred policy and its rules (Börzel 2002). Consequently, 'these mediating factors enable or prohibit domestic change, and they account for the empirically observable differential impact of Europe. Europeanisation might lead to convergence in policy outcomes, but at best to clustered convergence, and continuing divergence with regard to policy processes and instruments, politics, and polities' (Risse and Börzel 2003). Confirming Risse and Börzel's view, Knill (2006) has concluded that "implementation performance of EU policies is not affected by the choice of instruments per se, but by the degree of institutional adjustment pressure resulting from EU policies for national arrangements" (Knill 2006, p. 364). Knill argues that the degree of institutional change required can determine implementation performance. Implementation deficit probability increases with the extent to which EU policies require changes in strongly institutionalised domestic regulatory styles and structures (Knill 2006). The level of resistance of already established structures can influence considerably the implementation process. This is why it is important to understand the level of institutional resistance to the domestic policy-making actors who struggle to undertake necessary institutional changes.

In his book "The Europeanisation of National Administrations", which represents a considerable contribution in this area, Knill (2001) has explored the dimensions of

administrative change due to EU pressure. In order to understand the direction and the degree of domestic change, among other things, he suggests to study the allocation of competences. This means that it is necessary to analyse whether, due to EU influence, there is more centralisation or decentralisation, and if there is more fragmentation or concentration of competences. Knill has linked these patterns in his model, which he uses to explain domestic change in public administration. His framework offers interesting variables, especially for scholars who are focused on the institutional dimension of EU processes. However, he does not provide exhaustive comparative evidence that connect the pattern of domestic change to EU conditionality.

Falkner et al (2005) have also returned to the importance of institutional fit or misfit, drawing on Knill's work to explore the degree of compatibility or incompatibility between European policies and national administrative structures and traditions, including established interaction patterns between state actors and interest groups. They suggest that domestic change of these components is dependent also on the ability and flexibility of national institutions and actors to adapt. They debate with previous positions of other scholars who believed that, in the context of domestic adaption, starting from scratch would facilitate change, adaption and transposition. Falkner et al reject these conclusions, despite the fact that different scholars have reached these results. They start by quoting and arguing the idea of Kenneth Hanf (1991), who claimed that 'it is easier to implement a directive where no prior statutory rules are in place than in the presence of an established legislative system. Implementation is facilitated by the fact that governments can begin from scratch. They have more troubles in reorganising their established systems to bring them in line with EU requirements' (Falkner et al 2005). Following this argument and borrowing a phrase from Fritz Scharpf, it seems that planting new trees should be easier than rearranging old forests. However, as Falkner et al point out, the literature offers different perspectives on this issue. Therefore it is interesting to explore it in the Albanian case.

In the discussion about domestic changes from EU pressure and the impact on implementation performance, overall there seem to be four areas which are crucial to understanding compliance: a) *institutional design and coordination of the implementation process*, b) *administrative capacities*, c) *regulatory framework*, and d) *the role of non-state actors*.

a) The choice of *institutional design in the implementation process* plays an important role for the outcome of a policy. New democracies had to create and consolidate a sustainable set of institutions that creates the framework for political games which influence the policy output. Policy output, consequently, is dependent on interaction between formal institutional structures and actor constellation in a given regime (Jahn and Muller Rommel 2010). The first key word is coordination of the process. Once it is decided that a policy is to be transferred, institutional and actor related factors interact to shape the process and coordination is crucial (Unalan 2009). We have already explained previously about the role of coordination design and patterns in the early implementation studies, but, in the context of transposing EU policies, it is necessary to review some additional concepts deriving from more recent work. In general, as Steunenberg (2006) points out, the current literature on the EU tends to emphasise the EU legislative coordination stage in which policy is shaped by the interactions between the core European institutions and/or member states. However, such view is not entirely accurate because it does not explain how the ambitions formulated in Brussels are then implemented in the national administrations (Steunenberg 2006). Especially in terms of institutional coordination, policy implementation performance varies according to the type of coordination. Dimitrova and Toshkov (2007) claim that there are obvious causal mechanisms linking coordination of EU integration processes within the executive and compliance with EU law. Falkner et al (2005) also argue that implementation problems of EU legislation are often caused by administrative coordination problems, such as lack of cooperation between ministries in charge of preparing parts of the legislation. Disagreements within inter-ministerial working groups are reported as an obstacle to implementation (Falkner et al 2005).

Coordinating work with EU actors can provide useful technical assistance and expertise in EU law to the line ministries. This would also affect the information flows between the government and the EU, and between governmental units, since they would adapt to the coordination system chosen. A good system of coordination can facilitate settling conflicts between different parts of the executive, which is a common pattern in accession countries. The consolidation of smooth coordination would bring other consequent benefits to the policy implementation process such as improving the focus and priority assignment from policy makers and it would also provide monitoring and early warning systems for the overall level of implementation within the country. Good coordination of EU policy making (between the different institutions involved at

domestic and European level) is not a sufficient condition for transposition, but a necessary one (Dimitrova and Toshkov 2007).

Steunenberg (2006) is one of the implementation scholars to have explored the role of coordination mechanisms in the EU policy implementation process. He argues that since it is normal to have differences in views between the higher level players and between the different levels, this might lead to political or administrative deadlock. This is why coordination systems are influential to the process. Furthermore, Steunenberg (2006) claim that coordination mechanisms allow lower-level players to draft an implementing policy, which provides these players with discretion. But the degree of discretion of lower-level players is not equal to the degree of discretion provided by the EU directive. Lower-level discretion is thus further shaped by national coordination mechanisms, going down even to the street level bureaucrats or inspectors. He suggests that if the contents of a directive implies the adoption of only one or more 'lower-level' instruments (such as Ministerial Orders or Government Decrees), transposition could take place within the framework of single-player coordination (Steunenberg 2006). This is why Steunenberg (2006) and Steunenberg and Toshkov (2009) argue in favour of single player and centralised coordination. They point out that single player coordination is better capable of adapting a directive to domestic preferences than is multi-player coordination. Single player coordination can avoid deadlocks and can provide more opportunities for a flexible transposition, which would allow actors to adapt the directive to their preferences (Steunenberg 2006). Although their view is very interesting, some policy areas need interaction and coordination between different actors, thus it is not possible to apply this mechanism to all adopted directives.

In one of her more recent works, Falkner (2010) stresses the fact that, before EU accession, while non member states usually have new domestic coordination structures to improve administrative capacities to transpose EU directives and to coordinate responses to the European Commission's units controlling transposition deadlines (Dimitrova and Toshkov 2007; Zubek 2005), the same has not been accomplished when it comes to institutions in charge of securing the application and enforcement of the standards laid down in the law (Falkner 2010). In this sense, policy implementation depends on the need of reforming the state institutions in terms of coordination resources and organisation. The appropriate institutional design and coordination needs to affect all levels of the policy process, from the policy maker to the inspector.



b) On the other hand, the second topic, *administrative capacities*, is a well explored variable in the implementation literature and it is considered to be the most influential factor for EU policy implementation, especially in post-communist countries. There are several works that have argued for the importance of capacities in different settings and approaches. Hille and Knill (2006) have concluded that implementation performance is mostly affected by administrative capacities and less from other possible variable, such as veto players or interest groups. In their findings, they claimed that practical implementation is more about bureaucracy than politics. Having a well consolidated and stabilised public administration is a major concern when studying implementation process in terms of state capacity (Knill 2001). In the case of EU accession, this is related mainly to the administrative capacities that are engaged directly with adopting and implementing EU policies. In order to face the challenges coming from EU integration, the largest share of the burden falls on the public administration and its capacities (Schimmelfennig and Sedelmeier, 2005). The administration performance is important in all stages of policy adoption, from the transposition, to implementation (Thomson, 2009; Toshkov, 2008). This element becomes even more important for the Western Balkans despite improvements due to EU assistance. As Fagan (2010) argues, state or governmental capacity is still the main factor that explains implementation performance.

For non member states such as Albania, the European Commission constantly points out the need for establishing a professional civil service as a crucial requirement for EU membership. For this purpose, the EC has developed a guideline on the necessary administrative capacities needed in the accession process (EC 2005). The new civil systems that have been adopted, in many cases, have not been the results of domestic driven reform, but rather the results of EU conditionality (Dimitrova 2002). Dimitrova (2002) claims that administrative capacity building under the instructions of the EU may not lead to the creation of stable institutions. She argues that this might happen for two reasons: first, in the case of administrative capacity the EU does not have a strong and coherent model. Second, the institution building process might not succeed because it does not include the preferences of domestic political actors, which can not exercise a veto as they would in case of member states. And this can prove to be damaging for policy implementation because, as Dimitrova (2002) explains further, "experiences with implementation in the EU show that actors sometimes try to win back at the implementation stage what they lost at the decision-making stage" (p. 186). As

Maniokas (2009) argues, when policies are transposed, applied and enforced, it is mainly due to a well-functioning administrative system designed for this purpose during the pre-accession phase.

With reference to compliance with the EU, Hille and Knill (2006) claim that peculiarities of national bureaucracies play a central role in shaping processes of Europeanisation and implementation of EU policies in general. Greater financial resources allow a prompter and more comprehensive implementation of policies because civil servants, their training, their computers and their offices, cost money.

Falkner et al (2005) highlight another implementation problem presented by EU policies for national administrations: the ambiguous wording of legislative measures. The potential lack of clarity and consistency in EU directives makes it difficult for national administrations to understand and interpret them. This creates the basis for further incomprehension at the lower levels when the policy will be designed and adopted. Therefore, the capacity of public administration to understand the complexity of EU directives is a relevant factor that influences implementation.

c) *Regulatory patterns and frameworks* are also domestic factors that influence implementation directly. When an EU directive is adopted, policy makers need to design policies to implement its requirements. In this process the regulatory style of the administrative and institutional actors might have an important impact on implementation. Toshkov (2008) claims that regulatory quality has had positive effect on transposition and implementation. The type of regulation acts adopted, their coherence and uniformity throughout the public administration, their efficiency, potential conflicts with other regulations, need to be explored as they are suggested to embed potential explanatory power for understanding EU policy implementation performance.

When discussing domestic change patterns, Knill (2001) has elaborated different scenarios for regulatory interventions, which need to be taken into account in the study of policy processes. He has built two ideal types of administrative styles: intervening and mediating patterns of regulations. The two models differ according to the patterns they represent in terms of deductive or inductive style, hierarchical or non hierarchical, substantive or procedural, detailed or flexible. The intervening regulatory style presents deductive patterns, where regulatory attitude is based on a quasi top down approach, where the regulatory approach is preset and somehow adopted from best practices and

borrowed models. It is firmly hierarchical, which present clear competences and organisation of the process. It is substantive and detailed in its content, leaving no room for discretion. By contrast, the mediating model of regulations is characterised by an inductive regulatory style, which is an approach that leaves more room for adaption and discretion of the actors involved in the process. It is non hierarchical and flexible, which permits to solve potential problems emerging in the transposition and practical implementation process (Knill 2001).

Although Knill has provided a useful framework for analysing regulatory patterns, his approach relates mostly to institutional change rather than its impact in the EU policy implementation process. Therefore, his two types model needs to be revised further and related to the influence it might have in policy compliance. Regulatory patterns might partly explain implementation performance at the different levels of the policy process. As Falkner et al (2005) have suggested in the case of street level bureaucrats, they need a more, putting it in Knill's words, 'flexible regulatory approach' and non hierarchical style in order to have not only the necessary resources but also the pressure capacity (such as sanctions). However, Falkner et al's conclusions point out that the type of regulatory procedure and style is not determinant for the policy implementation process. According to her findings, there is little evidence that the regulatory framework chosen by national institutions can explain different patterns of compliance. Apart from the fact that Falkner et al's findings are not validated in other studies (Ruhil and Teske 2003), her conclusions might not be the same in the case of cross policy analysis. Therefore, when looking into single case studies, such as in this project, regulatory framework can be relevant.

d) Last, but not least, an important domestic factor in response to compliance with the EU is *the role of non-state actors* in the implementation process. As mentioned previously, the literature of the involvement of non-state actors in the policy process is vast and many scholars have provided several variables that connect their activities to policy implementation. Interest groups and non-state actors in general play an important role in decision making and implementation of European policies. Lampinen and Uusikyla (1998) refer to corporatist settings of interest intermediation when elaborating further this concept. Neocorporatism considers a cooperative relationship between government and non-state actors as necessary for stability and predictability when policies are implemented. This arrangement would increase the stability and degree of

institutionalisation of policy networks at the national level and set more rigid rules for inter-organisational negotiations. Thus it can be assumed that a high degree of corporatism can improve the conditions for implementation (Lampinen and Uusikyla 1998).

As Knill has observed, *"implementation more often implies complex interactions between public and private actors and organisations at the national, regional or local level, with potentially diverging interests, beliefs and perceptions with regard to the underlying policy problem"* (Knill 2001, p. 362). Therefore, the bargaining process becomes relevant. Jacoby (2005) argues that change can be better explained if we analyse the level of openness of the policy-making process in terms of involvement of non-state actors and in terms of influences by other international actors. He points out that these elements affect the process especially in cases when social-learning mechanisms are crucial to the transposition process.

Interest groups and other non-state actors exert pressure on reluctant public administration to fulfil EU requirement (Börzel 2002). They can push for implementation. In addition, as Degnbol-Martinussen (1999) claims, when external pressure groups are excluded from the policy design and decision making phase, they might oppose effective implementation and enforcement, impeding the achievement of the policy objective. In this way, governments fail to predict the costs of designing policies without consulting stakeholders. Some best practices from other countries have suggested the creation of mandatory monitoring committees with interest groups representatives for main directives and policies.

Knill (2001) has contributed to this debate as well. He points out that the dimension of administrative style is not only affected by aspects of regulatory intervention which define the rules for public/private interaction, but also by institutionalised relationships shaping the interaction between administrative and societal actors. Thus it is important to study the type of relations that these actors have established with institutions. In this perspective, Knill has built a model that depicts patterns of these relations, which he has called administrative interest intermediation. It tries to explain the different patterns of interaction and relations by exploring whether the type of intermediation is legalistic or pragmatic, adverbial or consensual, formal or informal, closed or open, privileged or equal access. By analysing these characteristics, it is possible to understand the impact that non-state actors can have in the policy implementation process. Of course, as explained in the above sections, their influence will also depend on their capacities,

coordination and level of expertise. But with specific reference to EU policy implementation, the role of non-state actors is very important and needs to be taken into account when studying compliance.

## 2.3 The Albanian case and the contribution of this study

### *2.3.1 Literature on EU accession and compliance of Albania*

After the fall of communism and the beginning of democratic transitions in Central and Eastern Europe, EU studies literature on the area started to develop rapidly. This development was much slower for the Western Balkan countries which represented some sort of periphery, mainly due to their instability and conflicts, and therefore, literature was much more focused on nationalism, state building, ethnic conflicts, minorities, etc. However, since the early 2000's, this region was included more in EU accession and integration works. When considering relevant literature on Albania, it can be depicted as the periphery of the periphery, because there is a considerable gap in EU accession and implementation studies regarding this country. This makes it very difficult to work on the country, but it makes it also interesting and challenging to explore it as a case study.

However, there are some interesting works which offer interesting perspectives of the Albanian case (Bianku 2003; Hoffmann 2005; Kellerman 2008; O'Brennan and Gassie 2009). The most relevant for my study is the research work of Arolda Elbasani (2004; 2009). Her work is mostly based on domestic change in Albania due to EU pressure and the civil service reform. She tries to analyse the effects of enlargement in a challenging environment such as Albania, focusing on public administration reform in post-communist Albania. Diverging from the classic Europeanisation literature, she has used the bottom-up approach, by exploring the role of domestic agencies in downloading and sometimes mitigating European transfers in the national arena. As Elbasani claims, "evidence from the case study shows that governing actors have used EU enlargement as a means to further their strategic goals – they have preferred to talk the talk of reform in order to reap the benefits associated with EU integration and broader external assistance, but also resist implementation of new rules that curtail the political control of the state and the ongoing system of spoils built throughout the post-communist transition. The EU's broad thresholds on administrative reform and the weak association

between monitoring of progress and rewards have left ample space for the governing actors to merely pay lip service to the EU prescriptions, while getting full control of a politicized administration" (Elbasani 2009, p. 14).

In a previous work, she focused on both the external and domestic factors that determine the mechanisms of norm adoption in Albania. She explored external conditions and the intervening domestic variables that induce a logic of consequentiality or appropriateness in domestic change (Elbasani 2004). Although her work is focused in a different direction from my study, it provides some good points of discussion especially about public administration reform and the explanations of its capacities.

Albania still suffers from not having a properly elaborated and implemented civil service reform. Studies and reports show that legislation on the civil servants' status is not implemented adequately and there are several cases brought to court for unfair termination of contracts due to political interferences (Elbasani 2009). Being constantly under pressure and uncertain about the career future, influences the performance of public administration officials and policy makers when dealing with the EU challenges. The administration performance is important in all stages of policy adoption, from the transposition, to implementation. This is why it is crucial to try to understand its influence in the whole process. There are only few reports and studies that assess Albanian public administration in terms of capacities, mainly EC (2011), Elbasani (2009), and few other from Sigma program and the World Bank. Although these studies do not offer an explanation of variance between the different sectors of the country, they provide an assessment of the general conditions and characteristics of bureaucratic administration in Albania. Unfortunately, this is the general extent of existing studies on the case of Albania, with very few research academic works and few good reports and evaluation papers. This applies even more to the implementation issue. Apart from sporadic studies that touch upon the subject (such as Vurmo 2008), most is reduced to reporting without exploring in depth the topic.

### *2.3.2 Contribution of the study*

It is obvious that implementation studies and EU compliance research has developed massively in the last decades. Therefore, theory formulation approaches to research work face important challenges, since there is an already extensive ground that has been

covered. However, this study has few advantages in its attempt to bring something new to the field.

First, the Albanian case is poorly explored. Placing Albania in the map of EU accession and implementation literature makes a contribution by filling the gap that exists about the country. As mentioned previously, there are few studies which deal with the integration process and domestic change in general, or with public administration reform. Therefore, the fact that I have adopted a single case strategy by exploring in depth the Albanian case, might open new perspectives for further research based on this work. By developing this sector based framework, the study can be used for other sectors in Albania or other countries similar to Albania.

Second, although this study aims at exploring some main theoretical propositions that have been adopted and used for other countries (as described in Chapter 3), there are some particular elements concerning chosen framework and the approach adopted. Interaction between actors and the differences in their understanding of the process are isolated in the strategy of inquiry in order to grasp as best as possible the role and the importance that they have in the process. This choice has the potential to bring new insights for implementation studies, especially on factors which might have been undermined in past works.

In addition there are some peculiarities related to the Albanian case. In this work implementation theories are applied to a country which has recently gone through radical changes from a harsh totalitarian regime to democratic transition. Although there are plenty of similarities with other post-communist countries, there are also many elements that distinguish it due to isolation and dictatorship. Albania is also interesting due to the fact that its population is massively in favour and very enthusiastic about EU membership (around 90%). Since some variables used in other cases refer to political and population support for EU as explanations for success or failure in implementation, in this study those elements are ruled out. Albania is a rare case where there is almost no scepticism among the population and non-state actors, and there is no political party which does not support EU accession. Thus the case represents a different scenario from other studies, since it explores implementation problems in a very favourable environment in terms of support and therefore narrows down the observation to few variables. In addition, since most of the compliance literature is focused on member states of the EU, this work can give contribution by applying those frameworks in more challenging environments and drawing some conclusions on the differences.

Last, empirical findings that will come out from the gathered information and analysed data can bring interesting arguments not only for explaining the Albanian case, but for understanding other similar challenging contexts. Especially when exploring differences between policy areas, I think that there is room for researching and bringing modest contribution to the broader literature. Since the EU compliance field in the context of enlargement is affected by continuous change, due to developments inside and outside the EU, this study can represent an opportunity for enriching literature and offering a research structure for exploring other candidate countries and other policy areas.



## CHAPTER 3 RESEARCH DESIGN AND METHODOLOGY

As described in Chapter 2, the literature on policy implementation is broad and has developed several theoretical propositions and has identified many variables. It becomes quite a challenge to structure and use them in a specific study. The same applies to theories on compliance with EU rules, which is even more specific. It requires a well thought-out and elaborated theoretical framework and a research design that can really bring an insightful contribution to the area.

In this chapter I explain the research framework of this study and the methodology used. First, the main research question of the study is explained and discussed. According to the type of inquiry that the study requires, I explain the research strategy chosen: qualitative research. More specifically in terms of strategy, the chapter proceeds with an explanation of the case study approach adopted and why it is the most effective strategy for understanding in depth the policy implementation process in Albania. A brief discussion on the role of the researcher and its implications follows. This part depicts the general ground where this study is developed and argues about the appropriate approach for exploring the Albanian case.

As this project requires a research approach that takes into account the multiple variables involved in the analytical framework, I explain specifically the variables and the theoretical approach used, drawing on the literature review in Chapter 2. In addition I discuss how the main theories are used in this study, what are the theoretical propositions to be explored in the Albanian case, and what is to be expected in terms of results.

As regards the organisation framework of the inquiry, I explain the main techniques and instruments used for the chosen approach and strategy methods. This part is more dedicated to the operational framework of the study, the sample policy areas and the timeframe of the study are elaborated and discussed thoroughly. I explain the choice of the specific sectors and how they will be used for the analytical part of the study.

The last important part of this chapter concerns the methods used. After explaining the methods chosen and their relevance, I describe more specifically each component, focusing more extensively on the interviews and analysis process. At the end of the chapter, there is a discussion on limits, constraints and ethics considerations for the study.

### 3.1 Research framework and strategy adopted

Considering the vast amount of literature and the specific characteristics of this little explored country, this study has adopted a combined theoretical framework and approach. Falkner et al (2005) have also used pluri-theoretical approach, by combining inductive and deductive reasoning. I have adopted a similar strategy. The study will start from a deductive perspective, by deriving a set of theoretical propositions from the already discussed literature. These propositions will be explored and analysed in the Albanian case and will constitute the core of the analytical part of the thesis. The inductive part is linked to the generation of findings and conclusions based on the Albanian case, which will be developed as considerations and discussions in relation with the already existing literature.

From the literature, it emerges that the policy design stage and interaction between the different actors involved are crucial for implementation. Possible inefficiencies in planning and designing the legal act and the policy have a direct impact in the implementation stage. This statement is the main theme and core argument in terms of the research framework and theoretical position adopted in this study. From here, and based on the literature, explanatory factors and theoretical propositions are formulated. Thus in order to understand the policy design stage's impact on implementation, the following questions will need to be answered in relation to their influence in the process: How is the policy design process developed and coordinated? What is the role of non-state actors in the process? How are street level bureaucrats involved? What is the role and impact of EU representatives in the process? Exploring and finding the answers to these questions and, more important, analysing how these elements influence the policy implementation process is the core part of the analytical framework of the study.

#### *3.1.1 The main research question*

As introduced in the Chapter 1, the main scope of this study is to understand and explain the implementation challenges that Albania faces in the accession process to the EU. Thus the main research question it asks is: Why is Albania experiencing difficulties in implementing EU legislation? As EU progress reports show, Albania seems to be

performing relatively well in some policy areas and much worse in others. Of course there are some clear factors that explain general attitude to compliance. However, they fail to give a full and in depth perspective on the process especially across areas.

Drawing from the concept of policy implementation and compliance, which was explained previously in Chapter 2, the dependent variable of the study is practical implementation of transposed (EU) legal acts. This means that what I try to explore and explain is, first, *how* the policy design and implementation process is taking place in Albania, and, second, *why* it is experiencing shortcomings which then results in an increased implementation deficit. Understanding the reasons of failure/success of final application of these legal acts in the Albanian context, by exploring how the process is developed and how actors involved interact, is the crucial part of the study. Practical implementation is distinguished from the other stages of compliance, such as adoption and transposition, and is related to effective implementation of the directives on the ground. In order to understand this final stage, it is important to explain the process in terms of policy design and institutional interaction.

Although some areas might reflect good performance in terms of the adoption of EU directives, effective implementation is not taking place, as EU Commission points out repeatedly in its progress reports on Albania. For this the EU has been able to provide measurements, indicators and benchmarking in particular policy areas. Monitoring is a key mechanism that the EU uses in accession countries and thus its evaluations of policy compliance are very useful for this study. The EC progress report gives regular and clear indications of the performance in the different areas, even by "covering implementation of individual policies, so they implicitly judged the performance of lower-level officials within the ministries" (Grabbe 2005, p. 73). The European Commission provides a set of indicators that it uses each year in the Country Progress Report, where it provides an analytical framework for quantifying transposition and implementation. These indicators have been used largely in other important studies (Hille and Knill 2006) and they are considered to be good instruments of monitoring and evaluating countries progress. They measure progress in the implementation of each directive, by assigning them different levels (such as some progress, good progress or no progress). There might be room for debate and discussion about the methodology used from the European Commission in assessing these countries and their progress. However, since the EU evaluation on directive implementation is considered to be "the last word" in determining country's success or failure in policy compliance and the

accession process, EU assessment's indicators provide a good ground for basic reference for the dependent variable: the practical implementation performance. Thus when directives are considered for the sample case studies, I trace the process and cycle from adoption to implementation (failed or successfully implemented, according to EU evaluation and then confirming it through documents and interviews).

From there, I try to reconstruct the different stages backwards, as it will be explained later. The operationalisation of the variable consists in understanding first its status, if implemented in practice or not. This is why for the sample fully complied directives will be selected (where possible), in order to analyse implementation when the legal act has been fully transposed into the Albanian legislation.

### *3.1.2 The choice for qualitative research*

As the literature review showed, there is a vast amount of works that has studied transposition and adoption of legislation across the EU members and other accession countries. They adopt mainly comparative approaches and assess quantitatively the process of adopting EU legislation in different sectors and countries. According to Cini (2003), implementation rates vary across policy areas and therefore it is not easy to generalise across countries. Although there are interesting findings on causal relationships between adoption performance and contextual factors of the countries, cross country comparative studies fail to capture how domestic factors might influence the successive step: practical implementation of EU policies. As explained earlier, failing to understand and to analyse this stage, not only makes it harder to explain causal relations and factors, but also influences directly the other two stages: enforcement and outcome of policies.

The type of approach more appropriate for this study requires is qualitative research and its related methods. This project is focused in the exploration of processes and the understanding and perceptions of the participants of their activities and the rules that govern their work. For this reason it is necessary to adopt a strategy that can help exploring in-depth the topic. Therefore, a qualitative research approach is the most appropriate. Qualitative research can provide context, understanding, depth, comparison and description of a certain process (Burnham et al. 2004). It is suitable for exploring people's subjective experiences and the meaning they attach to them (Marsh and Stoker 2002). As Silverman (1995) puts it, qualitative research is to say a lot about a little

problem. In order to understand implementation, this study is also an attempt to document the context and the process, in this case, from documentary analysis and the point of view of the participants. It will seek to provide additional explanatory insights to explain what drives actors to engage in the policy transfer process, how political change in institutional arrangements comes about, how power is structured in institutional arrangements, how rationality and power influence the process and how the process dynamics shape outcomes (Unalan 2009). As Bryman (2008) points out, in order to capture the process, we have to understand the meaning of the process for the actors involved. This approach completes the purpose and content of the propositions that will be raised and it is more appropriate for understanding in depth the process of design and implementation of policies in this case.

Interaction and communication between the three main groups of participants (see 3.2) involved in the study requires an explorative approach based especially in their understanding and meaning they give to the specific part of the process such as, procedures, institutions, regulations, hierarchies, etc. In this context, it is necessary to the study to capture possible distortions that might be present in the process which could help explaining trajectories, variances and results in the implementation process of the different areas. Understanding policy adoption and implementation in Albania, it is not only about written rules and processes, but also how they are perceived, interpreted and put in action. And qualitative research offers this opportunity.

Qualitative inquiries are also well known for being flexible and this is an added value for the type of research I am pursuing. They study people in their natural context, processes involved and outcomes. From this they try to capture meanings and causes (Hammersley 2008). As Cassell and Symon (1994) remind us, qualitative approaches are more appropriate when research is focused in organisational processes and trying to understand experiences. They seek to describe, decode and come to terms with the meaning, not the frequency, of phenomena occurring (Van Maaney in Cassel and Symon 1994). Although quantitative research data provide strong basis for correlations and sound findings, in order to look in depth and understand and explain the nature of processes and interaction between different actors, a qualitative approach is more suitable.

### *3.1.3 A case study*

According to Creswell (2007), there are five main approaches to inquiry when dealing with qualitative research: Narrative research, Phenomenological research, Grounded theory research, Ethnographic research, and Case study research. Considering the characteristics of this study, explained above, a case study approach is the most appropriate instrument for reaching the objectives proposed. In order to understand in depth and explain the process of policy implementation I chose this strategy, because, putting it in Yin's words, "a case study is an empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident" (Yin 2009, p. 18). This definition describes best the purpose of my research work and brings further elements to the process of research design of my study. Since I am studying a process, the understanding in-depth of interaction between institution, actors, regulations, etc. is a major instrument for explaining implementation and reaching conclusions for the Albanian case. The development of an in-depth exploration, description and analysis of my case requires a challenging task of choosing and using different methods during the field work such as observation, interviews, archives, documents and material analysis.

When analysing and explaining the different kind of case studies, Yin (2009) argues that there are three types of case studies used for research purposes: explanatory or causal case studies, descriptive case studies, and exploratory case studies. The research question of my study is about understanding and explaining the process of policy implementation. In this research, in order to study explanatory factors, which are crucial in order to understand why Albania differences in terms of implementation across the different policy areas, an explorative approach is as well necessary. Therefore, the study assumes and includes elements from both exploratory and explanatory case study.

The research consists in a single case study, focusing on a cross-sector approach for the Albanian implementation process. For this reason, variables which are appropriate for cross-country comparison, cannot offer variance and therefore cannot provide interesting findings for the purpose of this study. More specifically, with factors such as political support and willingness, public support for EU integration process, communist legacies, independence from political pressure, cultural factors, etc. there seems to be little possibility for exploring and reaching conclusions in terms of differences between sectors. Although these variables are very important in explaining implementation

patterns of a country compared to other countries, they can give us poor results and arguments when comparing between sectors within the same country (Jahn & Muller-Rommel 2010). These factors cannot explain differences of policy performance in terms of failure or success, since it is believed that they work almost in the same direction and depth in all sectors.

The choice for case study strategy requires variables which aim at in-depth exploration. Rather than looking to political aspects of implementation, this study requires looking into institutions responsible for implementation, coordination and organisational capabilities, and involvement of non-state actors. The political factor influences most the first stage, formal adoption of the directives or legislation (where there can be conflict or veto players). In the case of Albania this factor does not constitute evidence for influencing the policy implementation process, since there is an overall strong support for all aspects related to EU membership, among all political parties, institutions and broader population. Problems are rather related to the quality of the policy adoption stage and its impact in implementation. Putting it in terms related to Matland's model, policy ambiguity is a more appropriate explanatory element which, thanks to the case study inquiry, will be explored indirectly through analysis of institutional coordination and interaction.

#### *3.1.4 The role of the researcher*

In particular for this kind of research approach, the role of the researcher is crucial in trying to avoid bias and subjective interpretations. An important part of the study itself is about subjective interpretations of individuals at the same stages of the process. Findings and conclusions would be unreliable if the researcher's point of view was heavily included in the analysis and in the descriptions of participant's accounts. There are many factors that influence the conduct of social research. Personal beliefs, values and feelings of the researcher might influence in different degrees almost all components of research: choice of area of study, formulation of research question, choice of method, research design, analysis, interpretation of data and conclusions (Bryman 2008).

When analysing and interpreting the data there should be much attention in distinguishing between, what Silverman (2004) calls, *emic* and *etic* concepts. More specifically, there should not be confusion between concepts deriving from the

conceptual framework of participants (emic), thus their views and understanding, and concepts deriving from researcher's own framework (etic). As Bryman (2008) puts it, methods are not neutral tools. However, this impact can be reduced sensitively by using most appropriate techniques and methods, such as a larger sample, in depth exploration, double checking and triangulation of information and sources, etc. Most of these are included as instrumental part of this study.

There are some possible advantages and potential disadvantages related to the researcher's role in this specific case. I have been working on topics related to the EU integration process in the previous years and in the late stages of the writing process of this dissertation. However, before starting the research I had knowledge from outside of the practical world of the process, from a broader engagement as a policy researcher. This study is focused more on not only exploring the formal aspects of the implementation process and related procedures, but also trying to capture policy elements in terms of how they are understood and perceived by the involved actors. Before this study I had worked mainly through documentary analysis, without having inside information on the interaction patterns involved in the process. I think that this lack of information in terms of informal aspects of participants' work will help in having less bias from preconceived opinions and will increase the possibilities of capturing realities as they happen. Although there is a potential risk for channelizing and interpreting accounts according to previous information, I think that through methods such as triangulation and through in depth interviews of participants from different backgrounds, such risks can be reduced.

### 3.2 Independent variables and theoretical propositions

The theoretical framework where the study is based includes elements from the top-down and bottom-up debate, which aim at giving a more coherent and full picture of the policy implementation process in Albania. Drawing from Matland's experimental model and more recent developments in implementation theory, which were explained earlier, a set of themes is structured in the analytical framework of the study, in the following sections. EU policy implementation and compliance literature findings will also be integrated in the variables' structure, with particular reference to Falkner et al's work.



However, the root of the framework lies within implementation studies, which are then adapted and enriched in the case of compliance with EU.

There are many models and variables in implementation research which are useful for this study. From administrative capacities, to political stability, to level of directives' ambiguity and discretion, deadline of transposition, number of ongoing transposition processes in a ministry's unit, number of transposition actors or agencies, involvement of interest groups, all these elements affect the nature of policy making and implementation (Kaeding 2008). Most of the variables have been used for cross-country comparative analysis and therefore will not be considered sufficient as part of the research design in this study, but only for descriptive purposes when writing about the context. In order to study cross-sectoral implementation patterns, drawing from the theoretical ground of authors reviewed in previous chapter, I have identified three main themes that can be translated into variables that influence, which might shape and explain EU policy implementation in Albania. Therefore, the independent variables of the study are: domestic institutional capacities, the degree of involvement of non-state actors in the process, and the nature of cooperation with EU institutions (Falkner et al 2005; Grabbe 2005; Knill 2001; Ruhil and Teske 2003; Schimmelfennig and Sedelmeier 2005;).

Each of these independent variables has a specific impact on the implementation process and, consequently, on the level of practical implementation. They also provide a good interaction between top-down and bottom-up models, and Matland's model. From a preliminary overview of the Albanian case, they seem to offer interesting explanation and variance across the different sectors. With reference to the above explained framework, what follows is an explanation of each of these factors and the consequent theoretical propositions are formulated. Theoretical propositions are largely used in case study research, in order to explore and explain a particular research problem. As Yin (2009) suggests, in order 'to have a sufficient blueprint for your study, theoretical propositions are needed. These can be considered as a story about why acts, events, structure, and thoughts occur' (Yin 2009, p. 36).

There are of course different strategies for developing a case study. In this research project I rely on the use of theoretical propositions. As suggested by different authors and well formulated by Yin (2009), an effective way for exploring case studies and explaining processes is through making initial theoretical statements (theoretical propositions) which derive from literature and then explore your case in those directions

in order to reach and compare findings that can give explanations. What follows is an explanation of the three variables and the consequent propositions based on theoretical works explored in this area.

a) *Institutional capacities*. According to a considerable chunk of the literature, administrative capacities, in general, have the most reliable explanatory power for EU policy implementation performance and process. The impact of administrative capacities will be investigated in the implementation process of specific areas and directives in Albania. Exploring some important aspects related to capacities might also help in explaining variance between sectors. In this context, the concept of strength of bureaucracy elaborated by Falkner et al (2005) can bring some useful suggestions. The way in which this variable will be operationalised and studied is depicted below.

As it emerged from the literature review, coordination and institutional organisation of the process of adopting and complying with EU directives is one of the most important aspects that influences implementation (Kassim et al. 2000; De la Rosa 2005; Wolczuk 2009). Central coordination is crucial to the process but also agency based implementation arguments have found validation (Steunenberg 2006). In addition, institutionalisation and a clear division of competences and dispute settlement procedures, play an important positive role for the implementation process. This includes the role of street level bureaucrats as well, in terms of formalised interaction with the centre. It emphasises the need for unified rules and procedures concerning administrative practices but also the regulatory approach adopted. From this point of view, Albania suffers from a poor consolidated regulatory pattern which is unstable and heterogeneous between institutions. In the context of EU compliance and the complexity of EU directives, the literature suggested that the capacity of desk officers<sup>4</sup> to understand properly EU legislation and have a common interpretation of them, affects directly the policy design process and, thus, the implementation stage. This will be another explored element in order to understand its impact in implementation.

As we could elaborate from Knill (2001) and other authors, the degree of institutional resistance to policy and administrative change can determine the path of implementation process. In this perspective, we discussed the debate on new institutions versus old ones and how different authors have diverging conclusions on the impact of this

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<sup>4</sup> Desk officer refers to a policy maker in a specific department in public institutions.

characteristic in implementation. This will be analysed in the Albanian case, in different policy areas and sectors. On the basis of this discussion and focusing on the factors which have been extracted by theories and previous studies on implementation, the following proposition has been formulated:

*TP1: High centralisation of coordination and clear division of competences in the EU acquis adoption process improve implementation performance.*

This proposition, which has been derived from previous theoretical work and findings from other countries, will be explored in the Albanian case. Analysis of data gathered can bring interesting findings and conclusions which can contribute to broader discussions in the relevant theoretical field.

b) *The role of non-state actors.* As emerged from the literature review, non-state actors constitute an important part of the implementation process. Involving local organisations and actors in developing agendas might be a very good instrument in order to increase efficiency and legitimacy of the decisions taken and adopted agenda. Implementation practices and strategies need to be discussed with experts and different actors in order to avoid making the wrong choices which would affect implementation (Borghetto and Franchino 2010). Including non-state actors in early stages of policy formulation might become a source of success for implementation. Not only would this improve the level of information and expertise necessary for formulating policies, but it would have an impact on the credibility of the implemented directive. This is relatively easy in countries with high degree of corporatism. For this reason they neglect the formulation stage and deal mainly with the implementation phase and consequences (when it's 'too late', in the case of other countries such as Albania). When interest groups are not involved in the formulation process, they might attempt to influence the practical implementation stage (by resisting it).

However, this depends also on the capacities of these groups (Falkner et al 2005). The organisational and coordination capacities of non-state actors influences their effective participation in the policy design stage and thus in implementation. In the case of Albania, interest groups, in general, are poorly organised, with low efficiency in terms of articulating properly their interests and advocating to the relevant institutions. In addition, there is often conflict and division between different organisations which operate in the same field or sector. They rarely have regular and active membership.

Exploring this element in different policy areas might give interesting data in terms of its influence in implementation, since it affects their substantial participation.

With the information that non-state actors possess from the field and with a more direct knowledge of problems, they can give direct contribution in improving the policy content for an effective implementation. This will also depend on two other factors: their technical capacities and practical involvement in the process. Interaction between desk officers and non-state actors has intensified from the 2000's in Albania. However, there is a distinction between formal involvement and real participation. Different institutional forums and councils have been set up in order to provide access for non-state actors to have their say, but the nature of interaction differs in the different cases. It is interesting to notice that, in contrast to the literature on other countries, preliminary research work on Albania suggests that in some cases even formal involvement is important, in terms of broadening participation and improving the legitimacy of the decision making process, sharing information and easing the implementation stage (decreasing resistance). However, this will be explored in the selected policy areas. For the purpose of analysing in depth these elements and their role, the relevant theoretical proposition is formulated as follows:

*TP2. Lack of substantive involvement of non-state actors in the policy design process negatively affects the policy design and implementation process.*

This theoretical proposition summarises effectively the discussion described in the literature, which was reported in Chapter 2. Exploring these factors in the Albanian case might give interesting perspectives, especially when comparing different policy areas. Conclusions will then be integrated in the broader discussion on theoretical review of the above statements in the final chapter.

c) *The role of EU officials involved in the process.* EU institutional actors play also an important role in the design of the implementation process. Organisation work and coordination with EU officials remain crucial elements, according to many authors (Dahl 2007; Dimitrova and Toshkov 2007; etc.). Enhancing communication between the government and the European Union representatives is another matter of coordination which can be considered an important factor for implementation performance. The research aims to explore how specific conditions and requests from the country are taken into consideration from EU officials, how much they interact with the

counterparts when they elaborate the strategies (Kohler-Koch 2003) and, most important, how this affects implementation of adopted EU legal acts. Many of the assistance and planning mechanisms provided by the EU fail to succeed just because they are designed at their headquarters in Brussels and applied to a variety of local settings (Elezi 2013). The background and the specific conditions can determine the performance of complying with Europe (Giuliani 2005). This can be avoided through increasing communication and coordination between Albanian policy makers and EU officials of the respective desks, and through more direct involvement on the ground. The involvement of EU officials in specific projects or in the policy process is considered as a positive form of pressure towards institutional actors at all levels, since monitoring and evaluating is supposed to be more rigorous. Working closer with Albanian policy makers helps in coordinating work and improving their understanding of the process. Rather than ‘ticking boxes’, a more pro active approach of EU officers in assisting the Albanian counterpart might avoid problems that might be transmitted from the policy design stage to implementation.

This also relates to the understanding of EU actors of the institutional set up and nature of the process in Albania. Coordination with Albanian structures in terms of decisions on adoption and approximation is also important: the need for an understanding of the specific context of the country and its requirements. The ability and capacity of EU officials, who cover Albania, to grasp the situation and the problems of the country might affect the nature and content of the contribution and assistance they provide. In addition, this capacity can also influence domestic policy agenda of the candidate country, in terms of priority rankings among policy areas and measures. The perceived importance that EU actors attribute to a policy intervention might influence the design and implementation stage of that policy. Additionally, this might help in filling the gap in their knowledge of the country and thus ameliorate the successive programming of EU projects. The following theoretical proposition will be explored in the Albanian case:

*TP3. Implementation is more likely to succeed when EU actors are directly involved in assisting and monitoring the transposition process.*

This third element concerning explanation of policy adoption and implementation in Albania aims at giving a more comprehensive picture of the process, by including the role of EU as a dynamic actor that can influence implementation directly. This aspect

has not been developed largely in the literature and it becomes quite important when researched in challenging contexts such as post-communist Albania.

The theoretical propositions formulated constitute a structured approach which serves different purposes. First, since most of these explanatory factors have been used successfully in previous case studies for other countries, they will help in exploring the Albanian process in depth. By including in the picture different aspects and actors involved, the outcome expected will be an interesting account and explanation of shortcomings related to policy adoption and implementation. This approach will give a more comprehensive view of the process and will identify problems and patterns within the process.

As regarding the specific propositions raised, there is no doubt that the biggest element in terms of research and exploration concerns the first proposition: institutional capacities in coordinating the process with clear division of competences. Public administration is directly responsible for implementation of EU legal acts and related policies and thus main influencing factors rely within its organisation, coordination and functioning. From preliminary observations, before starting the actual data gathering, I expected to find that the low level of centralisation in organising the process has some impact in the process. Since most of the process is 'top-down', centralisation would appear to be an effective approach for smooth adoption and implementation of EU policies. However, this would require a proper analysis based in empirical facts and appropriate data gathered on the ground. The same applies to the level of uniformity among competences and procedures within public administration. From an institutional point of view, "speaking the same language" should help for better coordination among institutions and affect directly the quality of legislation adopted and its implementation provisions. As regarding the discussion about "old versus new" institutions, I think there might be interesting findings in the case of Albania. Although there have been previous studies in other countries arguing strongly in favour of one or the other (in terms of the efficiency of implementing EU legal acts), there is no in-depth research yet in Albania since several new institutions have been in place only for a few years. Thus this study is a good opportunity for enriching the literature with its findings on this issue, specifically for Albania, but drawing conclusions for contributing to the broader area of study as well.

In relation to the second factor (on the role of non-state actors), I think that the exploration of this proposition will generate interesting findings in the Albanian case.

Effective participation of non-state actors is seen as an important instrument for ensuring implementation of policies. However, this will depend on their capacities but also on the institutional opportunities given them by state actors, for ensuring their effective and substantive participation. What would be an added value on this part is the more inductive approach which might generate additional discussions that can lead to further research. This work will also be a good opportunity for better understanding the ‘world’ of non-state actors in Albania, their perceptions and interaction with public institutions in general.

The last proposition concerns the role of the European Commission itself in adoption of implementation of the *acquis* in the country. As with the previous propositions, this is poorly explored in the case of Albania. Although other studies have been able to look into the EU’s role from a critical point of view, this research aims at exploring EU actors’ impact on the ground, with specific focus on implementation. The specific proposition raised is based on a mix of elements coming from the literature but also on preliminary work done on Albania. I expect that exploration of this proposition might generate more discussion than the previous ones and will require a more in depth analysis. However, I think this will be overcome during the fieldwork where methods used will provide a comprehensive approach for exploring this element.

Finally, apart from exploring the abovementioned propositions, the study results will also help in understanding the whole process better and in identifying gaps in the coordination system, based also on interaction between the different groups of actors (state officers, non-state actors, EU representatives, etc.). Since this interaction is becoming more intensive in this stage of the process, the results expected would bring it to light in a more detailed account and will help for building further research projects.

### 3.3 Approach and design of inquiry

The design of this research project involves three main components: practical implementation (dependent variable), factors, actors and procedures that influence this process (independent variables and theoretical propositions), applicative sample for exploring propositions (selected sectors and directives). The first two have already been explained previously and the sample will be discussed in the next section. However, before discussing the sample, it is important to clarify the way this research inquiry is

organised with the aim of exploring the process as accurately as possible and producing valuable data, findings and conclusions.

### *3.3.1 Strategy and organisation of the inquiry*

The research inquiry of this study is driven by a two levels approach. The first tries to explore the process based on documentary data checked against accounts of participants who are asked about their understanding and their work within the process. Thus, after looking into the broader formal description of the process of adoption of the *acquis* (Chapter 4), this will be triangulated with participants' experience and practical interpretation on the ground. The second level or layer is related to the specific cases used as samples, thus specific policy areas and selected adopted directives. Not only will the the propositions be explored for each of the transposed policies chosen in the sample, but participants' accounts based on reconstructing the process and tracing it through the different stages will help in exploring interaction between actors, their understanding and how it impacts the outcome of the policy process.

By exploring the four chosen policy areas which will be described in the sample below, the study will seek to analyse the role of independent variables in the implementation process and explore the theoretical positions linked to them, first, in general for the area and, then, more specifically for the respective policy. There are two main inquiry methods used for achieving information necessary for explaining implementation: process tracing and triangulation. Despite the fact that they are often called "methods", in reality they are more considered and used as research techniques and instruments for inquiry.

As explained above, process tracing will be used for rebuilding the process as it happens in reality between the different actors and policy areas. As Falkner et al (2005) suggest, process tracing of implementation history is one of the most appropriate tools developed in the case of EU accession. Through a descriptive and analytical approach, the study will try to build a map of the process from formal adoption to (practical) implementation. This strategy will be followed in parallel, by triangulating the formal and procedural point of view, and the accounts and perceptions captured through the interviews. The process of tracing the origin of the implementation problem should start at the top, asking how policies are designed. As we know, transposition and implementation of each EU policy adopted is assigned to a responsible Albanian

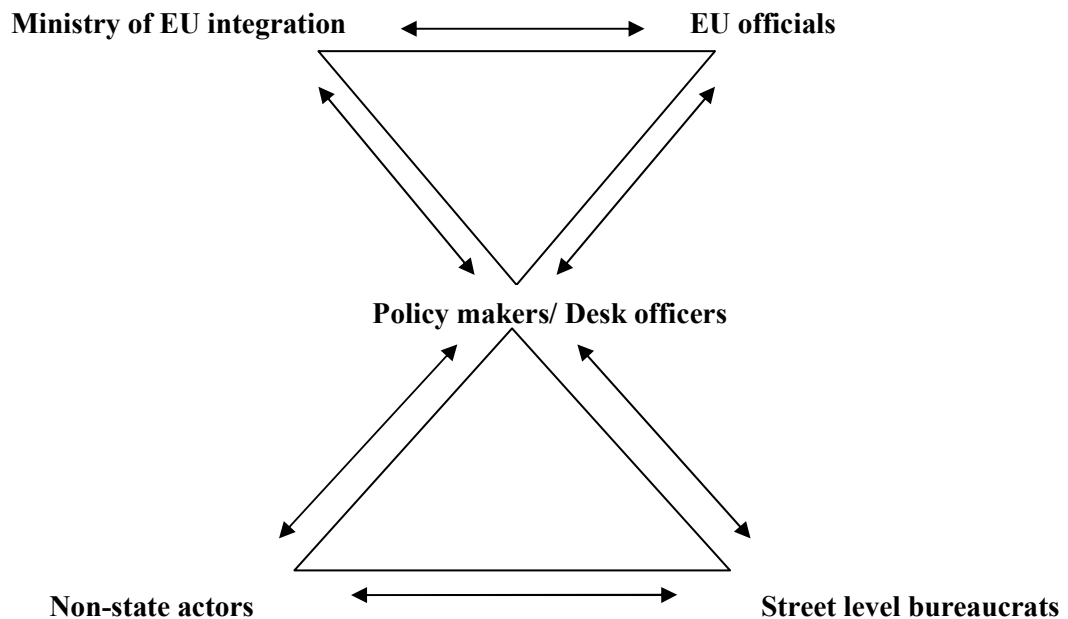


institution. This institution plans, prepares, adopts and implements necessary measures required from that legislative act. Reconstructing this path of institutional decisions and legislative processes only helps to identify a tracing approach, without assessing the process qualitatively at this stage, but rather by trying to understand if there is a standardised line of procedures and practices that Albanian authorities apply from adoption to full implementation. For each of policies (directive), the same set of variables influencing the process will be explored, grasping variance (Herieter 2007) and understanding the impact of the variables in each of the areas.

Triangulation is more related to ‘double-checking’ information given by the different actors involved in the process and their interaction patterns, in order to explore its impact in the policy design and implementation stage. The triangulation strategy is used for exploring differences and variances in understanding and meaning that the three different groups of participants give to the same process (Parsons 2005). As Yin (2009) points out, multiple sources of evidence are needed in case study research in order to construct validity. While rebuilding the process through their accounts in the interviews, a cross check and analysis for the answers on the same questions will be developed. The possible and potential differences that might occur will be an important part of the analysis and conclusions chapters. Triangulation of data is very important in case studies and in qualitative research in general. It helps to achieve convergence of evidence (Yin 2009) and thus discover facts that explain processes. In this study triangulation plays an important role in explaining patterns of the policy design process and interaction between different institutional actors, which then can explain implementation performance.

The diagram below (Figure 1) shows the interaction framework built as part of the research design and which constitutes the main research map of institutional interaction for the study framework. The study will explore patterns and nature of interaction between institutions’ representatives within the process, in order to understand the role of the selected variables and explain how policy design and implementation is affected by them. In addition, grasping the variance between policy areas might give important information than can be used to further elaborate the theoretical propositions used.

**Figure 1 Institutional interaction framework of the policy process.**



Policy makers are in the centre of this interaction flow. They are the main actors in charge of designing policies to be adopted and thus they constitute an important focus of the study. Their role is crucial to the design and implementation process. By using a broad set of methods (see 3.4), coordination and interaction patterns in the diagram will be explored and their impact in implementation will be analysed. Exploring propositions for the different areas will also mean looking into specific case studies (EU legal acts adopted) which have been traced and explored for the entire adoption and implementation cycle. This will help to explore in depth the area and to identify potential elements influencing implementation (beyond the factors embedded in the propositions), as well as consolidating the findings and final conclusions of the study.

### 3.3.2 The policy areas

EU integration and accession process affects almost every sector within each country. The *acquis communautaire* covers most of policy areas and is divided into chapters, according to what EU legislation deals with. For the case of accession countries, the *acquis* is structured in 35 chapters. Compliance with the relevant *acquis* is monitored through the SAA structures and, as already explained, the EU Commission which publishes the Progress Report for evaluating progress and performance in the different areas. In terms of EU policy compliance, implementation effectiveness varies across

policy sectors (Knill 2006). For the purpose of this study four main policy areas (*acquis* chapters) have been selected as sample. They represent important sectors in the process of complying with EU policies and encompass considerable extent of EU legal acts. The selected areas are: free movement of goods (Chapter 1), competition policy (Chapter 8), food safety (Chapter 12) and environment (Chapter 27). There are several reasons for selecting these policy areas:

First, these areas represent some of the most important parts of the *acquis*. They include a large number of directives or regulations<sup>5</sup> where technical difficulties and capacities for adoption and implementation are present more than in others. They are also interrelated and cross cutting at some degree, thus they do not represent completely different set up and scenarios (otherwise they might be other difficulties on comparing and drawing conclusions).

Second, some of these areas have been identified by the EC reports as main challenges for Albanian institutions in their compliance efforts with EU legislation. They are a crucial part of the SAA and the relevant national plan for implementing the agreement and thus it is of broader interest for different audiences (not just academic) to understand challenges faced in these sectors. The number of citizens and organisations which are directly affected by decisions taken in these areas is large and thus exploring the integration and legislation approximation process is important even in terms of general interest about country's European path.

Third, referring to the research design of the study, these chapters offer a good opportunity for exploring all propositions in an exhaustive way. They represent different institutional legacies and background history, with a mixture of new and old institutions. Areas such as free movement of goods and competition policy are new, since they were not developed, institutionally, until 25 years ago when the communist regime collapsed. By contrast, environment and agriculture were very much present but with a different institutional set up compared with today (there are old institutions still in place but also new ones approved and established in recent years). Thus these latter sectors have some older institutions with a strong organisational background, large number of employees and with firm ties to previous practises and legacies.

In addition, legislation in these areas is not adopted and implemented only by central institutions such as line ministries, but we can find related implementation and

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<sup>5</sup> In the area of Competition regulations are issued and not directives.

enforcement agencies with street level bureaucrats and inspectors, which make the sample appropriate for exploring the propositions and generating interesting findings and conclusions, by grasping implementation variance according to agency organisation characteristics.

Patterns, procedures, rules and interaction in institutions in each of the areas will be explored from an implementation inquiry perspective. The aim of this part is to identify variance between coordination methods, processes, regulations, procedures and perceptions that rule in each administrative branch in these four sectors. Moreover, the way in which each section interacts with the Ministry of European Integration, non-state actors, street level bureaucrats and EU officials, when designing policies for implementing EU policies, will constitute an important part of the in-depth exploration. These differences are part of the explanatory framework for the dependent variables and will be explored in the main propositions. As mentioned earlier, the study will go further in depth and, by using process tracing method it will explain and analyse the implementation process of legislation in these policy areas, based on specific directives or legislation adopted. The aim of this part is to further explore the patterns of the process and capture elements from real cases. The transposed directives chosen for each area will be explained in the design section of each analytical chapter.

### *3.3.3 Timeframe used for the study*

There have been several agendas and strategies throughout the years in terms of complying with EU requirement and it is not a purpose of this study to explore all of them. First of all, it would be very difficult to analyse all these periods, not only for the quantity of research and amount of work that it requires, but also because they differ considerably from each other. Those stages were developed in different political and economic contexts, especially when we compare the first period (1992 – 1997) with the late 2000s. Second, in some areas Albania has been engaged with the EU much later and thus it would be quite difficult to draw conclusions for compliance and implementation in general.

The timeframe used for this study will focus will be in the years 2006 – 2011<sup>6</sup>. In 2006 the Stabilisation and Association Agreement was signed between Albania and the EU.

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<sup>6</sup> There is one exception to the timeframe concerning the selected directive on Environment which was transposed with two stages in 2011 and 2012.

The Stabilisation and Association Agreement marked a qualitative new stage in bilateral relations of Albania with the EU, entailing significant new obligations and engagement for the country in many areas. In most cases cooperation has focused mainly on priorities related to the EU *acquis* in the relevant fields, with Albania committing to gradually introduce EU *acquis* in its legislation, to implement related policies and to cooperate with the EU on joint policy objectives (Council of the EU 2006a; 2006b). This agreement has also offered a clear path and roadmap for Albania, by describing specific objectives and timeframes for adoption. Five years from the entry in force of the agreement, Albania had maintained a good pace in the process of adopting EU policies and aligning its legislation to EU directives. However, the country had not recorded a satisfying performance in terms of proper implementation of directives, in some of the main policy areas (EC 2011; 2012). Reports that monitor and evaluate the situation every year claim that the implementation stage has been the weak point of Albanian performance toward EU membership.

The reason why this period is most appropriate for this study consists in the fact that, in this timeframe, adoption of EU legal acts has been intensive. In 2007 Albania elaborated and adopted the National Plan for Implementation of the SAA where all legal acts to be transposed were planned. Thus it offers a clear mapping of the adoption process and a sound basis for starting research. Before that, there were only few sectors included in the bilateral projects and in the previous agreement of 1992 (which did not focus on *acquis* transposition). The SAA includes all chapters of the *acquis* and the country is required to demonstrate progress in all areas. Therefore, it is more appropriate methodologically and much easier to reach sound conclusions about implementation patterns.

For explaining implementation performance, in several reports, the finger has been pointed mostly to the increase of administrative capacities required for facing the challenges deriving from the SAA and *acquis* adoption. When responding to Albania's application in 2011, the Commission had to give arguments on its position by identifying in detail the problematic areas for implementation. This is also useful for this study. Therefore, this timeframe provides an appropriate period for exploring theories and relevant propositions, since it constitutes the only period when transposition and implementation have been planned and happening in a programmatic way.

### 3.4 Methods

Due to the research design and framework of the study, different qualitative methods are used for exploring in depth the case. The main are: *documentary analysis*, *participant observation* and *interviews*. The data gathering is also based on extensive notes taken during 10 months of fieldwork.

**Documents** were related to institutions' strategies for EU integration, action plans, EU Commission progress reports, regulations concerning the sample fields and directives, internal procedures of institutions, communication notes between involved actors, working group meeting's proceedings. The purpose was to observe and study how information and regulations were adopted and applied from one stage to the other. The principal sources were mainly internal documents in the Ministries, communication papers between the ministries and the Ministry of European Integration, agendas and schedules of meeting with interest groups. Other sources were mainly related to official public documents, such as strategies, action plans, meeting proceedings, surveys, etc. Other studied documents were research papers, books, and reports which were published relating to the specific sectors. The documentary analysis stage was the first part of fieldwork. In order to research and explore in depth the process of implementation and the role of actors involved, it was necessary to be informed as much as possible on the background information of the sectors, institutional structures, their legal interrelation, procedures, etc. Although documents were an important part of analysing the process formally, they do not 'speak for themselves' too much and, therefore, cannot fully explain relations and context but can only acquire meaning according to research strategy and methodological assumptions (Burnham et. al 2004). I used documentary analysis for capturing the formalities of the process, in order to compare and complement the interview and observation data.

**Participant observation** is a well known method used in qualitative research. It consists in the participation of the main researcher in the working place or the environment where the studied process is taking place. For this purpose I participated in several meetings that policy makers have held with interest groups between 2011 and 2012. This technique has been defined as "a process in which an investigator establishes a many-sided relationship with a human association in its natural setting for the purpose of developing a scientific understanding of that association" (Loftland in Burnham et al

2004, p. 222). During his/her involvement the researcher observes and records interaction of people in that context. The result is a detailed description of the activities and patterns that those involved have manifested. This method is rather complex and requires a long term commitment in studying the participants. As Silverman (1995) argues about the observation method, one of the strengths of observational research is its ability to shift focus as interesting new data becomes available. However, I chose to use it as a complementary technique to the interviews rather than as the main method. More specifically, due to the fact that the categories of interviewees present different accounts and understanding of the process, it was interesting and useful to see the “live show”, which were the meetings held between policy makers and interest groups. Taking notes on particular aspects of those roundtables such as, interaction, behaviour, perceptions, formalities, outcome, etc. would enrich the understanding, interpretation and accountability of the interviews. It would complement the analysis of interviews with more in depth information and observation.

I did not assume the role of "full participant" (Burnham et. al 2004), which requires playing an active role in the context, but only engaged as an observer. Therefore, I participated in their activities but was not involved or integrated in the discussions (even when I was asked for an opinion). Permission to observe and take notes was asked to all participants. In case this was not possible, I used official proceedings and tried to write down what I could remember right after the sessions.

The limitations of this technique, especially in the way used for my research, is related to the fact that the observant cannot capture everything and, if based in partial observations, can reach inaccurate conclusions. This method requires a long term application in order to produce reliable data and sound findings. In addition, the sample was not sufficient. I participated in about only two meetings for each of the sectors. This is why the material collected from this method would not be used as main source for analysis but rather complement the interviews simply in a descriptive way.

**Interviews** are often considered to be the most effective way for obtaining in-depth information about policy makers and decision making processes. Semi-structured interviews with open-ended questions were prepared for this study. The content of the questions reflected the explorative approach bases on the propositions that the projects aim to understand in the Albanian case. Before starting the scheduled plan of fieldwork, first of all, I set up a *pilot stage* in order to test the chosen strategy of inquiry and the

planned methods in the Albanian context. I used initial findings and observations from these preliminary interviews for improving my research strategy and refining the open-ended questions on the topics to cover and how to explore them.

*Designing and conducting the interviews* were two of the most important stages regarding fieldwork. The choice to conduct a non-standardised form of interview was based on the intention to grasp the interviewees' attitudes and interpretation of the process without constraining them by a standardised set of formal and fully structured questions. The interviews were semi structured also in order to permit the participant to feel free to express his/her points of view, perceptions, understanding, without any constraint in terms of following a precise interview schedule. It is assumed that face-to-face and individual interviews would provide more valuable, first-hand data that will supplement the data collected through assessment of the written records (Creswell 2007). A carefully selected set of questions was prepared. The questions were unstructured, open-ended, i.e. without provided alternative answers, so that the interviewees would have a full freedom to answer the question in their own words (Bryman 2008). The open ended questions would also create the conditions for a fluid conversation, stimulating the in depth exploration of the topic. The content of interviews followed the topics that could be extracted from the sub variables of the study. Indirect questions related to these elements were included in the interview. Follow-up questions were used as a technique whenever the participant deviated from the question and did not give sufficient information about the particular section.

The group of participants<sup>7</sup> included: policy makers and street level bureaucrats, non-state actors, EU officials, experts and academics<sup>8</sup>. They all went through the same sample of questions, except for the part on the directive where each participant had to respond to its own area. Following a general introduction, the interview would then aim to explore the work context of the participant, their perceptions of the process, responsibilities, etc. After rebuilding and tracing the policy process according to their knowledge and understanding, the interview would continue on a more specific issue, such as the implementation of a chosen policy. The participants were asked to explain the process of designing and implementing that particular policy, and give their

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<sup>7</sup> For a full list of interviewed participants please refer to Appendix 1.

<sup>8</sup> It is important to notice that the information and the opinions received from this last group were not included in the analysis chapter as part of the methodology. They were used mainly for double checking information, testing the strength of research strategy and collecting suggestions and information from outside the 'triangle system' (policy makers, non-state actors, EU officials).



interpretation of its success/failure and related causes. In this part, participants were also asked about their interaction, cooperation and coordination with other institutions involved in the implementation process. Rather than having information only on the formal aspects of the process, this part tried also to explore in depth the understanding of coordination and involvement of other actors. It strived to capture the description of the specific process for the chosen policy, in terms of interaction with other interested parties.

Interviews took place in Tirana and in Brussels. Most of them were set in participants' offices and few in public places (such as coffee places, bars, etc.) All interviews were recorded, with participant's permission. Apart from few first round interviews, all the others were transcribed.

Regarding *the analysis of data*, the interviews were transcribed fully in the original language<sup>9</sup>. They were then cross referenced in two different approaches: by institution and by position (role). This would help when triangulating and analysing data. Before starting the analysis, an overall coding framework was set up in order to facilitate matching the patterns registered in the interviews.

Pattern matching technique was very helpful for associating concepts to actions and processes. Yin (2009) has discussed the characteristics of this technique and its uses, mainly related to explanatory case studies. He suggests that if the case study is explanatory, the patterns should be related to the dependent or independent variables used in the inquiry. Each variable was considered a pattern and the technique of pattern matching compares an empirically based pattern (a fact, an event, a rule) with a predicted one (in this case it is the result or outcome of the activity related to the policy process). The next step of analysis was building the explanation for each of the cases. Explanation building is a particular type of pattern matching (Yin 2009). It helps to explore further the case study and, most important, to answer the questions of how and why something happens. Exploring propositions in the data analysis stage was closely related to the repeating of patterns and ideas in the interviews, which would be associated with the main explanatory factors/variables. Data was sorted by theme and concept and summarised through thematic patterns (Ritchie, Spencer and O'Connor 2003). These data were used first for exploring preliminary findings and later for building the explanation model for the Albanian case, by identifying patterns which

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<sup>9</sup> Most of interviews were in Albanian. Only the ones held with EU representatives were in English.

matched. Using these frameworks, I developed descriptive accounts and tried to build explanatory arguments by looking for patterns and associations, as is usually done in these types of inquiries (Ritchie and Spencer 1994).

The use of this method of analysis facilitated the grasping of participants' understanding and perception of the different aspects of the process. The matched patterns were then grouped in categories and checked/triangulated first within the same institution, then with patterns of other actors involved, and in the end between policy areas for the final conclusions. The results of the patterns matched and the differences between the different participants were used in building explanations regarding the process and its outcome, as factors influencing implementation. This reduced error possibilities or neglecting important findings. Analysis of the patterns explored helped also in expanding further the section on the interpretation of the findings, where the analysis of variance between sectors and the elaboration of final conclusions followed.

### 3.5 Constraints and Limitations

As in most research projects, there are several limitations and obstacles that can jeopardise its effective implementation. In my study there were three kinds of constraints and limitations. First, an important limitation was the lack of research literature on Albania. Due to its particular isolation and specific patterns, Albania has not been very appealing to researchers and there are relatively few works in the academic field. This constraint influenced the way I designed the structure of the study. For the theoretical background and literature, I referred mainly to studies done on other countries and tried to apply them in the case of Albania. By itself, this probably might be considered a contribution in the literature, but it represented various difficulties in terms of formulating assumptions. It was difficult to build propositions and positions with the assumptions based on other cases. I tried to limit the risks from these effects, by developing a preliminary stage of fieldwork and a pilot case study. However, this represented one of the constraints of this research work.

A second limitation was related to the kind of research design I pursued and implications in terms of fieldwork. I had to undertake a relatively long period of fieldwork. This implied almost full immersion in the ground and distance from the desk study. The number of participants chosen for the sample and the long in-depth interviews (which have lasted an average of around 65 minutes, from 28 minutes the

shortest to 105 minutes the longest) made fieldwork and data collection quite a difficult task. I had to travel three times in Brussels, since it was very difficult to plan agendas with EU officers and, sometimes, some of them would become unavailable unexpectedly. In Albania I did a second round of interviews with some of the participants. Fieldwork constraints have extended the period of fieldwork and this might have limited my capacity to include all relevant information since more than a year had passed once I started writing the thesis. I tried to record as many details as possible, but this might be a limitation related to the data gathered and how it has been used.

Last, as regarding the access to sources, I experienced some initial difficulties in finding reports and documents related to public administration activities. Although some main documents can be found on official websites of institutions, because most of Albanian institutions have developed online platforms for informing the public and increasing transparency, internal regulations and minutes of meetings were difficult to find. Both formal and informal channels of communications were used, but at the beginning of fieldwork this appeared to be a constraint. However, the interview process and the 'snowball effect' helped in reducing the risks coming from access restriction and provided me with sufficient documentation for building a solid analysis.

### 3.6 Ethics considerations

For this research, I went through approval procedures at the Research Ethics Committee at the University of Sussex. The most delicate part was about the interviews and the role of the participants. For this purpose I prepared an information sheet for all participants, where my research was explained. The reasons why and how they were chosen for this study were also stated in the sheet. Especially for policy makers (who were the largest part of the sample) it was explained that since their job deals with implementing EU policies and directives, the information that they could provide would have been very useful for the study. Taking part to the research was entirely voluntary. It was up to the contacted persons to decide whether or not to take part. Once they decided to take part they would be given the information sheet to keep and be asked to sign a consent form. If they decided to take part, they were of course free to withdraw at any time and without giving a reason (fortunately, this didn't happen). They were informed that the interview would consist in a set of open-ended questions concerning the sector covered by their office and, more specifically, the implementation process.

In terms of confidentiality, in the information sheet it was stated that all the information collected from them was to be kept strictly confidential. The recordings and the notes from the interview were kept and stored in a secure place, without any reference to their names, in full respect to confidentiality and privacy legislation. Anonymity was ensured in the collection, storage and publication of research material. If they decided to participate, they needed to sign a consent form for this purpose. More than half of participants required to maintain anonymity and not to be quoted by name. The recordings are stored only in two devices and with secure key codes, as required in these cases. The transcriptions are named by codes which correspond to other identifying codes and not names.

There were two aspects related to the most sensitive in terms of ethics and confidentiality. First, there were the interviews in specific areas, such as public undertakings in the competition policy. Since it is a very political sensitive matter, in some interviews or parts of interviews, participants asked not to be recorded. They also preferred not to be quoted directly. The same happened with all street level bureaucrats. The second issue was related to the participant observation method. As explained in the method section, I used this technique in few cases and it proved to be very interesting and helpful for my study. Since I was invited as many other persons to these meetings, I only explained them about my research and did not request any signature for the consent form: first, because I was not recording them, but just taking notes. And second, because I would not use the information gathered there for my main data analysis but rather for improving my research design and interview structure. Overall, the study did not present major ethical issues.

## CHAPTER 4 INSTITUTIONAL ORGANISATION OF THE PROCESS

The European integration process of Albania is institutionally organised following the SAA provisions and commitments. The objective of the agreement is to establish political and economic stability in Albania, strengthen institutions and the rule of law. The SAA comprises four main pillars: political dialogue, establishment of a free trade area, mutual concessions concerning the movement of workers, establishment, supply of services, current payments and movement of capital, and cooperation in priority areas such as justice and home affairs (Council of the EU 2006a). The SAA between Albania and the EU was signed in June 2006 and entered into force in 2009. This document is the main and most important framework for the EU integration of Albania and it still guides the whole process. Signing and entry into force of the SAA represented the most important milestone for the process, setting up a well-structured framework which would guide the country towards membership.

This chapter explains and analyses the institutional set-up of Albania for the process of EU integration, specifically for the adoption and implementation of EU law. It starts with a description of the institutional impact that the SAA had in the country and the framework built for implementing it. The EU-Albania bilateral structures created to lead and manage the process will be explained.

The chapter then deals more specifically with the main Albanian institutions involved directly in the European integration process and their respective roles. It focuses mostly on the Ministry of European Integration (MEI) as the main actor in charge for coordinating the process. Together with the European Integration Units in each line ministry, the functioning of the Ministry of European Integration offers important information for understanding implementation of the *acquis* in Albania.

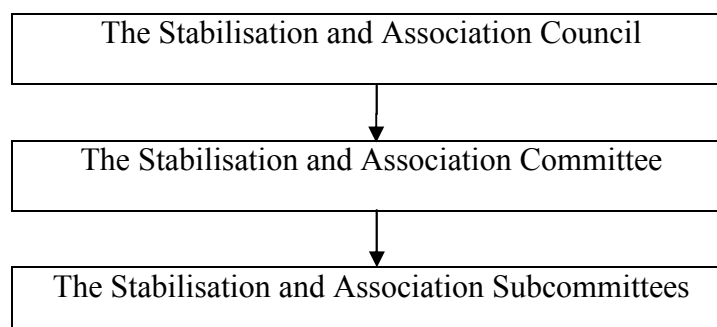
After completing the institutional map in terms of explaining the responsibilities of actors involved, the chapter focuses on another crucial aspect regarding the institutionalisation of the process: inter-institutional coordination. This section aims at explaining the framework that has been set up in Albania for ensuring a smooth interaction and cooperation between the different institutions involved. This is important not only for having a clear picture of all the actors and capacities, but it is also necessary for the next sections and chapters, in order to understand the transposition and implementation process.

After explaining the institutional map of the process, the chapter describes the formal process of the *acquis* approximation and implementation, by tracing the legal adoption of legislation and describing the procedures and the process step by step.

#### 4.1 Institutional framework developments under the SAA

The SAA has been the most important milestone of Albania in its path towards EU membership. Since the early 2000s main efforts of Albanian institutions were concentrated in preparing and undertaking all necessary measures for the negotiations of the agreement and, when these were concluded, for the signing the SAA. Probably the most important institutional development related to this preparatory period is the establishment of the Ministry of European Integration in 2004. There have been different coordination solutions among post-communist countries which have been part of the EU integration and accession process. However, having a separate ministry dealing specifically with the coordination of this process in a horizontal way has not been a common case. Most of other countries have adopted an office or secretariat directly under the Prime Minister's office (Poland, Estonia, Lithuania, Bulgaria, Macedonia, etc.) or a joint Ministry of European and Foreign Affairs (later in Croatia, Montenegro, etc.). In order to give the process full support and the right status, the establishment of a specific Ministry for European Integration seemed the right choice in 2004, while negotiations for signing the SAA were ongoing (Bushati 2011). The choice of setting up the ministry implied the establishment of a central coordination with the need for adequate capacities and the necessary political leverage and pressure to be exercised in its interaction with other ministries. In the section about the Ministry of European Integration, a more detailed explanation of its work and its role in coordinating the process will be given later in this chapter.

**Figure 2 Main bilateral structures EU-Albania under the SAA**



In terms of bilateral structures EU-Albania, which were set up after the SAA entered into force, a new framework was engaged in the process. With the purpose of helping smooth implementation of the SAA and its proper monitoring, the structure of cooperation was composed by three levels (as described in figure 2).

The first level is the Stabilisation and Association Council. This is the highest political forum that covers the SAA political issues between Albania and the EU. The Council monitors the implementation of the SAA and, since the political dialogue takes place in the Council, it discusses any major or sensitive issue that might come up as a result of the SAA provisions. More specifically, quoting from the SAA:

*“The Stabilisation and Association Council established under Article 116 shall regularly review the application of this Agreement and the accomplishment by Albania of legal, administrative, institutional and economic reforms in the light of the Preamble and in accordance with the general principles laid down in this Agreement”*  
(Council of the EU 2006a, p. 12).

The SA Council has the power to take decisions within the scope of the agreement. The decisions of the Council are binding for the parties (Council of the EU 2006). In the SA Council we find members of the Council of the EU and the EC on one side (representing the EU) and members of the Albanian government from the other side. The Council meets once a year and it is chaired on a rotation basis for each year: one year it is chaired by a representative of the Council of the EU (by Foreign Minister of the member state holding the Presidency of the Council of the EU at that moment) and the year after by the representative of the Albanian government. From the Albanian side, the Minister of Foreign Affairs is the chair and the responsible institution for representing Albania in the Council. Other members of Albanian delegation included in this format are usually the ministers of European Integration, Justice and Interior, as well as chairman of Parliamentary Commission of European Integration.

The second level is the Stabilisation and Association Committee. The purpose of the SA Committee is to assist the SA Council in its duties on the implementation of the SAA. The Stabilisation and Association Council can delegate any of its powers and duties to the Stabilisation and Association Committee. As foreseen in article 210 of the SAA, which set up the Committee, its composition includes representatives of the Council of the European Union and of representatives of the EC, on one side, and of representatives of Albania on the other. The SAA Committee is chaired by the Minister

of European Integration, on the Albanian side. It gathers once each year, usually few weeks before the SA Council meeting since one of its tasks is also the preparation of the Council meetings. The meetings of the Committee are an important forum where an overall assessment of the implementation of the SAA and its provisions take place, by reviewing all main areas covered. The representatives of the Albanian authorities present the progress made and there are follow-up discussions and recommendations from the EU side.

The third level of the bilateral institutional framework that ensures the implementation of the SAA is related to article 121 of the agreement which provides that “the Stabilisation and Association Committee may create subcommittees” (Council of the EU 2006a). The Agreement had foreseen that before the end of the first year, after the date of entry into force, the Stabilisation and Association Committee needed to set up the necessary subcommittees for the adequate implementation of the SAA. These operational structures would gather once a year and discuss more in detail all relevant issues divided into policy areas. The subcommittees are seven, organised by policy areas. The yearly meetings of the subcommittees serve the purpose of presenting in detail progress achieved from Albanian institutions each year and for ensuring the implementation of the SAA and the commitments undertaken. The EU representatives use this forum for assessing the ongoing of the SAA and for giving recommendation of the successive year. Subcommittees are co-chaired by the Deputy Minister of European Integration of Albania and representatives of the EU Commission. Participants are representatives of the Albanian line ministries and institutions at the technical level, from one side, and persons in charge for the respective areas in the EU Commission on the other side.

These three bilateral structures are responsible for ensuring and monitoring the implementation of the SAA between Albania and the European Union. The SAA foresees that this arrangement will be operational in two stages. The first one is of five years from the entry into force of the agreement (which means by 2014). During the fifth year, the SAA Council should evaluate the progress made by Albania and decide whether to continue with the second stage of association (Council of the EU 2006a).

Apart from the above institutional set-up, another format created by the SAA regards cooperation between the Albanian parliament and EU parliament. The agreement establishes a Stabilisation and Association Parliamentary Committee (SAPC). This platform is “a forum for Members of the Albanian Parliament and the European



Parliament to meet and exchange views” (Council of the EU 2006a, p. 122). Although the frequency of meetings of this committee was not foreseen in the agreement, in the last years it has gathered twice a year. Political dialogue takes place in the Stabilisation and Association Parliamentary Committee, where members of the European Parliament, on the one hand, and of members of the Parliament of Albania, on the other, meet in order to discuss most important issues in the European Integration agenda of Albania. The Committee is chaired in turn by the European Parliament and the Parliament of Albania. Although this forum was conceived as a political platform for improving political dialogue and strengthening consensus around reforms needed, in the last years it has been used as a political arena for harsh debates and accusations among Albanian political parties. This has been heavily influenced by domestic political agendas in Albania, which, sometimes, simply transfers to the SAPC in the European Parliament, affecting these meetings. However, the committee is a useful opportunity for sharing views and recommendations which makes it easier for Albanian representatives to be closer to EU developments and their counterparts in the EU Parliament.

## 4.2 Albanian institutions involved in the process

The transposition and implementation process in Albania goes through two main institutions: the Government and the Parliament. In the government, the Ministry of European Integration, the Ministry of Foreign Affairs and the European Integration Units of each ministry, share the respective load of work. However, since the Ministry of Foreign Affairs has a more political role, in bilateral structures, as explained above, it will not be discussed in the thesis. Domestic coordination and organisation of the process belongs mainly to MEI and EIUs, and therefore, they will be the main focus in the next section.

As regarding the *Parliament*, it has of course an important role in the adoption of legislation for approximating with the *acquis*. The Law No. 9252 “On the work of [the Parliamentary] Assembly in the integration process of the Republic of Albania to the European Union” (8 July 2004) sets out its role in the process as being responsible for compiling a complete legal framework, and supporting and monitoring the process of approximation of Albanian law with the European Union. The monitoring takes place through a formal procedure already established in the above mentioned law.

The law provides that the Albanian Council of Ministers submits information regularly

to the Assembly on the work done regarding the European integration process, especially in relation to the SAA. In addition, the Albanian Council of Ministers consults first with the Assembly concerning the positions it will hold at the various institutions of the European Union.

More specifically, the Parliamentary Commission of European Integration is crucial to the process. According to the Law No. 9252 “On the work of [the Parliamentary] Assembly in the integration process of the Republic of Albania to the European Union”, this Commission is considered the main actor of consultations for the Council of Ministers when taking up positions with various EU institutions. Such consultations are mandatory for the Government especially if such positions require the involvement of the Albanian Parliamentary Assembly. The Commission is the leading structure in all aspects of parliamentary involvement in Albania’s European integration efforts and their oversight, including, most importantly, legal approximation. Cooperation between the Ministry of European Integration and the Commission, especially in the process of law harmonisation, is very important for ensuring the compliance of the legislation with the *acquis* in particular.

Although the work of the Parliament is important in this process, most of the *acquis* is approximated through Council of Ministers Decisions (CMD) or Ministerial Orders (MO), without going through the Parliament. Therefore, the institutional focus of the thesis is the government and other implementing agencies.

#### *4.2.1 The Ministry of European Integration*

As introduced at the beginning of this chapter, the Ministry of European Integration is probably the most important institution, playing a leading role in the coordination of the EU integration process. The ministry was established in 2004, with Council of Ministers Decision no. 580. As the general Albanian institutional framework for the integration process, the ministry has also developed and changed during the years.

In terms of *responsibilities*, the Ministry of European Integration provides a more technical direction and coordination of the process of integration of Albania in the European Union. The ministry is responsible for monitoring and advancing the approximation of the national legislation with EU *acquis*. It uses several instruments for this, but most important is the National Plan for the Implementation of the SAA. This plan is elaborated by the Albanian government under the coordination of the ministry,

and it indicates the steps and timeline for fulfilling SAA commitments and approximation of *acquis* for each chapter. The ministry is also responsible for coordinating the work and monitoring all Albanian institutions for the proper implementation of the commitments taken under the SAA framework. Thus, it not only coordinates and assists institutions in drawing up strategic documents and national programmes, but it also monitors their implementation.

Checking compatibility with EU *acquis* of all legislation drafted by Albanian institutions is another responsibility that the above mentioned Decision of the Council of Ministers has delegated to the Ministry of European Integration. The ministry ensures and checks the compliance of normative acts issued by the government with EU *acquis*. It is foreseen that most draft and proposed laws need to go through the ministry for its opinion before going to the Council of Ministers or the Parliament for approval. In addition, the ministry prepares and organises training on reporting and monitoring of the *acquis* transposition, based on the national plans which derive again from the SAA. In addition, the ministry is in charge of reviewing most of reports that line ministries need to send to the EU institutions and is also in charge of coordinating financial assistance that EU provides for the country.

Overall, MEI is responsible for all horizontal functions and coordination of the process. Apart from the SA Council (Ministry of Foreign Affairs), the ministry co-chairs with EU Commission the bilateral institutional framework regarding the SAA implementation. To sum up, it sets the policy of European integration and it is responsible for monitoring and reporting the progress, the planning of legal approximation and compliance checking, translating the EU *acquis* into Albanian, coordinating the EU assistance and informing the public about the process.

As regarding its ***structure and capacities***, MEI has a total of 75 staff (only 65 in place in 2012), of which 12 are political-level appointments. An additional 17 are support staff (administration) and 26 are sector desk officers and coordinators. The structure of the Ministry has been built and formatted according to the main activities which it coordinates. The ministry has undergone twice a restructuring reform, trying to adapt to the different stages of the process. As in other ministries, apart from the leading positions, its main core is constituted by the directorates. Directorates are composed of operative units which are organised by areas (called ‘sectors’ or units). The ministry has six of directorates:

- Directorate for Justice and Home Affairs
- Directorate for Internal Market
- Directorate of the European Secretariat
- Directorate for the Translation of the *acquis*
- Directorate for Institutional Support (financial support)
- Directorate for Internal Services.

The present directorates are designed according to the needs deriving from the SAA. More specifically, the Directorate for *Justice and Home Affairs* has a total of 5 persons (including the director) and comprises two units: one covering the judiciary system and human rights, and the other covering justice, freedom and security. Most of the staff has received several training sessions, but only three of them have an adequate background according to the position they cover. Apart from ‘daily business’, its level of efficiency has also been tested in different occasions, such as the preparation of the roadmap for the visa liberalisation regime and the preparation for the 12 key priorities set by the EU Commission in order to recommend the candidate status for Albania. The new approach adopted by the EU for the accession of the Western Balkan countries implies that negotiations should open with chapters 23 and 24 of the *acquis*. This once again puts the units covering the rule of law issues in a difficult position, where capacities and resources need to be adequate.

The second important Directorate is the one which covers *Internal market* (basically all other sectors and policy areas, including the ones that are part of this research). After the signing of the SAA, this directorate was composed by the following three units:

- Economic, Financial, Customs and Markets
- Competition, Industry and Social Policies
- Agriculture, Environment, Fisheries, Transport and Energy

With a total of 14 persons, this is the biggest directorate and it covers coordination for most of the issues related to the SAA and the other processes. The mission and objective of this directorate is to orient and coordinate policies and legal measures regarding internal market, towards approximation with EU law. It coordinates and offers technical support to all other institutional and working groups who are engaged with the EU integration process. The directorate identifies the obligations and commitments deriving from the SAA, from the Progress Report and other recommendations and monitors their

implementation by the line ministries and relevant institutions. Since most of the *acquis* and the areas covered by the SAA fall under the competence of this directorate, it is responsible for organising and coordinating the joint meetings with the EU under the SAA (SAA committee and subcommittees).

Apart from the directorate for institutional support (which deals with financial support), and the directorate for Internal Services, the remaining two, as explained below, are also directly involved in the coordination process. The third one, the *European Secretariat Unit*, has a crucial role in horizontal coordination with line ministries and other institutions. This directorate covers main organisation needs within the ministry and acts as liaison with the EU Commission as well. It prepares also the important bilateral meetings and arrangements for all events related to EU integration process. In addition, the IT sector under the secretariat is in charge of databases regarding the integration process, including the important one on the allocation of the *acquis* in each line ministry and institution. The last relevant directorate concerning the integration process is the *Directorate for the Translation of the acquis*. This unit has faced several problems in terms of efficiency and performance due to its low capacities and unclear competences. During the last three years the whole directorate has translated a maximum of 440 *acquis* pages per year and linguistically revised only a few more. As one of the interviewed desk officers of MEI claims, the ministry tried to seek external help with the translation (through outsourcing) but due to lack of financial resources the call failed two years in a row (2012). As a result, even one of the MEI main documents, the last versions of the National Plan for the Implementation of the SAA (NPISAA) exists only in Albanian language, making it very difficult to monitor and study by people who do not understand Albanian.

There is a widespread perception and opinion that MEI does not have the ***political power and leverage*** necessary to guide the process. Sometimes the ministry is perceived as a public relation/translation/communication office, rather than a national coordinator of the process<sup>10</sup>. As one of MEI officers argues, this often causes delays in daily processes, especially when there is a need to respect deadlines for reporting. MEI staff manage to solve these obstacles by establishing personal relations with their counterparts in line ministries. The latter perceive MEI requests as ‘extra work’ and thus

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<sup>10</sup> This sentence is a representative extract of opinions expressed by at least 8 civil servants interviewed in line ministries. The others would maintain an official position claiming the high importance of MEI and its role.

they are not keen on putting them at the top of daily work priorities. This has often required the direct intervention of the Minister of European Integration, especially for important parts of the process, such as the questionnaire for the membership application. as a MEI director recalls.

However, the role of the MEI does not actually seem to be an issue in the agenda of politicians, of experts and high level officials in Albania (Bushati 2012). There have not been any debates in Albania so far on the possibility of radically changing the coordination system<sup>11</sup>. Although the choice is entirely up to the Albanian authorities, the EU representatives<sup>12</sup> in Albania share as well the view that the present system is appropriate for the country (stressing the necessity for strengthening MEI and restructuring it from time to time) at this stage. After the analytical chapters that follow and the empirical findings, I will come back to this issue in the Conclusions' chapter. For now, this discussion provides an overview of the role of the Ministry of European Integration in the process.

#### *4.2.2 The European Integration Units*

The European Integration Units (EIUs) or Directorates of EU integration within line ministries have the responsibility to coordinate and monitor implementation of the obligations arising from the SAA, including transposition and implementation of the EU *acquis* in Albania in their respective policy areas. They were established by Council of Ministers Decision No. 179 of 22.02.2006 (On the establishment of European Integration Units in line ministries). In terms of functions and competences, the European Integration Units are responsible for internal institutional coordination in the respective ministry and coordination with MEI and other ministries. More specifically, the units are in charge of ensuring a direct connection and coordination of the institution's work with the Ministry of European Integration and other line ministries, in the framework of commitments undertaken under the Stabilisation and Association process. The same type of work is done by the units regarding the process of approximation of national legislation to *acquis communautaire* and for reporting

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<sup>11</sup> No major studies or reports were found (apart from a not published draft paper by Agenda Institute in 2006 where it was argued for a more centralised body under the Prime Minister's office, which should be in charge of the process).

<sup>12</sup> Three interviewees in the EU Delegation in Albania expressed their thoughts about the coordination set up.

regulations that are aligned to it. The units coordinate the preparation of reports for the European integration process, since they act as secretariats for the inter-institutional working group which covers areas under their responsibility.

Performance of the units in the process of legislative harmonisation with EU *acquis* (planning, drafting and compliance checking) varies widely. Due to lack of capacities and resources, most of the units do not deliver in the above mentioned tasks. For this reason, overall, the harmonisation function remains at a rather early stage, understanding of it is still limited and performance of the law harmonisation function varies. EIUs are rarely involved in legal drafting though they might participate in working groups formed within a ministry for this purpose in the medium-term, providing advice on the *acquis* as well as helping in preparation of the concordance tables (through checking their quality). The units' capacities in understanding the *acquis* and participation in law drafting groups is an important element that can contribute to the outcome of the product and the coordination of the process.

As assessed by reviewing the legislation and from the interviews with officers from the units of four different ministries of the sample, the monitoring function is at an early stage as well. The units do not have a formal right to monitor work of other directorates or departments. In addition, there are no provisions for involving the units in translation processes in order to help sector directorates. There is poor capacity in drafting harmonised legislation and of coordinating revision of translated and linguistically revised pieces of the *acquis*. As a result, there is poor quality of materials and reports sent to MEI, which is also confirmed by MEI officers.

As regards the structure of the units, the decision of the Council of Ministers does not determine the type of structure or the number of employees. It leaves it up to the ministries, according to the needs of each institution. However, it specifies that they should not comprise less than three employees<sup>13</sup>. Directorates usually are composed of two sectors, one supporting the EU integration director, and the other sector coordinating other European integration activities such as planning of legal approximation, monitoring, reporting and preparing for SAA subcommittee meetings. The low number of staff and capacities within the units was put to the test during the work for answering the questionnaire of the European Commission about Albania's application for EU membership. Despite the fact that the Council of Ministers' decision

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<sup>13</sup> An updated full list of number of employees in each EIU by ministry can be found in Appendix 2.

of 2006 was revised in 2009 by improving the functionality of the units, and despite the fact that the number of people employed was increased (from around 50 people before 2009 to almost 100), the low level of performance has been a constant issue which was reported especially by MEI officers during the interviews.

As regards the capacities and background of people employed in the units, due also to the role that units have been assigned in practice, they rarely act like experts on European integration. They coordinate more the reporting and other activities, without having a role in the content of the work produced (Shytaj 2012). This is solely a responsibility of policy directorates. Another interesting fact is the academic background of people working in the units. From the data gathered from the Department of Public Administration, only 14% are lawyers and 31 % come from natural sciences. This is due to a problem with the annex of the Council of Ministers' decision which does not declare a mandatory field of study for the candidates<sup>14</sup>. The same approach applies to the English language requirements of the people employed in the units. Lack of language skills affects the quality of law approximation. These obstacles makes monitoring functions more difficult and it weakens the ability to coordinate and enforce deadlines within ministries which appears to be a major problem in most ministries.

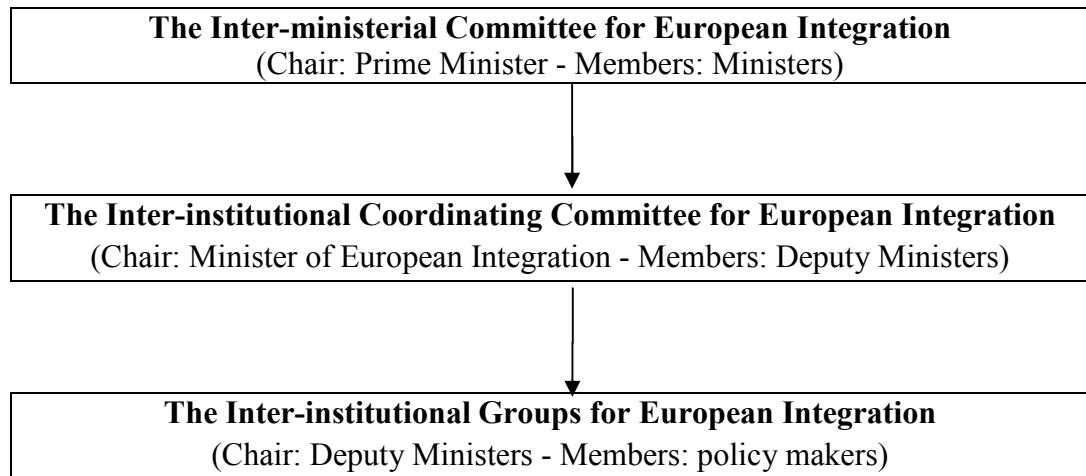
### 4.3 Inter-institutional Coordination

Coordination between the different institutions is key to the European integration process in general and to the adoption and implementation of the *acquis*. For this reason, it is important to explain and analyse inter-institutional structures that are in charge of the process, their role and performance. Institutional and inter-institutional EU integration coordinating structures in Albania are established and operational. Inter-ministerial co-ordination in integration matters is based on a multi-level structure of committees and working groups. The existing structure was defined by the order of the Prime Minister No. 46, date 01.04.2009, "On the establishment, composition and functioning of the inter-ministerial coordination structures, for implementing the commitments undertaken under the Stabilisation and Association Agreement". Inter-institutional coordination of the process of European Integration in Albania is built upon three levels:

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<sup>14</sup> It actually states "Law or Economics are preferable" and "a Master in European Studies would constitute an advantage". Therefore it leaves room for hiring even people who do not fulfil the above.



**Figure 3 Inter-institutional coordination framework in Albania**

a) *The Inter-ministerial Committee for European Integration* (ICEI) is the political level format for coordinating the European integration process between Albanian institutions. Its establishment happened in the same year of the entry into force of the SAA (2009) which aimed not only at facing the new challenges ahead with a proper coordination framework, but also for giving a strong political signal about the importance that the process has for Albania. With the help of the other lower level platforms, its role is to lead, monitor and coordinate the implementation of commitments undertaken under the Stabilisation and Association Agreement, at political and administrative level. ICEI is responsible for leading and approving general policies and the EU integration policy. Its decision making nature helps also for policy coordination for the implementation of obligations arising from the Stabilisation and Association Agreement and from other strategic documents, for the European integration process.

The ICEI is chaired by the Prime Minister, or in his absence, by the Minister of European Integration. Its members are all ministers. Apart from these permanent members, the committee can invite senior officials and representatives of line ministries and other central institutions to its meetings according to the agenda of the topics discussed.

b) *The Inter-institutional Coordinating Committee for European Integration* (ICCEI) is chaired by the Minister of European Integration and consists of representatives of line ministries at the level of deputy minister and secretary general, and of representatives from institutions under the Prime Minister and ministers, at director general level. This

format is very important because it connects the political level to the more operational one and it is supposed to give solutions to problems emerging in terms of coordination. More broadly, ICCEI is responsible for the monitoring and coordination of obligations under the Stabilisation and Association Agreement and strategic documents, for the European integration process. ICCEI reports to ICEI on all main activities regarding the EU integration process;

ICCEI is the leading institutional framework for annually updating the National Plan for the Implementation of the SAA and it is responsible for the validation and finalisation of documents and reports prepared for the meetings of the Stabilisation and Association Committee (where it represents Albania) and subcommittees. It is supposed also to assess financial and institutional implications of the SAA implementation and of law approximation with *acquis communautaire*.

c) *The Inter-institutional Working Groups for European Integration (IWGEI)* constitute the technical and operational level of the coordination framework. They were set up with an order of the Prime Minister, on the occasion of the questionnaire that Albanian authorities needed to reply to after the application for membership. Each group is responsible for one chapter of the *acquis* and the allocation of institutional responsibilities per each chapter of EU *acquis* is determined by the Ministry of European Integration in co-operation with line ministries. The scope of activity of the Inter-institutional Working Groups for European Integration includes the specific content of the relevant *acquis* chapter under their responsibility.

The IWGEIs are in charge of ensuring inter-institutional cooperation and communication at the technical level aimed at implementing the commitments under the policy documents related to EU Integration. They oversee and work for the implementation of the Stabilisation and Association Agreement. The groups prepare annual revisions of the National Plan for the Implementation of the SAA in the respective chapters.

IWGEIs are presided by the deputy minister of the lead/coordinating ministry or the head of the lead/coordinating institution, for its relevant chapter. The lead/coordinating ministry and MEI can invite independent public institutions to participate in the IWGs. Stakeholder representatives can be invited to attend IWGs meetings with the purpose of providing information and insight on particular areas.

The order of the PM foresees that Inter-Institutional Working Groups for European Integration should hold regular monthly meetings to take stock of developments and decide on the course of action. In the last years, there have been rare meeting of just few groups (as reported by the Ministry of European Integration).

#### 4.4 Mapping legislation approximation and *acquis* adoption

In order to better understand real compliance and implementation of the *acquis*, we should include in the loop different concepts and processes such as of the transposition of EU legal acts into the national legal acts of the country, the proper coordination and planning of this process and the required resources, monitoring of its ongoing progress and results, assessing of compliance with the undertaken acts, and, finally, full implementation of the legislation adopted as national legislation.

The process of legal approximation and implementation of the *acquis* in Albania has been initiated and followed up in a more programmatic way only in the last decade, especially due to the SAA. Apart from few previous weak attempts, it was only with the Stabilisation and Association Process that this relation included clear commitments in terms of approximation of legislation. Article 70 of the SAA states that:

*“The Parties recognise the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavour 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.”* (Council of the EU 2006a, p. 65).

One year before signing the agreement, the Albanian government had already prepared a plan that would guide the work on compliance with EU *acquis*. This was the National Plan for the Approximation of Legislation. This first attempt of organising the process was mostly a summary of main documents regarding EU integration. Despite its ambitions, the document was not well-structured and it was not realistic in its commitments (Vurmo 2008). As the EC progress reports have stated in 2006 and 2007, short term priorities and objectives contained in the plan were not respected. Beyond good intentions, the plan failed to provide some structure to the process of approximation. As a result, immediately after the SAA was signed in 2006, the government of Albania adopted a new plan: the National Plan for the Implementation of

the SAA. This document has been the main instrument used from Albanian institutions since then.

#### *4.4.1 The National Plan for the Implementation of the SAA*

After signing the SAA, the government of Albania adopted a new plan for approximating and aligning the legislation with the *acquis*. It was named the National Plan for the Implementation of the SAA 2007 – 2012 (NPISAA<sup>15</sup>). This new plan replaced and dismissed the one year old National Plan for the Approximation of Legislation. The SAA clearly defined the obligations for Albania in the area of compliance with EU standards and legislation<sup>16</sup>. The NPISAA follows the obligations and commitments of Albania and it tries to structure them in terms of measures and deadlines. The structure of the document is not much different from the previous one, the National Plan for the Approximation of Legislation. Apart from the failure of monitoring and implementing the NPAL, drafting a new plan was justified by the new government because of the SAA and the fact that a new stage of the process was about to begin. However, it is implied that another main reason was the fact that in 2005 Albania had general elections and the centre-right won, coming back to power after eight years of opposition. As usually happens in these circumstances in Albania, new forces try to build new instruments that they find appropriate, which would also leave their mark in the history of the process (although sometimes this might damage the so-called institutional memory). NPISAA contained measures based on short (2006-2007) and medium-term (2008-2009) priorities. The way it has been drafted is really important for understanding the process of compliance with the *acquis* and how it is planned. The Ministry of European Integration is the initiator and the coordinator of the process. It prepares the format and methodology for drafting the document. After this, MEI is in charge of training all working groups that will be involved in each of the parts of the Plan. In the end MEI reviews and prepares the final draft based on each institution's contribution.

The NPISAA is actually the main instrument used for planning and adopting EU acts and legislation in Albania. Despite the fact that authorities do not always respect deadlines foreseen and commitments undertaken in the document, it still remains a programmatic tool that the government uses in the process. It is updated almost every year and each revision is

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<sup>15</sup> Council of Ministers Decision No. 557 (2007)

<sup>16</sup> Title VI of the SAA is Approximation of Laws, Law Enforcement and Competition Rules.

used also by EU partners in order to follow up the government's planning. However, since the NPISAA is not a bilateral work but it is internal to Albania, and since the deadlines it sets are often not realistic and thus not implemented, the EU relies on other instruments for strictly monitoring the adoption and implementation of the *acquis* in Albania. Most of the work is channelised through the SAA bilateral structures. Though the Plan contains many provisions that come up from the SAA framework meetings, it is not a reliable instrument in terms of efficiency and deliverance. Commitments undertaken in the Plan exceed EU requirements in the process and serve mostly the purpose of showing political commitment and for giving the Ministry of European Integration an instrument to be used for monitoring and 'pressuring' the other institutions in terms of horizontal coordination. However, in order to understand the process of *acquis* adoption and implementation the Plan does not give a clear picture in terms of steps taken, therefore other government documents and fieldwork data collection were much more productive options.

#### *4.4.2 Tracing the process of formal adoption of EU legislation*

Albania's principal obligations in terms of *acquis* adoption derive from the SAA and recent developments in EU legislation regarding related areas (which are monitored by the Ministry of European Integration). As already explained, the SAA is the main framework of EU and Albania relations. Therefore, it is the bilateral structures that lead and coordinate the process that give the impulse and pressure for *acquis* adoption in all areas. The SAA is very clear on the obligations that Albania has in this respect. However, there are no specific deadlines for all issues. This is arranged through the NPISAA and inter-institutional coordination (internally) and through the SAA institutional framework (bilaterally). The Ministry of European Integration does a systematic review of the obligations and deadlines and it demands from line ministries and agencies a response on actions to be taken. In practice, subcommittees of SAA serve well the function of keeping *acquis* adoption and implementation process in line through giving a top-down signal to relevant institutions and through monitoring and making them accountable in the periodic meeting.

Figure 4 below traces the process of *acquis* adoption in Albania, by depicting the different stages<sup>17</sup> and institutions involved. Although this describes only formal adoption of the *acquis* (and not implementation, which is the focus of the study), it is very useful for

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<sup>17</sup> The different stages are labelled with numbers in incremental order for easing the reference and understanding in the narrative part.

understanding the steps of the process and then explaining in the next chapters how these affect implementation.

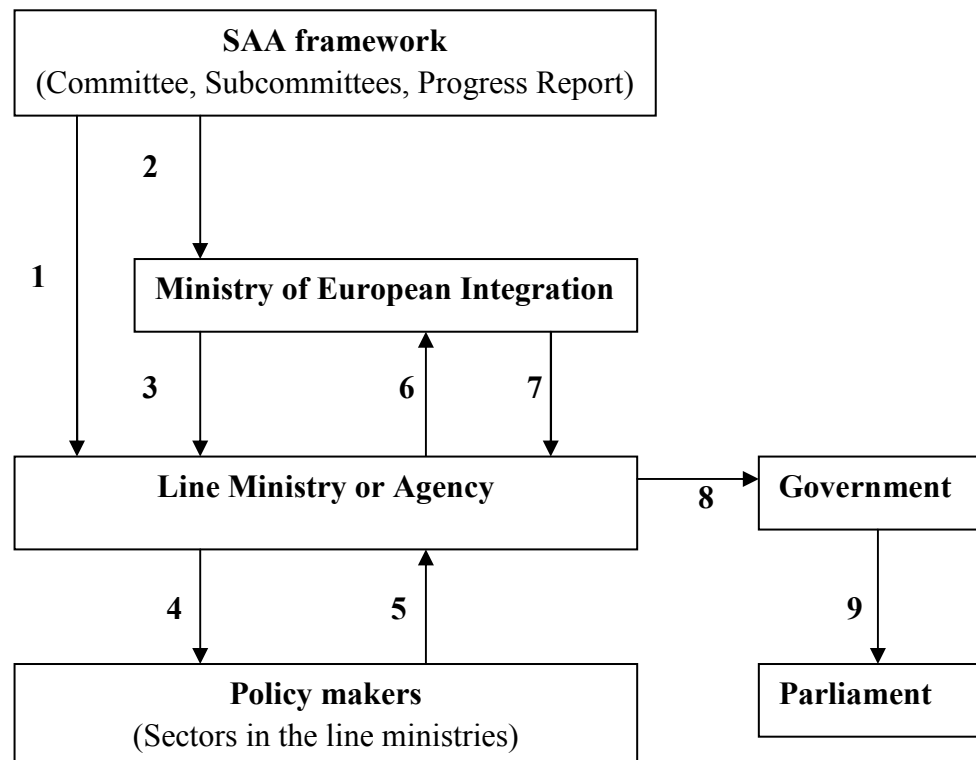
In the conclusions of SA structures meetings, recommendations are issued as regarding commitments for the next steps that Albanian authorities need to undertake in terms of measures, reforms and *acquis* adoption. This corresponds to stage 1 and 2 in the graph. There are two parallel channels because although MEI is in charge of coordination (and it chairs the meetings), several inputs are also transmitted directly to the relevant institutions in the meetings, by EU representatives. However, at the end, MEI sends the official conclusions to all involved actors and monitors their work in the successive months before the next meeting.

Apart from what comes up in the meetings, MEI does its own review of the obligations of the SAA (based also on the EC Progress Report and the NPISAA) and thus demands and pushes line institutions for specific issues with approaching deadlines (stage 3). Although this role is rarely exercised by the MEI, in some particular cases it has intervened and asked for fulfilling certain commitments<sup>18</sup>. Each year in October, when the Progress Report is published, the MEI does an analysis and a review of recommendations and tries to turn them into tasks for all relevant institutions.

Once the input has reached the line ministry, there is usually a need for ‘external’ pressure. The EC progress report and the recommendations from the subcommittees serve to catalyse and speed up the pace of reforms and *acquis* adoption. Thus after this stage, officers from sector directorates and departments are involved in the process, according also to internal programming of the ministry or agency (stage 4). The ‘real’ work in terms of approximating legislation and policy-making happens here of course. And this specific part of the process will be largely explored in the following case study chapters. The desk officers in the ministries review the recommendations and, according also to sector strategies and working plans, prepare the draft of legislation which introduces legal acts that approximate Albanian legislation to EU *acquis*. Once the drafts are ready, before moving to the next stages, formally it is foreseen that new legislation should be discussed internally and also consulted with non-state actors and interest groups who might be affected. This should happen for most important interventions, but it is not always the case. As it will be assessed in the next chapters, the consultation practice varies between sectors and within the same sector, according to the importance or sensitivity of the draft proposal.

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<sup>18</sup> This happens only when there are pressing issues, which however are rarely related to *acquis* adoption (such as measures needed for the visa liberalization process or the candidate status.)

**Figure 4 Tracing the process of *acquis* adoption in Albania**

Once the draft is considered finished by the technical level and has been passed for revision to the direction and political level (stage 5), the draft should be sent to the Ministry of European Integration which has the responsibility for checking concordance with EU *acquis*. This part implies verifying whether and to what extent a draft law or piece of legislation corresponds to a relevant part of the *acquis* or not. For this purpose the ministry has issued tables of concordance which, by law, should accompany each draft proposal. However, this does not happen regularly and therefore it is obligatory that each draft goes through MEI for a legal opinion (stage 6), on whether the draft proposal approximates Albanian legislation with EU legal acts, if it is in concordance with them and the SAA, or if it is in breach of these commitments. Drafts of legal acts which do not aim approximation with *acquis* are not always sent to MEI. However, this has become at the discretion of line Ministries (determining which act is relevant to the process and which not).

After the opinion from MEI, the draft is referred back to the originating ministry with possible comments (stage 7). Although the procedure foresees a revision of the draft in case of comments, usually this takes place even before, from informal contacts that desk officers in line ministries have with MEI desk officers. The final draft proposal is sent to the Government for approval (stage 8). If in case of a draft-law, the last stage involves the

Parliament, where drafts are discussed in relevant Commissions (MEI representatives are present in the discussions when requested) and then the final approval.

Developments in terms of adoption of the *acquis* are regularly reported from MEI to EU counterparts in several periodical occasions, such as SAA meetings, contribution to Progress Report (twice a year, in May and in September), experts' missions covering specific areas, etc. The approximated legislation is also reflected in the annual update of the NPISAA.



## CHAPTER 5 FREE MOVEMENT OF GOODS

Free Movement of Goods is one of the most important and extensive chapters regarding EU legal acts. To be integrated into the single market, accession countries must adopt the relevant *acquis* and standards. Trade with these countries has been a strategic sector for the EU in terms of conditionality and instruments for accession countries. In the Balkan region, it has been an important basis for EU's relations with these countries. With the SAA and the interim agreement concerning trade, Albania entered a new stage in terms of relations with the EU. The preferential regime that the EU applied to Albania has contributed to an increase in Albania's exports to the EU (Albinvest 2008). This process was in line with the EU's approach towards countries in the Western Balkans, which has been built upon a regional framework (Anastasakis & Bechev 2007). When referring to these developments, Vurmo (2008) argued that "Albanian economic operators will now have to adopt a more sustainable approach in both taking advantage of the neighbouring markets and also in facing the pressure of the regional economies and that of the European Union" (p. 29).

This is the most strategic agenda for Albania not only because most of its trade share is with EU members, more than 70% (DG Trade 2013), but also because of its national priority of achieving EU membership. The trade agreement had a great influence in the liberalisation of Albania's foreign trade<sup>19</sup> and in increasing trade flows between the two parties (ACIT 2012). More specifically, in relation to the market economy, free trade, and regional cooperation, the main SAA requirements in this field included "(i) establishing a Free Trade Area with countries in the region and EU; (ii) complying with WTO commitments and requirements; [and] (iii) adopting internal market *acquis*, related to free movement of goods, workers, services and capital" (Mancellari 2004, p. 5). Regarding benefits, customs duties on Albanian industrial products exported to European markets were reduced to zero. The same rule applied to most Albanian agricultural products. For some remaining products, customs duties were progressively reduced until they dropped to zero.<sup>20</sup>

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<sup>19</sup> For a detailed overview of Albanian economic indicators, please refer to Appendix 3.

<sup>20</sup> The agreement foresees a duty-free regime for a list of 323 processed agricultural products originating from Albania entering the EC markets. A detailed table on the custom duty exemptions is provided in Appendices 3 and 4.

Apart from improving trade figures and balances, with the entry into force of the SAA, there was a change in the nature of the contractual relation between Albania and the EU such that the membership perspective became more concrete (Vurmo 2008). The process finally had a better defined framework that would structure more efficiently the European integration path (Sanjay 2008), especially with regard to the approximation of legislation and transposition of the *acquis*.

This chapter will explore the adoption and implementation of the *acquis* related to the free movement of goods in Albania. Its aim is to identify and explain patterns of implementation, to explore the theoretical propositions raised, and to reach conclusions on the process in this sector. It will start with an overview of the situation, focusing on the major institutional steps taken and the development of *acquis* transposition in this area in Albania. A detailed account of the adoption process for EU legal acts and the situation of free movement of goods in terms of complying with the *acquis* is given. This part also summarises the major steps undertaken by domestic authorities according to SAA commitments.

The chapter continues with a brief explanation of the inquiry for this sector in terms of the documents and materials analysed, interview sample, the case study directives chosen to be analysed, and the process of data analysis. It explains the reasons for these choices and how they are implemented in the study.

Section 5.3 concerns the results of the data analysis. It is organised following the three main explanatory themes and independent variables. In each related part, an analysis of the data and an explanation of the findings are described. In addition, the process of the adoption and implementation of the sample directives is used in the account as an example for a better understanding and to trace the process. The last section contains a summary of considerations on the findings and the final conclusions for this policy area.

## 5.1 State of compliance with the *acquis* in Albania

The general principle of the free movement of goods in the European project is that products must be traded freely within the Union. This general principle is then further detailed and put into practice by a harmonised regulatory framework in different policy areas, following either the “Old Approach” (precise product specifications) or the “New Approach” (general product requirements). Transposition of harmonised European product legislation is the main part of obligations of this chapter for all member states

and accession countries. For proper implementation of legislation in this area, good administrative capacities are needed for the application of horizontal and procedural measures in areas such as standardisation, conformity assessment, accreditation, metrology, and market surveillance.

The Stabilisation and Association Agreement contains many obligations in the field of free movement of goods. Apart from trade liberalisation, the most important part concerns alignment with EU technical regulations and standards as well as metrology, accreditation and conformity assessment procedures. The obligation to approximate Albanian legislation with the *acquis* is detailed in Article 70 and 75 of the SAA.

Some of the most important parts of this *acquis* chapter concern laws on market surveillance, product conformity (with additional laws on specific products)<sup>21</sup>, as well as on standardisation, metrology and accreditation. The basis for product conformity and market surveillance is Law N° 9779, date 16.07.2007, “On general product safety, essential requirements and conformity assessment of no-food products”. The most important legislation that Albania has adopted in this context is the basis of standardisation, such as the Law N° 9870 of 04.02.2008. The basis of metrology is contained in the Law N° 9875 of 14.02.2008, “On metrology”. The basis of accreditation is stipulated in the Law N° 9824 of 01.11.2007 “On Accreditation of conformity assessment bodies in Republic of Albania”. The legal framework on accreditation also includes Council of Ministers Decision N° 1716 of 03.10.2008 and Prime Minister Order N° 124 of 03.08.2007 “On approval of the structure and organisational chart of the Accreditation Directorate”.

Deriving from the obligations and commitments under the SAA, this legislative framework has been designed and implemented through the line ministries and the specific directorates within these ministries. Transposition in this area is a joint responsibility of different institutions<sup>22</sup>. However, the Ministry of Economy, Trade and

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<sup>21</sup> The legal basis these products in Albania has been approved earlier though not fully in line with the *acquis*: Law No 9290 of 07.10.2004, Law N° 9323 dated 25.11.2004 “On drugs and pharmaceutical service”, Law N° 8531, date 23.9.1999 “On the Fertilizers Control Services”, Law N° 8378, date 22/7/1998, “Road Code of the Republic of Albania”.

<sup>22</sup> Institutions responsible for this area: Ministry of Economic Development, Trade and Energy; General Directorate of Accreditation; General Directorate of Standardisation; General Directorate of Metrology; Ministry of Energy and Industry; Ministry of Agriculture, Rural Development and Water Management; Ministry of Health; Ministry of Environment; Ministry of Transport and Infrastructure; Ministry of Innovation and Public Administration; Ministry of Defence; Ministry of Interior; Ministry of Culture; Authority of Electronic and Postal Communication; National Centre for Drugs Control; Technical Central Inspectorate;

Energy (METE)<sup>23</sup> is the one in charge of this chapter of the *acquis*. METE is the main coordinating ministry in regard to trade and it has the largest share of product directives and market surveillance activities.

As for related agencies and directorates, General Directorate of Standardisation (GDS) is the national standardisation body for the development, adoption, approval and publication of standards in all sectors, except for those in the area of telecommunications. The General Directorate of Accreditation (GDA) is also an important actor, being the only accreditation body in the country. Additional accreditation committees and an Accreditation Advisory Board assist and support the work of GDA. The total number of accredited conformity assessment bodies so far is 29 of which 15 are testing laboratories, 2 certification bodies and 12 inspection bodies. Another important agency is the General Directorate of Metrology (GDM). This is Albania's governing body of the national metrology system. The General Department of Metrology is a full member of EURAMET and an associate member of WELMEC. The GDM's calibration and measurement capabilities were accepted for mass measurements in the Key Comparison Database of the International Bureau of Weights and Measures. In addition, a new National Metrology Centre has been built and is already functioning in Tirana (EC 2013).

These newly established directorates are very important for implementing legislation in the free movement of goods area, since they are responsible for important parts concerning Chapter 1 of the *acquis*. These main administrative structures responsible for standardisation, accreditation and metrology are operational and, overall, Albania seems to have a proper institutional set up in place.

In terms of approximation or harmonisation of Albanian legislation with the *acquis communautaire*, as a prerequisite for the country's EU accession, Albania has transposed a significant amount of directives<sup>24</sup> into the Albanian legislation, especially in the period 2006–2009. As Vurmo puts it, although there were some previous attempts to "create a structured approach regarding the challenges of approximation of legislation with the EU *acquis*, it was not until the adoption of the National Plan for the Implementation of the SAA (NPISAA), that the country took serious steps in this direction" (Vurmo 2008, p. 43). This strategy was followed by the National Strategy for

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<sup>23</sup> Since a cabinet restructuring in September 2013, it is named Ministry of Economic Development, Entrepreneurship and Trade.

<sup>24</sup> For a full list of approximated directives on Free Movement of Goods, please refer to Appendix 6.

Development and Integration 2007-2013 (NSDI), approved by the Council of Ministers on 12 March 2008 which incorporated integration in a broader development framework (Department of Strategy and Donor Coordination, 2009). These important documents contained concrete measures and legal acts planned for transposing EU directives for the free movement of goods sector as well. Some of the most important directives that METE has transposed so far are detergents regulation and some other products (toys, pressure equipment, low voltage, machineries, etc). However, as stated in the answers of the questionnaire that Albania prepared in 2010, and in EC progress reports, other ministries still have to make efforts for the transposition of other product directives such as: medical devices, construction products, CIVEX, Pyrotechnics, etc. This would be followed by the establishment of other respective Market Surveillance Bodies (Council of Ministers, 2009, p. 390). By 2010, Albanian legislation has been fully harmonised on legal metrology, pre-packaging and units of measurements; it has been partially harmonised on motor vehicles, chemicals, detergents and fertilisers; and it is in the planning process on drug precursors, explosives for civil use, pharmaceutical and cosmetics as well as on crystal glass, textile and footwear.

Regarding the evaluation of the situation by the European Commission, it has acknowledged that horizontal and procedural measures, including the framework legislation on technical regulations for products and conformity assessment procedures, and Old and New Approach product legislation need to be harmonised with the *acquis*. Administrative and implementation capacities are also considered insufficient for implementation, although legislation is generally adequate. The 2011 Progress Report acknowledged positive developments in the legislative framework especially in the field of accreditation, standardisation, conformity assessment, customs legislation and in the field of the 'Old Approach' product legislation, while limited progress is noticed in regard to the 'New and Global Approach' product legislation (EC 2011, pp. 29-30). The report concludes by stating that "further efforts are needed in order to harmonise Albanian legislation with the New and Old Approach directives, as well as to align the horizontal legislation with the *acquis* and to build up an adequate market surveillance infrastructure" (EC 2011, p. 30). These were the same conclusions as the previous year regarding implementation deficit and the need for strengthening administrative capacities for effective implementation of adopted legislation.

The 2012 Progress Report has reported good progress in the field of standardisation (the GDS has adopted about 95.5% of ENs as Albanian standards), conformity assessment,

metrology, accreditation and market surveillance, while, in contrast to the previous year, it reports limited progress in the field of the 'Old Approach' product legislation and good progress in the 'New and Global Approach' product legislation. No progress is reported in the area of procedural measures. The report concludes that “further efforts are needed on overall legislative approximation and on establishing an adequate market surveillance inspectorate” (EC 2012, pp. 31-32).

In the different progress reports but also as stated in the minutes of the SAA subcommittee on Internal Market, there is a constant reference to the need for effective implementation of the adopted legislation. This has become more evident in the last years, when the amount of transposed legislation has increased and the implementation deficit has deepened as well. In terms of approximation of legislation, we can divide the integration process area of free movement and goods into two different stages according to EU evaluations: the first one is right after the signature of the SAA, 2006 – 2009, which has been an intensive period of adoption of *acquis* in this area, with no major focus on implementation. A high number of laws were approved in that period, many of which aimed at approximating Albanian legislation with the *acquis*, as foreseen in the NPISAA. The second period, 2009 – 2012, has been a more ‘careful’ one in terms of number of legal acts adopted, and the focus has shifted towards implementation of the already adopted legal acts. The rapid increase in the divergence between approved and effectively implemented legislation was of great concern to the European Commission and this is why implementation and enforcement in this area is still a main issue.

## 5.2 Explaining the samples and the research work

The set of directives falling under Chapter 1 of the *acquis* is very large. EU Old Approach product legislation covers the areas of motor vehicles, chemicals, pharmaceuticals, cosmetics, legal metrology and pre-packaging, textiles (1007/2011/EU), footwear labelling (94/11/EC), crystal glass (69/493/EEC). It is foreseen that a series of procedural measures with the sufficient administrative capacity to be properly applied, needs to be introduced in order to fully comply with the directives. For the purpose of this research in the area of free movement of goods, two specific directives have been chosen: the first Directive is the 75/107/EEC on the bottles used as measuring containers. This directive has been fully transposed in the Albanian legislation through a CMD no. 1161 on 13 August 2008. It has entered into force on 2

September of the same year. The second directive is the 76/211/EEC on the pre-packed products. This has been fully transposed by Albanian authorities through Decision no. 1352 on 3 October 2008 and it entered into force on 29 October of the same month.

Both these directives have been chosen due to the potential for variance and understanding of the process that they offer. They are both specifically related to the same sub-area of the *acquis* chapter and they are both related to the Old Approach. In addition, they have been both fully transposed in the Albanian legislation<sup>25</sup>. However, the first one has been considered partially implemented<sup>26</sup> while the second is regarded as not implemented (Council of Ministers 2010). Therefore, exploring in depth and tracking the process of legislative design and implementation set up of these two acts can offer valuable data regarding the understanding of implementation and the discussion on the raised theoretical propositions.

*Documents* and secondary sources used for exploring this policy area were mainly related to the public materials that regard procedures and the specific directives considered. Some of the information could be found in official websites of the METE. However, reaching and accessing more internal documentation and drafts (such as the minutes of meetings) was more difficult so interviews proved to be a good instrument for complementing the missing part. Archives of the Ministry of Economy were poor and not helpful for tracking important parts of the process. More specifically, documents used for this chapter were the drafts of the relevant EU directives and the decisions of the Council of Ministers of Albania that have transposed those directives; the code of administrative procedures; internal regulation of rules and procedures; policy briefs from institutional experts and business communities. Documents were helpful not just for understanding the process from the formal point of view but also for the analysis and triangulation method used for exploring the patterns and factors that characterise the design of the policy and the interaction between the actors involved.

*Interviews* in this policy area were quite useful in terms of information and accounts. All the participants agreed to be quoted but some of them did not want to be identified directly, in case they were quoted. According to the area to be explored and specifically for the directives selected for the sample, the full list of persons that have been interviewed can be found in the Appendix 1. They are representatives from the Ministry

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<sup>25</sup> Most directives are partially transposed which might make it more difficult to explore their implementation.

<sup>26</sup> Practical implementation

of European Integration, the Ministry of Economy, Albanian Parliament, EU Commission and its Delegation in Albania, Business Community, experts, etc.

As regarding the method of *participant observation*, in the case of free movement of goods, I had the possibility of participating in three meetings of the National Consultative Council of Businesses (NCCB), where the Ministry of Economy presents drafts and discusses them with business associations' representatives. I have used data gathered from this observation for enriching my exploration but not as a basis for my findings. Observations were very useful for understanding better interaction in consultations and for cross-checking information provided by participants in the interviews.

### 5.3 Exploring theoretical propositions and findings

#### 5.3.1 *Institutional coordination and division of competences*

Both selected directives, as part of the National Plan for the Implementation of the SAA, have followed similar paths in terms of timing and institutional framework. The first directive's adoption was a result of requests coming also from SAA subcommittee on trade while the second was planned ahead by the authorities in the framework of planning approximation of legislation. In both cases, a working group was set up with members from different departments within the Ministry of Economy. Although this is the common procedure (Sykja 2012), it is not a written rule rather than an established routine. The group is usually chaired by the relevant director covering that area, therefore representing, in principle, a decentralised management of the process. The two chosen directives represent interesting cases because although both of them fall under the Directorate of Metrology (DM), the work on directive of measurement bottles was chaired by this Directorate, while the second on pre-packed products was chaired by the General Directorate of Trade Policies (GDTP 2012). The approach on the second directive resulted in a much more centralised operation, where information flow and expertise was concentrated in the GDTP. These differences in the organisation of the process determined changes in the way policy design was developed and handled, as it is explained later below, which then can determine implementation results.

First of all, it affected the speed of the process. It seems that when the process is managed by a more central (and not sector based) authority, procedures are much faster,



consultations both internally and with other line ministries are easier, and disputes have more chances to be solved (Lleshi 2012; Sykja 2012). Although in both cases the first draft was consulted internally, the pace changed during legal department review, where delays produced uncertainties in the process and therefore extension of the deadline set. According to a desk officer in the Directorate of Metrology, the draft of the first directive was stuck in the legal department for several weeks and they were unable to receive a response for some time.

Hierarchy appears to play an important role when it comes to a smooth development of the policy process, internal to the institution. This was confirmed in the second directive case where the leadership of the GDTP managed to produce a draft ready in less time when compared to the previous one. One of the key words used in most of the interviews, concerning this point, was ‘authority’. It is perceived that the momentum of the policy process depends more on the strength of authority of the leading body rather than on written procedures and rules.

In addition to the duration of the policy process, central coordination seems to influence dispute solving as well. In the case of the first directive, the Directorate of Metrology faced problems in early stages with the Ministry of Agriculture, as a desk officer of DM explained during the interview. In the official correspondence between the two institutions there was an issue raised on the standards to be adopted in the case of agricultural products measurements. According to the account from the interviewed participant, although the raised issue was consulted ahead informally between the parties, they decided to follow the official procedure in order to ‘avoid any responsibility’ on the disputes that could follow. The process was slowed down and it was necessary to set up joint meetings at the desk officers’ level for reaching a common position, before sending the draft to Council of Ministers. This delayed further the drafting process until the final version was then passed through the Ministry of Justice and the Ministry of Finance (as per procedure) before going for approval.

However, when looking more in depth at the implementation phase, results appear to be more controversial. The first directive has been evaluated as partially implemented and the second one not implemented yet (although already transposed and adopted). In both cases consultations were carried with inspectors, but substantial differences could be grasped between them. As explained, the working group for the first directive was chaired by the specialised body dealing with metrology. Their technical expertise led the process and inspectors were involved in the drafting process. Surprisingly this did

not speed up things, but it delayed them further through several discussions<sup>27</sup> internally, as one of the inspectors claims. However, the result in the end was a commonly agreed draft where most of the issues raised were solved. According to a representative of the Inspectorate (2012):

*“People in the offices know the area but they do not understand the ground. Laws are copied but then it’s up to us to implement and enforce them, which is not easy. I think that they should listen to us more before approving them and not see us as an enemy”.*

In the interview I had with an inspector that actually participated in those meetings back then (the others had been removed from office in the meantime), he manifested dissatisfaction with the way the design process takes place. However, he admitted that after many discussions most of his concerns were addressed and that the quality of the legislative act was satisfactory to him. This simultaneous connection to the later stage (implementation actors) has helped in improving performance. As the literature suggests, street level bureaucrats can fail to implement the policy when not involved properly. In this case, implementation is considered partial. It is partial because it is not implemented in all areas of Albania (especially rural). In some areas businesses have failed to invest in its implementation and inspectorates have not allocated adequate resources for monitoring. This is of course an additional factor for determining implementation failure. But when it comes to the content of the policy, the way it was designed was considered a success and therefore its implementation is taking place though partially. As a policy maker (2012) in the DM argues:

*“They should leave these type of works in the hand of the experts. It's not about getting credits or showing off with the bosses, it's about who can do the job and who can't. But we are always in a rush when it comes to EU. When they give us time and leave it up to us, we can do a decent job”*

Because of the less centralised approach and expertise oriented guidance, the quality of the product was more destined towards implementation success than failure, despite the very big delays.

The opposite happened in the case of the second directive. As explained, the process was quick and all obstacles (even major ones with other ministries) were overcome using the authority of the GDTP or sometimes even intervention of the deputy minister

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<sup>27</sup> There were no written minutes or material on these meetings and discussions, apart from the notifications and invitations for the meetings. However, by triangulating answers from the different persons interviewed it was possible to understand the content summary of the meetings.

(Lleshi 2012). Inspectors were invited to discuss the drafts but their involvement was more formal. Only two meetings took place with them and on both occasions they did not propose changes or suggestions. When asked why, they requested not to be quoted directly and this is why all the information they provided was then used anonymously. I interviewed four of them in two sessions, all from similar background. As one inspector (2012) would put it, the common perception was that:

*"If you try to criticise the work of your superiors at the political level, it can be named as resistance or unwilling to comply with orders. And you want to have good relations with them, since they can promote or fire you".*

It was very interesting to see how the more they had to deal with higher levels, the more they were 'complying' with no resistance. Even when they might have known that the draft represented problems and they would face obstacles in implementation and enforcement afterwards. Actually, as another inspector (2012) argues:

*"Sometimes I can tell if a measure will not work and will not be enforced. But I do not want to make enemies in this work. Why should I save the world and be the black sheep! You know what, sometimes I think even they (policy makers) know that it's not going to work. But you have to do your job in the end, you have to adopt these laws".*

This sort of pattern was quite common among civil servants at Inspectorate or desk officers' level when approaching the higher political level. Senior officers in the ministry admit that this is a widespread characteristic even at their level, with few exceptions (Lleshi 2012). Of course this is a more structural problem of Albanian public administration and the system of political influence in appointments and dismissals, but from the angle of this research it shows that, in such cases, centralisation during the policy design can harm the process in terms of quality, due to the barriers built between the high political level in the institution and the desk officer/street level bureaucrats, between the urgent need of transposing the legislation and 'ticking the box', on the one hand, and the necessity of carefully planning and elaborating the legal draft with all actors, on the other.

In terms of capacities in public administration, it is accepted that poor capacities are affecting directly their work. There is a performance evaluation system in place, which has been approved by the Department of Public Administration and it is common to all Albanian institutions (Sykja 2012). In the Ministry of Economy and in its dependent institutions this system works quite smoothly, however it does not seem to constitute the basis for promotion or downgrade. It was not possible to find official evidence of a

follow up to the evaluation results in terms of recommendations for superiors, apart from six disciplinary warnings during all the time taken into account (2006 – 2011). In terms of stability and length of stay of staff working in this area, the interviewed persons had been working there for periods ranging from 2 to 14 years. They also stated that most of their colleagues had been in the job for many years. This puts the institutional set-up in a good position in terms of capacity building and institutional memory, especially in countries such as Albania which suffers from massive changes in the public administration every time a new government goes in power. However, if the price to pay for keeping the job position is to comply with the process driven from the centre without contributing with critical expertise, then the quality of the draft might suffer and the implementation stage can present shortcomings. In this type of 'fear interaction culture' between the different hierarchical levels in the public administration, centralisation of the coordination process might give fast results in terms of delivery but not good ones regarding draft quality and implementation planning.

### *5.3.2 Participation of non-state actors*

Policies regarding free movement of goods impact firstly, especially in the short term, the business actors and the business actors are usually the most organised and influential part of society even in countries experiencing democratic transition such as Albania, where the business community is newly established after the communist rule. In this area, a National Consultative Council for Businesses (NCCB) was set up by the Ministry of Economy. Its main objective is to offer the opportunity for discussion and interaction with interested parties, on policies concerning them. It started working in 2007, but in 2008 meetings became more regular<sup>28</sup>. Meetings are chaired by the Minister of Economy and only business associations' representatives can be permanent members of the Council. According to the representative of NCCB Secretariat, it is estimated that, approximately 18% to 25%<sup>29</sup> of the legal acts concerning business community, are discussed in the Council meetings on yearly basis.

As regards formal institutional involvement in the policy process, in the case of the sample of directives used for the study, the first one was part of the package discussed in 2008's first meeting of the Council. One representative of the business community

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<sup>28</sup> Referring to official records of the Ministry in 2008 the Council held 2 meetings. The number increased in 2009, 2010 and 2011.

<sup>29</sup> This calculation refers to year 2011.

who attended that meeting claims that there was only one proposal for a change by a business owner who produced those items, but it was not taken into account and it was not discussed because there were more important laws in the agenda for that day. Desk officers of the secretariat of the NCCB do not recall this episode and they have no written record of it. However, they have correspondence with business representatives who contacted them via email expressing their concerns. They were also invited to the meeting but, according to the minutes of the meeting, they did not have the floor due to time limitations. From many years of experience, Mr. Sykja, a senior director in the ministry and also a member of the NCCB, claims that there has been very little contribution by the business community even when they had information ahead. As he argues:

*"We send regular reports to the members of the Council and they almost never send a reaction. They always wait for the meeting of the Council to discuss and react. And there is little time there to collect proper contribution, though they come more for complaining than contributing. I am sorry to say that we rarely receive proposals on the drafts".*

Sykja (2012) continues that even when few more active members send contribution, their quality has not improved of the drafting work. Either they lack capacities and expertise, or the proposal is too narrow to be taken into account (Sykja 2012).

In the case of the first directive, there was information about the act and the draft was distributed ahead among members of the Council. Responses were mixed from business representatives when asked about any preparations they were making in order to undertake necessary measures for complying with the new changes (on measurement bottles), once it would enter into force. According to a Tirana based business association, out of nine different businesses inquired (all of them claiming to have had information before the law entering into force) only two of them took measures which had also financial implications. The rest of them answered that they planned to work on compliance later on when the law would come into force. It was a clear pattern of consequences related to policy uncertainty. They would not act until they felt that "the policy would become real" (Gjika 2012). When exploring this notion more in depth, it was easy to understand that 'becoming real' did not mean the approval and entry into force of the law. Instead, it means showing actual will to implement and enforce it, such as inspectors coming to inspect your business activity and the potential risk of fines and penalties. As one new member of the NCCB would argue:

*"Business people are smart and follow developments. They know that most of these rules are done only for pleasing Europe. Only for showing that our government cares. But they know that no one will come to you and check bottles or stuff like that. Not for now at least. Afterwards when we have higher standards as a country, who knows".*

Another business representative that I interviewed (not a member of the Council), confirms that there might be a general perception among business actors that EU rules adopted are quite advanced for the country but they do not resist them because they know that the State will not be harsh in enforcing them. The directive discussed in this case has been considered as partially implemented, but businesses that are represented in the NCCB claim to have fully implemented it despite they did it much later after it entered into force, as the representative of the NCCB Secretariat confirms. Financial costs associated with compliance in this case were not very high and this might have also influenced their decision.

In the case of the second directive, there was no formal involvement of interested parties in the process. Although civil servants dealing with it can't recall details, they admit that it might be the case. A representative from a business operating in the area of recycling and packaging claimed:

*"I have a lawyer and an assistant who work for me and monitor new legislation. Maybe they didn't do a good job, but I never knew that government was working on this draft until someone I know in the Ministry of Economy called me and told me. At least I knew what it was about. But no one ever asked me an opinion about it" (2002).*

Even in this case, a 'wait and see' approach prevailed from the business community side. The adoption of the directive into Albanian legislation failed to foresee the necessary instruments for enforcement, since inspectors were not entitled to inspections until a transitional period passed, when businesses would be able to adapt. The election campaign started early in 2009 and thus the government failed to produce the bylaws necessary for enforcement of the directive. This is why to date there has been no inspection or fine collected for infringement of this legal act. Therefore the 'wait and see' approach sometimes seems to pay off and businesses could perceive a lower risk through potential fines which they might receive, rather than certain costs for adaption and investments needed. However, another business representative (2012) raises a point about information and awareness:

*"I do not believe that businesses do not want to comply. Even in the case of this rule (the second directive). Sometimes it's about not having*

*information and being prepared for it. Not all of us have to time or have contacts for getting information. I personally get to know new rules mostly when an inspector comes and knocks at my door, which is too late. If he never comes, I might never know".*

It might be a justification, but it seems true that channels of information are not very well developed. The only ways to communicate are either as a member of NCCB or by having contacts with the ministry or business associations (Gjika 2012). Otherwise, it is necessary to check procedures of every government meeting in order to know what has been approved.

Looking to the process of the two directives, it can seem that the business community is formally involved but not in all cases. Apart from the Council activities, individual businesses or other associations have the possibility of interacting with civil servants by sending official letters<sup>30</sup>. However, in both cases there was no substantial involvement. This lack of involvement is twofold: from one side, officers at the Ministry of Economy did not create any opportunity for them to speak up and their involvement (in the first directive) was only formal. The only comment/proposal they received was not considered and there was no explanation why (Business representative 2012). Despite directors in the Ministry claiming ‘continuous dialogue with business community’ (Sykja 2012), business representatives interviewed complained about lack of real involvement which, according to them, discourages them from participating in other cases. They also send official complaints on a regular basis to the international community in Albania, especially in the EU Commission (Ebejer 2012; Muco 2012). Representatives of EU Commission think that the consultation process has not been very effective in this area in general, despite the fact that the business community is quite strong. In fact, the EU delegation sometimes is functioning as their advocate by raising issues that they consider important in this policy field and which are related to the *acquis*. This might create problems in the future in terms of attempts for strengthening relations between government agencies and business communities, although in the short term it seems an effective way to raise issues (no record of addressing issues according to the participants). In the case of the two directives, there was no involvement or request to the EU authorities.

On the other side, lack of involvement can be explained also by the lack of proper demand from business operators in the first place. From a formal point of view, there is

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<sup>30</sup> According to the law, public administration offices need to reply to requests for information within 30 days.

fair opportunity for business community to get involved. According to the regulation of the NCCB, membership is open to all associations which have been operating in Albania for the last 5 years and which have active membership. In total there were 21 members in the Council. However, there are several factors concerning their organisation, representation and capacities.

First, in the case of the first directive there was a lack of organisation and coordination capacities among members of the same association. As mentioned earlier, although there was a proposal by one member, the association representing him did not follow up on it. In terms of representation, there is no clear evidence on the number of the members, whether they pay membership fees for the association, how much they are involved in meetings, etc. In addition, when asked about their members outside the capital city, they admitted that contacts were rare and with no substantial interaction. This was common to most of the associations represented in the Council and might be one of the reasons why implementation is higher in Tirana and nearby, and not in other parts of the country. Apart from three associations (out of 21), none of them had structured channels for information flow with their own members and it is not common for them to organise meetings with members. As one of the members of NCCB admits:

*"To be honest with you, we have registered 68 members in our association, but is more or less 10 of us who meet regularly and discuss. And most of discussions are focused on how to cooperate and solve things informally, rather than come here (at the NCCB) and try to convince them on something. I think most of us (members of NCCB) here are in the same position of being the big companies and therefore can represent the voices of the sectors".*

Since no membership activism is present in these associations, therefore, it can be argued that the persons who are members in the Council are not properly representing the interests and causes of all their members, but were instead focused on their own business (in all cases, the person leading the business association owned the biggest company in that association). This is the impression of civil servants in the Ministry of Economy as well, who believe they are dealing with big individual business companies in the Council rather than with associations (Sykja 2012). It can't be captured how much their positions in the Council reflect their membership views. Since effective involvement of non-state actors is well recognised in the literature as an important factor for implementation, this misrepresentation of the business community in talks



with government agencies has consequences in terms of lack of information for businesses which might then cause resistance to compliance.

The NCCB Secretariat representatives claim also that the quality of the contribution from its members has been very low. I was provided with few drafts proposed by two associations which had been taken into consideration over the years, but according to ministry staff, they rarely receive materials they can work on (Sykja 2012). On the other side, business association recognise the fact that they invest very little in expertise and consultancy, claiming that the reason is that their work would rarely be taken in consideration by civil servants or politicians (Sejdarasi 2012). However, beyond this sort of vicious circle, there is also a cultural component among business community. Sometimes it is much more effective for a big business to have a good contact in the government or public administration rather than invest in consultancy or research (Sejdarasi 2012). Business community seems to assume a 'friendly' approach towards public administration and politics in the NCCB meetings or in the public arena in general, since they might solve their personal troubles through more informal channels. In spite of sporadic cases of actual involvement and contribution from business community, it seems that proper participation in the policy process is not the rule. This applies also to other non-state (non-business) actors. Experts from the field, academics and other interested actors do not have an official forum, such as NCCB for businesses, where they can articulate and express their concerns and proposals. Officially it can be done through letters, but there is no guarantee of a response. As one economy professor (2012) puts it:

*"We are rarely contacted and even when we are, it's for some big conferences which have no proper exchange of opinions. Sometimes we can be invited as experts for helping with a law, which is a good practise. But we would be paid for that and thus I do not believe that you can freely express all your thoughts in those occasions. You know, you want to be called again".*

This attitude was registered even in the case of the two selected directives. Although there was formal involvement in the first one, practical contribution was not relevant. However, some of the interested actors were informed and were present during the formulation stages of the draft, before getting approval. This helped at least in getting them informed and, when possible, even prepared for the new measure. In the case of the second directive, which has not been implemented at all, there has been no formal participation or informative sessions until the acts was passed. Up to date, it is still

considered not implemented and not enforced, therefore there have been no inspections for that category.

### *5.3.3 Involvement of EU officials in the process*

“Policy makers need to understand and assimilate directives” (Lleshi 2012). This was the opening sentence of one of the senior desk officers at the Ministry of Economy when asked about the type of assistance they might need. There is a clear understanding on the importance of this topic among civil servants and of the consequences that it might have for their work. As mentioned earlier, the free movement of goods is one of the most important and complex chapters of the *acquis*, because it covers most of the issues concerning the market. Although the ministry has been working for quite some years on the *acquis*, it faces difficulties in terms of proper translation and understanding of directives (Sykja 2012).

In general, for countries experiencing democratic transition many processes are carried top down, due to fragile civil society and low levels of activism. This becomes even more visible when adopting EU legislation (which comes from the top as a pre-designed agenda). Civil servants in the Ministry of Economy and its depending institutions seem to face the challenge of not only transposing properly the directives but also of understanding them at first and understanding what it entails in terms of bylaws and other measures necessary to ensure implementation. Failing to plan ahead might lead to incomplete adoption of legislation and risks for implementation failure might increase. For this reason, it becomes really important for EU representatives to be involved with their assistance in the process. The exchange of information would benefit both sides, not just the Albanian policy makers. As Ivan Ebejer, European Commission expert working on Albania covering economic issues, explains:

*“There are difficulties in evaluating and understanding the policy process in Albania due to the fact of not being on the ground. I must say that the information I get in two or three days of visit mission is more efficient than what I get from legal documents” (Ebejer 2012).*

That is the reason why officers at the EU delegation in Tirana are much more informed and involved in the process (than their colleagues in Brussels), though mainly through monitoring. They have better access to information on a daily basis and can provide monthly updates to their colleagues in Brussels (Muco 2012). However, direct

assistance through expertise in the policy process of free movement of goods is rare. The Albanian side sometimes requests opinions on a draft but that is the usual extent of cooperation in this area. Other times the EU's opinion is requested by government agencies or interest groups on specific laws. The European Commission is directly involved only when they are financing a project for a law or a policy. In this cases, they do not do just the monitoring, which is 'business as usual' but they are also more "internal to procedures and can give direct specific feedback on the different steps" (Muco 2012).

Such support is highly appreciated by Albanian civil servants and policy makers because it "helps to adapt the policy, to identify stakeholders and to create a suitable timetable" (Lleshi 2012). Muco (2012) recognises that the quality of drafts produced is not always good and that deadlines aren't usually met, despite the good will showed. However, assistance in the area of free movement of goods is *ad hoc* and upon the request of the Albanian side. Sykja (2012) reports some cases where the policy design necessary for the transposition of a certain directive has required specialised capacities which Albanian authorities did not have. In these cases the GDTP has set up a working group to deliver a preliminary assessment of needs and the main issues raised have usually been about understanding the directive and planning appropriately the stages for transposition and effective implementation. After this phase, the Ministry of Economy has issued an official request to EU Commission for assistance in that particular process or policy.

The most common practice in such cooperation is through TAIEX<sup>31</sup> program, which supports accession countries through expertise from member states in a specific area where it is needed. In the area of free movement of goods this type of assistance has been used quite often, especially for complex legislation and policies. The expert provided by the program works close with officers in charge of the policy at the ministry and the work is planned jointly. This has turned to be a very useful exercise for Albanian authorities, in terms of learning and understanding better the *acquis* and the transposition process, but, moreover, it has had a more direct impact in the quality and the accountability of their work (Sykja 2012). As one of the desk officers in the GDTP has pointed out:

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<sup>31</sup> Technical Assistance and Information Exchange instrument used by the European Commission.

*“Having an EU partner working here with us, setting deadlines, explaining how to plan the process for adoption and the required instruments afterwards for implementation has helped me think a bit more strategically. Unfortunately political pressure can sometime bypass all these necessary steps and so the quality of work is not the best. But when foreign experts are involved, the process becomes more structured” (2012).*

Actual participation of EU experts in the process seems to provide clear guidelines on what to expect in adopting a policy and how to prepare for guaranteeing its implementation. Of course this does not explain all successful implementations as there are cases when things have gone fairly well without this type of support. However, it is a common perception from civil servants and street level bureaucrats that when the EU is involved there is more pressure and accountability for succeeding, especially in the implementation and enforcement stages. As one inspector describes through his own experience:

*“I had to work for two weeks with a Dutch expert who came to help the ministry with the Law on market inspections. Honestly, first I was surprised how little information he had on Albania in general. However, when we went around in the ground, he could immediately list most of the problems we were facing and proposed some interventions in the new law. And most important he was listening to our thoughts, which is not always the case with our bosses” (2012)<sup>32</sup>.*

The EU presence in the process not only develops better planning and understanding of the directive to be transposed, but it seems also to help in somehow improving the bottom-up side of the process. The European Commission has a mandate to assist and propose interventions and, in order to do their job properly, they gather information from all parties involved and affected by the policy in the case of free movement of goods.

The two directives used as sample for this area did not receive any targeted assistance. As explained earlier, the process was developed mainly internally. The staff who were involved in both cases claim to have good knowledge and understanding of that specific area and therefore transposition was not particularly difficult, according to their accounts. However, they were not involved in the translation, which might create potential risks for misinterpretation. They received the draft of the translated directive in Albanian and started working on the policy proposal to transpose it. They admit that

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<sup>32</sup> During the time of the interview this inspector wasn't on duty anymore, although he was trained by EU programs on inspections. There were different cases encountered when well-trained persons were dismissed by institutions for various reasons.

assistance could have helped for better quality, in principle, but, as one of the desk officers of DM put it, it is also “a question of ownership and our own capacities. The EU does not have the possibility to assist with all transposition and therefore we need to learn and do it by ourselves” (2012). Nevertheless, it seems that in the area of free movement of goods, involvement of experts from EU has paved the path for better implementation during the policy design process, in other cases reported. In the case of the two directives (the first partially implemented and the second not implemented), the adoption stage of the legislation has failed to properly prepare and plan the implementation stage. Considering the vast amount of *acquis* and its complexity in the area of free movement of goods, expertise seems to be often necessary. However, the official request for expertise can come only from the specific Directorate in the ministry (Sykja 2012) and therefore the initiative is left in civil servants’ hands. This might open a discussion on their willingness to engage with EU experts on daily basis considering the fact that this might exercise indirect pressure for changes on their daily routines and approach to policy work.

#### 5.4 Conclusions on free movement of goods

From documentary analysis and the research data gathered in the field, it appears that the institutional setup in the area of free movement of goods is well established in Albania. The responsible ministry (the Ministry of Economy) is one of the largest in terms of structures and staff since its area of competence covers various policy sectors (in terms responsibility of *acquis* transposition, this ministry is in charge of seven chapters, being the Albanian institution with most chapters under its domain). In addition, trade has been the main pillar of the relation between the EU and countries aspiring to membership, such as Albania, so the amount of work required is quite intensive.

This research on free movement of goods indicates that *coordination* and *administrative capacities* in planning the policy process are the main factors influencing the policy design and then consequently the implementation stage. First, the fact that there is not a formalised procedure for setting up working groups and dividing competences leaves room for different interpretations in the process and makes it dependent on administrative will or personal interaction inside the ministry. This gap and lack of clarity appears to favour the option of a highly centralised approach. Although

coordination centralisation is perceived as a good approach for meeting deadlines and pushing the process forward by overcoming obstacles, these obstacles, their reasons, and how they are overcome, can sometimes have an impact on the implementation stage.

The quality of the draft depends not only on capacities within the department but also on contributions coming from different departments and street-level bureaucrats or inspectors and how these proposals are dealt with. In the case of the two directives studied, central coordination seems to have sped up the process but has not provided necessary instruments for the inclusion of other contributions. The type of attitude and approach assumed by inspectors and other desk officers in terms of interaction with higher hierarchical levels has affected the quality of the policy process. The inability to freely express their professional opinion and make contributions is one structural obstacle in the interaction between actors involved in the process from formulation to implementation and enforcement. This has resulted in a poor draft and a lack of agreement with other parties involved or affected by the directive. As a consequence, implementation has failed to date in spite of the fact that the law has been in force since 2008. In the case of the second directive, decentralised coordination has slowed down the process for many months, and obstacles have been solved at the technical level by mostly including proposals from other agencies and especially from inspectors. The directive is still considered partially implemented because of uneven enforcement in different parts of the territory.

Regarding the *consultation process and involvement* of interest groups and non-state actors in general, in the area of free movement of goods, formally, there is a well-structured framework in place, especially thanks to the functioning of the NCCB. The institutionalisation of consultation processes is quite recent in the area, so it is still formal to a large extent. Policy implementation is affected because of a lack of substantial involvement in the design process and, most important, because of a lack of information for interested parties that will be later affected by the policy. Although business associations are formally involved in parts of acts before approval, there is not a structured information flow within their membership that would create the conditions for them to contribute or at least to prepare for when laws enter into force. There is a centralised management pattern in these associations, and their representatives are often acting in their own interest rather than the associations'. In addition, even when they are involved in a more substantive way, they lack capacities for contribution in terms of

technical expertise and quality of contributions. Because of the continuous growth in implementation deficit regarding acts that transpose the EU *acquis*, a culture of “wait and see” has developed among actors in the business community. In the case of the directives studied, most of them did not start preparing for compliance before the act went into force but rather waited for information or rumours to understand whether it would be enforced or not.

When it comes to the importance of EU involvement in the process, it was difficult to find clear evidence for drawing conclusions on the selected directives. However, the experience of all participants was that EU direct assistance can improve the policy process because of their expertise and positive pressure in terms of structuring the stages from design to implementation. Neither of the two directives was assisted directly by the EU, but in other cases, their support on the ground generated positive cooperation, more accountability, and better planning for the process. Implementation records seem to have a positive coincidence with this cooperation, because monitoring from the EU side is more effective. In addition, because of the work approach adopted by EU experts, when they are involved, there is better inclusion of interested parties in the process. Experts tend to organise comprehensive cooperation by gathering information from different sources. Paradoxically, though the process is top-down in principle, the direct involvement of EU actors in the process for specific transpositions in free movement of goods has not only had a positive impact on implementation but also encouraged the bottom-up approach. One shortcoming regarding EU involvement is the fact that the initiative for assistance is left entirely up to the Albanian side. Since the participants all admitted the limited capacities in understanding the *acquis* in general and especially for properly planning its adoption, their choice for assistance may be influenced by this lack of capacity. EU experts would know better which are the most difficult parts of the *acquis* for the sector that have required major work for other accession countries in the past, what the order and steps in transposition should be, etc. Because of this “apathy” from the EU side, a request for assistance might not be effective and may not be used where it is really needed.

Free movement of goods has been and will continue to be one of the most difficult chapters of the *acquis* for implementation in the case of Albania. Despite the efforts to ensure adequate administrative capacities (quantitatively), there is a clear need for better structuring of the process and balancing between speed and quality. If the design stage is not carried out properly through expertise and inclusiveness, the implementation will

show clear problems. The implementation deficit in this area has grown in recent years, and with an increase in administrative capacities in quantity and political pressure for transposition, it will continue to increase if implementation obstacles are not taken into account during the early stages of the policy process.



## CHAPTER 6 COMPETITION

In the 1990s, the Albanian economy entered a process of restructuring and transformation aiming at transition from a state planned economy to a market economy. At that stage, the rules of the market were less defined, especially in regard to competition. Market economy principles were being transplanted all at once into a society that lacked a competition culture (Gugu 2004; Gruda & Melani 2010). In addition, the Albanian economy lacked a legislative basis to regulate, protect, and encourage competition.

The first real step for introducing measures to regulate and institutionalise competition in Albania was taken in December 1995 with Law No. 8044, “On Competition”. The law provided for the establishment of the first structure to deal with competition issues, the Department of Commercial Legislation (DCL) under the Ministry of Industry, Transport and Trade (Law No. 8044, 1995, Part V). The Competition Commission at the Ministry of Economy was later associated with the DCL (Gruda & Lati 2010). Although the law on competition was an important step forward, “the application of this law encountered with lots of problems in resolving cases of the privatisation and liberalisation of strategic sectors” (Gugu, 2004, p. 6). These concerns further emerged with the start of the negotiations for the SAA in 2003, the signing of the SAA, and the implementation of the Interim Agreement on Trade and Trade Related Issues in 2006 (Lati 2012).

One of the main developments in the area has been the creation of the Albanian Competition Authority (ACA), a structure responsible for competition-related issues. The creation of this structure is a direct response to SAA provisions on competition and competition-related issues. Points 3 and 4 (Title VI, Article 71) set the creation of this independent structure entrusted with the powers necessary for the full application of restrictions on:

*“(i) all agreements between undertakings, decisions by Associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition; (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Albania as a whole or in a substantial part thereof; (iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products” (Council of the EU 2006a: Title VI, Article 71).*

According to Gugu (2004, p. 3), the importance of the Competition Authority is visible compared to the previous Directorate on Competition established under the Ministry of Economy by the 1995 law “On Competition”. The Competition Authority is a unique institution composed of a Competition Commission, which is the decision-making body, and a Secretariat, which carries out the investigative work (Council of Ministers 2010, p. 787). The Competition Commission formulated and approved on 28 December 2006 the National Competition Policy (decision No. 43), the first document of this type on competition policy in Albania. This policy document “aims at fostering competition by ensuring the improvement of market efficiency and the minimisation of the negative impacts on resource distribution related to market power” (Gruda & Lati 2010, p. 14). Although assessed as considerably independent by the Project against Corruption in Albania (PACA 2010, pp. 19-20), recommendations aiming at preventing the risk to corruption related to the activities of the Competition Authority were given on three main areas: the legal framework, the operational independence, and the transparency of the work of this structure.

This chapter explores the implementation of the *acquis* in the competition policy of Albania. The adoption and implementation of EU regulations related to competition implies structural and institutional changes in the economic system, and that is why it represents an important area that directly influences the economic criteria set in Copenhagen.

Initially, this chapter introduces the background of compliance with EU legislation in the field through a summarised account of developments in EU *acquis* regarding competition and how compliance and approximation have developed. Then the research framework is explained by describing the sample, the process of data collection, materials and sources used, and the interviews that took place during the fieldwork.

As in the other analytical chapters, the part where findings are analysed and discussed is divided according to the main pillars regarding the research framework of the study to understand and explain the process in terms of institutional interaction between different actors involved in the process. The case study regulation is integrated into this part through analysis and the tracing of its cycle from adoption to implementation status. The theoretical propositions raised are discussed and explored in the same part. The findings are then integrated into the conclusion section, where the outcome of the research and analysis of the area is summarised and some considerations on additional findings and future research are addressed.

## 6.1 Competition and approximation with EU legal acts

The main mission of competition policy is the promotion and protection of free and effective competition by protecting the competitive environment and by promoting fair and effective competition in the market. The EU competition *acquis* covers antitrust, merger and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant positions), to scrutinise mergers and to prevent governments from granting State aid that distorts competition in the internal market.

Chapter 8 of the *acquis*, "Competition Policy", includes rules on the protection of free and effective competition in the market, rules regarding the applicability of state aid, as well as liberalisation. With the start of the negotiations for the SAA and the need for the approximation of the Albanian legislation with the *acquis* a new law on competition was adopted, Law No. 9121 of 28 July 2003, "On Competition Protection", referred to as the Competition Protection Law. The Competition Protection Law:

*"covers all sectors of the economy...applies to all public and private undertakings...applies to both goods and services.... covers binding or non-binding agreements of all forms concluded between undertakings, decisions or recommendations of associations of undertakings, and concerted practices of undertakings operating at the same level (horizontal agreements) or at different levels (vertical agreements)"*  
(Council of Ministers 2010, pp. 779-781).

Although this new law was considered "modern in the terminology used, and in evaluation of specific situation, regarding the performance of enterprises in the condition of market competition" (Gugu 2004, p. 3), at different stages the Competition Protection Law was amended in order to address specific *acquis* provisions, SAA articles and EU requirements. The last amendment to the Competition Protection Law was adopted on 16 September 2010, Law No. 10317, "On Competition Protection" (Albanian Competition Authority, 2013).

To establish fair and effective competition in the Albanian market, the Albanian Competition Authority is responsible for implementing the obligations which derive from Articles 71 and 72 of the SAA, the National Competition Policy, and the entire legal framework that regulates the decision-making activity of an independent public institution. Articles 70, 71 and 72 SAA foresee obligations and responsibilities of the Albanian Competition Authority to protect free and effective competition from anti-

competitive practices and actions, which may affect trade between the Community and Albania.

Overall, the Albanian competition legal framework has been approximated with the EU legal framework<sup>33</sup>. The Competition Authority has intervened in many sectors of the economy where anti-competitive practices have been identified and detected, taking appropriate measures to restore competition in the market (EC 2011). The Authority has continued the process of the approximation of legislation with the EU *acquis*, aiming at a comprehensive legal framework for competition (Lati 2012). The focus of its activities is all anti-competitive practices which may distort or restrict competition in the market. The Competition Authority has been very careful in watching different sectors and markets of the economy, as stated in the European Commission progress report 2012. It has given priority to the drafting of secondary legislation in the competition field. It has drafted and adopted a number of Regulations and Guidelines, which are fully approximated with EU laws. In addition to its activity, the Competition Authority has given special importance to competition advocacy. The Competition Authority works to create a ‘competition culture’, which is focused on full transparency of procedures followed by the Authority (EC 2012). This transparency is achieved by the publication of the Commission's decisions in real time, as well as by listening to other actors (state institutions) before giving recommendations.

The 2010 Progress Report considers Albanian legislative framework on competition as in line with “essential elements of the *acquis*” (EC 2010, p. 63), especially after the adoption of the amendments in 2010. The report again concludes by assessing that further steps are needed in order to safeguard the independence of the administrative structures. The 2012 Progress Report assesses that progress was made in the field of anti-trust and mergers following the adaptation of the Regulation on agreements of minor importance and especially considering the decisions against anti-competitive agreements and against the abuse of dominant positions implemented by the Albanian Competition Authority (ACA). The investigative and monitoring activity of the ACA during 2012 was further evaluated as important following some decisions on fines and its advocacy and public-awareness activities (EC 2012, p. 37). However, no progress was noticed regarding SAC administrative capacity.

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<sup>33</sup> A full list of transposed EU legal acts in the legislation can be found in Appendix 7.

## 6.2 Explaining the research inquiry for Competition

As explained earlier, the Albanian Competition Authority is the main responsible body for monitoring competition and for further complying with EU *acquis* in the field. Therefore most of research for this area has been focused on ACA's activity and performance, in terms of management of the policy field and performance in implementation and enforcement. The ACA has been praised for many consecutive years in the EC Progress Reports on Albania, as one of the most advanced institutions in terms of compliance and quality of its activities. As an example, over the last years (2010-2012), the ACA has issued twice the number of decisions with penalties as the Croatian authority (Lati 2012). This good general performance of ACA has also been highlighted from representatives of EU Commission who were interviewed which consider ACA as a good example for other competition authorities in the region (EC 2012, interview). Therefore, it is useful to explore in more depth the functioning of this institution and to understand its *modus operandi* as regarding compliance with the *acquis* and implementation.

The ACA is very active in proposing the adoption of new approximated legislation since they are also chairing the Inter-institutional Working Group<sup>34</sup> on Competition. They are in charge of coordinating all other institutions involved in this policy area with the purpose of transposing legislation on competition. However, implementation and enforcement is the main task for the Authority and its inspectorate<sup>35</sup>. Therefore, ACA covers the whole process of EU policy adoption from its proposal to monitoring implementation and enforcement.

Due to the fact that EU does not regulate Competition policy through directives, but through regulations, in this chapter I have tried to go more in depth to the institutional functioning (policy cycle) by using more in-depth and detailed interviews and documentary analysis, rather than focusing on specific legal acts/regulations being adopted. Since the process is mostly internal to one institution, it becomes more useful to analyse it from an organisational rather than a regulation based approach.

*Documentary analysis* has been used especially in the early stage before starting the interviews. There is extensive written documentation on this policy area since the system set up internally for the institution provides for very well-structured internal and

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<sup>34</sup> The functioning of IWGEI was explained in Chapter 4.

<sup>35</sup> Inspectorate is internal to the ACA and thus not a separate depending institutions as it is usually in line ministries.

external official communication. Several reports and publications issued by the ACA provided useful basis for understanding its activities through the years and its main statistics. Field reports from inspectors were also made available for my research (though not published to the wider public). The website of the ACA was also another useful source for gathering documents necessary for the analysis and for better understanding its activities from a formal point of view. In addition, studies done by external experts and internal staff were used for trying to capture evolution of the institution and changes in the policy area since 2006 to 2011.

In such a highly regulated, formalised and well-structured institution, *in-depth interviews* were the most important and effective instrument for exploring the theoretical propositions raised and for understanding the impact of the variables in implementation. The participants were 16 in total for this area, including the Head of ACA, one General Director, one Direction Board member, two inspectors, two EU officials covering this area for Albania, two desk officers from the Ministry of Economy, three representatives of the business community, two professors from the University of Tirana, one local expert on competition and one desk officer in Brussels. The structure of the interview was similar to other areas but more focused on institutional coordination and interaction in terms of procedures and the impact on the design process and implementation. The extent of transcriptions was quite large and it was very useful for the data analysis stage because it provided useful information for my findings. Since competition is sometimes a sensitive area interfering with different interests, most of participants required not to be identified with their name.

### 6.3. Analysis of the findings

#### *6.3.1 Institutional coordination and division of competences*

Being an entirely new policy area for Albania, competition required a central authority from the beginning in order to ensure proper functioning and to facilitate the establishment of necessary structures. The ACA fulfils that role since it was established. However, as the head of ACA, Lindita Lati (2012) points out, political support is essential when creating new institutions. Their credibility is often dependent on their competences and what type of political back-up they have in order to exercise fully their competences. First, this centralised role needs to be recognised by legal provisions.

With a few improvements in the legislation regarding the ACA, formally it now has the necessary independence<sup>36</sup> and the mandate for checking all legal acts and policy interventions that might jeopardise competition and have implications in that area. Drafts need to be sent to the ACA and its opinion needs to be taken into account.

However, beyond the formal aspect of the process, it is often a question of credibility in the practice and perception of authority. As Lati (2012) reminds, one of the key moments in strengthening their central role and perception in the public sphere was the case of the Insurance draft law. The legal act was drafted with businesses who were involved in the discussion but afterwards it was sent to the ACA for its opinion. ACA desk officers analysed the draft and identified several infringements to fair competition practices and SAA provisions. As Lati explained:

*“We were not sure how the ministry would react to our opinion although we were in contact with them at the desk officer level. We were ready to address it to the Parliament if it was passed by the government. It was an important moment for our work, because such a response could give an important signal for future practices. Fortunately the minister dismissed the act which gave us more credibility”* (Lati 2012).

This represented a turning point in its central coordination activities on the area, public awareness, especially among businesses, had an immediate boost. Complaints filed at ACA for competition issues by businesses increased by five times the year after (Melani 2012; ACA bulletin 2012). As Lati further elaborates:

*“Before that event we used to call periodical roundtables with actors from business communities and institutions, but very few were attending. After that act was dismissed, they came”* (Lati 2012).

Clear competences and political back up seem to have been essential elements for this newly established institution. It provided a solid basis not only for credibility and publicity in the community, but it also facilitated interaction with other government agencies especially in solving disputes. In case of disputes, there is a resolution approved by the Parliament that allows the ACA to bring important disputes directly to the Parliament, specifically to the Parliamentary Commission for Economic Affairs. This ‘power’ has helped ACA in its relations with government institutions which would prefer to avoid having the legal act rejected in the final stage (at the Parliamentary Committee), after many months of work, just because they did not take into account the opinion of the ACA. All these instruments have improved the functioning of the

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<sup>36</sup> It depends only from the Parliament.

Authority and have had a positive impact on the implementation record in the area of competition, where increased positive progress has been reported by the European Commission (EC 2012).

However, having a strong and credible central authority to coordinate the process can be a necessary but not sufficient condition for ensuring compliance. As one ACA Commissioner, Koco Broka (2012), states, each state institution has its own agenda and they pressure one another to pursue their objectives. Lati (2012) recalls an example regarding the Financial Supervisory Authority (FSA). FSA's main institutional priority is to fight informality in the economy. For this purpose they encourage stronger cooperation between private companies. However, as Lati argues on this, ACA has opposed this in some cases because it harms competition. Therefore, in these cases it becomes quite a struggle between public institutions. This seems to be one of the elements that creates obstacles to ACA's work especially in exercising their activity and involvement in the policy design stage (which later affects compliance and observance of transposed *acquis*).

Close cooperation and continuous communication between agencies is very important. The exercise that Albania went through in 2010 with the application questionnaire helped in establishing more useful working contact between agencies, which for the ACA is crucial. The Authority signed several memorandums of understanding with main institutions in order to structure cooperation and exchange of information with strengthened procedures. However, coordination remains a sensitive problem. As Melani (2012) describes it:

*"sometimes it seems like public administration is a train with many attached cars but no common or clear orientation. Each of them looks only internally, at their own little space".*

While this is a common problem in most policy areas, it is interesting how even a very centralised coordinated authority with clear division of competences can perceive this when interacting with other parties. The difference in performance between ACA and other similar agencies has been recognised by Albanian and EU experts and one of the key elements that has helped the Authority in its activity has been strong central coordination within its policy area. However, as explained, this has been combined with political endorsement, credibility and strategic operations in terms of networking and structured interaction with other institutions.



In addition, the ACA has adopted a modern approach to investment in human resources and strengthening its capacities. As an EU official covering this area from Brussels would note, apart from strengthening internal and inspections procedures and setting very clear competences for each department, ACA has in place a very active policy for promoting and training staff. Inspectors and other members of ACA have higher salaries than their counterparts in other institutions. From the interviews with inspectors it was quite evident that their knowledge on EU *acquis* development and its interpretation and understanding was quite advanced. They claim to receive periodic training and, after the restructuring of ACA, there is now a department dealing specifically with EU integration and approximation of legislation. This new office monitors developments and updates its staff. Members of the board and direction of ACA participate in many regional and European events and are very active in suggesting policy interventions in the country. This pro-active approach has not only improved their performance but, as a consequence, has recorded a positive trend in compliance and enforcement of competition policy in Albania, as stated in the minutes of the SAA subcommittee of Internal Market on 2011.

In terms of institutional capacities and centralisation of coordination, ACA is an almost unique case in Albania. Its successful performance in ensuring implementation and enforcement in the *acquis* related to competition policy has been stressed by EC in several occasions, praising its work even in comparison to other similar counterparts in the Balkan region. A local expert on competition argues that this is also due to the fact that this policy area does not face resistance from past practices, since there was no competition policy in the past. However, lack of resistance might be better explained from the strong political support given and the 'use' of Parliament from ACA as a instrument to fulfil its mandate.

Another dimension of centralisation regards the fact that ACA is leading and coordinating the Inter-institutional Working Group (IWGEI) on competition. It has full responsibility and authority for planning the adoption of the *acquis* in this area and it uses this institutional framework regularly for coordinating the process. As a member of this group points out (2012):

*"Inspectors of ACA are part of the working group because they are involved in the drafting as well. They give their opinion. This facilitates things, I guess, cause then they know how to follow them afterwards on the ground. I can tell from their active role in the group that they are*

*quite capable. However, at least, they can get all the information needed before it's approved in the Parliament".*

This is quite a peculiar case which is quite different from the other policy areas. The same authority is in charge of both policy design and then implementation and enforcement. Inspectors at ACA are not the classic inspector on the ground, rather than desk officers, checking documents and exploring business practices. This joint side of the two stages of the process is like a 'short-cut' that eliminates potential failures and problems coming from interaction and coordination with other institutions when drafting legislation for this policy area. Therefore, it looks like institutional centralisation can produce good results in terms of implementation, when not only the policy design process is centralised, but also when this is exercised and managed in common with the enforcement stage.

### *6.3.2 Participation of non-state actors*

As explained earlier, the ACA direction has been very open to the general public since the beginning of its work. Their periodical bulletin and website show a list of calls for open meetings and training programmes provided by the Authority, where representatives of public institutions, business community, experts, academia members, have been invited to participate. ACA's main engagement and interaction with the public sphere is about informing and raising awareness regarding bad practices or competition law infringements. These activities are quite important especially in this area which entails mainly new legislation that Albania has not faced before (thus there is a learning process and public education that requires constant attention).

This is why, maybe more than in other policy areas, competition policy faces unprepared stakeholders. As one of the field experts (2012) argues, after the chaotic business environment in the 1990s, the early 2000s have represented the first attempt to put order into the Albanian economy. Business representatives interviewed claimed to have been quite active with their association in exchanging information with the ACA, though they are not sufficiently aware of adopted legislation and its implications.

Going back to the already used example of the insurance law of 2007, what happened then can provide useful insights on this topic. The main insurance companies cooperated and agreed among each other on the draft proposed, which was initially accepted by the Minister of Economy. However, as explained, the ACA found out that

this was against competition legislation and imposed its decision. Even to date, when asking one of the main promoters of that draft, one of the big insurance company owners and a very active member of the business community. claims:

*“I am not saying that the draft was perfect, but it was adopted from the British model and adapted to our reality. The ACA fails to understand the stage of our economy. They set some criteria which are too advanced and do not allow us to grow and develop. Of course there is a need for competition, but we also need to improve our regulation and not let chaos go on in our economy” (2012).*

From the different views registered during the interviews, it emerges that the top-down approach is quite visible in this sector and there is weak involvement from below. An ACA member also admits that competition policy legislation is adopted mainly because of transposition requirements (SAA) rather than any perceived urgency or demand from business community or society in general. He argues that if legislation was properly implemented and enforced in other areas related to the market, there would not be a major need for advancing so fast in the EU policy adoption process. However, this does not match the views of other staff members and direction in the Authority, although it is a version which is supported by other participants interviewed. Most believe that ACA should play a minor role and adapt to the real situation on the ground, as regards rigorous implementation and enforcement. In relation to this, Lati (2012) argues that it might be useful to adopt a careful approach in the beginning and not ‘make enemies’ all around, who would then resist enforcement. She quotes the International Competition Network, that says that in first years of competition authorities activities, they should deliver mainly good advocacy, raising awareness and sharing information. Therefore, it should not use penalties but assume an educative approach and try to inculcate a culture of competition among the different stakeholders and actors.

In general, from what I could capture from interviews and from meetings organised by the ACA, there seems to be a lack of interest from business community regarding this policy area. The big companies have the necessary information because they have legal offices that monitor developments, but the large part seems not to be aware of competition policy and how it can affect their activity. As a professor in the Faculty of Economy of the University of Tirana explains:

*“When the law on competition was drafted there was no knowledge and no information by anyone, not even by us who study the field. But this was understandable, because there was almost no market here yet. Therefore it was not perceived as something that would have major effects in our*

*lives. This is why no one resisted implementation, although they were not involved or informed.” (2012).*

However, inspectors of ACA believe that after the first few years of ignoring competition policy, stakeholders are now beginning to complain and become interested in understanding and taking into account its implications in their activities. From their contact with big companies, their perception seems to be that all the awareness work is giving its effects. As Melani (2012) puts it:

*"communication has been problematic for early years. However, now due to a more pro-active approach of the ACA, competition policy is becoming more important in the agenda of public institutions dealing with market issues and for stakeholders (business community)."*

ACA still organises regular meetings with business representatives but, from the meeting minutes, participation seems to be very low. When asked about this, Melani argues that this is due to the culture changing very slowly. According to him, there is participation when there is direct interest on a certain subject by the company or when they need information they can't access otherwise, for example when there are rapid changes in the law (Melani 2012).

In spite of being a new policy area and of its many shortcomings in involving stakeholders, competition policy has a positive record in implementation. While it has been elusive in the previous years (due to lack of legislation in the field), it is now becoming more and more present, especially due to the speed of adoption of regulations from the *acquis*, helped by the good level of capacities and coordination of the ACA. However, this sector seems to be still at an early stage in terms of substantial involvement on non-state actors in the policy design and implementation, in spite of the awareness work and communication with stakeholders.

### *6.3.3 Involvement of EU officials in the process*

As mentioned in the previous sections, the ACA has a very well developed network of international experts and is a member of organisations concerning competition. Its activism and registered progress has further strengthened its role. However, since it was a new policy area when established, assistance and support from the EU has been crucial. There are few other cases in Albania when some institutions have been built from scratch with foreign, especially EU, assistance. EU expertise has assisted the ACA and competition policy since its beginning. Their staff have received adequate support

and training which allowed them to immediately interact with European experts' networks (Melani 2012). In addition, twinning projects have been a success story in the case of ACA, contributing to an elevated quality of its internal procedure, staff preparation and enforcement records.

Competition policy in Albania represents a relatively successful story for the EU and its conditionality. There was a very high attention and assistance during its establishment and especially after the SAA was signed. This is also confirmed by two of the interviewed participants, representing the EC. Thus, by doing this "initial investment" in terms of support and assistance, the EU created the conditions for a well-functioning institution and the premises for a good work in implementation and enforcement of competition policy (Lati 2012). That said, competition policy acts are however not fully implemented in Albania. There are several open cases and inter-institutional discussions going on, where Albanian authorities have not been able to implement relevant legislation, especially in the oil industry, telecommunications, energy, etc. In most cases the ACA acts on request, in others it assumes a pro-active approach (when the issue is brought to public attention by media or when it is sensitive). Despite the high level training of its inspectors and staff as explained earlier, the ACA does not have yet the required capacities to cover all the market in all sectors and EU expertise is still strongly needed (Broka 2012).

In addition, ACA has not developed and consolidated yet a proper interaction with stakeholders (as explained above) which would help its activities and would facilitate implementation of competition policy. This is proven by the fact that some issues or complaints to ACA have come from EU member states representatives in Albania or from EU Delegation. Muco (2012) recalls a case she faced in her capacity as EU officer based in Tirana, covering economic and competition issues, where a legal act that would be passed by Albanian government clashed with non-discrimination article of the *acquis* and SAA provisions, which could potentially harm competition. The issue was raised directly from the EU Delegation and the clause was revoked. Therefore implementation is monitored by other important actors which help ACA in its activity. Although EU delegation is involved more when they directly assist for designing and implementing specific policies (Muco 2012), they pay attention to implementation in all areas.

The fact that competition policy has been performing well in terms of implementation does not exclude the necessity for more direct assistance from EU experts. Adoption of EU competition regulations has been incremental and so far ACA has managed quite

well in planning its resources and capacities in accordance to the workload to come (EC 2012). However, in order to maintain this pace it is necessary that it strengthens further its expertise and capacities. As Melani (2012) points out, as an example:

*“EU is a moving target in all areas and competition policy is quite complex. For example, in the area of cartel practices there have been many changes in just few years. It is quite difficult to follow up and that’s why either we have additional specialised staff or we have support from EU expertise”.*

Involvement of EU actors helps in increasing attention and speeding up the process. However, in the case of competition, especially when big interests are at stake, sensitive cases are difficult to pursue without political support. Therefore, in the case of competition policy, rather than EU pressure, 'positive' political pressure and support seem to have more impact and effectiveness. The EU played a crucial role when assisting the institution in the beginning and supporting the framework for establishing a structured competition policy. Afterwards, implementation has been followed and monitored quite effectively by the ACA and its capacities.

However, especially in terms of inclusiveness, the EU is still playing a major role as 'mediator' for companies (especially foreign ones), member states, different stakeholders, which sometimes address their complaints to the EU delegation. Since competition policy has been transposed from EU *acquis* and since the EC is monitoring Albania's progress towards membership, the logical short-cut is used by all these entities who involve the EU in the picture anytime there is a clash or a dispute. While this helps competition policy implementation in general, it might undermine ACA's credibility in the long term, if stakeholders do not address issues directly to them. As an expert of ACA argues:

*"we have an excellent cooperation with EU representatives in Albania. However there are cases where they bring us complains from business community, especially foreigners. We do not mind that, but we have been open to interest groups for any request or issue they might have. We know that trust in public institutions here is quite low and international community is seen in a more positive way, but I think we need to cooperate for this to change".*

EU officials' role seems to undermine the authority and credibility of ACA despite the good intentions. This has further intensified contacts of non-state actors with the EU delegation, rather than with Albanian authorities. However, in the short term, this close relation between ACA and EU representatives has helped in ensuring its right direction

and in monitoring its activities more effectively and in including opinions and concerns from non-state actors (although mostly via EU officials). This has turned to have a positive impact on monitoring implementation and enforcement in this area.

It is still quite early to reach sound conclusions on the solidity of competition policy and its implementation because, as explained, it is still a new policy area. Since its establishment, ACA has been chaired by the same person, political support has been steady and staff has almost not changed, which has guaranteed the strengthening of capacities and institutional memory. However, we cannot predict what can happen in the future with this institution, what will the political will be, the vision of its future chair, etc. This is why, in spite of a good performance in implementation, EU assistance can be helpful even in the future for making sure that competition policy is monitored and ruled properly.

#### 6.4 Conclusions on the Implementation of competition legislation

Competition policy governance and implementation of the EU *acquis* in Albania represents an almost *sui generis* case for the country, for various reasons. First, it is coordinated in a very *centralised system* with an institution built from scratch. The mandate of the Albanian Competition Authority has been set clearly since its establishment, with an accurate description of competences and strong political support. Its public recognition and credibility grew quite quickly, and its proactive approach helped in ensuring compliance with and the implementation of adopted legislation. Inter-institutional disputes have been important but relatively easier to manage, as the ACA is independent from the executive and responds directly to the Parliament. In addition, the ACA has been given the power to bring disputes and issues directly to the relevant Parliamentary committees. Documentary analysis and information gathered suggest that strong central coordination has been an important asset in ensuring the good performance of the ACA in monitoring the implementation and enforcement of competition policy acts in the country.

The substantial assistance received from the EU since the beginning, the human resources strategy adopted, and the directions' proactive vision have also further improved the performance of this institution, achieving good results in ensuring implementation (which has also been recognised by the European Commission). High-level training and an efficient inspection system have also been praised for their

effectiveness. The involvement of inspectors in other important governance activities have had an impact in maintaining a common understanding among the various departments. As the literature suggests, street-level bureaucrats are not always involved in other processes and therefore do not have the opportunity to express their concerns, which might avoid obstacles in the implementation and enforcement stage. The smooth cooperation ensured in the institution through clear procedures and internal rules has helped in making the institution “work as one”.

However, the *inclusiveness of stakeholders* has not been developed properly. Because this was a new policy area for the country, public awareness was quite low, and despite the efforts of the ACA, there seems to have been a lack of information among stakeholders. Most of them do not show interest even many years later, although competition policy might affect their business activity. From interviews with business representatives, I grasped a perception of the ACA as an “enemy”, especially from big companies. The business culture still hinges on a desire for a less monitored system, and the introduction of new rules in a very incremental way might create tensions in the near future, especially in terms of implementation and enforcement. Therefore, there is a need for better communication and interaction with stakeholders from the ACA and other public institutions dealing with competition policy.

When it comes to the EU’s role, this is a very good example of what the theoretical proposition stands for: if EU actors are more involved in the process through assistance, then implementation has a better chance of succeeding. The EU was present in setting up the whole legislative and institutional framework from scratch through financial assistance and expertise. Its involvement, combined with domestic political will and good capacities from staff engaged in the process, helped in establishing a well-functioning structure that would then be able to achieve good results in ensuring the implementation and enforcement of related acts that would be adopted. Its role continued to be important in the years after, although the ACA has been covering the area in a satisfactory way by engaging with experts from different countries. However, the EU’s role remains very important in monitoring developments in competition policy from an institutional and legislative point of view. In addition, it is helping to fill the gap in inclusiveness since different stakeholders contact the EU delegation as a mediator on issues concerning competition. This function should be developed by the ACA directly, but in the short term, the EU is providing its assistance under this perspective.



Finally, the coordination and governance of this policy area has raised some additional discussions concerning implementation. This case seems to suggest that institutions built from scratch but with a clear vision and strong support might have better performance with implementation. The legal basis was immediately consolidated, so it started with a strong legal framework in place, ensuring clear competences and independence (Melani 2012). Their practices and internal procedures were transposed from good examples from the EU and did not reflect the institutional culture of Albanian institutions (so less resistance to new practices emerged). The staff hired had different domestic and international backgrounds in terms of professional experience, but the access criteria were higher than usual in Albanian public administration. Since the EU has been “sponsoring” and monitoring this institutional framework, its independence and staff stability has been monitored even closer, which has further increased the quality of its work. Therefore, this case can be considered an “experiment” that needs to be analysed even more deeply to understand the dynamics and combination of factors that can guarantee the replication of these results in other policy areas. Although just a few years have passed since its establishment, the ACA provides a good example of how implementation can improve when the right institutional framework and capacities are set in place.

## CHAPTER 7 FOOD SAFETY

The EU *acquis* on food safety is based on general principles derived from the Treaty on European Union and the Treaty on the Functioning of the European Union, as well from the jurisprudence of the Court of Justice of the European Union. These principles include the “precautionary principle”, that has been invoked to ensure health protection in the Union and transparency principle to ensure that consumers have confidence in the decision-making processes related to food law and the structures and independence of the institutions protecting their health. A considerable level of protection of human life and health needs to be ensured in the pursuit of Union policies that apply to all stages of the production, processing, and distribution of food according to the farm to fork or the “stable to table” principle. Food safety requirements are thoroughly regulated in EU secondary legislation. Regulation 178/2002 is the basic legal framework for food safety in the EU and the basis for establishing a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity of the supply of food, including traditional products. With the adoption of Regulation 178/2002, food safety became a horizontal issue, and such a horizontal approach has continued to be followed and completed by the adoption of the Food Hygiene Package and other relevant regulations listed in Chapter 12 of the *acquis* on Food Safety, Veterinary and Phytosanitary Policy.

In the case of Albania, food safety, unlike the previous policy areas, has some institutional history from the communist regime. Under communism, the Ministry of Agriculture was in charge of and responsible for this area, and it had its own institutions and laboratories that were involved in ensuring safety to a certain extent. Of course, the EU represents a much higher level and quality of standards in this field, which require major efforts in terms of financial and administrative resources.

This chapter starts by explaining the most important steps and reforms undertaken by Albania regarding alignment with the EU. It describes the state of legislation approximation and then explains the institutional framework that has been established over the years to fulfil the commitments and requirements under the SAA. The elements of the research inquiry are then described, focusing mostly on the directives chosen for the sample and the sources used. Section 7.3 elaborates the findings according to the

different variables studied. Last, conclusions are discussed and the main findings relevant for this policy area are explained.

### 7.1 Alignment with the *acquis* and institutional development

The obligation to approximate Albanian legislation in Chapter 12 with that of the European Union stems from Articles 70 and 95 of the SAA. It is required from Albania to strengthen the food safety system and related control systems. This would imply the reinforcement of laboratory capacity in food safety and in the veterinary and phytosanitary domain. Most important, it requires alignment of legislation with EU legal acts and its proper implementation for improving food safety, phytosanitary and veterinary situation.

Current Albanian law on food safety is partly in compliance with the EU *acquis*. Although several provisions are either fully or partly approximated, further legislative work is necessary in order to comply with the approximation obligation laid down in the Stabilisation and Association Agreement (EC 2012). More specifically further legislative work is needed in order to comply with the two certification requirement regulations (Regulation 605/2010/EC and Regulation 206/2010/EC). Moreover, major transposition effort is necessary to approximate the Albanian hygiene package with Regulation 853/2004/EC and Regulation 854/2004/EC on food of animal origin.

Overall, in the field of food safety, more than one hundred EU acts have been transposed into national legislation and a number of major steps have been undertaken. The Law on Food No. 9863 was adopted in 2008 and this is partially approximated with EU Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety and with Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. In general, current legislation dealing with food safety in Albania is partially aligned with EU provisions. However, implementation remains the main problem (EC 2012).

In terms of institutional organisation, the Ministry of Agriculture, Food and Consumer Protection (MAFCP) is the main responsible institution for food safety policy in

Albania. The central competent authority within the ministry is the General Directorate of Food Safety and Consumer Protection (GDFSCP). This unit is also responsible for the transposition and implementation of legislation on the technical aspects, while the Legal Directorate is responsible for checking legal aspects.

As mentioned previously, the legal basis regulating food control includes Law No 9863 of 28 January 2008 ‘On food’ (No 17, 2008), based on Regulation No 178/2002 of the EU. This law is designed to help lay the foundations for the protection of human health and consumer interests. As regarding the process of alignment with EU legal acts, the ministry drafts legislation in the field of food safety and it is responsible for approximation of Albanian legislation to EU legislation. The ministry cooperates with the Ministry of European Integration on complying with the National Plan for the Implementation of the SAA and obligations formulated in the respective SAA subcommittee.

In Albania, official inspections in food safety, animal health and plant protection are carried out by inspectors, employees of the regional directorates of agricultural, food and consumer protection, regional directorate of public health and the veterinary offices of the local government. Samples taken during official inspections are analysed in the regional laboratories under the Ministry of Health and MoAFCP, and in the relevant agencies, namely the Public Health Institute (PHI) and the Food Safety and Veterinary Institute (FSVI). The official control is carried out across all the stages of the production, processing and distribution. There are 12 regional inspectorates country-wide. At present, there are a total of 135 food safety inspectors. These inspectors draft their monthly and yearly control plans and, in general, they apply these plans through special inspections based on the Albanian legislation in force (Ministry of Agriculture 2007). These controls are performed in serious risk periods based on the joint control programs. The State Sanitary Inspectorate is responsible for the food safety control of the products of non-animal origin. The Inspectorate of the Food Safety is responsible for the quality control of all types of food products (Cuko 2012).

By changing the Law no. 9863 date 28.01.2008 “On Food”, the organisation of the control system changed<sup>37</sup>, foreseeing the creation of a National Food Authority (NFA) who became responsible for all inspections regarding food safety, animal health and plant protection, including risk evaluation. It was foreseen that NFA would be

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<sup>37</sup> The system explained above has experiences changes and the National Food Authority has been in charge of inspections since 2009.

functional gradually, in three phases, until 2011 when it would be fully functional. At the time of fieldwork of this study (2012), the NFA was fully functional and staffed (EC 2012).

The full establishment of the National Food Authority (NFA) has been the most important institutional development in food safety area. NFA was established with a Ministers Council Decision No. 1081 date 21 October 2009, but, as explained, it became fully operational in 2012. The main reason for establishing this new body was because of the unclear chain of command between the four agencies involved in food safety and to clarify competences related to it, concentrating them under a single authority (Cuko 2012; Misha 2012).

In terms of actual responsibilities, NFA is the competent authority for inspecting at national level in the field of safety and protection of consumers', plants and animal's health protection. Therefore now organisation of adoption and implementation process is simplified as follows: the only responsible organism for transposing and drafting legislation and policies that cover EU legal acts on food safety is the Ministry of Agriculture and the NFA is the only authorised body for implementing and enforcing this legislation and policies. Since its establishment, the NFA has significantly increased its operational capacity and has expanded its activity across the 12 regions of the country (Cuko 2012). However, the responsibilities, powers and interaction procedures between the Ministry of Agriculture and NFA need to be defined clearly (EC 2012).

## 7.2 Explaining the sample and the sources used

This chapter of the *acquis* is composed from four different parts: food safety and control, veterinary policy, phytosanitary policy, and seed and planting material. The focus of this inquiry is on food safety only. The main strategies and planning documents of this area used as reference in the study relate only to this first of the four sectors. The food safety chapter is considered as one of the most difficult for accession countries. The quantity of directives and legal acts makes it quite difficult to comply with. Quality is also a big challenge, since most of it is related to standards and therefore has financial implications for the country. As explained in the previous sections, Albania has done a considerable amount of work in trying to comply with the *acquis* in this chapter. Legislation in this chapter is complex and more often quite technical. In order to better identify representative legal acts which might help in exploring the policy process, I

undertook a preliminary fieldtrip where I consulted different actors and experts of the area. I chose two different directives which have been transposed into Albanian legislation, both presenting partial compliance<sup>38</sup>. In addition, in one case implementation has been considered partial and in the second case there is no implementation as of the end of 2010 (Council of Ministers 2010). An interesting fact is that transposition has been implemented through two different legal acts, one via the Council of Ministers' Decision and the second via Ministerial Order. As will be analysed later, the two procedures present differences in terms of policy process and adoption, which might affect implementation. The choice reflects also the need for exploring different scenarios which might offer more variance for the analysis.

The first Directive is the 92/46/EEC which regulates the norms for collection of unprocessed milk. It has been transposed and partially complied with in Albanian legislation through Decision no. 1132 of Council of Ministers of Albania named "On adopting the norms governing collection of unprocessed milk", on date 05.08.2008. The decision has entered into force on the same day.

The second is the Directive 86/363/EEC on levels of pesticides in food, which has been transposed through Ministerial Order no. 5 on date 07.09.2009, entitled "On maximum levels for pesticide residues in food of animal origin". It has entered into force in the same day.

Research work on this policy areas included a preliminary stage, as explained above. During that first phase, I gathered *documentation* related to internal regulations and procedures concerning organisational work and interaction between different departments in the Ministry of Agriculture and with other depending institutions such as the NFA, and non-state actors in this area. These institutions cover a vast policy area and therefore there was a considerable amount of internal documentation. However, my focus was on materials that could help with the three main propositions that I needed to explore. Some minutes of meetings with interest groups were available though not published. Documentary analysis was used to understand the formal regulation of the policy process internal to the ministry which would provide the basis for then triangulating with personal accounts taken in the interviews. Written reports from inspections, their format and periodicity provided additional information which was then used to adapt the interviews for this policy area. In addition, learning about the

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<sup>38</sup> For most of legislation transposed in this area, compliance with EU *acquis* is considered partial.

organisational structure was quite useful, since the ministry is quite different from other line ministries, especially in terms of high number of staff and expertise required. As with the other policy areas, *interviews* have been the most useful source for analysis and for exploring more in depth the policy design and implementation. Two rounds of interviews were carried out. The first one was during the pilot stage and it was focused mainly in the directorate for European integration in the Ministry of Agriculture. The second round started once all elements of inquiry were clarified and the interview questions were adapted according to the feedback received during the pilot stage and after documentary analysis. Thirteen persons<sup>39</sup> were interviewed for this policy areas. Around half of the participants required not to be quoted directly by name. They were three desk officers at the Ministry of Agriculture, two inspectors, two members of Farmers' Association, one expert on food safety. In addition to the two rounds of interviews, a last follow-up session was done at the NFA with two desk officers covering Food safety.

### 7.3 Analysis of the findings

#### 7.3.1 *Institutional coordination and division of competences*

The Ministry of Agriculture together with its dependent institutions represents one of the biggest public institutions in terms of competences and number of employees. In addition to all other policy areas related to its work, it provides central coordination for food safety sector. As explained in previous sections, the level of approximation in this area is quite low and it is one of the *acquis* chapters where the country will have to invest considerably in the future. One of the challenges that the ministry faces as central coordinator is the fact that this sector is very much interrelated with other sectors and institutions (Misha 2012). This requires constant communication and structured cooperation, especially during the work on designing policies.

From the analysis of this sector, there are three main components concerning coordination which explain and affect performance in planning of implementation instruments for policies.

First, despite formal centralisation of the process in the ministry as leader of the Inter-institutional Working Group on food safety, coordination is still mostly horizontal with

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<sup>39</sup> For a full list of persons interviewed please refer to Appendix 1.

other institutions. Most of the officers interviewed in the ministry admit that relations with other line ministries at the technical level are quite problematic. Main clashes are related to different views on understanding of methodology and its implementation (Misha 2012; Zeqo 2012). In most of the cases they are solved through informal negotiations and they depend also on the type of interpersonal relations built between and with directors of the different ministries. Therefore there is a lack of establishing formal channels for solving disputes. This is confirmed by the fact that there is little official communication available regarding problems and disputes in the ministry. In both cases of the chosen directives, informal discussions with the Ministry of Economy were considered sufficient to solve the few problems raised.

It is interesting to notice differences in perceptions between the different levels in the same ministry when it comes to relations with other institutions. At the technical level there is common position on the need for improving relations and coordination with other line ministries. At the political level, it seems that "there are no disputes involved and if there are, they are solved quite easily with direct contact with the political counterpart" (Varfi 2012). Therefore this seems to be a common feature as in the Ministry of Economy.

Communication with the Ministry of European Integration is quite intensive at the technical level, according to the filing system used in the ministry. However, at the political level there is little communication. From the political staff, contacts with the Ministry of European integration are considered not 'decisive' and not important since "the Ministry of Agriculture is very clear on the approximation process and does not have remarks by MEI on that" (Varfi 2012). This is an important point on which I will come back in the next session. Overall the political level in the ministry communicates only with its internal Directorate for European integration which, although it has regular contact with MEI at the technical level, is not much aware of developments and indications at the political level. According to official job description and competences, but also from what could be grasped from interviews, this Directorate carries many duties which overload it in terms of coordination tasks. The interviewed policy makers in the Ministry believe that daily communication and interaction should be organised by sectors (line departments) by assigning competences horizontally and not centralised in one Directorate (Misha 2012). When it comes to approximation and designing policies, the Ministry of Agriculture has close contacts with the Ministry of Justice in the consultations stage of the draft (same procedure as each ministry, foreseen by law).



Overall coordination system in the policy design process is not well established and somehow confused and different approaches between political and technical level. This has generated a high number of disputes during the process, including in the case of the directives of the sample, which affects later the implementation process.

The second important element concerns internal procedures of the coordinative body regarding transposition of EU *acquis*. According to internal regulation, for each transposition a working group is set up, with at least one lawyer as member. Once the technical work on the draft is finished it goes through the Legal Directorate which check legal compliance and then the draft is ready for consultations with line ministries, other government agencies, interest groups, etc. This is the description of the formal policy design process and how it should be taking place. However, in reality it is not how it goes and this is probably one of the weakest points in terms of explaining implementation failures in this area. According to the Director of the Legal Department in the ministry, most of transposition acts are issued through Ministerial Order (Profkola 2012). One of the two directives of the sample was transposed via such ordinance. This type of decree, though it's faster and effective in terms of getting through with the process, represents many important problems when it comes to the *acquis* and its implementation. First of all, Ministerial Order do not require or need the set-up of working groups. In theory the legislation or the policy can be drafted by a single desk officer in the ministry, be checked at the Legal Department for general references, and then be signed by the minister which makes the act enter into force immediately. Not setting up working groups means that other departments and other line ministries and institutions do not have a say in the policy design process and therefore get information only when it enters into force. This is what happened in the case of the second directive which was drafted by the desk officer in the ministry and not by a working group (as in the first directive). This creates potential risks for implementation because there is no time and consultation before so that other actors can discuss, prepare and plan implementation requirements. None of the implementation disposition contained in the ordinance is discussed with other implementing and enforcement parties. They just get the notification when it enters into force.

The second problem that comes from using ordinances for transposition concerns relation with Ministry of European Integration. According to the law on competences of the Ministry of European integration, any legislative act related to transposition of the *acquis*, needs to be submitted to MEI for opinion on compliance with the *acquis*, before

going through approval procedure. This happens in most of the cases according to MEI officials, because otherwise when the draft goes in the agenda of the Council of Ministers for approval, it may get blocked if there is not a positive opinion from MEI or if its comments are not reflected. The problem is related to the fact that Ministerial Order do not need to be submitted (and are not submitted) to MEI for opinion (Profkola 2012). Therefore there is no check for compliance with the *acquis* apart from the desk officers who worked on the draft in the Ministry of Agriculture. The ordinance on pesticides in food did not go through MEI for opinion on compliance (Begaj 2012) while the first on collecting unprocessed milk is registered in MEI database before being submitted to Council of Ministers for approval in 2008.

This difference in procedure creates potential for two types of deficits. On one hand, the difference between what the ministry declares as transposed *acquis* with what is actually been transposed grows further and no one is checking it. As a MEI officer (2012) states:

*"This will be a big problem in what is called the screening process before opening accession negotiations, where all chapters are scanned in detail".*

On the other hand, implementation deficit grows since the transposed acts through ordinances lack many elements which are necessary for successful implementation such as consultation and common positions on implementation mechanisms which are shared by all actors involved in the process after approval of the policy. In the concrete cases, implementing agencies have had the opportunity of being informed previously on the draft of the directive for collection of unprocessed milk, but have received the bylaw and the ordinance on pesticides in food products only when it was approved. To date, the first directive is partially implemented (mostly in farms close to big cities) while the second one has not been implemented and no inspections have taken place, according to the National Food Authority. One of the direction members claims that they are still waiting for training to take place on this issue, since there is lack of information (the legal act has entered into force in 2009 and training has not taken place yet!).

It is also interesting to notice that the EU representatives have not issued any criticism or complaint about this type of procedure but instead focus on the outcome (transposition and/or implementation). This is confirmed by ministry staff and also by EU officials interviewed in Brussels and Tirana. It appears that the general view is that it is up to the country to choose the instruments it uses for transposition and

implementation. However, it is clear that this type of coordination and regulatory framework used puts at risk the implementation stage in the case of food safety.

A third important element concerning coordination is related to frequent restructuring and lack of clear division of competences. The ministry, its structure and its competences have changed quite often during the last 10 years. Especially when referring to food safety, responsibilities and competences have been spread out in different institutions such as Ministry of Agriculture, Ministry of Health, Health inspectorate, etc. This has caused many shortcomings in terms of coordination and accountability when it comes to implementation and enforcement. Overlapping in exercising activities in food safety standards enforcement has been highlighted by EU experts as well in different occasions and reports. This has been confirmed by interviews carried in Brussels at Albania unit, in DG Enlargement, as well. At the time of this field research (2011-2012) another restructuring process was going on, with particular focus on food safety. Implementation of food safety acts were somehow slowed down due to a transition period of no clear division of duties among different structures within the ministry and its dependent institutions (Varfi 2012). The outcome of this new restructuring process has been a concentration and centralisation of competences in one body when it comes to implementation and enforcement of food safety regulations, which is the National Food Authority. Previously inspectors would report to the ministry and did not have a proper planning on inspections.

From accounts of interviewed inspectors, there is a standard procedure for their work. During official inspections in the food establishments the inspectors take samples. These samples are taken in routine controls as well as in cases when there is foreseen risk in sight. The samples are tested in the regional laboratories of food, veterinaries and public health regarding physical-chemical or microbiological tests. These inspections are carried out regularly twice a year, during the hot season of summer and at the end of the year. An important element is the availability of instruments for inspectors to enforce the law and its implementation. Based on the Law no. 9863 date 28.01.2008 “On Food”, Chapter XVI, all inspectors have the right to impose sanctions. In the cases when a food has been launched in the market, and verified that has caused damage to the human’s health, or may create serious threat for his life, according to the provisions of this Law, the inspector can also remove the license to exercise the activity to the operator of food business.

However, according to the EU official (2012) covering this sector for Albania, they were not organised and equipped properly to handle the tasks and, most important, their inspectorate was unstable due to continuous changes. As he states:

*"there is a need for public authorities covering this sector, to understand the vast amount of work required for implementation. It needs to start from the desk of the ministry, when bylaws are drafted, to the instruments planned for the inspectors and the enforcement work."*

When referring in particular to the two selected directives, for the first one on unprocessed milk collections the registered inspections according to data of the ministry have been only 7 in 2009<sup>40</sup>, in 2010 18 inspections and in 2011 23 of them. Some fines were issued but no confiscation of products or any business closed down. As already explained in the case of the second transposed directive there have not been any inspections yet and it results as not implemented. Inspectors claim that there is a lack of clarity regarding their tasks and until it is sorted out they are not starting inspections. Enforcement and the 'threat' of potential fines is of course key to raising awareness about implementation and therefore sorting out this stalemate in terms of division of capacities will contribute to improvement of implementation records.

It will also be interesting to observe the functioning and performance of the new institution, the National Food Authority, since it has been largely assisted and supported by the EU in its early stages. So far it has significantly increased the number of inspections and according to Cuko (2012), who was a former desk officer in the Ministry of Agriculture, working now in the NFA, 'concentrating all implementation in one hand is giving very good results. It was necessary to divide policy design from implementation'. However, success in this perspective will also depend on the level and quality of coordination and interaction between the ministry and the NFA, especially in the policy design stage which now is entirely separated from implementation and enforcement. The type of interaction and involvement of inspectors in the formulation of approximated legal acts can determine the outcome of implementation.

### *7.3.2 Participation of non-state actors*

Food safety regulations have a direct impact on a large part of Albanian population which is employed in the agriculture, agro-processing, services, and other sectors. This

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<sup>40</sup> This was the first year of implementation of the transposed directive but it was also an electoral year, when in general all public authority enforcement gets weakened due to political pressure.

is why it becomes really important to inform and involve most affected groups by legal acts in this policy area, in order to avoid resistance in implementation. Farmers' associations and consumer protection organisations are present in Albania but their activity and public visibility is quite weak. This is also confirmed from their interaction frequency with public institutions such as the ministry or the NFA. Communication officers in both institutions claim that they are rarely contacted by interest groups or parties whose activities are affected by policies in this area. There is no direct contact with sector departments and they rarely participate in meetings of working groups in the policy design process. However, when asked about official opportunities that the ministry offers for participation, there seems to be no other procedure than receiving an invitation from the ministry (for participating in a hearing or in a working group) or writing a complaint letter directly to the minister. Therefore meetings and contacts happen case by case, depending on the will and availability of ministry staff and direction, and not in a structured, periodical and formalised manner. What can be extracted from the interview accounts of both sides<sup>41</sup>, seems to be a circle of non cooperation with each other. Profkola (2012), director in the ministry, claims that:

*"business associations in this area are not well organised and their representatives represent their personal interest in the discussion. There have been many cases when policy drafts are sent to associations via email by ministry's officers, before approval, but we have not received any response most of the time".*

Therefore business associations do not seem very active and do not possess capacities in terms of organisation and technical expertise for contributing to the policy design process. On the other hand, during the interviews, members of the biggest association of farmers, complain that they are not involved regularly and, since their comments have not been taken into account in the past, their members do not have trust in the consultation process and therefore are not active. Despite the different views on the reasons for non-involvement, it seems a shared position that they are not involved. This not only prevents them from defending their interests, but it also increases the risk of resistance in the implementation stage since they have not been part of the process, have not been informed on the new policy regulations and have not been able to contribute. Instead, the way they interact with the process is through informal information channels within the ministry and through requesting the direct involvement of the minister. This is the case of the transposition of the selected directive on pesticides in food. As

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<sup>41</sup> Ministry officials and farmers association representatives

explained earlier, this legal act was approved via Ministerial Order which means that formally no interest groups were involved in the drafting process. However, according to two persons interviewed (one from the farmers' association and one from a large food processing company), they knew about the draft and its content before approval. They claim to have their contacts within the ministry, because of their previous jobs and therefore when some initiatives affect their work they can ask for information (informally). In that particular case they sent a letter and a request for appointment to the minister. The minister received them<sup>42</sup> and there was a lively discussion of the missed opportunities and damages caused to their business activity if this transposition happened at that time (Varfi 2012). The minister, after consultations with the technical staff, agreed on few minor changes and a longer transitional period for some parts. These changes shifted the draft to lower level of compliance with the EU directive<sup>43</sup>. Despite this might seem as a very effective way of dealing with problems during the policy design process, it weakens incentives for a structured interaction and cooperation with technical structures in the long term. Interested parties who have influence and access to politics can sometimes manage to influence decision making, but they do not cooperate with the technical level before the meeting with the minister. However, there are also positive cases of an open process. As Zeqo (2012) reminds also another similar case concerning olive oil when a different type of interaction with interest groups brought some changes to the draft.

*“The Department chairing the working group that was set up used the database of registered NGOs that is in the Albanian Parliament and invited all organisations and associations which in their mission include food safety and agriculture. Around 60 persons were consulted during the whole process. The draft was also sent to MEI for compliance check and it is considered to be one the most constructive experiences with interest groups in the ministry.”(Zeqo 2012)*

The transposed act is now considered partially implemented by with much higher rates than other legal acts (EC 2010). However, apart from this episode, the general trend in and view from the ministry and NFA on the interaction with interest groups is summarised as follows by Cuko (2012):

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<sup>42</sup> Once again interaction seems to be depending on political will and openness for cooperation. Especially when it is around elections time (such as this case) this type of contact can work well, but, however, it is unstructured and unstable.

<sup>43</sup> In both cases the compliance level remained 'partial', but after the changes fewer parts were transposed.

*“There is an established practice that when we have working groups meetings, we send invitations to interest groups. Few participate, even few send comments and most of the comments are not constructive. Mostly it is about resistance and complaining. The main problem is that most of the companies are not involved in associations”.*

This last part of Cuko’s comments is actually key to understanding the weak interaction and involvement of the business community. In the area concerning food processing and food wholesales, the sector is fragmented with few very big companies and many little ones. This is why the big ones manage to obtain access (mostly at the political level) and the little ones are discouraged and do not participate. In the case of the other directive, on milk collection, big companies participated in the consultation process and none of the smaller ones (which are many more) attended. This explains why the transposed directive is considered implemented in areas near cities (where big companies are located) and not implemented in more rural communities, according also to inspectors involved in this area.

Overall, involvement of non-state actors is weak and unstructured. This seems to have direct repercussions in terms of resistance to implementation, especially due to lack of information and ahead planning. Informal practices with direct access to the political level have perpetuated this lack of formal interaction and have not helped in implementation of the two directives in a large scale.

### *7.3.3 Involvement of EU officials in the process*

Technical expertise and good knowledge of the evolution of the EU *acquis* are important in the food safety policy area as well. Changes in the legislation are evolving fast and their complexity has grown especially in the last decades. Accession countries such as Albania have adopted food safety *acquis* ‘in a rush’, trying to fulfil commitments taken in important joint meetings such as SA subcommittees (Varfi 2012). Considering the vast amount of legislation in the field, strategic capacities in terms of planning and setting priorities are really important and other countries’ experiences can teach in this perspective.

EU has provided substantial assistance in this policy area, especially in terms of institutional capacity building, such as in the case of the establishment of the National Food Authority. Several training programmes have taken place since the Authority was established and, with particular attention to inspectors, tailor prepared assistance under TAIEX has been used. However, there seems to be some confusion when it comes to

communication with EU representatives, regarding food safety policy. Desk officers at the Ministry of Agriculture and at the NFA claim to communicate on case by case issues directly with the respective DGs in the EC (Misha 2012; Vuksani 2012). When asked about exchange of information and coordination with MEI, they say that they are in contact but mostly for issues concerning coordination of meetings with EU or specific directives.

Direct communication is best for solving some issues regarding technical aspects, but may cause problems when it comes to a common ground of understanding of the transposition and implementation process. As Misha (2012) claims, relations with counterparts in other line ministries or dependent institutions become often difficult due to different understanding of the process. Although there are joint trainings of the European Integration Units of each ministry, the technical staffs by sector are not involved in these trainings and therefore the people who do the drafting work have different understanding. According to Profkola (2012), this creates many problems that are then inherited by the implementation stage. He adds:

*“I think there are no clear dispositions on transposition at our disposal. We interpret directives and transposition according to our knowledge in each sector or each line institution. Administration is sometimes unprepared to take decisions on what to transpose and what standards to adopt”* (Profkola 2012).

Very often directives are transposed by using directly the translation from the original directive, with no adaptation work. And there are cases when sentences do not make sense in Albanian because of the way they are translated or when there are even bigger mistakes. He continues:

*“As director of Legal Department I check every act for legal standards and compliance. In some cases I have found the word ‘member state’ in the Albanian legal act that was proposed. Clearly it was just translated and put ahead for adoption, without even caring to read it properly. I think sectors should work on English original version of directives, and not use translated drafts. But we need a lot of help for understanding and interpreting them”* (Profkola 2012).

The more this aspect is explored and the more there seems to be a need for direct assistance and involvement from EU experts in explaining directives before they are adopted. In the case of the first selected directive that has been transposed, the one on collecting unprocessed milk, the desk officers drafting the act were advised by a member state expert who was at the Ministry of Agriculture for a short visit under Taiex



program. Although he was assisting the sector in a more general framework of institutional capacity building, according to desk officers in the European Integration Unit, people working on the draft had the opportunity of interacting with him and exchanging some useful information and contacts. It is difficult to assess how much this has influenced and improved the understanding of that particular directive; however, it is a common perception among staff of the ministry that when external experts are involved there is a better understanding of the act and a better quality of policy draft. It is like an ongoing training which helps in improving skills during transposition work. In the case of the second directive, as explained earlier, the whole transposition and drafting process was somehow behind ‘closed doors’ and therefore not only there were no consultations but also there was not any assistance provided. As a representative of the respective DG in Brussels comments:

*“Directives on food safety have a whole historical background to them. It is sometimes difficult for accession countries to understand them and elaborate and adequate policy for transposition. The case mentioned, on food from animal origin, it is difficult even for some member states. That is why we expect vigorous attention to implementation after adoption of the directive”.*

EU representatives in Tirana consider the expertise assistance given to this area insufficient, but they argue that the request for assistance should always come from domestic actors. They claim to have offered assistance on most required cases, while the initiative is in the hands of Albanian authorities. A professor in the Agriculture University of Tirana and expert on food safety who follows developments of the process thinks that:

*"there is quite a strong pressure on Albanian institutions dealing with this topic to rush with adoption of transposed legislation, despite the clear fact that there is a lack of capacity".*

In addition he argues that:

*"there is a mismatch between what most ‘hot topics’ are in terms of priorities coming out from bilateral meetings<sup>44</sup> and where assistance has been provided".*

Another expert on food safety, who now owns a big wholesale company, is quite critical of the EU’s approach of waiting for the Albanian side to propose. He perceives the process as guided by the EU and therefore it can’t be left only in the hands of the will

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<sup>44</sup> He calls them bilateral meetings but when he elaborated further it was clear that the reference was to SA subcommittee on Agriculture.

and capacity of Albanian representatives. Notwithstanding the different views and perceptions gathered, the food safety policy area seems to have suffered from a lack of proper understanding of the work related to transposition and implementation of EU *acquis*. Anytime EU or member states' experts have been involved they have brought not only an improvement to the quality of work but also some know-how and capacity for future work (Misha 2012). This chapter of the *acquis* is so complex and with high standards needed, that it will require not only many financial resources in the future, but also a strong need for capacities in understanding, transposing and implementing the developing *acquis* of the EU. Since implementation in this area is assessed very low in general, it is difficult to evaluate precisely whether EU assistance provided has made big changes, but in the specific directive cases, based on the accounts gathered, EU support is definitely a positive and qualitative added value for Albanian institutions' work.

#### 7.4 Conclusions on the Implementation of Food Safety legal acts

Food safety is another difficult and complex policy area. It represents one of the chapters of the *acquis* where the Albanian record of implementation is quite low. As explained in this chapter, there are different explanations for this, and some go beyond the variables taken into account, such as financial resources. However, there are several aspects concerning our theoretical propositions that directly affect the policy design process and implementation outcome.

The issues of policy *coordination* and the division of competences are crucial in explaining poor implementation in this area. There have been continuous clashes and disputes with other institutions that are not solved horizontally (which would strengthen capacities and help in developing a common understanding within public administration) but rather through political intervention. This has also brought a different approach and understanding between the political and technical levels within the ministry on the same issues. Communication and interaction with MEI and other institutions is also fragmented, and not everyone is "on the same page". However, the biggest problem in this respect concerns the centralisation of internal procedures for transposing directives. As explained, most of the *acquis* is transposed through Ministerial Order, which are not required to be discussed or consulted either internally (with other desk officers and inspectors from the ground) or externally (with other

mainline ministries or stakeholders). Because of the vast amount of *acquis* and the highly ambitious commitments that Albanian authorities have made in this policy area, transposition requires a very intense pace of work that is beyond the public administration's capacities. The ordinances are a "shortcut" for speeding up transposition work by avoiding long procedures and delays because of disputes from consultations to attain formally transposed legislation with a satisfactory speed. This has produced poor-quality legal acts with either missing or problematic implementation disposition. The result is a very big gap in implementation that has made it one of the worst-performing sectors. The two selected directives and the process followed confirm the above conclusions, especially in terms of implementation.

Regarding the *involvement of stakeholders* in the process, a pattern of direct interaction with the political leaders in the institutions has been developed (as in the case of the second directive). Because most acts are implemented through ordinances and few public hearings are organised, direct contact with the minister has become quite a common solution, especially for large companies, which have more opportunities for access. In the other cases when a directive is transposed through a Council of Ministers' decision or via law, working groups are established and records of meetings with stakeholders are kept. However, in general, there is low turnout and few constructive proposals or comments. The meetings turn more into sessions for complaining and criticising the policy or public administration work in general. Mutual mistrust has developed on both sides (desk officers and stakeholders) based on previous interactions where comments were not taken into consideration (stakeholders' view) or they were not of good quality and not helpful (desk officers' view). As the findings show, stakeholders have the power to resist implementation, so their involvement (or at least their information) in processes regarding food safety needs to be improved. The uneven implementation in terms of geographic distribution suggests also that the network and associations of stakeholders in this area are quite poor and need to be strengthened with concrete support.

Last, the EU targeted assistance for this area is another important factor. It seems that the field is so broad and complex that, regardless of what assistance is provided, immediate and tangible results cannot be achieved. However, in the learning process and in building institutional memory, the EU can provide more ad hoc assistance for a specific group of directives. According to the data analysis, there is a general lack of understanding of directives, and very often, desk officers get lost in translation. This

brings a need for constant support for capacities from experts of the EU Commission or from new member states that have recently faced those challenges. In addition, the EU might need to assume a more proactive role in monitoring the need for assistance and proposing it rather than leave the entire initiative to Albanian authorities. Although the process is mainly a commitment and workload undertaken by Albanian institutions, in the bilateral framework meetings, there is room for jointly planning technical assistance in a more coherent and strategic way.

Overall, there is a lot to learn and to explore about implementation failure and problems in this sector. The positive side is that, with shortcomings looking so clear from these findings, it might be easier to tackle them if the appropriate political will and capacities are in place. However, this policy area might represent one of the weakest points when Albania starts negotiating *acquis* chapters with the EU and might delay the process even further because of the large implementation deficit it already presents.

## CHAPTER 8 ENVIRONMENT

EU environment policies aim to promote sustainable development and environmental protection. These policies are based on the integration of environmental protection with other EU policies, preventive measures, the fight against environmental hazards at the source, and the division of responsibilities. The environmental legislation includes over 250 main legal acts, which cover horizontal legislation, water and air quality, waste management, nature protection, climatic changes, industrial pollution control and risk management, genetically modified organisms, chemicals, noise, and forestry. Achieving compliance with the EU legislation requires significant efforts, especially financial investment (Andonova 2005). For the application and implementation of the *acquis*, it is necessary to have strong administrative capacities at the central and local levels.

The obligation for the approximation of Albanian legislation in the field of environment with that of the EU derives in particular from Article 108 of the SAA, in which it is cited that “the Parties will develop and enforce the collaboration in the very important task of the fight against the environment degradation, with the view of promoting the sustainability of the environment. The collaboration is mainly focused on the priority areas related with Community *acquis* in the environment field” (Council of the EU 2006a). The main policy document for the achievement of legislative compliance is the National Plan for the Implementation of the SAA. These documents attempt to manage environmental issues through a very large number of legislative changes, which are required to achieve transposition. The current body of law is considered broad in scope, although it does not cover all areas of the *acquis*.

The EU Commission considers that there is a “major gap” between the current level of implementation of Albanian legislation on the environment and that of the European Union. There are structural problems associated with the current environmental legislation (EC 2011). As reported by Albanian authorities, the main difficulties encountered during the approximation process include the initial identification of required organisational, economic, structural, and administrative measures. Many of the directives require the establishment of new organisations and systems and the necessity to strengthen existing capability and capacity. Thus, in practice, EU directives are implemented with major difficulties and generally involve delays.

This chapter starts with an overview of the transposition of EU legal acts into Albanian legislation. In this part, the most important steps in terms of institutional settings and compliance with directives are described, with a particular focus on the implementation records based on EU reports. Since this policy area is very broad and includes several sub-areas, for the purpose of this study, I have selected waste management as the case to examine. The sample selected is explained in section 8.2. A case study directive is taken as reference to concrete examples of policy design process and lack of implementation are explained. The policy process of the sector will be analysed in depth in section 8.3, where detailed components and variables will be explained according to the study methodology. Final considerations on the findings of this area will constitute an important part of the conclusions of the thesis, which is also reflected in the conclusions of the chapter.

### 8.1 The state of alignment with EU *acquis*: Waste Management.

Environment is one of the most difficult chapters of the *acquis* in terms of alignment requirements and that is why Albania is falling behind in this process. In the horizontal legislation field there has been progress regarding the transposition of the Environment Impact Assessment (EIA) Directives, but there has been no progress regarding the other directives. The transposition of the EIA Directive (2011/92/EU) has advanced and there is an ongoing work for its full approximation (Abeshi 2012). Notably progress has also been achieved in regard to the transposition of the Strategic Environment Assessment (SEA) Directive. The majority of the provisions of this Directive were transposed with the adoption of Law No 91/2013 "On Strategic Environmental Assessment" in February 2013.

Considering the vast area that this *acquis* chapter covers, I have selected Waste Management as the focus of the research. This is a very sensitive area in general, but even more important in the case of Albania, since there has been much and continuous public debate on this topic. In addition, this area can be considered important also from the point of view of analysing interaction between institutional actors and non-state groups.

Transposition in the *acquis* in the *waste management* field has experienced good progress. The level of approximation with directive in the framework for waste has been high. The legal framework on the administration of wastes is based on the Law No

9010, of 13.2.2003 “On the Environmental Administration of Solid Wastes” and on the Law No 9537, of 18.5.2006 “On the Administration of Hazardous Wastes”. In general terms, what legislation aims in this area is protection of the environment and public health from pollution and solid wastes through environmental administration at each phase, including creation, collection, separation, transportation, recycling, processing and disposal. The transposition of the Directive on packaging waste was completed in 2012 with the adoption of the Law “On Integrated Waste Management” in September 2001, as well as with the adoption of DCM No. 177/2012 “On packaging and its waste”, in March 2012. The adoption of DCM No. 705/2012 “On the management of end-of-life vehicles”, in October 2012, has notably improved the transposition of the respective Directive (EC 2013).

Legislation dealing with the administration of waste has only partially transposed European directives. According to the Progress Report of the European Commission of 2009, “On monitoring the Transposition and Implementation of EU environmental *acquis*”, the level of transposition of the Waste Directive<sup>45</sup> stands very low. In alignment with the recommendations of EC Progress Report 2009 and 2010, and in compliance with the National Plan for the Implementation of the Stabilisation Association Agreement (NPISAA) 2009-2014, a new integral law regarding waste was drafted in 2011 which aimed at to completely transposing the new Framework Directive on Waste<sup>46</sup> of 2008.

The Ministry of Environment (MoEFWA) is the principal institution dealing with the development of policies and legislation on waste administration, licensing of waste administration, waste generation, inspections and supervision of environmental legislation enforcement. Currently MoEFWA does not have a separate directorate dealing with waste management issues. The MoEFWA is responsible for drafting policies and legislation concerning waste management, and for ensuring compliance and implementation. The MoEFWA also coordinates the work of 12 Regional Environment Agencies (REA) with 38 employees.

In other areas, waste management responsibilities are split between Ministry of Health for hospital wastes, the Ministry of Public Works, Transportation and Telecommunications for solid and urban wastes, the Ministry of Economy, Trade and

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<sup>45</sup>Waste Directive of the European Parliament and Council 2006/12/EC, of 27.04.2006, 32006L0012, Official Journal L14, L, of 16.05.2006, p. 9-21.

<sup>46</sup>Framework Directive on Waste 2008/98/EC, 32008L0098, Official Journal L312/3, L, of 22.11.2008.

Energy for industrial and mining wastes, the Ministry of Agriculture for relevant sectors generating wastes, and local authorities.

As pointed out earlier, cooperation between these institutions remains poor. There is overlapping in several activities, such as inspecting (Agenda Institute 2009). All three, the MoEFWA Environmental Inspectorate, the State Sanitary Inspectorate, and the Municipal Inspectorate have the right to exercise waste activity control. Based on the Article 76 of the Law “*On environmental protection*”, the Local Government Units represent the most important element for environmental protection by executing duties and obligations enumerated in Law No.8652, dated 31.7.2000 “*On organisation and function of local government*”. With regard to waste management, they are required to designate sites for collection and the processing of production wastes in accordance to environmental criteria and developmental plans. They should also organise the dumping of wastes and dangerous substances, and for protection of green areas in urban zones and their surroundings. Finally, they are in charge for the management of urban waste, including water treatment plants and solid waste.

Despite some positive developments, the EC points out in almost all progress reports of the last years that lack of implementation and enforcement of the legislation remains a concern. As regarding administrative capacities the EC has identified several problems. Apart from the visible lack of financial and human capacities in most of the involved institutions (the Ministry of Environment, the Ministry of Public Works, the Environment Agency, the National Environment Inspectorate, etc.), cooperation and coordination experiences many difficulties. Interaction between the responsible ministries, the agencies and coordination between central and local authorities is weak (EC 2012, p. 61).

## 8.2 Description of the sample and data used

In the case of environment, the selected *sample* is Directive 2008/98/EC which regulates integrated waste management in general and then by specific products. The directive has been fully transposed in Albanian legislation in two different steps: first, through the law no. 10463 date 22.09.2011 “On integrated waste management” which entered into force on 23.11.2011. The second step was the Council of Ministers’ Decision no. 765, dated 07.11.2012, which entered into force on 22.11.2012. These acts and what followed in this area have been highly debated in the public sphere in Albania



and therefore represent a very good case for not only assessing coordination among institutions in the way the process was developed, but also for exploring interaction with other non-state actors. In the same period another important legal act was approved to regulate imports of waste for recycling purposes. This case was highly controversial and it will be discussed further during the analysis of the data and findings. In terms of formal compliance, the selected directives represent a good example of the transposition process, even though implementation is considered poor. Implementation failures in this area need to be explored more also in the work of inspectors and enforcement agencies, rather than only in ministry desks.

As regarding *documentary* sources, environment policy in Albania has produced a large quantity of written documents through the years. There are several strategies, action plans and memorandums signed and approved. This has been possible, first because of high attention from EU and international community through assistance and support, and, second, due to the fact that there is a quite consolidated expertise present in Albania inherited also from the previous regime. However, not all the documentation is useful for understanding implementation. I used mostly documents regarding waste management policy development through the years and structural changes in the institutions covering this area at the ministry desks but also on the ground. In addition, media debates were quite useful, since most of the discussions were ongoing when I started fieldwork. Minutes from meetings with stakeholders and their policy amendments in written form were sometimes available and provided useful information for exploring the theoretical propositions.

*Interviews* for this area included<sup>47</sup> two senior desk officers at the Ministry of Environment who are in charge of sector policies including waste management, another two desk officers from the ministry, three inspectors, two EU representatives, three representatives of local organisations dealing with environment protection, one activist who co-organised protests in 2012 and one independent environment expert. For different reasons only the first two and one EU official accepted to be quoted by name. All the others agreed to be quoted but not to be identified. Interviews in this policy area were quite interesting not only because of the topics discussed, but also due to the fact that many events were occurring in real time and it was very useful to capture and analyse information during action. Interviews were quite long, especially in the case of

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<sup>47</sup> The full list of participants can be found in Appendix 1.

the meetings with representatives of local NGOs since they cover these topics for many years and their historical perspective on developments was quite helpful as well as their thoughts on the specific directive and the ongoing situation.

### 8.3. Analysis of the findings for waste management sector

#### *8.3.1 Institutional coordination and division of competences*

Coordination of waste management policies in Albania is quite complex. Competences are spread out between Ministry of Environment, Ministry of Agriculture, different inspectorates, local governments (municipalities), etc. However, when it comes specifically to transposition of the EU *acquis* and monitoring of implementation in this area, the Ministry of Environment is the leading institution. It chairs the Inter-institutional Working Group on the Environment chapter of the *acquis* (Chapter 27), coordinating one of the biggest among these groups, in terms of number of members. Within the ministry, the Directorate of European Integration plays quite an important role in coordinating working groups of policymakers to respond to the Ministry of European Integration requests and directives. What could be grasped since the first interviews is a general confusion in terms of division of competences which seem to shift depending on the issue and policy in discussion. As Hoxha (2012) observes:

*“Without a clear map of competences in terms of relations between us and other departments or agencies, from time to time there are misunderstandings, tensions, delays and stalemates. These have increased even more with the increase of environmental acquis adoption”.*

In the case of transposing the directive on waste management, two different departments cooperated on the drafting process (the General Directorate of Policies and the Environment Directorate). It was a decision of the minister to set up that type of arrangement. However, as Abeshi (2012) explains, there is not a unique and consolidated procedure in terms of coordination of the transposition process, even concerning the procedure followed for setting up working group. There seems to be no clear institutionalised model when dealing with transposition work, in terms of units involved. As one desk officer in the legal department claims, sometimes their department has been used for legal compliance checks and other times it has been called for drafting the legal act. This does not allow for proper preparation and planning in terms of human resources. Because of the vast amount of sub-policy areas that the

ministry covers, it seems that there has been strong and centralised coordination at the department level, but not at higher level. By higher level I refer to minister or deputy ministers, when dealing with inter-institutional coordination. Therefore it can be described as a big institution with weak central coordination at the top and different 'islands' within it, which have strong power in terms of coordination of their sub-area. This type of structure can become quite efficient when policies are more segregated within that specific area of expertise. However, it reflects a quite problematic coordination when it comes to possible disputes with other institutions and depending agencies such as the selected case.

Related to the dispute settlement point, this chapter appears to have been by far the most problematic as compared to the previous policy areas. The transposed directive on waste management experienced different stages of stalemate, according to desk officers in the Ministry of Environment, mainly because of clashes with other institutions. The staff of the ministry, in charge for leading the coordination process of the working group, expressed dissatisfaction about cooperation with other members. As a member of the working group (2012) would describe:

*"We would meet on weekly basis and say the same things, the same positions. It got so ridiculous because no steps ahead were taken. However we would formally attend the meetings because it's an obligation. But we already knew that nothing was going to happen".*

The whole process was characterised by several 'inter-agency conflicts and institutional clashes'. As explained earlier, rather than following legal procedures to higher institutions or to a well-defined structure for such cases, these disputes are usually settled and solved on an individual case basis by the main officers in respective institutions. However, in this case, due to sensitivity involved and overlapping of competences for the upcoming implementation and enforcement stage, they assumed a more official approach. After many weeks of stalemate, the respective department in the Ministry of Environment sent an official letter with their arguments<sup>48</sup> to all members of the working group. This opened up the process and, according to the accounts of two desk officers involved in the drafting process, it gave the perception to other members that there was no central coordination in the group. One of them recalls:

*"Asking to more than 30 persons for their opinions on that problem was a mistake. We ended up making fun of the process and it was a clear sign*

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<sup>48</sup> The dispute in this case was about who should carry out inspections on waste management

*that the ministry didn't want to follow that version of the draft and thus it was 'killing' it in that way, by throwing it in the 'market'".*

In spite of this view, when collecting other accounts, it looks like the intention was not to delay the draft but it was rather a way to remove responsibility for that situation out of the department in charge. A long correspondence<sup>49</sup> followed, involving all members, with no agreement or structured discussion been carried on, but rather deepening the conflict with mutual discharges of responsibilities. Clearly, as stated earlier, having strong coordinating units is helpful for the institution internally, but for horizontal coordination with other line institutions, a central coordination mechanism at higher level is required. According to Hoxha (2012) there is no formal mechanism for solving disputes officially, without the involvement of the respective political level. He argues that:

*"in these cases the political level is involved, otherwise we can't solve the issue. We were asked to set up an additional working group for solving the dispute and we still didn't manage. Some decisions are to the political managers" (Hoxha 2012).*

The biggest obstacles encountered during the policy design stage of the directive were related to the role of municipalities (local governments), which according to the draft of the transposed directive were to be in charge of monitoring implementation and enforcement. Although their representatives were part of the working group, they opposed this proposal from the beginning. In the final draft, this responsibility is divided between central and local government which has created a confusing situation as regards implementation. Although some inspections have already been carried out, according to a known expert on this topic in Albania, there have been embarrassing situations when central government would need to issue fines to the local municipality for not implementing and enforcing the law in its territory. This is confirmed by the Ministry of Environment as well. Nearly one year after its entry into force, this transposed directive was still not been implemented (according to EU Commission representatives in Tirana and the EC progress report).

A final point concerning coordination and competences regards a crucial side of implementation: inspections and enforcement. The new law assigns this power to the central Inspectorate which is accountable to the ministry, but also to municipalities and their officers in charge. There is regular interaction between the desk officers in the unit

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<sup>49</sup> Copies of part of the correspondence were made available.

responsible for drafting the law and the inspectors to explain or interpret the law. I interviewed inspectors from the central unit and from one of the local offices. Despite evident and well-documented lack of financial and human resources in the Inspectorate activities, which have been pointed out by EC in several occasions, their interaction with policymakers and interest groups is not always affected. They have regular meetings between units where they raise problems and issues, especially regarding specific cases. Contrary to preliminary impressions, street-level bureaucrats and their counterparts in the Ministry of Environment unit appear to be in harmony when discussing policies and implementation. Communication and information flows between the two groups are regular with no major problems experienced.

However when explored in more detail in relation to the specific directive, their opinions on procedures for specific cases differed in terms of their understanding and interpretation. Although they were part of the working group when the waste management law was drafted, they claim to have had a different position, especially on the 'discretion responsibility' given to inspectors and how it is interpreted in different areas. Since officers in the inspectorate are from varied backgrounds, experiences, ages, training, etc., the outcome of their interpretations often depended on the quality of instructions and information received. This gap determines often the differences in practical implementation of the directive, especially in geographic terms. In the case of the selected directive, because of the poor clarity on the interpretation and due to delays in allocating resources to inspectors, very few inspections have been carried out in the first year after the directive entered into force.

Therefore, there is a typical top-down pattern that characterises environmental legislation implementation, which is somehow accepted and recognised. As one inspector recalls:

*"whenever there are disputes and discussions among us and people in the ministry, or whenever we raise some issues or changes we propose to the draft, they would tell us that this draft is mandatory and non-negotiable because it's about transposing EU laws".*

This type of attitude is often assumed and used by desk officers in the ministry (Abeshi 2012) whenever there are discussions with inspectors about interpretation of implementation dispositions. Once again, the need for keeping up with the approximation planning and agenda can lead to overcoming consultation with involved institutional actors.

### 8.3.2 Participation of non-state actors

In Albania, there is a good network of environmental organisations that have operated since the early 1990s. Some of them are well-structured and have a broad range of activities in environment protection. In terms of their presence and efforts in influencing environment policies, the difference between expertise-oriented organisations and advocacy/protest types can be distinguished. The former have established regular relations with policy makers and participate often in roundtable consultations and common projects. Their members are usually professors, experts and former policy makers (removed after political changes in the government). They have managed to cooperate with policy makers occasionally, offering expertise on specific sub-areas. This has proved to be a good practise considering the fact that public institutions handling environmental issues suffer from a lack of administrative and expert capacities. An interesting phase of successful experiences of consultations happened during the period of preparation of the questionnaire answers in 2010 that the European Commission sent to Albania.

However, in the environment policy in general, relations between government agencies and non-state actors have experienced highs and lows. Overall the Ministry of Environment seems to have a clear strategy (formally) in place for performing regular consultations with the public on environmental plans, programmes and legislation, organising regular meetings with environmental NGOs, and also for the delivery of weekly and monthly Environmental Bulletins. It is broadly accepted from most of the participants that this has had a significant impact in improving the situation regarding public awareness and its participation in environmental decision making, as well as public access to environmental information. Presenting a more political stance under this perspective, Abeshi (2012) claims that:

*“The cooperation with interest groups is a main priority in our policy approach. For every initiative, and especially the preparation of new legislation, we have a long process of consultations in place with businesses, NGOs, experts, etc.” (Abeshi 2012).*

Desk officers in the ministry report about good cooperation with interest groups in the last years. There is a large number of environmental NGOs operating in Albania, many independent experts from academia and activists from civil society. What happens

formally in the consultation process is described by rules of procedure internal to the ministry, summarised as follows by Hoxha:

*“All drafts of acts are published in the ministry’s website and are left there for one month. In addition, we have a long mailing list with most important stakeholders in the field and we periodically send them all new proposed drafts. We receive their comments and we integrate them when we can” (Hoxha 2012).*

However, from interviews with independent experts and NGOs’ representatives, it comes out that, although the ministry publishes everything in a transparent way, there is no regular feedback from policy makers on the comments of non-state actors. A representative of ECO-Movement, a well established network of NGOs, provides correspondences over the years and although in one case their comments were reflected in the draft, they never received responses. This is also confirmed by ministry officers who claim that there is not available time for replying to all comments and explaining why there are not taken into consideration. This discourages interaction from the non-state actors’ side since they never understand whether their comments are read and on what basis they are rejected. On the other hand, a desk officer in the Ministry of Environment argues that from his experience non institutional actors are not active in the policy design stage:

*“They are often invited at our roundtables, but they are not useful in general. They either do not come, or if they come they do not intervene. In intervention cases, they broaden up their comments and are not very constructive but mainly complaining about everything. And after the meeting they claim in the media that they were not consulted”.*

Beyond frustration from both sides, there are some gaps in the mechanisms used for collecting comments in the consultation process which do not help to strengthen mutual trust. In the case of the selected directive on waste management, the ministry had a transcript of all comments that arrived via email or in official written letter. This type of archive is not common in other line ministries. There were a total of 18 comments and letters coming from different areas: academia, NGOs, and business. In addition, the ministry organised two roundtables during the drafting phase where stakeholders were invited. The meetings were characterised by intense discussions but here again versions differ from both sides and meetings’ minutes are essential for reconstructing an account as accurately as possible. Ministry desk officers say that consultations went well and that participants at the end agreed, but afterwards they changed their minds as soon as they went in media debates. While the interviewed participants claim to have opposed

some parts of the draft and they agreed because they were promised those changes. These types of reactions fuelled the mistrust and maintained a tense situation until the draft was approved. The final draft reflected partially their suggestions (ECO-Movement 2012).

As explained earlier, substantial involvement of these important networks can pave down the way for smoother implementation. They are important actors in the community and have a considerable role especially in terms of raising awareness and educating citizens towards compliance. In spite of dissatisfaction registered, the case of the waste management directive represents a quasi success or a step ahead for cooperation between public administration and non-state actors. There was a large participation of non-state actors in the process through consultations, but not all their concerns were reflected. The ‘case within the case’ presented below offers a very different perspective of the same story, which helps in understanding more this complex interaction and its impact in implementation.

*A case within the case: import of waste for recycling industry.*

As explained above, the previous law on waste management was reformed in order to increase harmonisation with EU directives. However, some later changes in the same year, more specifically two articles of the same law (art. 22/3 and art. 49) provoked early public reactions and debates. These changes included paragraphs regarding rules and conditions for permitting waste imports by recycling industries in Albania. Business representatives from the recycling industry expressed their support for this intervention and argued for a positive impact it would bring in terms of further investment and employment. On the other hand, what started as a modest struggle against these measures, by three NGOs, spread and became a public campaign embraced by many intellectuals, opinion makers and civil society in general. Because of the lack of dialogue with public authorities, this group appealed to the general public and grew strong by creating the so-called *Aleanca Kunder Importit te Plehrave* (Alliance Against Waste Import). Initially, this movement started to organise itself through minor protests and roundtables, where they repeatedly invited institutions’ desk officers, who did not attend. The support and endorsement of public personalities was crucial for the Alliance, especially in terms of visibility. As explained by a desk officer (2012) at the Ministry of Environment, the Government’s main argument on the specific articles related to the fact that:



*"recycling industries in Albania do not invest in technology, due to the lack of necessary amount of waste suitable for such technological investments and financial efforts. Therefore, Albanian waste would not be processed and recycled. If Albania would allow waste imports, this would bring more investments in technology and, as a result, Albanian waste would be recycled as well".*

The law was also justified by authorities in some public declarations, as often happens, as a requirement of the EU in the transposition and integration process (top-down pressure). However, the latter point was not confirmed from Peter Stano, DG Enlargement spokesperson in the European Commission, who was asked by an Albanian journalist regarding the possible obligation of Albania to adopt this articles, and he commented that:

*"the approval of this law was within the framework of the harmonisation of Albanian legislation with the acquis. What we need to keep in mind is that the EU does not encourage and does not force anyone to import waste. We do not establish rules on what you have to import and in which ways you import"* (Stano 2011).

The Alliance contested the lack of transparency of the amendment process and the public protest spread, undermining trust and cooperation with authorities. One of the main supporters of the Alliance (famous Albanian columnist), Fatos Lubonja, argued that:

*"it is unforgivable that this has been done without explaining everything to the public and without getting their opinion. Politicians need to understand that this is not the way to do things anymore, we want participation!"* (Lubonja 2011).

After a period of debates, discussions and protests, the amendments were approved by the government. The Alliance decided to take a further step in order to block the implementation of the law, by starting procedures for a referendum. It organised a petition for gathering necessary citizen signatures (50,000) for holding a referendum. After many months of this marathon and institutional legal battles for the referendum procedure, the president declared the referendum in early 2013 and decided to hold it in late 2014. The referendum never happened because in September 2013 the new centre left government that had just come in office dismissed the decision of the previous government regarding the articles on waste import.

This illustrative case gives a more practical example of the relation between decision makers and environmental NGOs in Albania. Thanks to their public visibility and civic engagement, environmental organisations have been able to exercise political pressure

upon decision makers and 'threaten' implementation of the legal act. Many of the environmentalists often participate in public debates and have good access to the Albanian media sphere. Therefore, they have strengthened their impact in the policy design process through indirect instruments of influence, such as engagement with media or civic organisations. Although this might seem an effective method of influencing the policy process, it also enlarges the gap between policy makers and civil society actors who are involved in environmental protection. By fighting each other on the output of the policies, they seem to avoid attempts of sitting down and discussing the input process. This distance is reflected in various institutional practices and has determined a conflictive and non-inclusive type of interaction.

### *8.3.3 Involvement of EU officials in the process*

Implementing EU environment *acquis* requires considerable financial resources and human capacities. Not only are its standards quite high, but they need to be applied in developing contexts where public awareness is more focused on growth rather than environment protection and sustainability. This is why a more direct communication from EU actors present in the country can affect implementation of legislation for this policy area as well.

Although Albania has some expertise on environment in general, waste management and its very fast development require necessary knowledge and management skills. This is why EU has put considerable focus in assisting Albanian authorities in this area. Its main assistance, apart from investment in preserving the territory, has been in giving technical support to desk officers and inspectors in the ministry. Training and study visits in different member states have helped in improving the understanding of policy and implementation on waste management (Kontonis 2012).

However, some of the most fruitful cooperation recalled by ministry desk officers in the interviews concerned cases when policy based pilot projects were developed. Due to complexity of some directives, their transposition was assisted by experts invited from the EU delegation in Tirana. They worked together with Albanian desk officers in setting up the preparatory framework and for planning ahead activities necessary for the policy design and its implementation. All participants from the ministry expressed high evaluations of these exercises. They claim to 'have learnt more in those few weeks than

in entire months of trainings and seminars'. Exchange experiences were more effective as a result of "learning by doing", together.

In the case of waste management directive no direct involvement of EU assistance was provided, because it was not requested. As Avignon (2012) points out, the country needs to strengthen capacities for planning assistance required and for prioritising the policy agenda through a strategic approach. The outcome of that process was lacking in quality and encountered considerable resistance, which make it even to date a not implemented directive. Based on other successful cooperation, involvement of EU experts might influence the quality of policy design and then implementation. According to accounts of desk officers and inspectors, this impact has been visible in different modalities:

First, the opportunity of having the day by day contribution of experienced experts improved the quality of the drafts sent for consultation. This is not only a general perception in the ministry but it is also confirmed from their counterpart in the Ministry of European Integration. In general they say to be able to 'recognise when drafts have been aligned with *acquis* by external expertise' (Shytaj 2012). Legislative technique, references, format and reasoning in the draft are more complete and exhaustive. Whenever the quality of policy design improves it affects also the implementation stage because a well prepared draft implies also well planned implementation dispositions. According to a desk officer in the Legal Department of the ministry, all directives that have been transposed with external expertise from EU, have achieved full compliance<sup>50</sup> into Albanian legislation. This facilitates the work of Albanian institutions once the negotiation stage of accession chapters begins.

Secondly, EU experts' involvement, as in other areas, has increased accountability. Their participation puts pressure in terms of deadlines and solving disputes contributing in cultural interaction benefits for the Albanian side. In addition, due to high perceived leverage of EU in Albania, the commitment of local officials improves in front of this pressure. As one of the desk officers in the Ministry of Environment puts it:

*"It's not a shame to admit that Albanian public administration is motivated and pressured positively by EU projects and assistance. It is one thing when my Albanian counterpart calls me and asks me to meet with guys coming from Brussels and work with them, and it's a different story with cases when a certain law project is initiated by local actors...different type of commitment and engagement. Of course in the*

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<sup>50</sup> Full compliance means that they have been able to transpose the entire directive into Albanian legislation. However this does not necessarily reflect practical implementation.

*first case you are more strict and aware about deadlines, monitoring, etc. Everything runs smoothly and there are rare conflicts. Because it is a different culture of work and we do not want to perform low in their eyes, and because of other repercussions”.*

This very open and sincere account from the desk officer reflects the general attitude towards cooperation with EU experts in the ministry. It seems that when EU institutions are directly involved with the policy process, better practices are applied by ministry desk officers. Prompt interventions from EU officials and/or directive/project based assistance in the compliance process improves the attention of policy makers, in spite of daily routines, and maintains a healthy tension in terms of effective communication and schedules. This brings a better preparation for implementation dispositions and because of the follow up monitoring it increases the chances for better results.

Last, one of the requests that EU experts raise in their participation is inclusiveness. EU projects seek to encourage participation of organisations and other stakeholders, which is not a given in the environment policy process (Ikovic 2012), as it was explained in the previous section. EU experts exercise their influence that the process or project is established with clear instruments that give the opportunity for involvement of interest groups (Avignon 2012; Begeuot 2012). As it is argued by a desk officer at the ministry:

*"When we were drafting the first version, the German expert that worked with us asked us to identify all stakeholders. He would then participate in the meetings we organised with them and he requested the minutes of the meeting. I guess it's a different method of work, but we tried to adapt to the requests, although there was not any big contribution from the NGOs in my opinion".*

This institutional pattern ‘affects’ the process they are assisting and the attitude of civil servants when interacting with stakeholders. This was mentioned from NGOs representatives as well who claim that when ‘EU is sitting at the roundtable then behaviour and communication changes’. This influence brings better cooperation between parties and reduces chances for resistance in the implementation stage. One of the experts in the EU delegation in Tirana who was involved in one project considers this a very useful practice since participation of stakeholders was high and their contribution was satisfactory.

The fact that there was no EU expertise involvement in the case of the waste management directive didn't allow this type of cooperation and atmosphere to be established. Not only did this affect the quality of interaction and involvement of non-state actors and their contribution, but it also did not produce a good quality of the draft,

in terms of implementation provisions and in terms of level of compliance with the *acquis*, as confirmed from the Ministry of European Integration (Begaj 2012).

Overall, the direct involvement of EU experts in the process helps its quality and improves institutional capacities and culture. Of course EU representatives cannot do all the work that civil servants need to do, but these types of joint projects go beyond the specific policies. They bring added value to the process and help the learning curve in terms of quality, accountability and better interaction with stakeholders.

#### 8.4 Conclusions on the Implementation of environmental legislation

Although there have been big efforts at approximating with the EU environmental *acquis* by Albanian authorities, implementation remains weak. Poor capacities and little information and public awareness of actors and citizens, combined with inadequate financial resources, have produced low implementation rates of transposed legislation.

*Coordination* and how the process is organised institutionally affect the design of policies that transpose the *acquis* and their implementation. Albanian authorities have established a weak central coordination at the Ministry of Environment with strong sub-area units of coordination. While this has proved effective in the policy process within the ministry, it has created difficulty in solving disputes in horizontal coordination with other ministries or agencies. In the case of waste management legislation, a lack of substantial interaction with other institutional actors, especially municipalities, has undermined the policy design process and led to a poor outcome in terms of draft and implementation dispositions. Resistance to implementation by environmental organisations and groups was a predictable consequence. Different interpretations and understanding among enforcement agencies and inspectors have complicated implementation further. Their substantial inclusion during the early stages of policy design and a clear coordination in terms of the division of competences between inspectorates are necessary conditions for increasing the implementation rate.

The effective *involvement of stakeholders* in the policy process is important in this area, where they are strong and well organised in networks. Policymakers at the ministry have established all formal arrangements for guarantying official participation to everyone, with some good transparency practices. However, trust between the two sides is quite unstable and communication needs to be improved. As the law on waste management case shows, substantial involvement is necessary to ensure a better quality

of the draft and less resistance during the implementation stage. In addition, NGOs can contribute with their technical expertise and especially help with raising public awareness because of their activism and good access in the media. This can be used as an instrument for improving conditions for implementation of the transposed acts.

Last, the direct *involvement of EU* experts in the policy process has a direct positive impact in the quality of the draft and the implementation of the legislation produced. Apart from improvement in the technical side of the work, their involvement through specific policy-based projects improves the accountability and commitment of civil servants and ministry structures. Their leverage and positive pressure have managed to produce good results in a few joint projects. In addition, because of their approach to the policy process, their participation has improved interaction with stakeholders and thus helped in building more constructive bridges between civil servants and non-state actors. This has improved the quality and the outcome of the process, but it has also ensured better cooperation between the parties regarding the implementation stage. As a third important party, the involvement of EU experts has helped in managing disputes and conflicts while increasing inclusiveness.

## CHAPTER 9 CONCLUSIONS

Explaining policy implementation patterns is not an easy task. In this study, I have explored in depth the policy process in Albania to understand and explain what determines implementation failure or success. After studying the four policy areas and analysing the relevant data, findings were explained and discussed for each chapter based on the research framework explained in Chapter 3.

In this chapter, I will formulate the main conclusions based on the findings. It starts with an overview of the most important elements for each policy area in the study sample. This part constitutes a summary of the main findings in each field and serves as a helpful basis for introducing the next section. Section 9.2 discusses the theoretical propositions raised in Chapter 3 that served as the main theoretical framework guiding the study. It will discuss the three main independent variables taken into account and, based on the respective theories, it will address their replication in the Albanian case. The discussion is based on the actual findings from the selected cases explored, but they will be confronted with the theoretical claims they were extracted from. In addition, some more general considerations will be developed regarding findings registered beyond the three variables.

The chapter continues with the implications of the findings and conclusions of my study for the main implementation theories and compliance with EU studies. The views of most important scholars of the field, which were described in Chapter 2, will be revisited from the new potential perspectives emerging from the findings. The contributions of the study and suggestions for further research in this direction follow.

The chapter concludes with some final considerations on the study, as well as the EU integration process of Albania, particularly the transposition and implementation of the *acquis*. I formulate a few recommendations based on this study that might help to improve the performance of the policy process in the future.

### 9.1 Overview of findings for policy areas

The selected policy areas represented very useful cases for exploring in depth the policy process. Despite differences among them, some patterns were similar in all areas, following expectations formulated on the basis of previous theoretical works.

In the area of *free movement of goods*, one of the largest chapters of the *acquis* for Albania, there is a clear need for better structuring of the process in terms of coordination and for balancing between necessities for the speed and quality of the policy process. If the policy design stage is not carried out properly through expertise and inclusiveness, implementation will experience shortcomings or even fail. The implementation deficit in this area has grown in recent years also because of the higher speed and will to meet transposition targets. Involving interested non-state actors in a substantial way and having an increase in EU expertise influence preparation and planning for the process and the tackling of some of the implementation challenges that this policy area is facing.

The case of *competition policy* represents some *sui generis* characteristics. The coordination and management of this policy area has further enriched the analysis on implementation. Findings from this case seem to suggest that institutions built from scratch but with a clear vision and strong support might have better effect upon implementation. However, this depends on the conditions and instruments provided. The legal basis has been properly consolidated with EU expertise, so it started with a strong legal framework with clear competences and independence. Their practices and internal procedures were adopted from good practices from the EU and were not based on previous experiences in the country or the institutional culture of Albanian institutions. The hiring criteria for its personnel and experts were more rigorous than for similar positions in other public institutions. Centralisation of the policy design and implementation activities in the same institution has helped performance. Since the EU has been sponsoring and monitoring this institutional framework, its independence and staff stability have been monitored even closer, which has further increased the quality of its work. EU direct monitoring and conditionality have been important instruments for keeping this policy area's developments in the right direction. Therefore, this case can be considered a successful experiment that could be analysed in even greater depth to understand better the reasons and explanations for its good results. Although just a few years have passed since its establishment, the ACA provides a good example of how implementation can improve when the right institutional setup and capacities are set in the beginning. The same is happening with the NFA and a few other minor institutions, which might be interesting to explore in other research studies to determine whether the same patterns are repeated.



*Food safety* is probably the most problematic of the four policy areas in terms of implementation performance. Bad practices in coordination and internal procedures for transposition, which damage draft quality and implementation provisions, are some of the main obstacles to reducing the deficit. This difficult area suffers from instability in terms of institutional structures such that frequent changes and a clear division of competences is difficult to achieve. Non-state actors are mostly excluded from the policy process, bringing important consequences in terms of resistance to change and implementation. Assistance from the EU has helped, but it remains weak and it is based on general support and involves little policy project-based aid.

Regarding *environment* policy, despite a more transparent policy process than the previous one, coordination is again the missing link. Failure in horizontal coordination has produced shortcomings in implementation, and overlapping in the competences of enforcement authorities has deepened the implementation deficit. Although a very large and structured network of organisations and other non-state actors are operating in the field, public institutions fail to properly include them in the process beyond formal participation. This has caused tensions and conflicts that have translated into poor implementation. EU expertise in this area has had a very positive influence on implementation, but it has been unstructured and lacked good bilateral planning.

## 9.2. Theoretical propositions and the findings of the study

### 9.2.1. *Coordination and administrative capacities*

The first theoretical proposition guiding the process of exploring policy implementation in the four policy areas concerned administrative capacities and, more specifically, the coordination and division of competences. It emerged from the literature that central coordination influences the implementation process, and this proposition was analysed in the Albanian case. Van Meter and Van Horn's (1975) findings on the centralisation of coordination apply generally in the Albanian case as well, but mainly in inter-institutional processes. Top-down practices seem to explain to some extent the type of inter-institutional process that takes place in the policy design stage. For all four areas and the legal acts of the samples, the level of centralisation of coordination was a crucial factor that can explain failures and successes in the implementation process when a draft is processed by different institutions. However, institutions present different

approaches and, apart from the case of competition policy, there seem to be no standardised procedures between ministries or within a single ministry, and this has clearly had an impact on the policy process. In some cases, there is weak central coordination but strong centralisation in the departments (Ministry of Environment), and in other cases, higher levels intervene and centralise the process (Ministry of Economy). The adoption of different methods and approaches does not allow the consolidation of coordination practices, putting implementation at risk. Therefore, rather than centralised versus decentralised coordination, it is more challenging to establish one repeating pattern. However, following the top-down perspective (Mazmanian and Sabatier 1981), clear central coordination has produced better results during the policy process.

In all ministries, there is an institutionalised practice of setting up working groups for transposition, but it changes according to the case. This flexibility does not help interaction between the different units because it demonstrates weak central coordination and therefore low-quality transposition and implementation, such as in the case of the environment *acquis*. The sort of subsidiarity in the internal organisation of the policy process has made interaction more difficult (apart from the area of competition, where the approach is different). It is useful to have centralised coordination within the departments, but when it comes to policies that involve different institutions, coordination should be central at a higher level and avoid horizontal coordination, which proved problematic in all the cases analysed. However, for this to work, there should be good coordination between the political and technical levels inside the institution, which is not always the case (such as in the area of food safety), and this causes different perceptions and different types of process management. The point made by Goggin et al. (1990) regarding the importance of communication and sharing information in the policy process finds ground in the findings of the study and has been confirmed to be an important factor. Exchanging information between the different levels has a considerable impact on the quality of the policy product and, later, on implementation and enforcement.

Many scholars, from Pressman and Wildavsky (1973) to Falkner et al. (2005, 2007, 2008), have claimed that one of the important instruments for facilitating implementation is a limitation on the number of actors participating in the process. Although this might be true in the enforcement stage, in the policy design process, the inclusion of affected actors can help implementation. Rather than limiting the number of

actors and excluding potential contributions, in the Albanian case, there is a need for what Bardach (1998) wrote about: making agencies work together. As explained in Chapter 2, there are different views on choices regarding single or multiple implementing agencies. Hogwood and Gunn (1984) and Steunenberg (2006) strongly argued for a single agency model for successful implementation. Though this is the case for the Albanian Competition Authority, in the current study, I did not find other evidence that supports this claim. Rather than the number of implementing agencies, minor resistance to change (as compared to other institutions that were not built from scratch) seems to be an explanation additional to the joint design-implementation functions. Many scholars have argued on institutional resistance (Knill and Tosun, 2009; Schimmelfennig and Sedelmeier 2004; 2005) and its importance in the compliance process. Börzel and Risse (2003) also elaborated on the importance on having appropriate institutions in place, and in the case of the ACA, all the right instruments were assigned with no major “misfits”. In addition, the clear division of competences and a formal method of dispute resolution seem to help implementation. As explained earlier, including more participants with appropriate procedures can bring benefits to implementation.

However, to allow greater participation in the process, clear mechanisms for solving disputes should be arranged. This is a point made especially by Börzel (2009), and the findings from the current research confirm the necessity of including solutions when planning for a legislative measure. In the Albanian case, very often, inter-institutional conflicts and disputes could be solved only by ad hoc political interventions. This type of solution did not necessarily yield the best solution but depended on the will and political influence of the politicians involved. The quality of the draft and its implementation were not debated and agreed upon at the technical level in the appropriate way. Thus, the lack of a clear and institutionalised mechanism for solving disputes has harmed the policy design process and made implementation more difficult. In the case of competition policy, where disputes are taken directly to the Parliamentary committee through a very clear procedure, enforcement is much easier and implementation has been showing progress.

In all cases, the division of competences played a direct role in determining the outcome of the process. As mentioned, in the case of competition policy, a well-established system could guaranty accountability because of a clear division of responsibilities. There were rare cases of overlapping and therefore no major obstacles to monitoring the

implementation and enforcing the policies. In the case of line ministries, especially for environment and food safety, the stance of Lipsky (1978) regarding street-level bureaucrats has been confirmed, especially in the aforementioned sectors. Uncertainty in competences between different inspectorates has influenced the number of inspections (low) and produced negative results in monitoring implementation, which has been considered absent in most of the legislation transposed. This lack of coherence and certainty in the competences has also weakened the credibility of these enforcement agencies because of instability and frequent restructuring. As Falkner et al. (2005, 2008) concluded, the pressure capacity and sanctions are vital for ensuring implementation and enforcement. This is the case for the Albanian inspectorates in the policy areas studied. If inspectors do not have the right legal instruments to monitor and enforce a policy, implementation will experience problems.

Another pattern that is common to most of the cases studied is the fact that inefficiency in coordination at the department level has led to the “speed versus quality” conflict. Because of the over-ambitious commitment on *acquis* transposition, departments are pressured to transpose at a high pace, but this is often done at the stake of quality of transposition and implementation dispositions. The quality of the draft depends on capacities within the department and on the contributions of different departments and street-level bureaucrats or inspectors and how these proposals are dealt with. In the case of the two directives studied, central coordination seems to have sped up the process but has not provided the necessary instruments for the inclusion of other contributions. Consequences for implementation could be observed in the cases explored. In particular, in the case of food safety legislation, adopting ordinances, a very internal procedure, like a shortcut for transposing directives, has had direct consequences for implementation because the drafts were not consulted and not checked for compliance by the Ministry of European Integration.

Therefore, an open and standard procedure for transposition should be adopted by all institutions to guaranty better quality for the legal drafts. However, this is also related to the role of the Ministry of European Integration. It emerged from the findings of the current research that central coordination at the inter-ministerial level is very weak. MEI clearly faces difficulties with horizontal coordination because of internal limited capacities and a lack of political strength to impose its role in line ministries and agencies. Its staff lacks the capacities for fulfilling the obligations properly. In addition, it does not include in its competences the monitoring of implementation of the *acquis*.

Sometimes, this has reduced the ministry to being like a secretariat whose main responsibilities concern forwarding materials to and from line ministries to the EC and vice versa, without having the capacity to properly review these documents before sending.

The weak role of this central coordination body has also had a direct impact on inter-institutional coordination structures. From the findings, it is clear that the weakest point is the link between the political level and the technical level, which is the ICCEI (as explained in Chapter 4). MEI leads the ICCEI, and the Minister of European Integration is the chair. This committee should serve many purposes and, considering how institutional coordination is designed in Albania, it is the most crucial body. It organises a few ad hoc meetings rather than monthly as anticipated. The failure to make this committee work affects the work of the other two structures, ICEI above and IWGEI below. ICCEI has failed to fill ICEI with information needed to make important political decisions and has failed to pressure IWGEI regarding the transposition work. IWGEI rarely meet and coordination of transposition does not take place through these groups, as foreseen, but each line ministry has adopted its own regulatory style. The malfunctioning of ICCEI has created additional chaos in the types of procedures for transposition that each ministry adopts, as it is a duty of MEI and ICCEI to harmonise work and rules regarding the European integration process across the public administration.

Regarding institutional coordination of the policy process in the country, central coordination is key in explaining implementation failure. The lack of a standard procedure for coordinating transposition has produced institutional disputes and poor-quality implementation dispositions. Combined with a clear division of competences, such as in the case of competition, centralised coordination improves implementation. In addition, very weak inter-ministerial coordination has increased disputes at the lower levels. The Ministry of European Integration seems to experience difficulties in playing that role because horizontal coordination would require a more centralised authority in terms of competences and political power. It is also failing to deliver one of its main duties at the inter-institutional level – which could avoid some of the disputes between institutions – which is to provide a common methodology for the transposition process and to monitor its implementation by the line ministries.

### *9.2.2. The role of non-state actors*

The second explored factor affecting policy implementation is the involvement of stakeholders in the policy design stage. There were some common patterns across the policy areas but also some important differences. It is common that, overall, Albanian institutions have in place a formal consultation process. It goes from the best practice in the Ministry of Environment, which publishes all the policy drafts on its website before approval, or a structured and institutionalised consultation, such as in the area of free movement of goods with the National Consultative Council of Businesses, to a less developed interaction as in food safety or competition policy. Bottom-up scholars, such as Berman (1981) and Hjern and Porter (1981), have asserted that the substantial involvement of non-state actors is essential to ensuring implementation.

In the Albanian case, when we focus on real substantial participation, the situation is quite different from the formal involvement situation. In most cases, either there is a lack of contribution from stakeholders in the process or their contribution is not taken into consideration. Just as Smith (1993) predicted for such cases, this has produced and reinforced a “circle” of mutual mistrust in the interaction and consultation process, where both sides (public administration and non-state actors) blame each other for the lack of cooperation, with desk officers claiming that stakeholders do not contribute or do not have the capacities to contribute and stakeholders accusing desk officers of neglecting the involvement and participation of non-institutional actors. It emerged from my findings that, to some extent, both points of view are accurate and both keep feeding it. Stakeholders do not invest time and resources and do not trust the results of the consultation process because of previous experiences. This is why their interaction very often turns into a series of debates and complaints rather than constructive dialogue on the specific policies. A finding that could be key to understanding the establishment of this circle of mutual mistrust is that there is no feedback mechanism in place in any of the explored institutions. After desk officers receive comments and proposals, they decide what to include but never provide feedback to stakeholders explaining the outcome of their proposal and, if it is rejected, the reasons for not accepting them. This does not help in improving interaction and in avoiding the conflictive state that prevails that has not permitted trust to be built in the process. The actual participation of non-state actors would improve implementation since, in some areas (especially food safety and environment), resistance from stakeholders can be an important obstacle to practical

implementation. Degnbol-Martinussen (1999) made a point on the importance that this resistance can have with respect to compliance. We could see from the current study that, as in the case of food safety, not involving stakeholders can activate their resistance to implementation and the legislation will not be enforced.

In addition, because of the increasing number of transposed directives that have not yet been implemented and enforced, stakeholders affected by this legislation (especially businesses and farmers) have developed a “wait and see” attitude. They do not comply immediately with the new legislation when it enters into force but wait for inspections to start because they may never start and potential compliance spending would have been useless. This appears to be quite a problem, especially in food safety, where the implementation deficit is larger than in any other area. To tackle this phenomenon, there is a need for constant information exchange and increasing awareness among stakeholders and, of course, better enforcement activities once competences are clear and defined. Falkner et al. (2007, 2008) theorised on the possible impact of a lack of information for non-state actors on their activism and therefore the whole policy process, from design to implementation. As found in the current study, in the presence of a weak network among interested parties and their membership, no active pressure in the policy process would follow, and there would be no awareness of the necessity of adapting to the new legislation for implementation.

The substantial involvement of stakeholders is also necessary to ensure better quality for the transposed drafts and less resistance during the implementation stage. In the Albanian case, they play a very small role in effectively monitoring the policy process, which, according to Börzel (2009), can have a direct impact on its outcome. In addition, they contribute very little of their technical expertise, especially in raising public awareness among members of their sector. This represents another obstacle for implementation of the transposed acts. However, as in the case of the free movement of goods, although substantial involvement would be the best practice, even formal involvement produces a positive effect in terms of information and the education of stakeholders. From the explored policy cases, it could be concluded that, despite complaints and lack of cooperation, where formal participation was guaranteed, stakeholders were at least informed, and implementation had a better chance to succeed, even partially. In view of Albania’s approaching the opening of accession negotiations, the substantive contribution and involvement of stakeholders becomes very important in facing the challenges entailed by stage of the process.

### 9.2.3. *EU involvement in the policy process*

The third theoretical proposition claimed that, if EU actors are more directly involved in the transposition process, then implementation would be more effective. In different ways from one policy area to another, this proposition also applies in the Albanian case, according to the findings. The more direct participation of EU experts in the process of policy design through twinning projects, technical assistance, or ad hoc expertise brings a positive contribution that improves implementation in three main ways.

First, EU expertise affects the quality of transposition outcome. Sometimes, because of a lack of capacities in Albanian line ministries, the drafts produced are translations from the original directives without coherence within the general framework of the sector and without a clear and efficient implementation disposition (Bushati 2012). The general lack of understanding of directives and the rush for transposition because of political pressure have produced a large number of transpositions with low-quality policies (especially in food safety and environment). The current study has confirmed Cini's (2003) conclusion on the importance of properly understanding the complexity of the *acquis* as the key to understanding the implementation. Observed and documented lack of capacities in this regard have affected policy design and implementation across policy areas. Therefore, the implementation deficit has deepened and domestic capacities have not improved. In cases where EU experts assisted a transposition policy as a project during the design and drafting, the quality of the policy product has been improved because of their experience, expertise, and different approach to the transposition process. Not only have these experiences produced better policies and more chances for implementation but they have also served as training and learning experiences for Albanian desk officers working on these projects together with the experts. In addition, because of the increasing volume of *acquis* to be transposed, Albanian authorities face many challenges in setting priorities and planning the transposition process over the years. Therefore, experts, especially from new member states that have recently gone through the same process, can give a substantial contribution in improving domestic capacities for better planning.

A second important element that EU involvement has improved is accountability. In all cases, policy projects developed in cooperation with or with the assistance of EU experts were monitored closer and taken more seriously by all members of working



groups. Because of the positive leverage that EU actors exercise in the country as a result of conditionality mechanisms (Grabbe 2002), their involvement increases the sense of responsibility and helps in changing some routines in desk officers' work, especially in terms of approaches and deadlines. This has been the experience of most of the participants, and because of the increased pressure for better performance, the policy process has improved. There have also been cases where the EU has been involved from scratch in establishing an institution, not just policies. This is the case for the Albanian Competition Authority, one of the best-performing institutions in the country, according to the EC. The involvement of EU experts in setting up the institutional and legislative framework of the ACA, helping with selection criteria, competences, its organisational aspects, etc., has been one of the key elements in explaining implementation performance in this policy area. This joint effort between Albanian and EU experts produced a well-structured institution with clear competences, a dispute resolution mechanism, and an effective human resource strategy. In each step, accountability was high, so the results of the policy process have been satisfactory. The same experience is now being repeated with the National Food Authority, newly established, where the EU has participated directly in its setup and organisation. Although it is quite early for assessment and many problems still exist, in terms of accountability, this institution represents a better environment than other established institutions.

Börzel (2009) reminds us that the EU interacts with three different group of actors in accession countries: public administration, non-governmental organisations, and business community. A third contribution made by the involvement of EU actors involves their role as a mediator with the different stakeholders in the country. As the analysis showed, interaction between stakeholders and policymakers is not well structured and there is mutual mistrust when it comes to involvement in the policy process. The EC and EU delegation in Tirana has considerable credibility in the public sphere and therefore is used for complaints and proposals by different stakeholders. If the matter is relevant to the EU integration process, then EU representatives might present it to Albanian authorities and even follow up if the issue is important. In all four policy areas, there have been cases when stakeholders have used EU authorities as a mediator for presenting their concerns, which have then been transmitted to Albanian institutions. This type of indirect interaction between stakeholders and Albanian policymakers can improve the policy process and the implementation stage because

their comments are sometimes taken into consideration because EU actors are backing them. However, in the long term, they do not allow the establishment of direct cooperation between the stakeholders and policymakers, as EU representatives are often perceived as more credible. This is what has happened, for example, in the case of competition policy, where, despite good implementation performance, interaction with stakeholders is still poor and often goes through EU desks and channels.

Overall involvement of EU expertise in the policy design process has positive repercussions for implementation in the short and medium terms. Although most of the work must be done by Albanian desk officers, their presence improves the structure of the process, with a particular focus on the implementation stage. However, these types of assistance are not frequent and are activated only at Albanian institutions' request. This might represent an obstacle when, for example, there is no sufficient will to be monitored and "pressured" in the daily activities. Considering the high leverage that the EU has in Albania, in terms of conditionality (Grabbe 2006) and credibility, it is not contributing as much as its potential promises. The EU is perceived as very important, so it needs to be more present in assisting Albanian authorities because of the positive results that this interaction can produce, as shown in the findings. Increased interest will benefit both sides. Policymakers will improve their understanding and capacities in the transposition and implementation process, and EU officials will be more directly in touch with the Albanian policy process to better evaluate and program future assistance. Planning and programming assistance for the country does not seem to have matched the necessities of policymakers, as it has been designed mainly in Brussels, with little contact with the ground and through general assumptions for the whole region, without distinguishing the specific characteristics of each country in the policy process.

### 9.3 Theoretical implications of the study

This research work started with a main question about implementation, asking "why". Why is Albania experiencing difficulties in implementing EU legislation? Following the main theoretical frameworks of implementation studies, to explore and respond to the question, the second helpful questions were "how" and "what". How is the policy process developed and what are the factors influencing its shortcomings? After reviewing the main literature on implementation and developing the research study and the analysis, I was able to explore the theoretical proposition formulated and reach some

conclusions on their pertinence in the Albanian case. As shown in the previous section, most of the findings were confirmed as applicable in the policy process of the selected sectors. However, there are some findings and observations that challenge the mainstream theoretical model. In this section, I will discuss these elements and then summarise how the study has contributed in this sense.

One of the most interesting approaches described in the theoretical framework for the study was Matland's model. As explained in Chapter 2, Matland (1995), by combining top-down and bottom-up perspectives, formulated a model based on two main pillars: policy ambiguity and policy conflict. His framework with four different types of scenarios concludes by predicting what the implementation results would be according to high or low ambiguity and conflict in a policy process. Based on the analysis and the findings, the concepts of conflict and ambiguity as developed by Matland, in terms of impact in implementation, are not confirmed in the Albanian case. This is mostly explained by the development stage of Albanian public administration in terms of capacities, political influence, and type of organisation.

More specifically, regarding policy conflict, this model fails to capture the fact that conflict can assume many forms. Matland claimed that, if there is no conflict, policy implementation has a greater chance of succeeding because of lack of resistance. However, the lack of conflict does not mean that there is no opposition to the policy. A "silent opposition" can be present and undermine the process in the later stages of implementation and enforcement. For example, as shown in the case of the second directive regarding the free movement of goods, there was no resistance or conflict during the policy design process. However, as the in-depth interviews showed, inspectors and other desk officers admitted that they were afraid to speak up and give their professional opinion.<sup>51</sup> Because of the construct of public administration and staff instability, opposing initiatives coming from above are perceived as non-collaborative. To preserve their jobs and not create a hostile environment, actors involved in the policy process do not get into conflict. However, as they admitted, this happens even when they know that the policy as designed has little chance of being implemented. Therefore, the concept of policy conflict and its consequences in terms of implementation, cannot be generalised and cannot be applied to contexts with an unstable public administration where civil servants are not fully assured of their job

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<sup>51</sup> All inspectors interviewed, in the four policy areas, requested not to be quoted directly in the study.

positions in spite of relations they have with the other hierarchies. In addition, low “courage for conflict”, combined with strong political support for the integration process, such as in Albania, can create an unpleasant situation in terms of implementation deficit. Because of the political pressure to speed up transposition, implementation records might become even weaker. Since negotiations and the screening process have not started, lack of implementation does not seem to concern the political elite much at this stage rather than having formally adopted the EU *acquis*. However, this lack of conflict has created an interesting scenario from an academic point of view, where legislation is rapidly passed even without adequate resources and time for implementing it (courts also are not enforcing some transposed legislation).

Regarding policy ambiguity, Matland’s conclusions are also a matter of discussion when considering the findings of the current study. Matland (2005) claimed that, when policy ambiguity is high, implementation depends on contextual factors. This implied that ambiguity can sometimes be positive because it can create flexibility that can be used to reduce resistance among the different actors. The argument is that, in this scenario, both goals and means are ambiguous and there is fluid participation of actors (which changes over time). For this reason, implementation varies from one area to another and from one policy to another. However, as shown in this study, policy ambiguity itself is caused by the context as well, since administrative capacities in terms of understanding the *acquis* and poor institutional coordination cause poor-quality transposition and very often ambiguity, which represent obstacles to implementation (especially for street-level bureaucrats). The lack of clarity in procedures, competences, legal provisions, etc., instead of creating room for accommodating different actors’ interests, has caused a lack of accountability and responsibility in the Albanian case, harming the implementation stage. Matland’s concept of policy ambiguity seems more suitable for developed public administrations, with clear institutional responsibilities. Thus, when policy is not clear, they can become more proactive and use it to their advantage. In administrations with low capacities and weak stability, policy ambiguity adds to the general chaotic attitude, damaging the policy process and implementation. This was evident in this study, especially in the case of food safety and environment. This research work has also been largely based on studies of Falkner et al. (2005, 2007, 2008). As detailed in the findings section of this chapter, many of the positions and conclusions that Falkner et al. formulated have emerged in the Albanian case as well. However, there are a few points that the findings of the chosen policy areas seem to

challenge. The first is related to the issue of inter-institutional disputes. As in Matland's case, the concept of conflict is seen in negative terms by Falkner et al. (2005). They claimed that one of the main obstacles to implementation is related to conflicts merging between the different institutions and within them. However, as already explained, the study showed that lack of conflict does not necessarily translate into better implementation, as it may harm the quality of the policy design stage. At the same time, the presence of conflict does not necessarily translate into poor implementation. It is, rather, the presence of a clear mechanism for settling inter-institutional disputes that can determine the outcome in terms of implementation, as the Albanian case shows. Falkner et al. (2005) did not elaborate further in depth on these distinctions, so there is room for reconsidering the concept of inter-institutional disputes and their impact on implementation, in different contexts.

Another important finding of Falkner et al. (2005) on implementation involves the relevance of the type of regulatory framework adopted. They claimed that there is no evidence that regulatory frameworks can influence or determine implementation performance. In addition, more specifically related to street-level bureaucrats, they pointed out that the regulatory framework needs to be very flexible and mostly interpreted by inspectors on the ground to allow them to adopt the necessary instruments that they consider appropriate for enforcement (Falkner et al. 2007). This study concluded that these propositions do not seem to be confirmed in the Albanian case. The regulatory framework has had a direct impact on procedures regarding policy design and implementation. The case of food safety showed the clear impact that its regulatory framework had on the policy process from design to implementation. The use of a certain procedure (Ministerial Orders), the lack of hierarchical organisation in the process, ambiguity in the definition of duties for inspectors in the enforcement disposition, etc., proved crucial factors for determining policy results on the ground. The relevance of the regulatory framework was also strengthened in the other cases, such as in competition policy. Unlike in food safety, implementation in the competition field has registered good results because of the type of institutional and regulatory framework adopted. Therefore, there is a need to revisit the conclusions of Falkner et al. (2005), especially in relation to the context of accession countries where transposition and successful implementation can depend on regulatory framework patterns.

Another important contribution to the literature, as explained in Chapter 2, was provided by Steunenberg (2006). He claimed that, in terms of the organisation of the process, a

single agency can be more successful in implementation. Although this was confirmed in the Albanian case (ACA), there are some specific conditions that make this possible, without which this statement fails to capture the whole picture. Implementation seems to be managed and organised in a more efficient way when there is no need for coordination with other agencies and institutions. In the case of this study, we had two agencies dealing with implementation as a sole actor, the ACA and the NFA. Implementation performance differed, with the ACA being ahead with satisfactory records and the NFA still struggling to find its own path. In the Albanian context, what explains the success of the single agency is not that all implementation and enforcement instruments are gathered in one body but the fact that policy design is also included in the same agency. ACA is leading the process of transposition, the policy drafting process, consultations, implementation, and enforcement. Its unique structure, combined with other quality elements as explained in the relevant chapter, has provided good performance in implementation. In contrast, the NFA is only an implementing agency for food safety. The policy design process regarding the sector happens entirely at the Ministry of Agriculture. As shown in the findings, there are many shortcomings in that process, so implementation is affected by the consequences. To sum up, having a single agency for implementation does not guarantee success in challenging environments, such as Albania. Other conditions, which Steunenbergh did not develop further, are required for those agencies to succeed.

A last discussion emerging from the findings of the study concerns the bottom-up approach (Berman, 1978; Hjern and Porter, 1981; Lipsky, 1978) with respect to related author's view of the process and explanations for implementation. Based on conclusions reached in the current work, my criticism is not related to what they claim to be important for implementation and how low-level actors influence it by resisting, interpreting, and enforcing it. It is related to their view of the policy process as strictly divided between the top and the bottom. A common statement from the aforementioned bottom-up scholars says that, once the draft is designed and approved, there is nothing more that the top can do; it is all in the hands of the bottom. Therefore, implementation is all up to them. I think that these scholars fail to capture the fluidity of the process and the back and forth activity between the top and the bottom. In the Albanian case, inspectors (the bottom) are involved in the policy design process, in spite of their weak contribution. In addition, during the implementation and enforcement stage, inspectors contact desk officers when they need an interpretation or professional advice on certain

provisions, as in the case of food safety. Therefore, although the findings confirm the importance of street-level bureaucrats, the current study has approached the policy process from a different angle, so the aforementioned view seems quite narrow. To better understand the results of a policy in terms of implementation, the design stage and enforcement should be seen as considerably interrelated and as having a mutual impact on each other.

The study aimed also to make a modest contribution in the debate regarding “old versus new” institutions. More specifically, as discussed in the literature review, there are different positions regarding the performance of newly established institutions, which do not “suffer” from previous institutional patterns, and already established (old) ones. In the Albanian context, this means that new institutions (the ACA and NFA) are more successful in designing and implementing policies. Built from scratch, they have managed to avoid some of the legacies and inherited routines that can often undermine attempts to generate change. However, it is very important to stress that the process of setting up these institutions was entirely co-guided and assisted by EU experts. Therefore, this is a key factor that needs to be included when discussing the above debate.

The last important aspect where the current case can contribute is the type of governance that is developing in the country because of the EU’s role. Paradoxically, the EU’s presence and involvement, which helps the process in many respects, is also damaging the credibility of domestic institutions in terms of interaction with stakeholders, as shown by different policy experiences and participants' accounts. This exclusive type of governance, which establishes formal participation among domestic actors but not a substantial one, can foster even more mistrust and the “them and us” syndrome. EU assistance, as it is currently formatted, might be contributing to the consolidation of this exclusive further and eroding trust between policymakers and stakeholders, as the only time they cooperate properly is when the EU is moderating.

As explained earlier, there has been little research on EU transposition and implementation in Albania, so this study brings some insights to the Albanian context by applying theories already tested in other countries and seeking to enrich in a modest manner the geography of policy implementation studies. However, many other areas and patterns need to be explored to obtain a more exhaustive picture of the policy process in the country. Some of the developments are still ongoing, so it is important to revisit the findings and conclusions of this study in a later stage of the accession

process. In addition, exploring other factors that influence the transposition and implementation of *acquis* can provide useful insight for better understanding the process in the Albanian case and drawing broader conclusions.

#### 9.4 Final considerations

In my first fieldwork interview in 2012, the participant, Mr Bushati, an expert on European integration and the Minister of Foreign Affairs of Albania since September 2013, pointed out the main problem of coordination of *acquis* transposition in the country, according to him: understanding the process. With an understanding of the European integration process and EU legislation, transposition can also be the key to implementation. This is an important conclusion that connects the dots between administrative and coordination capacities and policy transposition and implementation. In this study, I explored the policy design process in Albania with the purpose of better understanding and explaining implementation challenges that the country faces in the EU integration process. More efforts are required in terms of building institutional capacities, coordination, and inclusiveness. Apart from the specific findings and conclusions of the study, there are some more general observations and considerations that can be a matter of discussion for the near future.

Albania does not seem to have a proper internal political plan in terms of strategy and timeline for the accession process. In spite of transposition plans, which are not followed properly, the whole process seems to be guided by the EU and its pressure. Although there is general political support for the process, institutional mechanisms in charge of the process have not been functioning, so the speed of accession is slower than that of some countries in the region. The established coordination system, through the MEI, shows clear shortcomings and therefore rethinking the entire coordination framework is necessary.

The EU integration agenda remains the most important strategic policy for Albania and countries in the region. Not only has it guaranteed stability and improved bilateral relations but it has also helped in building bridges of cooperation. Therefore, it is important to better understand this process and to improve it in terms of quality and speed. Albania is now a candidate country for membership and is aspiring to open accession negotiations once it fulfils the required conditions. A historical perspective of the process seems to indicate that it has not been able to consolidate and separate the



political consensus necessary for the reforms from the domestic daily political debates. The political culture, characterised by harsh debates and lack of cooperation, combined with an unstable public administration, is slowing down the process of transposing and implementing the *acquis*. A stronger commitment and better coordination are the only way to ensure the continuation of the process.

Academia, civil society, and experts are helping and should continue to help keep the process on the right track by contributing through expertise and advocacy to avoid stalemates as it has happened in the recent past. One of the purposes of this study was to contribute to this constructive approach to inform and enrich the academic and public debate, especially among policymakers and actors of the area. The inclusion of all actors that can contribute to this process should be encouraged. Especially in the stage of accession negotiations, the poor administrative capacities that the country has inherited will need the cooperation of all the best resources of the country among non-state actors.

Last, the EU's role in this process is crucial. Because of the high support for EU membership in Albania and its prestige and credibility in the country, its influence on domestic developments is greater than EU officials perceive. Although it is up to Albania to do the work and comply with required standards, a more active role of EU institutions can help the country get there faster. In a bad period with respect to enlargement feelings across member states, EU institutions need to keep up the pace and support Albania and other Balkan countries with their integration agendas as the only alternative for peace, stability, and development in the region.

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## APPENDICES

## APPENDIX 1

**List of interviewed participants and institutions represented**

Abeshi Pellumb, Policy Director, Ministry of Environment of Albania  
 Avignon Antoine, EU Delegation in Albania  
 Begaj Eranda, Head of Environment and Agriculture, Ministry of European Integration  
 Begeuot Francois, EU Delegation in Albania  
 Broka Koco, Direction board, Albanian Competition Authority  
 Bushati Ditmir, MP, Head of Parliamentary Committee for European Integration  
 Cuko Luljeta, Director, National Food Authority of Albania  
 Ebejer Ivan, DG EcFin, EU Commission  
 Gjika Gjergji, Albanian Business Association  
 Hoxha Sajmir, Desk officer, Ministry of Environment of Albania  
 Ilovic Azra, DG Enlargement, EU Commission  
 Kontonis Charalambos, DG Enlargement, EU Commission  
 Lati Lindita, Head of Albanian Competition Authority  
 Lleshi Ramis, Head of Sector for Trade, Ministry of Economy of Albania  
 Melani Pajtim, Director, Albanian Competition Authority  
 Misha Arjana, Director for European Integration, Ministry of Agriculture of Albania  
 Muco Ledia, EU Delegation in Albania  
 Niafas Kostas, DG Enlargement, EU Commission  
 Profkola Kristaq, Legal Director, Ministry of Agriculture of Albania  
 Sejdarasi Bardhi, Business Albania (business association)  
 Shytaj Jorida, Ministry of European Integration of Albania  
 Sykja Bashkim, Director for Trade and Competition, Ministry of Economy of Albania  
 Varfi Elona, Advisor to the Minister, Ministry of Agriculture of Albania  
 Vejseli Alketa, Albanian Mission to EU  
 Vuksani Angelina, National Food Authority of Albania  
 Zeqo Altin, Desk officer, Ministry of Agriculture of Albania

29 other participants<sup>52</sup> representing the following institutions or organisations:

Ministry of Economy (four)  
 Ministry of Agriculture (three)  
 Ministry of Environment (three)  
 Competition Authority (two)  
 Inspectorate of Environment (three)  
 National Food Authority (three)  
 Konfindustria (business association) (one)  
 Business representatives (four)  
 EcoMovement (two)  
 European Commission (three)  
 Albanian Parliament (one)

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<sup>52</sup> These participants asked not to be identified in the thesis or quoted directly by name.

## APPENDIX 2

**Number of employees in European Integration Units in each ministry (2013)**

<b>Ministry</b>	<b>European Integration Unit (EIU)</b>	<b>Number of employees</b>
Ministry of Education	Directorate of Integration and Projects	7
Ministry of Agriculture	Directorate of European Integration	7
Ministry of Justice	Directorate of Integration and Projects	5
Ministry of Energy and Industry	Directorate of Integration and Projects	5
Ministry of Finance	Directorate of Integration and Projects	3
Ministry of Culture	Directorate of Integration and IPA Funds Management	5
Ministry of Defence	Directorate of Integration and Projects	5
Ministry of Welfare and Youth	Directorate of Integration and Projects	8
Ministry of Environment	Directorate of Integration and Project Coordination	7
Ministry of Internal Affairs	Directorate of Strategic Planning and Integration	10
Ministry of Health	Directorate of Integration and Projects	6
Ministry of Transport	Directorate of Projects	10
	Directorate of European Integration	6
Ministry of Economic Development	Directorate of European Integration	5
Ministry of Urban Development and Tourism	Directorate of Integration, IPA Funds management and projects	7
Ministry of Foreign Affairs	Directorate for EU	7
	<b>Total employed</b>	<b>103</b>

## APPENDIX 3

### Macroeconomic indicators of Albania, in million Lek (2004-2013)

[illegible]



## APPENDIX 4

**Tariff liberalisation scheme of Albanian agriculture products exported to the EU**

CN code	Reference	Description	Status in the IA
0102, 0201 and 0202	Paragraph 1 of Article 27 of IA	Baby-beef and bovine meat	MFN treatment
07 and 08	Paragraph 1 of Article 27 of IA	Vegetables and fruits	Only ad valorem duty is waived, while specific duty remains in force
1701 and 1702	Paragraph 1 of Article 27 of IA	Sugar	Tariff quota of 1,000 tons
220410 and 220421	Annex I of Protocol 3 of IA, p	Wine sector: Quality sparkling wine and Wine of fresh grapes	Exempted from duty within the quantity of 5,000 hl
220429	Annex I of Protocol 3 of IA, p	Wine sector: Wine of fresh grapes	Exempted from duty within the quantity of 2,000 hl
CN codes of trout, carp, sea bream and sea bass from chapter 03 16041311 16041319 16042050 160416 16042040	Annex III of IA, p	Fishery: trout, carp, sea bream, sea bass, sardines, anchovies	Duty free within 50 tons quota for trout Duty free within 20 tons quota for carp Duty free within 20 t quota for sea bream Duty free within 20 t quota for sea bass (reduction scale over quota for the above) 6% of MFN for 100 tons of quota for sardines (MFN over quota) Duty free 1,000 tons of quota for anchovies with increasing quota next year up to 1,600 tons
All agricultural products not mentioned above			Duty free

Source: ACIT

## APPENDIX 5

**Tariff liberalisation scheme of EU agriculture products exported to Albania**

<b>CN code</b>	<b>Reference</b>	<b>Description</b>	<b>Status in the IA</b>
CN codes of agriculture chapters	Annex II (a) of IA	701 tariff lines of primary agriculture products not considered sensitive for Albania	Duty free
CN codes of agriculture chapters	Annex II (b) of IA	495 tariff lines of primary agriculture products considered as semi-sensitive for Albania	Scaled reduction
10019091 10019099	Annex II (c) of IA	Common wheat and muslin seed Spelt, common wheat and muslin (excl. seed)	Duty free within tariff quota of 20,000 tons
CN codes of chapters 05, 13, 14, 15, 17, 19, 21, 29, 33, 35 and 38	Annex II (a) of Protocol 2 of IA	148 tariff lines of processed agricultural products not considered sensitive for Albania	Duty free
CN codes of chapter 22	Annex II (b) of Protocol 2 of IA	Alcoholic spirits	Duty free
CN codes of chapters 07, 18, 19, 20, 21, 22, 23 and 24	Annex III (c) of Protocol 2 of IA	103 tariff lines including vegetables, chocolates/cacao, flour products, prepared vegetables/fruits, sauces, waters, beer and tobacco	Scaled reduction in five years
CN codes of chapter 04 and 21	Annex II (d) of Protocol 2 of IA	Milk and butter, ketchup	MFN treatment
220410 220421	Annex I of Protocol 3 of IA	Quality sparkling wine and Wine of fresh grapes	Duty free within quota of 10,000 hl

*Source: ACIT*

## APPENDIX 6

**Inventory of transposed *acquis* in the area of metrology**

<b>EU <i>acquis</i></b>	<b>Alb legislation</b>	<b>Lead institution</b>	<b>Level of approximation</b>	<b>Date of Adoption</b>	<b>Entry into force</b>
Directive 71/316 EEC	Law no. 9875 "On metrology"	MEDTE/General Directorate of Metrology	Partial	14.02.2008	15.03.2008
Directive No 80/181 EEC amended by 85/1 EEC, 89/617/EEC and 1990/103/EEC	CMD no. 1162 for other measurement units	MEDTE/General Directorate of Metrology	Full	13.08.2008	02.09.2008
Directive 75/107/EEC	CMD no. 1161 date on bottles used as measuring containers	MEDTE/General Directorate of Metrology	Full	13.08.2008	02.09.2008
Directive 71/317/EEC	CMD no. 1351, on approval of regulation for technical and metrological requirements for legal controlled measurement instruments	MEDTE/General Directorate of Metrology	Full	03.10.2008	02.09.2008
Directive 74/148/EEC	CMD no. 1351, on approval of regulation for technical and metrological requirements for legal controlled measurement instruments	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 76/765 EEC	CMD no. 1351, on approval of regulation for technical and metrological requirements for legal controlled measurement instruments	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 76/766 EEC	CMD no. 1351, on approval of	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008

	regulation for technical and metrological requirements for legal controlled measurement instruments				
Directive 86/217 EEC	CMD no. 1351, on approval of regulation for technical and metrological requirements for legal controlled measurement instruments	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 71/347 EEC	CMD no. 1351, on approval of regulation for technical and metrological requirements for legal controlled measurement instruments	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 76/211/EEC	CMD no. 1352 on approval of regulation for pre-packed products	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 75/106/EEC	CMD no. 1352 on approval of regulation for pre-packed products	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 80/232/EEC	CMD no. 1352 on approval of regulation for prepacked products	MEDTE/General Directorate of Metrology	Full	03.10.2008	29.10.2008
Directive 71/316/EEC	Order of Minister no. 195, on initial and subsequent verification	MEDTE/General Directorate of Metrology	Partial	09.03.2009	15 days after its publishing in the Official Gazette

	of legally controlled measurement instruments				
Directive 2009/23/EEC	CMD no. 77, date 30.1.2013 non-automatic weighing instruments	MEDTE/General Directorate of Metrology	Full	30.1.2013	21.02.2013

*Source: National Plan for the Implementation of the SAA 2007-2013*

## APPENDIX 7

**Inventory of transposed *acquis* in the area of Competition**

<b>EU <i>acquis</i></b>	<b>Albanian legislation</b>	<b>Lead institution</b>	<b>Level of approximation</b>	<b>Date of Adoption</b>	<b>Entry into force</b>
Articles 101-102 TFEU	Law No.9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Regulation (EC) No 1/2003	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Regulation (EC) No 773/2004	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Commission Notice on the definition of relevant market for the purposes of Community competition law	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	full	28.11.2003	01.12.2003
Commission Notice on Immunity from fines and reduction of fines in cartel	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a)	Law No. 9121, dated 28.07.2003, "On Competition Protection",	Albanian Competition Authority	Full	28.11.2003	01.12.2003

of Regulation No 1/2003	amended				
Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
Regulation (EC) No 139/2004	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
	Regulation "On implementation of the procedures of concentrations between undertakings"	14.12.2010	Full	14.12.2010	14.12.2010
Regulation (EU) No 1218/2010	Regulation "On exemptions of the categories of specialisation agreements"	Albanian Competition Authority	full	26.05.2011	26.05.2011
Regulation (EU) No 1217/2010	Regulation "On exemptions of the categories of research and development agreements"	Albanian Competition Authority	Full	03.05.2011	03.05.2011
Regulation (EC) No 772/2004	Regulation "On categories of technology transfer agreements"	Albanian Competition Authority	full	02.03.2011	02.03.2011
Regulation (EC) No 1/2003	Regulation "On investigative procedures of the Albanian Competition Authority"	Albanian Competition Authority	Full	24.02.2011	24.02.2011
Commission Notice on agreements of minor importance	Regulation "On agreements of minor importance, de minimis"	Albanian Competition Authority	Full	08.11.2011	08.11.2011

which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)					
Commission Notice on Immunity from fines and reduction of fines in cartel cases	Regulation “On fines and leniency”	Albanian Competition Authority	full	10.09.2009	10.09.2009
Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003	Regulation “On fines and leniency”	Albanian Competition Authority	Full	10.09.2009	10.09.2009
Regulation (EU) No 330/2010	Regulation “On the categories of vertical agreements and concerted practices”	Albanian Competition Authority	Full	19.07.2012	19.07.2012
Regulation (EU) No 461/2010	Regulation “On categories of agreements in the motor vehicle sector”	Albanian Competition Authority	Full	19.07.2012	19.07.2012
Regulation (EU) No 267/2010	Regulation “On categories of agreements in the insurance sector”	Albanian Competition Authority	full	18.03.2013	18.03.2013
Regulation (EC) No 487/2009	Regulation “On categories of agreements and concerted practices in the air transport sector”	Albanian Competition Authority	full	21.05.2013	21.05.2013
Commission notice - Guidelines on Vertical Restraints	Guideline “On the assessment of vertical restraints agreements”	Albanian Competition Authority	Full	15.04.2010	15.04.2010
Commission Notice — Guidelines on the applicability of Article 81 of the EC Treaty to	Guideline “On the assessment of horizontal agreements”	Albanian Competition Authority	full	05.02.2010	05.02.2010



horizontal cooperation agreements					
Regulation (EC) No 139/2004	Law No. 9121, dated 28.07.2003, "On Competition Protection", amended	Albanian Competition Authority	Full	28.11.2003	01.12.2003
	Regulation "On implementation of the procedures of concentrations between undertakings"	14.12.2010	Full	14.12.2010	14.12.2010
Regulation (EC) No 802/2004	Guideline "On the form of concentration notification " and also the respective articles I and II	Albanian Competition Authority	Full	23.06.2008	23.06.2008
Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings;	Guideline "On the assessment of horizontal mergers between undertakings"	Albanian Competition Authority	full	07.12.2009	07.12.2009
Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings;	Guideline "On the assessment of non-horizontal mergers and conglomerate mergers between undertakings"	Albanian Competition Authority	Full	07.12.2009	07.12.2009
Commission Notice on the definition of relevant market for the purposes of Community competition law	Guideline "On market definition"	Albanian Competition Authority	Full	07.06.2008	07.06.2008
Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of	Guideline "On control of concentrations"	Albanian Competition Authority	Full	19.07.2012	19.07.2012

concentrations between undertakings” (2008/C 95/01);					
Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements”	Guideline “On assessment of horizontal agreements”	Albanian Competition Authority	Full	14.11.2013	14.11.2013

*Source: National Plan for the Implementation of the SAA 2007-2013*

## APPENDIX 8

**Inventory of transposed *acquis* in the area of Waste Management**

<b>EU <i>acquis</i></b>	<b>Albanian legislation</b>	<b>Lead institution</b>	<b>Level of approximation</b>	<b>Date of Adoption</b>	<b>Entry into force</b>
Directive 2008/98/EC	Law No10463, dated 22.09.2011 “On integrated waste management”	Ministry of Environment	Full	22.09.2011	23.11.2011
	DCM No 765 dated 07.11.2012 “On approval of rules for separation collection and treatment of used oils”.	Ministry of Environment	Full	07.11.2012	22.11.2012
Directive 2000/76/EC	DCM No178, dated 06.03.2012 “On waste incineration”.	Ministry of Environment	Full	06.03.2012	11.04.2012
Directive 94/62/EC	DCM No177, dated 06.03.2012 “On packaging and packaging waste”.	Ministry of Environment	Full	06.03.2012	11.04.2012
Directive 1999/31/EC	DCM No 452, dated 11.07.2012 “On landfill of waste”.	Ministry of Environment	Full	11.07.2012	28.08.2012
Directive 2000/53/EC	DCM No 705, dated 10.10.2012 “On waste management of end of life vehicles”.	Ministry of Environment	Full	10.10.2012	06.11.2012
Directive 2006/66/EC	DCM No 866, dated 4.12.2012 “On batteries, accumulators and their waste”.	Ministry of Environment	Full	04.12.2012	27.12.2012
Directive 2002/96/EC	DCM No 957, dated 19.12.2012 “On waste electrical and electronic equipment”.	Ministry of Environment	Full	19.12.2012	December 2012
Directive 2008/98/EC;	DCM No 117, dated 13.02.2013 “On main criteria defining when some sort of scrap metal cease to be waste”.	Ministry of Environment	Full	13.02.2013	01.03.2013
Regulation No 333/2011/EC	DCM No 117, dated 13.02.2013 “On main criteria defining when some sort of scrap metal cease to be waste”.	Ministry of Environment	Full	13.02.2013	01.03.2013

*Source: National Plan for the Implementation of the SAA 2007-2013*