Of Flamingos, EU Conditionality and Unfulfilled Expectations

Mass Protests Over "Development" Projects in Albania

Darinka Piqani

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Recently Albania has hit international headlines with news on an ongoing protest over a development project linked to Jared Kushner and Ivanka Trump (see here and here). Flamingos, that populate the area where the project is set, and banners stating "Albania is not for sale" have become the symbol of the demonstrations. The fact that the investment is linked to the Trump family certainly contributed to the prominence the whole affair got internationally. Given the advanced stage of the accession negotiations between Albania and the EU, many counted on the role of EU conditionality in the protection of the environment and wildlife. In fact, the approval by the European Parliament of a Resolution on the 2025 Commission Report on 17 June 2026, where a moratorium was requested on any development in the Vjosë-Nartë area until the repeal of certain provisions of the 2024 Law on Protected Areas, was received with optimism from protesters.

Against these expectations on EU action, this contribution investigates the reach and effects of EU conditionality for candidate countries in the field of environmental policy. It is argued that during the pre-accession period, EU rules are external rules implemented through a political process led by the European Commission. Especially in environmental policy where damages might be irreversible, pre-accession EU conditionality may appear slow and with limited effectiveness. Furthermore, proper implementation of EU environmental *acquis* should be seen as a matter of good governance and the rule of law. Yet, the link between environmental policy and these principles does not have a prominent place in EU's conditionality policy as it stands right now.

The Project

The protest began as a revolt against a development project on the island of Sazan and in Zvërnec, a coastal territory in the Vjosë-Nartë protected landscape, but then transformed into political rallies in the capital, Tirana, against the government and the political establishment. Already for some years now, the couple Kushner-Trump had expressed interest in a multibillion Euro investment project for elite tourism in Sazan and Zvërnec. In late 2024, a company presumably linked with Kushner obtained the status of "strategic investor" on the basis of the 2015 Law "On Strategic Investments in the Republic of Albania". The law provides for accelerated procedures for granting permits for major projects as well as other benefits that ultimately facilitate these investments. In the meantime, in 2024, the Albanian Parliament adopted Law no. 21/2024 "On Protected Areas" which introduced amendments that, among other things, make possible the development of protected areas for tourism of excellence. Fears of further environmental degradation and a general lack of transparency on the investment idea fuelled the protest and magnified its effects.

All Eyes on the EU

There are two main frameworks through which the EU steers the process of approximation of national legal orders with the EU *acquis*: Stabilization and Association Agreements (SAA) and EU conditionality as the heart of accession negotiations. The question is to what extent these sets of rules or frameworks can

produce concrete effects especially in cases of potential environmental degradation.

Firstly, the SAA between Albania and the EU was signed in 2006 and entered into force three years later. Its Article 70 provides for an obligation on the part of Albania to approximate its existing and future legislation with the EU *acquis*. According to Article 108, parties shall cooperate with the aim of combatting environmental degradation and in order to promote environmental sustainability.

Following the 2024 amendments on the Law "On Protected Areas" a group of parliamentarians brought a case before the Albanian Constitutional Court (ACC) requesting the annulment of Law no. 21/2024. The plaintiffs in the case challenged the compatibility of the law with article 108 SAA and with the obligations from Article 70 SAA because it contradicted the *acquis*, more specifically Council Directive 92/43 (the Habitats Directive) and Directive 2009/147/EC (the Birds Directive).

The ACC ultimately did not reach the quorum to rule on this issue. Judges split in two groups and provided two reasonings in an *obiter dictum*. According to the majority of the judges, even though the SAA is part of the internal legal order and takes precedence over conflicting national norms as per Article 116 and 122 of the Constitution, the provisions of the two Directives are not part of the Albanian legal order and, therefore, cannot serve as a constitutional standard for the review of the challenged legislation. An *a contrario* interpretation would mean that the ACC has absorbed the functions of the legislator by making these Directives part of national law and by ultimately giving them binding legal effects (para. 27 of the Decision).

According to the other group of judges, the *acquis* is not part of the internal legal order but the SAA itself as a ratified international agreement puts forward obligations including that of the approximation with EU law of national legislation. Therefore, compatibility of national legislation with Article 108 SAA may not be assessed without specific reference to the Habitats Directive, because otherwise "article 108 would be void of substance" (para. 29).

This decision illustrates limitations on the status and effects of the *acquis* in the pre-accession stage. As the restrained position of the majority of judges shows, there is resistance to give to the EU *acquis* legal binding effect in the pre-accession stage. It is rather used as persuasive authority assisting national (constitutional) courts in "developing constitutional concepts in light of international standards" (see para. 27). This is a very restrictive reading of the approximation obligation under Article 70 SAA and of Article 108 SAA and it leaves them without any real effect in cases like this one. Interpreted in this way, the ACC lacks the capacity to act as a check on the legislator and to partake in judicial harmonization.

Secondly, since Albania's application for EU membership, the SAA framework has been complemented by EU accession conditionality organized around the different chapters of the *acquis*. With the adoption of the 2020 Enlargement Methodology, the *acquis* is organized in six thematic clusters with chapter 27 on environment and climate change as part of cluster four. Since the first Intergovernmental Conference on accession negotiations that took place in July 2022 and following the screening process, all negotiation clusters – including cluster four – have been opened between 15 October 2024 and 17 November 2025. In this process, the Commission plays the main monitoring role. The European Parliament follows the process and contributes mainly with resolutions, whereas the Council is the main political decision maker.

Awareness Without Effects

The thorny issue of investment in protected areas was present already in the 2019 Commission Report:

> *"The 2016 Strategic Investment law raises concerns for the protection of biodiversity, as it can allow large tourism and industrial investments in protected areas, namely in the Divjaka-Karavasta National Park and in the Vjosa-Narta Protected Landscape, in contradiction with existing national laws and international conventions on biodiversity protection that Albania has ratified." (pg. 90)*

The same concerns were articulated again in the 2020 Commission Report which saw as problematic the project of the airport in the Vjosë-Nartë area. The contract to build the airport was nevertheless signed and in its 2021 Commission Report the Commission stated:

> *"[This was] in contradiction with national laws and international biodiversity protection conventions that Albania has ratified. This Protected Area is a candidate for the Emerald site network, which provides shelter to more than 62 species of birds listed in the EU Birds directive." (pg. 114)*

The issue of the airport featured again in the 2023 Commission Report in which the Commission noted:

> *"[T]he Standing Committee of the Bern Convention recommended to Albania to suspend the construction of Vlora Airport until a new and sufficient Environmental Impact Assessment (EIA) procedure is conducted." (pg. 121)*

Yet, the airport is almost finalized. The 2024 Commission Report was critical of the 2024 amendments to the Law on Protected Areas because:

> *"[these changes] risk compromising Albania's ecological and biodiversity values including potential Natura 2000 sites, in conflict with EU standards." (pg. 86)*

The same issues, including the prolongation of the Strategic Investment Law to 2027, featured in the 2025 report.

All of this demonstrates that the Commission's monitoring mechanisms have not yielded any effects on this matter. Commission's monitoring powers in accession negotiations remain primarily political and follow-up measures remain weak and slow, especially considering that environmental degradation may be irreversible. This is so despite the novelties in the 2020 Enlargement Methodology. Accordingly, after screening, key reforms for each cluster are identified and, in case of sufficient compliance, the whole cluster is opened. Thus, at its best, deficiencies in particular policy fields may delay such opening but it is very unlikely to obstruct the opening of the whole cluster which includes several chapters of the *acquis*.

The next possible "pressure" tool for the Commission are the provisional closing benchmarks which must be met for cluster four to be temporarily closed. These benchmarks demand "repealing of the incompatible provisions enacted through amendments to the law on Protected Areas [...] and [by] terminating the 2015 legislation on strategic investments." In fact, when asked about developments in Zvërnec, Commission representatives stated that "Albania should refrain from actions that could undermine the fulfilment of the closing benchmarks and [we] expect the Albanian authorities to act without delay" (Politico).

None of the sanctioning mechanisms under the 2020 Enlargement Methodology, such as suspension of benefits of closer integration or reduction of scope and intensity of EU funding, seem to be discussed so far.

More Than Environmental Policy: The Rule of Law

Alignment with EU environmental *acquis* goes beyond the technical aspects of this policy area. It touches upon good governance, transparency, accountability and more generally the rule of law. Bogojević and Drenovak-Ivanović have argued that in the case of Serbia, "the main legal challenges in transposing environmental acquis [...] relate to good governance, specifically the rule of law". They identify three such challenges: well-timed impact assessments with the involvement of independent experts, broad public participation and access to environmental information. This resonates with Commission's findings on alignment of Albania's legislation with the *acquis* such as the Environmental Impact Assessment (EIA) Directive and the Strategic Environmental Assessment (SEA) Directive.

Already in 2019 the Commission had concerns about the quality of EIA and public participation in decision making in the context of hydropower construction and tourist resorts. In its 2020 report, the Commission expressed the need to improve public participation and consultation in decision making, particularly at local level. These persisting issues are part of the provisional closing benchmarks for cluster

four. What is required from Albania is alignment of national legislation with the horizontal environmental *acquis* and a solid track record of implementation "especially for infrastructure investments whilst ensuring compliance with the requirements on public participation, transboundary consultations and access to justice in environmental matters." (pg. 29)

However, as argued also by Bogojević and Drenovak-Ivanović already in 2019, this relation between implementation of EU environmental *acquis* and good governance is not clearly reflected in the EU accession procedure. In the case of Albania, transparency and openness of decision-making by the government and parliament's implementation of public consultation are mentioned in the fundamentals section of the 2025 report with no cross reference to, for instance, the environmental *acquis* or any other area. Similarly, problems with impact assessments in the environmental field are not cross referenced to good governance and rule of law issues under the fundamentals cluster.

In addition, the need for a better link between environmental protection objectives and good governance principles may become more visible in the context of the Growth Plan for the Western Balkans. Under this instrument, Western Balkan countries get financial assistance for home-grown reforms (Reform Agendas) under the condition that they deliver on those reforms and advance in the area of the rule of law. One of the areas of Albania's Reform Agenda is energy and green transition which implies more reliance on renewables. This push may imply more risks for the protection of landscape and biodiversity. This makes proper enforcement of transparency, public participation and good governance an urgent matter. It also illustrates the need to rethink EU environmental policy as not just about technical standards but as something intrinsically linked with the rule of law.

The tension between development and environmental protection is not new. Yet, what ought to be different is the approach towards this tension by requiring more transparency and accountability. Also the EU, through EU conditionality, needs to "translate" better the link between environmental policy and the rule of law.

ABOUT THE AUTHOR

Darinka Piqani

Darinka Piqani is an Assistant Professor of EU Law at the Faculty of Law, Leiden University.Darinka Piqani is an Assistant Professor of EU Law at the Faculty of Law, Leiden University.

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