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# **ASSESSMENT**

## **Albania**

**2011**

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## DEMOCRACY AND THE RULE OF LAW

The European Commission issued its Opinion on Albania's application for EU candidate status. The Albanian government welcomed the assessment even though it was negative and accepted that it was realistic. The Opinion was accepted as a reminder that much remains to be done and should provide added impetus to and focus on reform efforts.

### ***Democracy***

The political stalemate caused by the contested results of the June 2009 election remains. The final results of the May 2011 local elections were not available at the time of writing and the results of the count to elect the Mayor of Tirana remained contested. Article 7 of the Constitution provides for the separation and balancing of legislative, executive and judicial powers. This full operation of this Article has been constrained by the reduced effectiveness of parliament, particularly as regards bills which require approval by three-fifths of the Assembly. In turn, this impacts on the balance of power and limits the effectiveness of the exercise of checks and balances normally associated with a parliamentary democracy based on the rule of law.

The stalemate negatively impacts particularly on proposed reforms of public governance. Many draft laws in this area require a three fifths majority in parliament for their enactment. The enactment of these laws is crucial to the development of the institutions required by a democracy ruled by law. Polarised political thinking limits the potential for compromise and progress.

Democracy is threatened by the gap between political realities and the democratic values embodied in the Constitution. The court system, for example, is weak and their independence remains threatened. Despite free access to the internet, freedom of speech remains constrained.

### ***Rule of Law***

The limited extent to which the public governance system puts the rule of law into practice remains a serious matter of concern.<sup>1</sup>

The separation between the executive and legislative branches of the state is problematic, with the former dominating the latter. Compliance with the law by government is not assured. The independence of the judiciary is also questionable. Individuals do not have full confidence in the legal system to solve legal conflicts. The poor quality of legislation is still a problem. Major reasons for this include: limited law drafting capacities in ministries and administrative bodies; inadequate consultation with regulated communities; poor translations of European laws and adoption of laws drafted by international

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<sup>1</sup> The rule of law includes, for the purpose of this report, a set of principles such as: The separation of powers between the judicial, executive and legislative branches of government, Compliance with the law by government and the proper functioning of the judiciary, and The consistent application of fair procedures by the administration.

consultants from unfamiliar with the Albanian context resulting in a system rich in written laws but poor in laws that effectively regulate; constrained potential for parliament to scrutinise government proposals adequately. The lack of implementation (correct application) of laws remains a problem further undermining the role of the law in the society.

### ***Constitution***

The Constitution provides the basis for a parliamentary republic, a unitary and indivisible state, based on free elections. It recognises fundamental freedoms and human rights, freedom of expression and religion. It provides for respect for minorities and prohibits the death penalty. According to the Constitution, the governance system is based on the classical separation of powers between the legislative, executive and judiciary.

### ***Parliament***

Albania has a unicameral parliamentary system with an 'Assembly' consisting of 140 deputies. The current stand-off between government and the opposition in parliament weakens its effectiveness. There is little understanding that parliament requires an opposition as well as a government for it to function effectively. The parliament does not adequately oversee the executive. It is not a full participant in the process of developing policies or legislation. Question time is rarely used in parliament and written questions are hardly ever submitted. Investigative committees rarely produce results and tend to be a forum for political quarrels rather than analysis of issues.

The functioning of the parliament is also constrained by the lack of adequate facilities for deputies either in the form of research and support personnel or accommodation.

### ***Government***

Executive power rests with the Council of Ministers<sup>2</sup>. There is a clearly defined institutional framework for the operation of the Centre of Government (the cabinet and its secretariat). There is a good process for inter-ministerial consultation on policy proposals, procedures for dispute resolution and for work planning. A linkage exists between Integrated Planning System (IPS) and budgeting. The former is progressively becoming part of the routine work of government. However, the underlying information systems for formulating, executing and monitoring of both IPS and budgeting processes need to be improved.

Progress has been made on inspection reform, which is one of the components of the "Regulatory Reform" headed by the Ministry of Economy Trade and Energy to improve the business environment by simplifying administrative processes. The Draft Law is also known as the Horizontal Inspection Law and applicable, as a rule, to all inspections of business/economic activities.

The Ministry for European Integration (MoEI) with the Ministry of Foreign Affairs provides the central co-ordination focus for European Integration (EI) work in the government. Structures have been

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<sup>2</sup> Terminology on what is sometimes called government; terms such as cabinet, government or council of ministers may be used interchangeably and vary from country to country. In Albania Article 95 of the Constitution provides for a Council of Ministers, consisting of the Prime Minister, deputy prime minister, and ministers. Also it is empowered to exercise every state function that is not given to other organs of state power or to local government.

established to ensure the adoption of the *acquis*, including the establishment of EI units in line ministries. There has been a strengthening of the requirements relating to the approximation of legislation to the *acquis*. Stability of staffing of the MoEI has increased. However, there is turn-over in the membership of inter-institutional working groups. The quality of EI units in ministries is variable.

At the level of ministries, the quality of policy-making and legislative drafting needs to be improved. More attention should be paid to the implementation and the enforcement of legislation generally.

### **Public Administration**

A basic administrative law framework and civil service system is in place. However, it has many shortcomings. A number of crucial reforms remain to be enacted and implemented. These reforms are set out in the “Inter-sectoral Public Administration Reform Strategy 2009 – 2013” and in various draft laws including the Law on Administrative Justice and the Law on General Administrative Procedures.

The organisation of the central administration lacks coherence. It is too fragmented. The current Civil Service Law (CSL), as it is used by politicians, does not promote a ‘merit’ system. The law permits restructuring. Despite the CSL, individuals are employed in the public service on temporary contracts without a competitive procedure. Individuals so appointed may then become tenured civil servants without undergoing a fair, transparent and competition procedure.

An Integrated Planning system lies at the heart of public expenditure management. The enactment of the Organic Budget Act (OBL) 2009 has improved the legal framework for public expenditure management and the integrated budgeting processes that Albania is introducing. The Act reflects modern standards and approaches to using the budget as a policy instrument. The OBL provides for authorising and executing officers. It creates a structure to divide the roles and responsibilities for budget execution. Some ministries have authorising officers and the new structure is in place. Other ministries, the Ministry for Finance, for example, have not appointed an authorising officer. The full effectiveness of this system, therefore, remains to be seen.

A legal framework for Public Internal Financial Control and a new Law on Financial Management and Control is in place. Internal audit (IA) is now separated from inspection. IA has been established in most of the larger organisations. Financial Management and Control is progressing but is still not in line with good international practice and is limited to control (‘checking and authorising’).

### **Public Procurement**

There is positive progress towards the alignment of public procurement laws with European Standards. Further reform efforts are needed, in particular as regards implementation. A new, independent review body has been established (Public Procurement Commission (‘PPC’)). The Concessions Law neither fully complies with EC Directive 2004/18 nor reflects the fundamental principles of the EC Treaty applicable to concessions.

### **Judiciary**

There is a general disrespect for decisions of the courts, including the Constitutional Court. The judiciary is seen to be inefficient, too vulnerable to corrupt dealings and not fully independent. Professionalism, independence and accountability mechanisms within the judiciary and prosecution services need to be strengthened. Some judicial decisions have been ignored by the government and

there is a prevailing culture of disrespect for the judiciary. To strengthen legal certainty, more efficient mechanisms to protect legality and ensure judicial control over the government need to be developed.

### ***Anti-corruption***

Despite anti-corruption rhetoric from politicians, few changes are visible. Improvements are needed in many areas, including: property rights, health services (perceived by the Albanian public as the most corrupt) and police (especially, traffic police). Some of the laws addressing integrity issues have many loopholes, sometimes by design, and do not have adequate implementation mechanisms.

There have been some police investigations of corruption. There are, however, few successful prosecutions in corruption cases. Investigations against high-level corruption have been ended without credible justification in several outstanding cases. No sentence has been imposed on high ranking officials. State institutions, such as the President's Office, General Prosecution Office or High Council of Justice are not perceivably engaged in anti-corruption measures.

### ***Recommendations***

- 1) The government should adopt the package of administrative law already drafted, which includes fundamental pieces of legislation such as administrative procedures, judicial review, civil service and state organisation.
- 2) The government should strengthen the rule of law by supporting the adoption and implementation of a reform strategy for the judiciary, which is designed to ensure the independence, efficiency and accountability of judicial institutions.
- 3) Given the importance of policy making and law drafting, the government should put in place a programme for the development of the necessary knowledge and skills in the public service to improve policy making and law drafting.

## CIVIL SERVICE AND ADMINISTRATIVE LAW

### *Main Developments since the Last Assessment (May 2010)*

The stalemate caused by the contested results of the June 2009 election in Albania has had an impact in particular on fundamental reforms of public governance, which require a three-fifths' majority in parliament, as the deadlock of parliament continued during the entire period under review. Hardly any positive changes can therefore be recorded in the area of the civil service and administrative law.

The pieces of legislation relevant to the implementation of the Intersectoral Public Administration Reform Strategy 2009-2013 that are still pending due to the current political situation are as follows: Law on Administrative Justice, Law on General Administrative Procedures, Law on the Status of Civil Servants, Law on Organisation and Functioning of the State Public Administration, and revision of the Law on Government and of the Law on Prefects. This legal package can be considered as the general "constitutive" basis for the public administration, as they provide the most important structural elements of the state administrative legal framework.

The draft Law on Administrative Justice provides the legislative precondition for establishing an administrative justice system that is fully in line with European standards<sup>1</sup>. This draft law was already introduced into the parliamentary procedure in April 2009, but it has since fallen victim to the parliamentary impasse.

A complete draft Law on General Administrative Procedures, which includes all legislative requirements for putting into practice European standards of good administration for an appropriate system of administrative procedures, was communicated to and discussed with various stakeholders in the public administration. The Ministry of Justice is currently preparing the draft law for submission to parliament, but in view of the political situation its review by parliament is not foreseen in the near future.

The Department of Public Administration (DoPA) completed a "Concept Paper on a New Civil Service Law" in October 2010. This document reflects all of the proposals for new solutions and procedures related to the civil service, based on the objectives of the PAR Strategy, and it is aligned with mainstream European principles and standards. In order to create a consensus with stakeholders, DoPA initiated a process of presentations and discussions on the proposals before starting the actual drafting of the legal framework. However, it is very unlikely that the government will initiate a constructive dialogue with the opposition, and this stalemate will slow down all of the activities related to this legislative project.

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<sup>1</sup> Due to the non-existence of administrative courts in Albania, judicial review of administrative actions is entrusted to the ordinary court system.

A policy paper on a new Law on Organisation and Functioning of the State Public Administration and an initial draft of this new law were prepared and communicated to stakeholders within the public sector. The draft is currently being reviewed by DoPA with the support of a bilateral GIZ project.

On February 2011 the Government approved the Draft Law on Inspections and submitted it to parliament. The Law is part of the inspection reform, which is one of the components of the “Regulatory Reform” lead by the Ministry of Economy, Trade and Energy to improve the business environment by simplifying administrative processes. The Draft Law is also known as the Horizontal Inspection Law and applicable, as a rule, to all inspections of business/economic activities.

The Draft Law covers both the organisation of inspection bodies and inspection procedures. In terms of inspection procedures, it provides some novelties related to planning and authorisation of inspections. It establishes a clear list of the rights and duties of the inspector during the administrative inspection proceeding as well as the rights and obligations of the subject of inspection. The Draft Law provides administrative legal remedies in accordance with the Code on Administrative Procedures.

The Draft Law on Inspection is the first step of the inspection reform. The objective of this reform is to streamline the organisation of inspection bodies and unify inspection procedures as much as possible. The adoption of the Draft Law by Parliament, for which simple majority is required, is expected for June 2011.

The Government is currently working on the reorganisation of existing inspectorates and on the amending of special legislation applicable to previous inspection procedures. The amendments aim at abrogating the special procedural provisions in substantive laws (approximately 30), preserving only those deviating from the horizontal law that are considered strictly necessary, given the specificity of inspection in a given area.

The issuing of temporary contracts for the appointment of civil servants has persisted. Approximately 25% of all civil service positions were considered to be occupied by officials who had been appointed under such contracts and not in accordance with Civil Service Law procedures. The Prime Minister issued an order in October 2010 setting a maximum limit of 2.5% of all positions to be occupied by officials appointed under temporary contracts and enumerating a number of conditions that would allow DoPA to approve such contracts. By February 2011 the use of temporary contracts had been reduced to 11% of civil service positions in the public administration.

Due to the financial crisis the government provided the Training Institute for Public Administration (TIPA) with only 10% of the foreseen budget for training. As a result, TIPA was able to provide only 21% of the planned training days for 2010. TIPA co-operated with international organisations and technical assistance (TA) projects to deliver some other training programmes. With the support of a project financed by a Multi Donor Trust Fund on Capacity Building Support to Implement the Integrated Planning System<sup>2</sup>, TIPA elaborated the new training needs analysis and the Strategic Training Plan 2011-2013. Almost 40% of the planned training is related to the EU integration process.

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<sup>2</sup> The Multi Donor Trust Fund has a total budget of € 5.85 million and has been co-financed by the UK, through DfID (€ 2,21 million), the Netherlands (€ 1 million), the European Commission (€ 1 million), Austria, through the Austrian Development Corporation (€ 500,000), Sweden, through SIDA (€ 430,000), Italy (€ 272,000) and Switzerland (440,000 €).

The Civil Service Commission has gone through a very difficult period and has not been able to function satisfactorily. Since the spring of 2009, the Commission has had a vacant position for a commissioner, and parliament did not approve the proposed candidate for the position. This situation has created significant difficulties in the deliberations of the institution, as it has often been impossible to reach the necessary quorum, or in other cases there has been a deliberation where two commissioners were against and two commissioners were in favour of the appeal, making it impossible to arrive at a decision.

The Ombudsman received 1831 complaints during 2010, almost as many on as in the last three years. It has also initiated 103 cases *ex officio*. According to the report submitted to parliament in 2010, the Ombudsman office has resolved 2018 complaints, ruling in favour of the complainant in 33.3% of cases and judging the complaint to be unjustified in 17.7% of them, whilst half of the complaints received fell outside the Ombudsman's scope of competence. There is no information available on whether or not and to what extent public sector authorities accept the decisions of the Ombudsman taken in favour of complaining citizens.

The areas of concern, identified by the annual report, remain the same as in previous years and are mainly related to the treatment of detainees by police, the restitution of properties, and the execution of court decisions. The *ex officio* cases were initiated mainly in the areas related to human rights, and in particular to the treatment of detainees in penitentiaries and psychiatric hospitals. The recommendation for legislative improvements submitted by the Ombudsman mainly addressed these areas.

### **Main Characteristics**

Due to the political impasse in Parliament, a properly functioning system of checks and balances was not operating during the last twelve months. This situation has had direct adverse consequences on the legislative process. For example, laws requiring a qualified majority could not be adopted. It has also brought into question the legitimacy of parliamentary decisions taken without a proper parliamentary debate, and has marginalised the parliamentary control of the executive branch of government. There is a risk that in the long term the role and standing of parliament will be damaged, leading to a permanently unbalanced system of powers with too much power exercised by the executive and too little by the parliament.

The internal organisation of administrative decision-making processes in administrative bodies needs to be reconsidered, with a view to allowing for increased delegation of decision-making competences. Currently, only the top level of an administrative body (e.g. minister, state secretary, president, director) is authorised to take a decision and sign a document. This situation, which is hardly ever questioned within Albania's public sector, contradicts insights on modern public administration, according to which expertise and authority should rest with those who are closest to the recipient of an administrative service. Crippling consequences of this administrative tradition include:

- The head of a public authority being chronically overburdened. If having to deal with simple, every day issues he/she will have hardly any time left space for managerial tasks such as strategic thinking, supervision and control, leadership, and communication with the staff.
- Nobody in a public authority can be familiar with every detail of a subject matter. Thus many decisions taken through a strictly centralised and hierarchical process inevitably suffer from a lack of familiarity with the subject matter.

- Even if staff are involved in the internal decision making process, they are neither authorised to take the final decision or appear as the person responsible person through their name and signature. This is de-motivating, a waste of resources available from very often qualified and well educated – personnel and, besides the quality of laws (see above), another reason for the lack of accountability of civil servants.

The DoPA has struggled in its efforts to implement the objectives of the PAR Strategy approved by the government in September 2009. However, these efforts have not produced any results worth mentioning. The final activity necessary for implementing most of the objectives would have been the adoption of a new Civil Service Law – CSL (or of amendments to the current law), but due to the constitutional requirements of a qualified majority for the adoption of this law, these activities were halted from the start. Given the current political climate there is no chance that the CSL will be amended.

The current CSL suffers from important omissions – in particular, it is deficient in respect of the merit system. The law provides for exceptional legal remedies, such as retrenchment and restructuring, which have frequently been used to dismiss civil servants on uncertain grounds. In contravention of the CSL, it has become frequent to employ individuals under the Labour Code on temporary contracts, without a competitive procedure, and to assign them to civil service positions. The individuals are then converted into the tenured civil service following a competition procedure that cannot be considered as fair and transparent. This practice undermines the intent and effectiveness of civil service policy and creates an opening for politicisation.

Whatever the merits of the legal framework, it is not followed in practice, and implementation capacities are insufficient, reducing the attractiveness of the civil service. This situation is one of the reasons for the high turnover of the civil service in Albania, which further undermines its professionalisation. The information published by DoPA related to recruitment procedures shows that in the past five years the staff in ministries has been completely renewed. This turnover, calculated to be at the level of 20%, affects mainly managerial positions.

The failure to implement legislation – which is mainly due to the lack of respect for the law and for democratic institutions in general – is also obvious given the situation of the Civil Service Commission. It is not only the politically motivated vacancy of the fifth Commission member that is keeping the institution weak and ineffective. Moreover, the Commission's control over the management of the civil service has been undermined by the frequent disregard of its decisions by the government, ministries and administrative bodies.

Currently, judicial of administrative actions is still entrusted to the ordinary court system which applies the procedural rules of the Code on Civil Procedures. As developed in detail in previous SIGMA assessment reports, the lack of a specialised judiciary for administrative cases entails a number of deficiencies. A precondition for resolving these deficiencies would be the adoption of the new Law on Administrative Disputes, as introduced in the parliamentary procedure but still pending due to the three-fifth majority requirement, and the establishment of the corresponding administrative court system.

### **Reform Capacity**

Public administration reform “capacities” that have a cross-sectoral impact on the situation in the public sector can hardly be identified. This situation is not surprising in a state where the political system is split into two irreconcilable camps.

The Department of Public Administration (DoPA), with its 22 staff, is entrusted with developing civil service policies and as such should play a key role in the implementation of public administration reform in the area of civil service. However, DoPA’s regulatory and monitoring capacities have *de facto* continuously been weakened. Furthermore, frequent staff changes in the past four years have negatively affected the work of the department. This situation may lead to the fragmentation and deconstruction of the still fragile Albanian civil service system, which runs the risk of disintegrating.

The Ministry of Justice in charge of the areas of administrative justice and administrative procedures is aware of the need to reform these areas, and it has been making efforts to process the respective legislative projects but, given the political impasse, these efforts have so far been without success.

Two institutions, namely the Ministry for Information Society and the National Licensing Centre, have very ambitious management and staff who have demonstrated their commitment to reform. The innovative approaches of these institutions have led to remarkable results within their remits, but their activities and impacts have been limited to their respective sectors.

### **Recommendations**

1. The government needs to create a climate of co-operation with the opposition, with the aim of setting common and long-term goals that have the support of all of the main political parties. Such a climate requires political negotiation and compromise in order to build a consensus.
2. The adoption of the package of laws, which form the most important structural elements of the state administrative legal framework, is urgently required. The Ministry of Justice will require political support and technical assistance for the implementation of the two new pieces of legislation, namely the Law on Administrative Disputes and the Law on General Administrative Procedures, in the event that the political situation allows the adoption of these laws. The same applies to the DoPA concerning a new Civil Service Law.

The civil service management system, based in DoPA, needs to have greater powers and capacities if it is to be respected by politicians and by the institutions employing civil servants. The legal, managerial and infrastructural capacities of DoPA need to be strengthened so that it is able to exercise oversight and to steer the development of a more professionalism.

## INTEGRITY

### ***Main Developments since the Last Assessment (May 2010)***

The political impasse in parliament has had negative consequences for anti-corruption policy-making and policy implementation. One of the results has been the blockage of important legislation requiring a three-fifths' majority in parliament.

The Law on Political Parties of 2000 regulates the financing of political parties in general, whilst the Electoral Code of 2008 (Part VII) regulates the financing of electoral campaigns. Amendments to the latter were not passed because they require a qualified majority. In February 2011 the Law on Political Parties was subject to considerable amendments<sup>1</sup>, which have filled some of its loopholes, which had been identified by SIGMA and GRECO in 2009<sup>2</sup>. The amendments to the Law on Political Parties concern both general financing from the state budget and non-public funds. They also deal with electoral campaigns issues, thereby avoiding the amendment of the Electoral Code and its qualified majority requirement.

The amendments to the Law on Political Parties entrust the monitoring and supervision of the financing of political parties to the Central Election Commission (CEC). Similar to the provisions of the Electoral Code (on the control of electoral campaign financing), the amendments specify that the CEC is to appoint independent accountants (selected randomly from a preliminary approved list of certified accountants), who are to carry out controls of the financial accounts of political parties, including state and private funds, and report back to the CEC. The resulting auditing report is to be published on the official website of the CEC.

In 2010 an important development was noted in relation to the immunity of members of parliament. As pointed out in SIGMA's 2009 assessment report, the Albanian Constitution grants absolute immunity to a large group of public officials, including MPs, ministers and judges. This immunity regime was considered by SIGMA to be too broad and unjustified.

In February 2011 parliament, with the votes of the majority only, passed the "Decision on the limitation of the immunity of the MP and conditions for the authorisation of a criminal proceeding"<sup>3</sup>. The Decision states that an MP could "*declare in writing his/her consent on the limitation of immunity*".

The limitation applies to criminal offences related to passive and active bribery. In the event that an MP has given his/her consent as indicated above (and in the meantime has not withdrawn this consent), the criminal investigation could start without the need for the "authorisation" of parliament<sup>4</sup>. The self-renouncement of immunity is deemed to be an authorisation for the beginning of the criminal proceeding,

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<sup>1</sup> Law no. 10374/2011

<sup>2</sup> See SIGMA's May 2009 assessment of the Public Integrity System in Albania, p. 12 et seq. (<http://www.sigmaweb.org/dataoecd/0/58/43910328.pdf>) and GRECO's "Evaluation Report on Albania on Transparency of Party Funding", 11-15 May 2009.

<sup>3</sup> Decision no. 89, dated 24 February 2011; the decision is formally an integral part of the parliamentary Rules of Procedure as annex no. 1.

<sup>4</sup> In accordance with article 73/2 of the Constitution and article 118 of the parliamentary Rules of Procedures

but it does not extend its effects to the corrective measures related to the limitation of the freedom of movement<sup>5</sup>; personal examination of the person, inspection of the person, domicile or office<sup>6</sup>; and arrest.

The limitation of immunity would actually require an amendment of the relevant constitutional provisions. The aim of such a limitation could hardly be achieved on a voluntarily basis or by a simple decision of the parliamentary majority. Only a broad consensus in parliament would give legitimacy to the change of the constitutional legal status of a member of parliament. However, it is still too early for a final assessment of this parliamentary initiative. It could at least be considered as an expression of the will of the parliamentary majority to limit the immunity of its members, although it is legally inconsequential since the immunity is not a personal right of the Member of Parliament, which he/she could waive, but a right of parliament as an institution.

Nothing has changed with respect to the immunity of judges and prosecutors. However, it should be mentioned that the Prime Minister has publicly asked for the assistance of the EU-funded EURALIUS project in the search for a proper legal path for resolving this issue.

In January 2011 parliament amended the Law on the Prevention of Money-Laundering and Financing of Terrorism<sup>7</sup>. In general the amendments address the recommendations of the MONEYVAL Committee of the Council of Europe. The most important change related to the link to corruption and money-laundering regards the extension of the application of “enhanced vigilance”<sup>8</sup> to subjects that have “business relations to politically exposed persons”.

In December 2010 the Department for Internal Administrative Control and Anti-Corruption (DIACA) started to revise the government’s Strategy for the Prevention and Fight against Corruption and for Transparent Governance 2008-2013 (hereafter referred to as the Anti-Corruption Strategy) and to develop a relevant Action Plan for 2011-2013. The DIACA has been carrying out this work with the support of the EU-funded Project Against Corruption in Albania (PACA). The previous version of the Anti-Corruption Strategy was a long, narrative document, which had little chance of being implemented due to its many shortcomings, such as the lack of clear institutional responsibilities, the lack of indicators and, above all, the absence of an available budget. The results of the revision process had not yet been published at the time of writing (April 2011).

In September 2010 the DIACA presented its report on the implementation of the Action Plan during the first half of 2010. This report presented a favourable picture of anti-corruption policy implementation, but it was based solely on information provided by line ministries.

### ***Main Characteristics***

According to a recent survey conducted by Gallup and published in November 2010<sup>9</sup>, only 9% of Albanians trust their government “a lot” and 31% have “some” trust in the government. The remainder of the population does not trust the government. Concerning corruption, 69% of citizens consider that it is widespread throughout government, and 49% conceded that they had given a bribe or a gift in order to solve a problem.

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<sup>5</sup> The limitation of freedom during the criminal investigation is comprised of certain personal precautionary measures regulated by the Code of Criminal Proceedings under Title V, such as the prohibition to leave the country, the obligation to appear before the judicial police, and the obligation of residency.

<sup>6</sup> The examination of persons, inspection of persons, and inspection of domiciles/offices are measures that are commonly known as “means of searching for evidence” and are regulated by the Code of Criminal Proceedings under articles 198 to 207.

<sup>7</sup> Law no. 41/2011, dated 12 January 2011

<sup>8</sup> Articles 7-11 of the law

<sup>9</sup> [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf)

The results of this survey are in line with a widespread public perception that the systems and mechanisms in place have been mainly established to gather information and “ammunition” for political confrontation rather than to prevent and fight corruption.

Despite the strong anti-corruption rhetoric at the high political level, institutional arrangements are not strong enough to prevent and combat corruption. Improvements are lacking, especially in areas highly vulnerable to corruption, such as properties, health services (perceived by the Albanian public as the most corrupt area), and the police (traffic police).

There has been no change in the weak role of parliament in the state system of checks and balances. The continued parliamentary stalemate since the June 2009 elections has undermined Parliament’s ability to exercise its oversight functions and to initiate any important legal reforms related to improving public sector integrity and combating corruption.

The Albanian government lacks a strategic vision for setting priorities in the fight against corruption. The current approach, which is concentrated on legislation – which itself is partially inconsistent and rapidly changing, has led to confusion on the enforcement level and resulted in legal uncertainty. Some laws lack adequate implementing mechanisms, while necessary secondary legislation is frequently missing. The production of legislation has not been adequately followed by implementation measures, such as the training of civil servants, capacity-building and public information activities. As a consequence, although a substantial volume of policy papers and a regulatory framework for fighting corruption both exist, the absence of implementation remains a huge problem.

The government’s Anti-Corruption Strategy and Action Plan have brought about some police investigations, but criminal verdicts remain scarce. A corruption witch-hunt was used to produce figures that report success in discussions on the fulfillment of conditions of the “Visa Liberalisation Roadmap”. However, the view that “some poor devils end behind bars” remains justified. Investigations concerning high-level corruption have terminated with dubious justifications in several outstanding cases; in no high-ranking case has a sentence been issued.

Other state institutions, such as the Office of the President, General Prosecution Office or High Council of Justice, are not perceivably engaged in anti-corruption measures. Their level of transparency is low in general, but in particular regarding the fight against corruption. No information (e.g. regular reports) is available on corruption-related plans or anti-corruption activities within their scope of responsibilities, either on their websites or in any other form.

The DIACA meant to be the administrative body in charge of implementing the Anti-Corruption Strategy. Its major task is to co-ordinate the activities designated by the inter-ministerial anti-corruption working group. However, the DIACA suffers from meagre resources. Its low institutional capacities, as well as its limited power, contradict the government’s statements about the “war against corruption” and the ambitious objectives of the Strategy.

The High Inspectorate on the Declaration and Audit of Assets (HIDAA) is the central authority for the implementation of the Law on the Declaration and Audit of Assets and of the Law on Prevention of Conflict of Interest. The HIDAA collects asset declarations from approximately 4250 officials annually, including from the President, Prime Minister, ministers, members of parliament, high-level and middle-level civil servants, prosecutors and judges. These officials are obliged to submit declarations personally either to HIDAA or to its representative authority in the human resources unit of the respective institution (there are 512 representative authorities). The HIDAA carries out random audits of these declarations. In the event of non-compliance with the law, administrative and criminal sanctions can be applied against officials.

The regulation of conflicts of interest has not been modified in recent years and maintains the weakness identified in SIGMA’s previous assessments of the public integrity system in Albania. It

establishes universal regulations for MPs, officials at central and local levels, as well as judges and prosecutors, which does not allow for the application of special prevention measures and sanctions for conflicts of interest according to the status of the various categories of public officials. Despite this regulatory framework, conflicts of interest and illegal profits remain widespread among high-level public officials.

The mandate of the Ombudsman (People's Advocate) was terminated at the end of February 2011. Since then the position has remained vacant, and it seems that this vacancy will be extended for a long time, as it requires a three-fifths' majority vote of all members of parliament. In the meantime, the most senior member of the Ombudsman Commission has substituted for the Ombudsman.

SIGMA's 2011 assessment report on Civil Service and Administrative Law describes in more detail the negative effects of the fact that almost all decisions in the Albanian administration are taken at the top level of an administrative authority. This situation is not only a major reason for inefficiency and bad quality of administrative decisions but also fosters corruption.

### ***Reform Capacity***

The weakness of the institutional set-up raises the question of political will. Apparently, reform initiatives aimed at improving public sector integrity and fighting corruption are mainly undertaken in response to pressure from outside, especially from the EU and international organisations, and these initiatives are therefore not sufficiently internalised. This raises evident concerns regarding the ownership and medium-term sustainability of the reforms.

The DIACA's limited human resources capacity, insufficient budget, and weak controlling competences do not enable it to have a noteworthy impact on processes within line ministries and other administrative bodies, as it should have if it is expected to hold a central position in the implementation of horizontal anti-corruption activities across the public administration.

### ***Recommendations***

1. A stronger role for Parliament in the system of checks and balances is urgently needed. Regarding its institutional weaknesses, better working conditions for members of parliament, such as appropriate premises (offices), equipment, and research and analysis services, could contribute to better legislation and to increased transparency in the public sector through effective control of the executive.
2. Amendment of the constitution is required to limit MPs' and judges' immunity regarding criminal offences related to offering and acceptance of a bribe. The legislative initiative for amendment of the constitution needs to emanate from the Parliament (one fifth of its members).
3. The regulatory framework on conflicts of interest and asset declarations requires a thorough review, in order to allow for different prevention measures and sanctions for conflicts of interest according to the different statuses of the various categories of public officials. As far as civil servants are concerned, the drafting of the pertinent provisions of the Civil Service Law fall under the responsibility of the DoPA (Ministry of Interior); as to the status of members of parliament, the parliament holds the right to self-regulate and self-control. Matters regarding other appointed or elected public officials should be regulated in the Law on the Government, for which the Ministry of Justice should take the drafting initiative.
4. High priority should be given to the implementation of existing laws. It is first and foremost the responsibility of the executive level of administrative authorities (ministers, directors, heads of departments and units) to ensure - by exercising internal managerial control within their respective remits - administrative compliance with the law.

5. The improved capacity of the DIACA and the strengthening of its competence to monitor the implementation activities of line ministries are needed to ensure the effectiveness of its work. Otherwise, the DIACA will be unable to act as the key mechanism for driving the implementation of the government's Anti-Corruption Strategy.

# PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

## *Main Developments since the Last Assessment (May 2010)*

Albania is recovering from the period of fiscal stress that started in late 2008 and deepened in 2009. GDP growth for 2010 was 3.9%. The scale of the budget cuts required in order to contain the level of deficit and debt during 2010 was estimated at 7% and in fact 9% was achieved. The budget deficit for 2010 was 3% and the forecast for 2011 is 3.5%. The Organic Budget Law (OBL) sets a limit of 60% for debt as a proportion of GDP. This limit was nearly reached in 2009 and is expected to be 59.4% at the end of 2010.

A review of the National Strategy for Development and Integration (NSDI), published in 2008, commenced in 2010.

For the development of **Public Expenditure Management (PEM)**, the OBL of 2008, which came into force in 2009, has been a key factor. This law also specified the basic organisational structures for a budget entity which were subsequently developed by the Law on Financial Management and Control (finalised in 2010 and operative from 1 January 2011) which defined the legal framework for **Public Internal Financial Control (PIFC)**. These organisational structures include the appointment of authorising and executing officers and the establishment of a strategic management group. General secretaries are to be appointed as authorising officers but not all have yet been so. This responsibility is currently held by some ministers, who are required to relinquish this role by August 2011. The responsibilities of the strategic management group include the preparation of the annual and medium term budget strategies, and, as required by the Law on Financial Management and Control, the review of the FMC arrangements and related issues,

The Internal Audit Law was revised in September 2010. It separates internal audit (IA) from inspection and amends the remit of the General Directorate of Internal Audit (GDIA) to make it only the CHU for internal audit. In March 2011 a new Financial Inspection Law became operative. An FMC manual was published in 2010; the launch of the manual was accompanied by a series of "promotional" seminars around the country for authorising and executing officers.

The computer-based Treasury system became operational across all regional Treasury offices in April 2010. The system could serve as the core of a more comprehensive financial management information system that would provide services to meet management accounting, costing and budget performance/monitoring needs. However, a thorough analysis of the specific needs for information systems has still not been undertaken. In 2010 a reorganisation of the Treasury resulted in the creation of two directorates, operations and systems administration, which has led to improved response times to questions and a reduction in the number of problems that had previously been occurring.

With regard to the **decentralised arrangements for the management of EU funds**, progress was made in 2010 concerning IPA component I. The Albanian Government is planning to submit its application for the decentralised implementation system (DIS) in the summer of 2011. Preparations for the establishment of management and control systems for IPA components II, III, IV, and V are still in the early stages. The Audit Authority has been established in the Ministry of Finance but with the Head appointed by the Prime Minister.

The Albanian **external audit** institution, the High State Control (HSC), has maintained its good reputation as an independent institution carrying out financial compliance and, to a lesser extent, performance audit.

In 2010, the HSC has merged methodology development with human resources management (HRM). This merge certainly increases the potential for strengthening the methodology unit, provided that staff resources in the unit are increased. Currently this unit is too small to be able to carry out all of its tasks.

### ***Main Characteristics***

An Integrated Planning System (IPS) has been established, which includes the NSDI, a summary of sectoral and intra-sectoral strategies. A Public Finance Sector Strategy 2007-2013 had been published in 2008. The IPS is a central feature of **PEM**. The budget is linked to the IPS, and proposals for new developments are expected to reflect the Council of Ministers' priorities. The development of a fiscal framework and the setting of sectoral ceilings within that framework have provided the budget process with more rigour and strategic direction. In 2010 a technical assistance project provided support for the improvement of macroeconomic modelling. The ceiling-setting process has been effective and its implementation has not been affected by the 2010 financial crisis.

The OBL has considerably improved the legislative framework for the integrated budgeting processes. In general, with the exception of the absence of a clear definition of public finances, the provisions of the OBL are clear and reflect modern standards and approaches to using the budget as a policy instrument, but within a firm control framework.

Although major efforts have been made to implement programme budgeting, problems remain concerning the quality of some aspects of this implementation process in terms of defining programmes, projects and outputs. So far the development of programme budgeting does not appear to have been accompanied by changes in management structures to ensure the effective implementation of programmes and the achievement of programme objectives. Although general secretaries have been appointed as authorising officers and strategic management teams appointed, the full development of managerial structures with the delegation of budgets and executive authority has not so far occurred. Executive officers have a book-keeping, financial reporting and controlling role. They are not trained as Finance Directors able to take on the role of supporting the authorising officers in ensuring efficiency, effectiveness, and economy in the use of public resources as required by the OBL, nor in developing strategic financial management, an essential element for effective medium and longer term financial planning and budgeting in their decision-making. The budget formulation is still mainly top-down.

Supporting management accounting and costing information systems have also not yet been developed.

The budget submission is in programme form. Each programme contains a relatively high level of economic analysis (staff costs, recurrent operating costs, and capital expenditure). Bodies that incur expenditure are required to further break down their budget into a more detailed economic analysis. This approach provides a reasonable balance between control by the Assembly at a strategic level and administrative control at an operational level. In general, the budget formulation process of PEM is reasonably defined and operational.

Some progress has been made in resolving the outstanding issues of last year. Activities financed by donor loans (but not donor grants), which previously were not part of the fiscal framework or of the allocations to programmes, have now been incorporated.

At the end of 2009 a high level of domestic arrears was apparently not treated as public debt. Debt and domestic arrears' management are not integrated. At the end of 2010 evidence of a similar level of arrears was not available.

The OBL requires each government unit to submit for approval, together with the draft annual budget, a list of capital projects, the estimated phasing of expenditure on those projects, and the provisions made in the budget year. This requirement covers all projects, whether they are financed by donor funds or not. The basis for setting priorities is primarily a ministerial choice. However, no formal regulation exists with regard to the appraisal of investment projects, and the Ministry of Finance does not specify how such appraisal should be undertaken, relying on the evidence contained in a project “fiche”, which has to be completed for all investment projects, no matter what the size. Overall, procedures for evaluating and prioritising capital projects are still relatively underdeveloped. Post-implementation review also needs further attention.

While improvements to the Treasury IT system are planned, at this stage these improvements relate only to expenditure input arrangements (to allow direct user input in the Treasury system in 50 budget institutions), and they are not yet intended to provide a full financial management information system. The development of the IT system as a comprehensive financial management system to help budget-users (general government units, public funded commercial companies, non-profit organisations and joint authorities) improve efficiency and effectiveness is still some way off. However, such a system is an essential complement to the reforms envisaged as part of the development of more effective financial management and control arrangements, and if such operational financial information cannot be provided as part of the Treasury system, budget users will need to develop their own systems.

Although progress has been made in the legal framework during the past year, the Albanian **PIFC system** still needs to be improved to comply with good international practice. So far PIFC has been interpreted as “control” in the narrow sense of “checking and authorisation”.

The FMC Law envisages fundamental changes to the way in which budget-users and local governments manage public expenditure. Those changes would promote a more effective implementation of programme budgeting and improve the efficiency and effectiveness of public expenditure management. The CHU/FMC is developing an FMC implementation plan, which will initially cover the period up to 2015. Given the scale of changes required, the CHU/FMC has chosen a pilot approach to the plan. This cautious approach might take more time, but it should provide more assurance that all FMC-related elements are implemented properly and in the right sequence (quality over speed!). Following the pilot, the implementation of the FMC plan, using this modern approach, would be rolled out to both central and local governments.

The changes in 2010 to the Law on Internal Audit, with the separation of inspection from internal audit, will help over time to clarify the role of internal audit (IA) as a support to management. There remains at this point in time a limited awareness of the purpose of internal audit. Authorising officers, for example, still appear to confuse IA with *ex post* control/financial inspection. This confusion is due to a legacy of the historical role of financial inspection. However, the quality of IA still needs to be improved. Internal auditors are not yet perceived as advisers to the executive level of administrative authorities (such as ministers, directors of agencies, and head of departments and units, despite the many training efforts of the CHU/IA in the GDIA during the last four years. The reforms to FMC will potentially have a major impact on the role of IA as an advisory service to management, and IA may no longer be perceived as solely a “control” function. However, the CHU/IA may be required to undertake a major training programme for authorising and executing officers and the executive level of administrative authorities (such as ministers, directors of agencies, head of departments and units), as well as for internal auditors.

The **external audit** institution, the HSC, has a wide remit, which necessitates a selection of audit subjects. On an annual basis, approximately 50% of the potential auditees are covered, which represents approximately 70% of the state budget. Budgetary constraints have prevented the appointment of additional staff, with total staff number remaining at 156, of which 115 are audit staff. The HSC still suffers from inadequate premises, which among other problems, hampers the necessary investment in IT infrastructure.

Although the current law covers the objectives, duties, organisation and powers of the HSC, the mandate of the institution is still deficient, especially in terms of certification audit, the audit of EU funds, and the dismissal criteria concerning the Chairman of the HSC. The HSC has done all that it can in preparing to amend the law and bring it into line with EU requirements and international best practice. However, the fact that a qualified majority (3/5) is needed to pass the law makes it impossible to predict when these amendments will be passed, given the current political situation.

The Strategic Development Plan (SDP) 2009-2012 is not very specific in its definition of outputs or results. However, for 2010 and 2011 the SDP has been developed as detailed annual work plans, both for the institution as a whole and for individual departments. These work plans show that the SDP is taken seriously and that it serves as guidance for the day-to-day activities of the HSC. In addition, SIGMA's 2010 assessment in this area has served as an input for decision-making on actions that are needed for further development.

HSC's policy is to gradually develop certification and performance audit based on the foundations laid during the 2007-2009 twinning project. In 2010 one pilot audit on certification audit was carried out, with a relatively easy entity deliberately chosen, and in 2011 another two pilot audits are planned. Although such a gradual approach seems appropriate in terms of development capacity, the resulting pace is slow. The gradual development of performance audit has worked well so far. The HSC leadership and auditors are well aware that performance audit sets other, and sometimes more demanding, requirements to the audit staff, which is another reason why the gradual development of performance audit capacity is a sensible choice. The HSC has no experience and no trained audit staff for IT audit, while IT information systems are increasingly used by auditees (salary system, treasury system). In all three areas – certification audit, performance audit and IT audit – focused technical assistance is indispensable for obtaining better results.

The competent parliamentary committee, the Economy and Finance Committee, has not changed its way of dealing with HSC reports, which means a still generally unsatisfactory treatment by parliament of these reports, limited to the Annual Report and the Annual Activity Report. However, the HSC might consider whether the format of its reports, especially those that are currently not dealt with in parliament, is adequate for drawing the attention of parliament, and how, for performance audit reports, the interest of parliamentary committees other than the Economy and Finance Committee could be sought.

Parliament has also not taken the initiative of demanding an external audit of the HSC, as foreseen in the HSC Law. In order to show its good will in terms of being held accountable for its own budget execution, the HSC has to continue to ask its own internal auditors to carry out such an audit, which is an unsatisfactory solution given the hierarchical relationship between the HSC leadership and the internal auditors.

### ***Reform Capacity***

The Government has started preparing a follow-up of the current National Strategy for Development and Integration. It is foreseen that this new strategy, to cover the period 2013 -2020, will be published in 2012. This demonstrates a political will to continue reform. Supporting this is also a clear commitment to continuing reform within the Ministry of Finance (MoF), in both **PEM** (budget policy) and **PIFC** (FMC and IA).

The foreseen roll-forward of a new strategy to follow the current National Strategy for Development and Integration (NSDI) also indicates a continuing determination. In this sense, the outlook is positive. In terms of resources to carry out the reforms, the outlook is not entirely positive. The reforms will require significant changes in the roles of ministers and officials. The organisation of public services will need to move from a traditional administrative approach to a managerial-oriented approach. However, the introduction of managerial accountability will call for a cultural change within management (at both political and official levels), and the competencies in ministries to facilitate such a change are very limited.

The Treasury Directorate and the CHU/FMC are both being supported externally. Although the Treasury project focuses mainly on technical issues, the real impact on public expenditure management will only come about as the Treasury system develops into a tool for the executive level of administrative authorities, such as ministers, directors of agencies, and heads of departments and units.

The FMC reform will impose significant demands on the CHU/FMC. The proposed pilot is intended to follow a holistic approach, acknowledging its role in a wider system and bringing management and finance together. Such a project will require considerable time to plan, implement and evaluate, and to do so the CHU/FMC will require extensive support.

In short, in view of the current capacity and the huge challenge that Albania is facing, substantive assistance to support the Albanian Government in carrying out these tasks will be necessary.

In the area of **external audit**, the HSC has shown a clear commitment to the development of its audit methodology and audit practices. The SDP, although more concrete in identifying problems than in pointing the direction to solutions, has served as guidance for the actions that have been undertaken in the framework of its implementation. However, the impact of its work in Parliament is still unsatisfactory. The management of the HSC is well aware of its wider environment and is therefore well placed to assess the impact of changes in this environment (PIFC, EU funds management) on its audit work but, as indicated in last year's assessment, the HSC requires external support.

### **Recommendations**

1. The Ministry of Finance should start preparing the business case for the development of information systems that will provide the executive level of administrative authorities (such as ministers, directors of agencies, and heads of departments and units) with the information that they require to ensure that programme objectives at all levels can be monitored and achieved. Such systems should also be capable of providing extended financial management information, including management accounting and costing information, as well as a much more detailed analysis of budgets over sub-programmes and cost centres. The Treasury system could serve as the core of such an information system, but additional systems that are not part of the Treasury system will also be required.
2. A more rigorous approach to investment analysis, with political choices being limited to those projects demonstrating the maximum benefits within an overall ceiling, would lead to a more efficient investment programme. The Ministry of Finance would need to have technical support to enable it to identify and set the requirements for cost-benefit analysis and other forms of investment analysis.
3. Success in achieving the benefits of programme budgeting depends heavily on linking public expenditure management policy, FMC (as a contributor to the efficient and effective management of resources), and IA. The general understanding of the process of moving from a "control-oriented" approach to a "management-oriented" approach and of its implications for programme budgeting and for the organisation of decision-making processes within ministries, agencies and municipalities, is still underdeveloped. The Ministry of Finance should ensure that these linkages and understandings are developed in practice. The Ministry of Finance should ensure that at the highest levels in each budget organisation (and in the larger local governments) financial expertise is available to develop financial strategy, to analyse from a financial point of view all policy and investment proposals, and to analyse and interpret financial information, linking that information insofar as possible with performance information by setting up specific training programmes for high officials.

4. The CHU/FMC should gradually introduce and implement FMC in ministries and municipalities that will support “managed” public services. The success of this reform will depend on the adoption of a realistic and holistic approach. The approaches to implementing FMC in central and local governments should differ so as to reflect their different organisational arrangements.
5. The CHU/IA should reconsider the consequences of the FMC Law for IA and, among other aspects, ensure that the impact of FMC policy is reflected in the training of internal auditors. Emphasis should also be placed on ensuring that the executive level of administrative authorities (such as ministers, directors of agencies and head of departments and units) and the highest levels of management are aware of the aims and objectives of internal audit.
6. The HSC needs to start the process of developing a new SDP for the period starting in 2013. This new SDP should be more concrete in terms of output than the current SDP, and it should include some of the activities now covered in annual work plans.
7. The HSC should consider its reporting formats in order to see whether more attention could be drawn from parliament, especially to reports other than its annual report and annual activity report.
8. The HSC should open a dialogue with parliament concerning the need for the external audit institution to be held accountable for using taxpayers’ money. In the event that this dialogue does not lead to a solution that is acceptable to the HSC, the HSC could consider appointing an external auditor itself.
9. The HSC should seek external support in the areas of certification audit, performance audit and IT audit.

## PUBLIC PROCUREMENT

### ***Main Developments since the Last Assessment (May 2010)***

No major amendments to the legislative framework for public procurement in Albania have been made in the past year. The governing law remains Law No. 9643 of 2006 on Public Procurement (henceforth "PPL"). The PPL was amended in 2010 by Law No. 10 309 of 22 July, which introduced certain changes with regard to the tasks and responsibilities of the Public Procurement Agency – henceforth "PPA" – (article 13 of PPL) and removed the provisions related to investigation activities of the PPA (articles 65-68 of PPL). The PPL is implemented by the Decision of the Council of Ministers on approval of Public Procurement Rules (henceforth "Implementing Regulations"). The Implementing Regulations were amended in 2010 by Decision No. 398 of May 26, implementing into secondary legislation amendments that had been introduced into the PPL back in 2009 (mainly concerning framework agreements and utilities contracts).

More significant, however, have been the developments in the institutional set-up for public procurement. First, a new, independent review body has been established – the Public Procurement Commission (henceforth "PPC"). In April 2010 the PPC started to deal with appeals submitted by economic operators against decisions of contracting authorities, on the basis of both the PPL and the Concessions Law. As from that date the PPC took over the tasks of a review body, which until then had been performed by the PPA. Second, the concessions agency that was envisaged in accordance with changes to the Concessions Law adopted in 2009 has finally not been established, and the provisions related to the agency have been deleted from the Concessions Law. The tasks that the agency was to perform have been divided between two institutions: the PPA – responsible for concessions as a regulatory body – and the PPC – responsible for the review of appeals in concessions procedures. Third, the staffing of the PPA, following a decision of the Council of Ministers, has been reduced by 50% (from 36 to 18), which raises serious questions concerning the proper discharge of its functions. While the PPA has ceased to deal with appeals, it has been entrusted nevertheless with new tasks related to concessions. Fourth, as from 24 May 2010 contract notices are published in electronic form only, on the website of the PPA. Fifth, the PPA has entered into a twinning arrangement with a joint Polish-Romanian team, which started in November 2010 and is foreseen to continue through the entire year 2011.

### ***Main Characteristics***

The amendments and developments of 2009 and 2010 confirmed the progressive alignment of the PPL with the EC Directives. The incorporation within the scope of coverage of the PPL of entities operating in the utilities sectors, with a new chapter devoted to the procedures to be applied in these sectors, has also brought the PPL largely into line with EC Directive 2004/17. For the most part, the PPL is consistent with the EC Directives, although some differences remain. The PPL's origins can be found in the UNCITRAL Model Law, which means that some elements of the PPL cannot be said to reflect entirely the provisions of the EC Directives. This can be seen most notably in the conditions that apply for the use of the restricted procedure and in the procedures that apply for the procurement of consultancy services. New requirements stemming from the new EC Remedies Directive (2007/66) also have to be implemented. The rules concerning defence

procurement do not satisfy all of the requirements imposed by EU primary law, settled case law of the European Court of Justice (ECJ) and EC Directive 2009/81.

The efficiency of the Albanian procurement system has been enhanced with the development of the electronic procurement system, which is now mandatory and used throughout the country. Apart from some technical hitches, this system appears to be working to the satisfaction of contracting authorities and economic operators.

The overall weakness of the system stems from its implementation. There is no real understanding of procurement (or of the operation of procurement markets) in procuring entities, which appear to take a very dogmatic or mechanical approach to procurement. This situation is not helped by a similarly bureaucratic approach in the law itself, which is reflected in particular in the mandatory disclosure – without any exceptions – of the “funds limits” available to the contracting authority (the contracting authority has to inform suppliers in the contract notice of the sum that it can pay for a given contract), thereby depriving it of the possibility of reaping more benefits from competitive award procedures. The law also takes a dogmatic approach to the issue of abnormally low price. A formula is applied, according to which all tenders that are more than 20% less expensive than the average discount offered by suppliers against the estimated value of the contract (disclosed to them in advance) are treated as “abnormally low”. Without a doubt, economic operators hoping to win a contract will set a price which is lower than the limit disclosed but not so low that they risk having to justify their prices or getting their tender rejected. The combination of the requirement to disclose “funds limits” in advance with the mathematic formula for the identification of abnormally low tenders results in a situation whereby as often as not tenders only slightly cheaper than the “fund limit” are treated “automatically” as abnormally low. Another peculiarity of the public procurement system is that, at least in the case of bodies financed from the state budget, procurement is a rather seasonal activity, which basically takes place between May and September (30 September is the last date for the conclusion of a contract, as otherwise a special approval by the government is required).

A new institution – the PPC – has been created to review appeals from tenderers against decisions of contracting authorities, a role that was previously one of the PPA’s functions. In this way, the review function – consisting of the resolution of disputes between the two sides of public procurement processes, i.e. contracting authorities and suppliers, initiated by the submission of a complaint against a presumably illegal decision of the contracting authority – has been shifted from the regulatory body – the PPA – to a quasi-judicial body – the PPC. The PPC, with 18 staff, composed of a chairman, deputy chairman and three members plus support staff, started to operate in April 2010. In 2010 the PPC reviewed 283 appeals (including seven complaints related to concessions and nine complaints filed in the course of public auction procedures). At the same time, the monitoring (control) functions of the PPA have been drastically reduced. Prior to the reform introduced in 2009, the PPA played a double role: both review and monitoring (in the latter capacity the PPA could investigate presumed irregularities on its own initiative). At the same time, both functions were clearly defined and the procedures related to them, at least from the legislative point of view, were governed by clearly distinctive rules. The changes introduced by the 2009 amendment to the PPL have somehow blurred those distinctions. This situation has been further aggravated by the July 2010 amendment – as from that date the PPA not only has no powers to deal with complaints submitted with regard to presumed irregularities in public procurement, but it also has no instruments to initiate and conduct the audit of procurement procedures on its own initiative. The basic instrument for monitoring the functioning of the procurement system as a whole by the PPA is the analysis of summary reports submitted by contracting authorities every four months and of reports received from the central purchasing body and the Public Procurement Advocate. By any means, such monitoring can take the form of *ex post* monitoring only, since any contracts subject to it have already been signed and probably also implemented. Moreover, the PPA has practically no powers of investigation of its own, and the information provided in the above-mentioned reports has a rather statistical character. For

instance, contracting authorities are not required to justify in the report the application of any non-transparent, non-competitive procedures. Secondary legislation rules envisaged by the PPL, defining how this monitoring is to be conducted, have not yet been adopted by the Council of Ministers. On the other hand, given the current staffing of the PPA, there are serious concerns as to whether this monitoring could be properly discharged without strengthening the human resources capacity of the PPA. The main monitoring body is in fact the institution that does not have its equivalent in either EU law or the laws of EU Member States – the Public Procurement Advocate (henceforth “PPAd”). First, the PPAd can conduct the monitoring of the compliance of procurement procedures, both prompted by the persons concerned (not necessarily economic operators since the scope of persons legitimised to refer to the PPAd is practically unlimited) as well as on its own initiative. The number of cases dealt with by the PPAd is larger than the number of cases reviewed by the PPC, which is not surprising, considering the fact that the number of staff of the PPAd is equal to that of the PPC, it can also act *ex officio*, and there are no fees for the submission of complaints to the PPAd.

With regard to the transparency and competitiveness of the procurement system, it is noteworthy that, according to the statistics disclosed by the PPA, 37.6% of contracts were awarded by means of the negotiated procedure without previous publication. Whenever competitive procedures are applied, the competition seems to be quite severe: according to the annual report of the PPA, there were on average seven tenders submitted in any given procedure in 2010.

In the area of concessions, the Concessions Law neither fully complies with EC Directive 2004/18 nor reflects the fundamental principles of the EC Treaty applicable to concessions. The law is based on the UNCITRAL rules rather than on the EC Directives. This can be seen, *inter alia*, in the procedures that are available for the award of concessions and, in particular, in the possibility of applying an unsolicited proposals procedure. It is remarkable that the award procedures for practically all concessions have been based on unsolicited proposals. It appears that most concessions have been awarded to Albanian companies.

### **Reform Capacity**

It is clear that the staff of procuring entities have difficulties in understanding and applying the law. This capacity deficit needs to be addressed. The current monitoring system is mainly based on the analysis of complaints submitted to the Public Procurement Advocate (PPAd), and monitoring is undertaken on the PPAd’s own initiative. The PPA, which is responsible for legislation and for the dissemination of information on bidding opportunities (contract notices published on its website) and as such has access to information on any developments in the field of public procurement, has hardly any tools for conducting the efficient monitoring of compliance. The monitoring role of the PPA has been reduced to implementation of the PPAd’s recommendations (penalisation of procurement officers who have been responsible, in the PPAd’s opinion, for irregularities in public procurement). The relatively high proportion of non-competitive, non-transparent procedures is worrisome.

The immediate and urgent concern is to address the institutional problems caused by the significant reduction of the human resources of the PPA. Whilst the transfer of the review function from the PPA to the PPC implied that the PPA would no longer need the number of staff previously required to conduct that function, the reduction in the staffing levels of the PPA went even further than was justified by the reform of the review system. At the same time, the PPA assumed responsibility, as a regulatory body, for the proper functioning of the concessions system. The 50% reduction of the PPA staff has seriously undermined the proper discharge of its remaining functions (legislation, training, legal advice and help desk, maintenance of the electronic procurement system, and monitoring).

**Recommendations**

1. A comprehensive action plan for the implementation of the procurement system should be adopted by the government in order to increase in the short and medium terms the effectiveness, efficiency and transparency of the Albanian public procurement system; the action plan should provide for a set of clearly defined tasks to be performed as a minimum in a time span of a few years..
2. The Public Procurement Agency should ensure that public procurement provisions are brought into line with the remaining EU requirements (stemming from both primary and derived law), notably in the areas of concessions, defence and security procurement, and review and remedies.
3. The PPA should introduce a comprehensive system of administrative monitoring and control of the application of public procurement rules; monitoring should also include contracts that are a part of public procurement but for various reasons are excluded from the scope of the PPL or are regulated by other legal acts.
4. The institutional framework should be strengthened, and the competencies of the various institutions involved – PPA, PPC and PPA<sub>d</sub> – should be more clearly defined and delimited; their roles should be reconsidered and clarified wherever required in order to avoid, on the one hand, the overlapping of tasks and activities and to remove, on the other hand, the remaining loopholes in the system, in particular with regard to the control and monitoring system concerning contracts that have not yet been signed.
5. The Public Procurement Agency must be strengthened, in particular with regard to its financial and human resources and monitoring tools.
6. The Public Procurement Agency should, in the medium or long term, further align the Concessions Law with EU procurement law. Its definitions and concepts should be brought into conformity with EU law principles.

*PROCUREMENT/CONCESSIONS STATISTICS for 2010*

<b>A. Number of contracting entities</b>		
Central government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total number of contracting entities	1700 <sup>1</sup>	
<b>B1. Awarded public contracts/Contracting entities</b>	<b>Total (estimated) value (Mio EURO)</b>	<b>Total number</b>
Central government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total public contracts awarded	205 279 252	4456
<b>B2. Awarded concessions/Contracting entities</b>		
Central Government	57 732 884	7
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded	57 732 884	7
<b>C1. Awarded public contracts above the EU thresholds</b>		
Works	19 997 086	2
Services	17 531 543	44
Goods	33 423 161	83
Mixed contracts		
Total public contracts above the EU thresholds	70 951 790	129
<b>C2. Awarded concessions above the EU thresholds<sup>2</sup></b>		
Works		
Services		
Other		
Total concessions above the EU thresholds		
<b>D. Procurement methods used (above the national thresholds)</b>		
Open procedure	140 647 384	1738
Restricted procedure	-	-
Negotiated procedure with prior publication of a notice	-	-
Negotiated procedure without prior publication of a notice	40 287 158	1960
Other procedures (competitive dialogue, etc)	24 344 710	1506 <sup>3</sup>
<b>D1. Low value procurement (estimated)</b>		
<b>E. Participation rate (average number of submitted tenders)</b>		<b>7 offers per procedure</b>
Works		
Services		
Goods		

<sup>1</sup> There are in total 1700 contracting authorities: 14 ministries, 12 regions, 65 municipalities, 309 communes, and the remaining number of contracting authorities consists of institutions under the dependence of central and local government.

<sup>2</sup> The legislation of concession does not foresee any monetary thresholds.

<sup>3</sup> This is the total number of the procedures request for proposal, consultancy services and design contests.

<b>F. Review procedures</b>		
Number of complaints received	N/a	283
Number of rulings issued	N/a	267
Number of appeals against rulings of the review body	N/a	6
Number of decisions with interim measures	N/a	-

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. Drejtoria e Pergjithshme e Rrugeve,
2. Ministria e Puneve Publike, Transportit dhe Telekomunikacionit,
3. Ministria e Brendshme,
4. Ministria e Arsimit dhe<sup>4</sup> Shkences,
5. Bashkia Tirane
6. Ministria e Mbrojtjes
7. Agjencia Nacionale e Trafikut Ajror Tirane
8. Agjencia Kombetare e Shoqerise se Informacionit
9. Spitali i semundjeve te mushkerive Shefqet Ndroqi, Tirane
10. Operatori i Sistemit te Transmetimit OST.

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2010 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

**Public contracts<sup>5</sup>**

1. Ndertim Rruga Unaza e Re – Mullet, Loti I; Drejtoria e Pergjithshme e Rrugeve; Contractor: ALBSTAR Sh.p.k; value : 1 575 876 669;
2. Ndertimi i Godines se re te ACC (Qendra e kontrollit te trafikut ajror) dhe kullës se re; Ministria e Puneve Publike, Transportit dhe Telekomunikacionit; Contractor: Gener 2; value : 1 223 715 456;
3. **Loti II Furnizim me gasoil D1; Ministria e Brendshme; Contractor: Skenderi G; value : 628 257 952;**
4. Loti I “Sherbim gatimi dhe shperndarje e ushqimit per Komanden e Doktrines dhe Stervitjes; Ministria e Brendshme; Contractor: SORI-AL; value : 597 243 007;
5. Ndertim rruga Milot-F. Kruje (dublmi i superstrades), Loti 3 (sinjalistike rrugore);Drejtoria e Pergjithshme e Rrugeve; Contractor: FRAICOM SERVIZI SRL; value : 492 019 290;

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<sup>5</sup> The value of these public contracts is given in the Albanian currency (LEKE).

6. Loti II “Sherbim gatimi dhe shperndarje e ushqimit per Spitalin Ushtarak Qendror Universitar”; Ministria e Brendshme; Contractor: SORI-AL; value : 399 400 367;
7. Loti I Furnizim me benzine super pa plumb; Ministria e Brendshme; Contractor: SKENDERI G; value : 245 174 999;
8. Loti II “Sherbimi pastrimi i brendshem, i jashtem dhe sistemim gjelberim per Spitalin Ushtarak Qendror Universitar”; Ministria e Brendshme; Contractor: SORI-AL; value : 242 285 782;
9. Blerje pajisje mobilerie per arsimin baze, te mesem e profesional; Ministria e Arsimit dhe Shkences; Contractor: ERALD/K; value : 229 751 800;
10. Furnizim dhe vendosje me guardrail ne aksin Kalimash – Morine (perseritje 2); Drejtoria e Pergjithshme e Rrugeve; Contractor: ALBIT DIABRA; value: 229 500 227.

### ***Concessions contracts<sup>6</sup>***

1. Dhenie me koncesion e formes “BOT” e Hidrocentraleve ne perroin e Luses , rrethi Mat (HEC Kaskada e Luses); CA: METE; value: 4 781 675 816;
2. Dhenie me koncesion e forms “BOT” e objekteve “Miniera e kromit, Kalimash”, “Miniera e kromit, Vlahna”, “Fabrika e pasurimit te kromit, Kalimash”, dhe “Fabrika e pasurimit te bakrit, Golaj”; CA: METE; value: 2 499 100 000;
3. Dhenie me koncesion e forms “BOT” e Hidrocentraleve ne rrjedhen e lumit Strelce, rrethi Korce (HEC Lenie, Shales, Strelce); CA: METE; value: 354 282 240;
4. Dhenie me koncesion e forms “BOT” e Hidrocentraleve qe shfrytezojne rrjedhen e ujrave te kanalit vadites Naun Panxhi, hidrocentrali Topcias, rrethi Elbasan; CA: METE; value: 128 221 000;
5. Dhenie me koncesion e forms “BOT” e Hidrocentralit Menkulas, rrethi Devoll; CA: METE; value: 124 254 000;
6. Dhenie me koncesion e forms “BOT” e Hidrocentraleve “Per shfrytezimin hidroenergjitik te rrjedhes se perroit te Shutines” Rrethi Puke; CA: METE; value: 115 000 000;
7. Dhenie me koncesion e forms “BOT” e Hidrocentraleve ne burimet e Spathares, rrethi Librazhd; CA: METE; value: 80 070 750.

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<sup>6</sup> The value of these concessions contracts is given in the Albanian currency (LEKE).

## POLICY-MAKING AND CO-ORDINATION

The Integrated Planning System (IPS) and its associated timetable are progressively becoming routinised as part of the government's regular operations. An innovation in the past year is the introduction of a results-based IPS monitoring system, using high-level indicators, applied initially to 18 of the IPS strategies. This has been promulgated by an instruction from the Prime Minister that stipulates the roles of ministers and general secretaries in the monitoring process. The Department for Strategy and Donor Coordination (DSDC) is now working with the Ministry of Finance to have the objectives and indicators for these 18 strategies reflected in the Medium Term Expenditure Process.

At the time of the writing (April 2011), the DSDC was about to start a self-evaluation of the implementation of the National Strategy for Development and Integration (NSDI), which will lead in 2012 to the development of a new multi-year strategy.

The Council of Ministers meeting now uses an effective E-documents system which has the substantial incidental benefit of blocking the circulation of any material less than 48 hours before the meeting. The secretary general of the government is using this to prevent ministers from putting items forward at the last moment, which in turn allows his staff, limited but sufficient time, to check that legal and procedural requirements have been met. Increasingly, items that do not meet these requirements are being returned to ministries for further work on the authority of the Prime Minister or, increasingly, of the Secretary-General himself.

The government is in the process of adopting regulatory impact assessment and environmental impact assessment linked to the European Integration process. This is described as "impact assessment light". The Regulatory Reform Task Force, a ministerial body chaired by the Prime Minister, has approved the necessary methodologies and is beginning to screen all relevant legislation together with the impact assessments. It is too early to assess its effectiveness, as the system was only put into place in April 2011,

Some changes to the government rules of procedure have been made to:

1. Clarify and strengthen the requirements relating to the approximation of legislation to the *acquis*;
2. Strengthen the requirement for ministries to consult the public on draft legislation, and to report the outcome to the Council of Ministers;
3. Require that when a Minister submits proposals to the Council of Ministers, they include a deadline for reviewing their implementation.

On February 2011 the Government approved the Draft Law on Inspectorate and submitted it to parliament. The Law is part of the inspection reform, which is one of the components of the "Regulatory Reform" led by the Ministry of Economy Trade and Energy to improve the business environment by simplification of administrative processes. The Draft Law is also known as the Horizontal Inspection Law

and applicable, as a rule, to all inspections of business/economic activities. The necessary secondary legislation and planning of staff training is in preparation.

### **Main characteristics**

There is a framework for the operation of the Council of Ministers (CoM) with a process for inter-ministerial consultation on policy proposals, procedures for dispute resolution and for work planning. The dispute resolution mechanisms seem to work effectively, although they function on an *ad hoc* basis and are often rushed. The CoM is the decision-making body for the government. However the position of prime minister enjoys very strong authority and therefore can be considered the *de facto* authority for government policy. At a ministerial level the decision-making process is also highly centralised, with politicians deciding many issues without the benefit of administrative inputs. This reduces predictability of decisions and does not help foster trust in the administration.

The role set out in rules of procedure for the activities of the secretary-general of the government tends to be interpreted in a narrow and technical manner. Attention is given to formal issues rather than policy substance. For example, the power to review and return items to proposers is limited to technical grounds. On a positive note, the Secretary-General uses the mandate to return items that are not well prepared by ministries. The capacity at the centre of government to advise on policy issues is confined largely to the prime minister's political advisers; this may become a weakness in terms of institutional sustainability.

The Integrated Planning System gives the Albanian government system a strong element of strategic direction and the input planning side is well developed compared to the other countries in the region. The National Strategy for Development and Integration (NSDI) 2007-2013 provides the policy framework for the Medium Term Budget Programme. However the crucial link is between the sectoral strategies and the annual budget, and the Department for Strategy and Donor Coordination DSDC and the Ministry of Finance are working together to foster consistency between the two, although the degree of harmony varies from strategy to strategy and is particularly difficult to achieve in the case of crosscutting strategies where responsibility is spread across many institutions. The linkage between IPS and budgeting is operational, but the underlying information systems for formulation, execution and monitoring of both IPS and budgeting processes need to be improved.

The government's Analytical Legislative Programme is co-ordinated with the other strategic documents but the immediate agenda of the CoM is still set mainly by the flow of laws put forward by the ministries.

Although capacity to support the Council of Ministers and central decision-making remains limited and lacks analytical capacity, the process changes relating to legal approximation, public consultation, monitoring of decisions and the enforcement of deadlines before submitting items to the Secretary-General represent some progress.

One collateral benefit from these changes appears to be slightly better conformity with the requirements for inter-ministerial consultations on draft legislation. However, the quality of materials prepared by ministries, in terms of both analysis and legal drafting, remains generally poor. This remains the most significant weakness in the system.

There is a continuing weakness in the fiscal impact assessment process, which the Ministry of Finance attributes to inadequate work in ministries. However, there is no written guidance for ministries on how to prepare an estimate of costs. In effect, the Ministry of Finance often carries out a basic fiscal impact assessment itself. This is an indication that more development is needed for the system to become fully functional.

The framework for public consultation still remains weak and there is not enough operational guidance to the ministries. There is no separate policy to improve the quality of legislation and regulation such as better regulation policy adopted by a number of EU member states.

The requirements for each draft law to be accompanied by an assessment of the level of approximation and the table of compliance with the *acquis communautaire*, and to be reviewed and approved by the Ministry for European Integration, are complied with, although the expert capacity of the Ministry's departments to comment appears to be patchy .

Understaffing at the Centre of Government means there is little capacity to review proposals submitted to government or monitor the implementation of government decisions. Many of the officials engaged in policy-making are political appointments, and generally high staff turnover in recent years inhibits the capacity to learn from experience. Further cuts in budgets will also impact adversely on capacity building.

European Integration work is coordinated by the Ministry for European Integration in conjunction with the Ministry of Foreign Affairs. Collective political direction for the EI process is provided on strategic issues (including IPA matters) by the Strategic Planning Committee and on other EI issues including implementation of the Stabilisation and Association Agreement by the Ministerial Committee on EI. Both are chaired by the Prime Minister. The Minister of European Integration chairs an Inter-Institutional Coordinating Committee whose membership is at general secretary or director-general level, which meets monthly, and is the preparatory body for the ministerial committees. Below this, 35 expert working groups covering the chapters have been established, each chaired by the secretary-general of the lead ministry and supported by that ministry.

Turnover of the members of inter-institutional working groups remains high and the quality of European integration directorates in line ministries is variable.

### ***Reform capacity***

There is recognition that policy-making and law drafting in ministries remains weak and that the Centre of Government is not well staffed. The capacity to strengthen policy-making and law drafting is constrained by a number of factors, including the current political stalemate and limited capacities at the centre. The administration alone is not in a position to initiate considerable changes in the public administration, even if supported by donors. The recent initiative to prepare a new NSDI shows that the government intends to continue with the current strategic planning framework.

In the European integration sphere, the government has concentrated on consolidating the structure and on training participants. However, comparatively little attention is being paid to institution building and human capability development. The main capacity building development is turning the SAA action plan into a plan addressing all aspects of implementation of the *acquis*. The capacity of the

Ministry for European Integration to lead the EI process has been strengthened by greater stability of staffing.

The DSDC, although leanly staffed, remains an effective engine for developing the IPS process. The same is true of the Ministry of Economy in the field of regulatory reform. The Strategic Planning Committee and the Regulatory Reform Task Force, both of which meet monthly under the Prime Minister's chairmanship, are highly influential in coordinating and driving forward business in these two spheres. The Ministry of Economy is receiving support from the World Bank and the International Finance Corporation in support of regulatory impact assessment and AIDA.

A new IPA project in support of legal drafting finished its inception phase in January 2011 and has been asked to concentrate on the transfer of drafting skills to staff in the Ministry of Justice, with training for other ministries following in 2012. It seems doubtful that this will be sufficient to meet the very considerable need for improvement.

Recent reform of the rules of procedure demonstrates a willingness to carry forward modest reforms to the policy coordination system, but this is limited by capacity constraints and political considerations.

### ***Recommendations***

- The Government Analytical Legislative Programme should be better linked with the Government's main strategic objectives so as to ensure that the IPS and European integration strategic objectives are clearly reflected in the programme.
- The Ministry of Finance should take steps to strengthen fiscal impact assessment.
- There should be more emphasis in the European integration sphere on institution building and developing human capacities, drawing on assistance available from the IPA.
- Capacities in line ministries for policy analysis, development and coordination need further development. This should be done in parallel, and in linkage, with the development of the non-political apparatus supporting the Prime Minister and the Council of Ministers.