

## 3.2 Human resources management

### 3.2.1 Human Resources

The Constitution of October 1998 outlines, in Article 107, the main characteristics of the civil service by requiring that public employees apply the law and function in the service of the people. Employees in public administration are to be selected through examinations, and guarantees of tenure and legal treatment of public employees are to be provided by law. The Constitution also requires that the status of the civil service be regulated by an organic law (Article 81).

In 1996 a Law on Civil Service was passed by the Albanian Parliament. In fact the 1996 Law was never applied, due to its many shortcomings in building up a professional civil service ruled by law. Criticism of the law was commonplace in Albania and among international donors, and was made apparent at the various meetings held within the framework of SIPAR in 1997-98. For example, in the Donors Meeting of December 1998 the main concerns were the “need for greater stability, de-politicisation and professionalism of the civil service”, to “ensure respect for the rule of law within public administration”, and the need to “systematically ensure transparency and predictability in enforcing laws, regulations and administrative procedures”.

*DoPA is the central HRM Unit*

In March 1999 the Albanian Department of Public Administration (DoPA) prepared a draft law on the Civil Service to better align the legal framework with constitutional requirements and with widely recognised European international standards for the civil service. Eventually a new Law on Civil Service was adopted by the Albanian Parliament on the 11<sup>th</sup> of November 1999. The Law entered into force on the 15<sup>th</sup> of January 2000.

*The Civil Service Law of 1999 was seen as a positive step...*

A National Conference, with participation of the most relevant international donors, took place in Albania in January 2000, to present the new Law on civil service and the government's proposals for its implementation. The assessments of the Law made by the international community (EU/SIGMA, OSCE and WB) were positive, and the Law was deemed to represent good progress towards bringing the Albanian administration to mainstream European standards.

*... but still suffers shortcomings.*

The new Law defines the scope of the civil service as including “positions exercising public authority” or directly involved in policy-making at the central and local self-governments levels. The Law draws a clear line between political and professional civil service positions.

*Complementary legislation is required to make the civil Service Law work effectively.*

However, the new Law still displays some shortcomings. For example, the system of appeal against administrative decisions is unclear and very general in the law. This problem is solved in the law by reference to the Civil Procedures Code, which is insufficient for that purpose. Administrative processes before courts need specific regulations. Procedures for appeal should be regulated by other laws or rules, namely an Act on Administrative Procedures or an Act on the Administrative Process before courts. Therefore to properly implement the Civil Service Act, other administrative laws will be necessary in order to complete the legal administrative framework.

The Civil Service Law does not establish a system allowing for temporary recruitment of civil servants in order to fill in vacancies on an urgent basis. In such cases it would be necessary to use labour contracts, which could be deemed as contravening the law, which clearly defines what positions are civil service positions. A mechanism to solve this problem was provided for in the draft law, but the provision was not included in the Act passed by the Parliament.

The Civil Service Law does not define the competent authority to impose disciplinary sanctions on civil servants. On the face of it this can represent a problem, but it is solvable through a provision in secondary legislation dealing in general with procedures on administrative penalties.

It is necessary to strike a balance between administrative discretion of the hierarchy and the legal certainty necessary in administrative decision-making. The Civil Service Law is unclear in setting limits to discretionary decisions by the administrative hierarchy. This uncertainty can lead to actions taken in excess of power, and arbitrariness. This problem was addressed in the draft law, but the Act adopted by the Parliament opted otherwise.

*Weaknesses in the law could result in recruitment without competition.*

The remedies foreseen in the law for unlawful decisions concerning recruitment are ineffective. The only remedy for an aggrieved candidate for a civil service position is an uncertain right to obtain a vacant position when, and if, a vacancy appears in the future. In addition, this could lead to recruitment without competition if Article 13 of the law is literally interpreted, depending on the moment within the recruitment procedure when an unlawful decision was made. This situation represents a deviation from the draft law, and could be considered as contravening the constitutional requirement of “effective justice” implicit in article 44 of the Constitution. In

addition, the remedy provided opens a way to circumvent decisions of the Civil Service Commission issued to redress grievances concerning recruitment, by making its recruitment decisions ineffective. This drawback is difficult to overcome unless the law is amended or the Constitutional Court would rule the unconstitutionality of the penultimate paragraph of Article 13.

The transitional arrangements foreseen in the law raise some concerns. Article 27 is weak and insufficient to guarantee that the objectives of the law will be attained. Mistakes made in the past could easily be repeated. The transitional system proposed in the draft law on civil service was based on a stiffer screening of the suitability of existing civil servants measured against the professional requirements set out by the new law. Unfortunately, the Act finally passed by the Parliament has eased such a screening.

*Amendments to the law are envisaged*

The law is basically in line with EU MS standards; but has some shortcomings and possible contradictions. Some secondary legislation is still missing. In the course of its implementation, some problems have become obvious. A thorough review of the law is underway, and amendments are contemplated.

Some progress has been made in the implementation of the Law on Civil Service, although to date relatively few staff exercising public authority have acquired civil servant status. Public service in Albania accounts for about 110,000 staff, of which only about 1,500 have so far been awarded civil servant status.

The Albanian organisational structures in public administration are characterised by considerable informality where relationships are established more through direct personal contacts than through structured mechanisms. Most ministries lack basic concepts of work organisation and management controls and show flat organisational structures, with the result being that ministers are engaged mostly in routine administration. Fragmentation of managerial responsibilities has been used as a response to low pay levels as it represents a way to increase salaries by promoting more people to mushrooming fictional “managerial” posts.

*Management skills of senior officials are generally insufficient*

In general, management skills and human resources management abilities of senior officials are insufficient and vary widely from one ministry to another, which makes the task of the Department of Public Administration (DoPA) and the Civil Service Commission (CSC) difficult. In theory, there is one human resources department in each line ministry, but in practice they care only that civil servants receive their salaries. The role and functions of senior managers, including HR managers, are insufficiently defined. This, coupled with the weak HR management culture that exists, makes the development and implementation of HRM instruments problematic.

*A Civil Service Commission was established at the insistence of donors.*

The Civil Service Commission (CSC) was established by the Civil Service Law under pressure from international donors (basically from the World Bank) and was slow to start working due to political bickering regarding the staffing of top management positions in the CSC. The CSC's role and its interpretation of the legislation also make the management of the civil service difficult: the CSC was attributed a quasi-judicial role in controlling the DoPA's management of the civil service, and is now able to block management (see below). Voices exist that propose the modification of the legal competencies of the CSC.

The CSC also deals with civil servants' complaints. In 2002, a total of 201 complaints by civil servants in central and local administration were submitted to the CSC, of which 37.2% were resolved in favour of the civil servants, and 28.9% were rejected. The CSC declared itself incompetent to deal with 24.8% of the cases<sup>1</sup>.

In general, collaboration and mutual assistance between the DoPA and the CSC has been problematic. According to the DoPA, overlaps between the DoPA and CSC lead to conflict as far as the supervision of HRM is concerned. For instance, repeated checks in ministries may be conducted by DoPA and by the CSC, and different or contradictory interpretations of the law create confusion in law implementation<sup>2</sup>. In addition, the DoPA has insufficient staff to ensure appropriate implementation at all levels of government.

### **3.2.2. Budgeting control of staff numbers, remuneration content, pay determination system**

*The Prime Minister's Office is responsible for determining civil service pay rates.*

According to the Civil Service Law, the competence for deciding the salary scheme for civil servants lies in the Council of Ministers. However, Law No. 8487 of 13 May 1999 "on the competencies for defining the work salaries", which predated the Civil Service Law, had awarded such competence to the Ministry of Labour. The conflict between these two pieces of legislation was initially solved by transferring the competence to the Ministry of Labour (Law no. 8935 of 12 September 2002). Finally this provision was again amended in 2003, following pressure from international donors. This latest amendment rightly shifted the competence for defining civil servant salaries back to the Prime Minister's Office.

Provisions on salary restructuring are formulated within the Medium-Term Economic Framework (MTEF), drafted by the Ministry of Finance and approved by the government. As a result of the implementation of these provisions, employment in the civil service apparently became more attractive, as illustrated by the increasing number of applications, (1340 in 2002 against 825 in

<sup>1</sup> Annual Report of the Civil Service Commission

<sup>2</sup> DoPA, pp. 18-19

2001). The trend may also have been favoured by the 2001 salary rise in the civil service, whereby salary levels in the private and public sectors are now comparable. A further revision of the salary system is envisaged during 2004. However, the politicisation and high turnover within the civil service may diminish the attractiveness of the public sector.

### 3.2.3 Different status/missions, working conditions

*Salaries vary from ministry to ministry.*

According to the Civil Service Law, civil servants are divided into four categories, from the civil servants at top management level to the civil servants at implementation level<sup>3</sup>. Civil Servants are paid differently depending on the ministry they work for. Until now there have been a lot of ad hoc changes, because of needs and claims from specific ministries and institutions. In addition, public employees under labour contract arrangements have different rights and obligations, including salary treatment.

*There is disagreement concerning the pay for local and regional government employees.*

A unified salary scheme for the whole public sector is under consideration. However, difficulties abound. For example, Regional Authorities consider that the present salary system applied to the Regional Civil Services and Public Employees is unfair because of the existing differences in relation with the Municipality of Tirana. They express their point of view in terms of hierarchy: as they consider the Regional Government superior in rank, they consider having the right to be paid more. The Parliament has the right to set the salaries of its workers. For its Civil Servants the Parliament sets the salaries according to the categories defined for the civil servants working at the Central State Administration. Parliament has higher salaries compared with positions in the State Civil Service, as it is argued that a civil servant working in the Parliament should be better paid according to the superior status of the Parliament. Secondly some Albanian experts think that there are some positions in the administration of Parliament that have more responsibility than the same position in the State central administration (e.g. relations with the press).

There are also additional problems concerning information about public employment. A computerised database has been in the course of preparation for some years now; although the software has been completed, there has been little progress with entering the data. The aim of that database would be to gather real information on the positions and on the salaries paid to Albanian public employees (about 110.000 people distributed in 44 institutions). To have reliable information a deep analysis of the present situation of each Albanian public institution will be necessary.

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<sup>3</sup> Law No. 8549 on the Status of the civil servant, article 11

**3.2.4 Social rights and fundamental freedoms**

Civil servants have the right to form and be members of trade unions and professional organisations. They have the right to take part, through trade unions or representatives, in decision-making processes related to working conditions, and to be members of political parties, but not of central steering committees. They may take annual paid leave and enjoy health benefits for themselves and for dependent members of their families<sup>4</sup>.

**3.2.5 Education and vocational training policy**

The DoPA organised in 2002 some training with specific targets, such as training in human resources management and training of trainers in European integration issues. The creation of the Training Institute for Public Administration (TIPA) was financed by the EU and UNDP. The TIPA is under the supervision of the DoPA. However, it appears that the DoPA has assumed too wide an interpretation of its supervisory role, as it intervenes even in the elaboration of the Institute's curriculum. In addition, TIPA seems to be rather understaffed.

*Creation of a Training Institute for Public Administration has not yet had an impact*

As a result, Albania does not yet have the critical mass of trained, skilled civil servants needed to impact positively on the functioning of the state administration. Whereas it would be necessary to train 15 to 20 % of all civil servants on an annual basis, fewer than 1,000 persons, out of 110,000 public employees (i.e. less than 1 per cent), were trained in 2003.

**3.2.6 Recruitment policy and career development**

One of the main activities of the DoPA since 2000 has been the organisation of testing procedures for recruiting civil servants to vacant positions announced by institutions of the central administration. The DoPA has published all announcements of vacant positions on its Internet web site, which constitutes a step towards increased transparency of recruitment procedures. Employment by contract has decreased in comparison to 2002<sup>5</sup>.

*The recruitment process is cumbersome and slow.*

One of the main problems hampering the stability of the civil service and the efforts to professionalise it is the high turnover rate. However, the recruitment process is cumbersome and problematic, as recruitment has to be done on a position-by-position basis, according to the prevailing interpretation of the current Civil Service Law, an interpretation that is perhaps too literal. DoPA acknowledged that it had to postpone several recruitment competitions due to insufficient numbers of candidates.

<sup>4</sup> Law No. 8549 on the Status of the civil servant, article 20

<sup>5</sup> DoPA, p. 3

**3.2.7 Ethnicity and gender aspects**

There are no specific provisions on ethnicity or gender in the 1999 Civil Service Law. This gap may reflect the non-existence of ethnic or gender discrimination.

**3.2.8 Ethics and anti-corruption policy in the public service**

Since 1998, the Albanian government has approved various anti-corruption and pro-integrity strategies, including a comprehensive anti-corruption plan, with the support of international donors. Specific laws prohibit various forms of corruption, such as bribery, abuse of public office, and money-laundering, and require the mandatory denunciation of corrupt conduct. In general these laws are regarded as weak.

*There are numerous laws and programmes combating corruption.*

Albania participates in selected international anticorruption initiatives such as the Stability Pact Anticorruption Initiative. The last three Cabinets had a dedicated Minister (or Minister of State) responsible for the fight against corruption (respectively Ministers Legisi, Klosi and Bello), and a national anti-corruption plan of action. A specialised Anticorruption Monitoring Unit has also been created under the Minister of State for Co-ordination, with responsibility for monitoring the Anti-Corruption Plan and reviewing the overall legal framework relating to Conflict of Interest and corruption.

In April 2003 the government introduced a draft law on Rules of Ethics in the Public Administration, concentrating on selected aspects of Conflict of Interests. Specific administrative processes are featured, rather than general ethical principles, for example in relation to gifts, attempted bribery, and ancillary employment. As a result, the proposed law reflects the civil service employment law and the anti-corruption law, and contributes little to a broader understanding of ethical standard-setting in the public service. Specific occupational Codes of Ethics have been developed for various categories of public official, such as police, judges, and medical personnel. Ethics promotion in the civil service appears to be a priority issue for the DoPA. A seminar on ethics and anti-corruption issues is scheduled to be organised in early 2004.

*A law on Ethics in the Public Administration has been passed in 2003*

Anti-corruption efforts have reportedly been frequently politicised in recent years. In 2003 there was a new focus on the adoption of a revised law requiring declaration of personal assets, financial obligations and conflicts of interests by some 5,000 specified senior public officials and elected officials. The law was prepared with significant civil society consultation and expert collaboration, to remedy a number of faults in earlier law, especially in relation to effective audit of asset declarations. Under the law, declarations will be required from all Ministers, and key officials such as high level Customs officers, tax officers, police, officials from Local Government, and others selected because of their exposure to

*Anti-corruption efforts have reportedly been frequently*

*politicised.*

corruption activity. These officials must provide a declaration of assets at least every two years, and every year in the case of the President and the Ministers. In certain cases declarations of assets can also be required from private citizens who have links with officials who are required to make a declaration.

The law provides for an independent Inspectorate to receive and assess declarations, which is to be operational by early 2004. The Inspector-General will have powers to make searches and investigations and the public and private entities interrogated (e.g. banks) have a duty under the law to respond with accurate information.

*Albania ranks 92 on the TI Corruption Index.*

In the 2003 Transparency International Corruption Perception Index, Albania ranks 92, on a par with Argentina, Ethiopia, Gambia, Pakistan, Philippines, Tanzania and Zambia. There is no Albanian TI Chapter.

### **3.2.9 Role model of top management**

As human resources management of the civil service does not seem to be efficiently centralised and organised, and as politicisation is high, the role model of top management, if it exists, is weak.

### **3.2.10 Accountability, assessment of personnel**

The lack of an adequate legal administrative framework, except for the constitutional provisions and the Law on Administrative Procedures of 2000, which is unevenly applied, makes it difficult to ensure that public officials' actions and decisions respect the principle of legality. Laws and regulations are minimally enforceable due to feeble institutional settings.

*Accountability mechanisms are weak.*

Mechanisms for accountability are extremely weak. Judicial review of administrative decisions is not developed although the Constitution contains provisions for an independent judiciary (Article 145). The Ombudsman (People's Advocate) is a constitutional institution (Articles 60 ff. of the Constitution) and has been operational since the first Ombudsman was appointed on 17 February 2000 (see above).

The main mechanism for accountability within the administration is hierarchical subordination. At this level accountability is a matter of subjective appreciation by superiors of individuals' performance. At the organisational level, agreements between administrative units and government authorities (for example, on objectives and time-delimited performance targets for the provision of public services), are unskillfully used. No systematic monitoring on the performance of administrative units is carried out, even if according to the Civil Service Law the job performance of individual civil servants should be evaluated. DoPA has noticed, from the evaluation forms provided by institutions and line ministries, that the performance evaluation process is not fully understood by direct superiors. As a

result, only about 50 % of civil servants were evaluated in 2002. However, the fact that in 2002 almost all line ministries have started to carry out performance appraisal exercises of their staff reflects an increased awareness of the importance of performance evaluation within the public administration.

An Instruction on the categorisation of specialist working positions within ministries was prepared in January 2002. However, its implementation was postponed. As a result, a second Instruction was prepared by DoPA in August 2002, which set forth the main criteria for the categorisation of working positions<sup>6</sup>.

*Disciplinary provisions of the Civil Service Law are not respected.*

The disciplinary provisions of the Civil Service law are unevenly applied. A total of 33 disciplinary measures proposed and accepted by the ministries were examined and carried out in 2002. 13 removals from the civil service were proposed. However, it should be noted that the procedures established by the Civil Service Law were not fully respected. For instance, disciplinary proceedings were not started by the direct superior, as defined in the Decision of the Council of Ministers no. 306, dated 13 June 2000 ("On the Discipline in the Civil Service"). In general, ministries have not respected their legal obligation to inform DoPA<sup>7</sup>.

#### **3.2.11 Assessment**

The Civil Service Law of 1999 has played a very positive role in improving not only the previous legislation of 1996, but also the Albanian civil service management practices and control. However, the legal framework needs a revision and adaptation in order to overcome dysfunctions observed during its four years of existence. At the same time, there are parts of the legislation that have not been implemented, such as the unified salary scheme for public employees and civil servants.

Certain human resource management instruments still need developing and applied in practice in order to rationalise and homogenise the management. In particular the training of civil servants and public managers needs more effort and resources if European principles are to permeate the Albanian legal culture and mentality.

Corruption remains a problem, though government efforts to reduce it need to be acknowledged and encouraged.

#### **3.2.12 Recommendations**

1. Review the current Law on Civil Service. After its 4<sup>th</sup> year of existence certain amendments are necessary

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<sup>6</sup> Main criteria set forth: job description, importance of each position in proportion to the mission of the ministry, and the importance of each position within the internal structures of the respective ministry

<sup>7</sup> Ibid., pp. 9-10

concerning those aspects that are not working well and that have been highlighted in this assessment. In particular, amendments are necessary on:

- Management system of the civil service and its control, with more clearly legally assigned responsibilities to every institution involved. Legislation should also provide incentives for inter-ministerial and inter-administrative co-operation in the field of civil service management to better ensure that standards are applied homogeneously across all public administration settings.
  - Recruitment and promotion, in order to make the selection procedures nimbler and less cumbersome. The efforts up to now made to promote a merit-based selection for the civil service should be sustained and enlarged to the whole public employment.
  - The revision of the classification of the civil service may be convenient in order to establish a clearer distribution of management responsibilities and different selection modalities according to a new classification of positions.
  - The disciplinary arrangements need to be regulated in a more adequate way in order to introduce more legal certainty in this delicate matter and reduce arbitrary decisions.
2. The salary system needs to be revised and made more transparent and motivating. A unified salary scheme for the whole state administration should be prepared and implemented.
  3. The development of adequate human resource management tools is a necessity, in particular job descriptions, job evaluations and an adequate scheme for managing vacant posts, which would include improved human resource planning.
  4. Training is necessary across the board to instil new thinking in the field of human resource management in public administration as well as to make human resource management techniques available. Existing training structures need to be strengthened.
  5. Anticorruption efforts need to be sustained and systematically implemented. Continuous assessment of

existing anticorruption mechanisms should be a goal to permanently improve their effectiveness.

### 3.2.13 External Assistance

A considerable number of multilateral projects exist, most of which concentrate on training. Among others, there is a large World Bank loan, which includes about US\$8.5M for PAR. In line with the loan's conditionalities and IMF demands, the number of staff has been reduced. DfID is working mainly in the finance area; it worked with the CSC two years ago, but discontinued its involvement as the Albanian authorities could not agree on the Chairperson of the CSC.

The EU has funded a PAR project over the past two years, finishing at the end of 2003, which has included interministry relations, communications and change management, reviewing the legal framework, and improving monitoring and evaluating capacities. The project supported the development of the CSC and the DoPA.

## 3.3 State of play in key sectors of the State's functions

### 3.3.1. Public expenditure management

#### 3.3.1.1 Legal framework

*The MoF is considering replacing the Organic Budget Law.*

The Organic Budget Law, which was drafted with assistance from Sigma in 1995-96, has been fully implemented since 2000. This law governs both budget preparation and budget execution; however, recent changes, such as the introduction of a Medium-Term Economic Framework (MTEF) and the establishment of an internal audit function, have necessitated amendments to the law. A replacement law was drafted in 2002-03 with assistance from DfID, but this has not been well received by other donors, and the ministry is now reconsidering whether an amendment of the existing law would be preferable to its replacement. The Ministry of Finance will require technical assistance with this task, whatever the outcome of these deliberations. The intention is that the new law should strengthen the areas of accountability, public internal financial control, and financial reporting.

#### 3.3.1.2 Institutional framework

The Ministry of Finance (MoF) comprises 12 departments; the Tax Department and the Customs Department answer directly to the minister. The core departments of the MoF are generally understaffed, although the staff itself is of high calibre.

*The MoF has successfully implemented a number of important budget reforms.*

Consequently, the MoF has been able to successfully introduce a number of reforms – for example, the MTEF for 2004-2006 is the fourth successive iteration and represents further enhancement of the process. The annual budget is closely linked in to the MTEF, which in turn is linked to the National Strategy for Socio-Economic Development. The budgetary processes are transparent and operate well at the technical level: the MoF is now assuming the role of “naysayer”, at least in its own eyes. All of the major documents involved in the budget are made available publicly, with many of them published on the Internet.

The budget is unified, covering the transactions of the Treasury Single Account as well as those of the Social Security and Health Funds. However, the budget has tended not to be used as a vehicle to move forward important structural reforms, mainly because of a lack of political vision. There is significant budgetary leakage as a result of poor controls and targeting in the health, education and social security areas. Much of this problem could most likely be eliminated through the introduction of activity-based budgeting, giving a more output-oriented focus.

*Modernisation of the Treasury system has been delayed.*

Despite the start in April 2002 of a World Bank project to provide a modern technical infrastructure and software to the Treasury network, there has been little visible progress, as delays in WB procurement procedures have so far prevented installation of the necessary hardware. Budget execution therefore continues to be handled manually through a network of 39 Regional Treasury Offices. It is anticipated that an interim treasury solution will be installed early in 2004 and that the full solution, based on a commercial off-the-shelf accounting package, will be operational by mid-2006.

*Revenue collection is below the regional average.*

The introduction of the treasury system should permit more accurate cash management by the Treasury, which has been a problem area in recent years. This is partly attributable to poor revenue collections which, at only 19 per cent of GDP, are substantially below the regional average of 28-30 per cent, but is also because revenue projections are overly optimistic and expenditure forecasts are not as accurate as they should be. While in the longer term this will be alleviated by reform of the Tax and Customs Departments, short-term assistance to the Treasury will be required. Another significant factor is that the Albanian economy is still largely cash-based. All public employees, from the Prime Minister down, are paid in cash once per fortnight. There is very little reliance on the multiplicity of private banks<sup>8</sup>, which in turn makes it more difficult for the Treasury to finance cash shortfalls

<sup>8</sup> This is largely attributable to the pyramid banking scandal of 1997, when a large proportion of the Albanian population lost their savings. The majority of private banks are very small, with only a few branches and small in assets. It should be noted, however, that the banking sector responded well to a minor run on the banks in the first half of 2002, and that this response was able to stem the flow of funds from the banking sector.

through sales of Treasury Bills. The US Treasury Department will be providing a long-term Debt Advisor starting in 2004; the position of Director of the Treasury and Debt Department has been vacant since late 2002, when the former Director left to join the private sector.

In recent years, the gap between budgeted expenditures and executed expenditures has narrowed significantly. This trend should continue, as revenue collections improve and the ability of the Treasury Department to provide accurate forecasts of cash requirements increases.

The Accounting Department consists of seven staff and is responsible for the development of private and public sector accounting standards, as well as for processing accounting information and producing accounting reports. Unlike the reports produced by the Treasury Department, which are prepared on a cash basis, those of the Accounting Department are not audited because, at this stage, consolidation of accrual information on a whole-of-government basis is still not sufficiently reliable.

#### *3.3.1.3 Reform Agenda and capacities*

*The MoF has a clear reform agenda.*

The MoF has a clear perspective of where it is in need of reform, and is endeavouring to modernise and improve its systems and processes in a coherent fashion. The IT infrastructure of the ministry, which is necessary to support many of the reforms envisaged, is being upgraded. Much of the legal framework is to be updated; additional technical assistance will support the Treasury Department and the newly-established Combating Money Laundering Department. In addition, the MoF is keen to ensure that reforms are consistent with European good practice. Nevertheless, the ministry has expressed some concern in relation to donor co-ordination.

#### *3.3.1.4 Assessment*

**Strengths** The Ministry of Finance has successfully implemented several key reforms in the area of budget preparation, and is poised to introduce improved processes in relation to budget execution. While the majority of departments within the ministry are understaffed, the staff is very competent and dedicated. This has been a major factor in the progress with technical reforms within the ministry.

*Understaffing in key areas means sustainability could be problematic.*

**Weaknesses** The understaffing mentioned above means that the ministry lacks the depth necessary to ensure sustainability in many areas: the departure of a few key staff could pose significant problems. Key positions are also left unfilled, which undermines the accountability structure within the ministry. A systemic problem

within Albania is the cash nature of most transactions, which leaves the payments system vulnerable to fraud.

#### *3.3.1.5 Recommendations*

Revision of the Organic Budget Law should be completed, encompassing all necessary amendments in relation to budget, treasury, accountability, control and financial management issues, and accounting issues.

A unit to handle donor co-ordination should be established, with linkages to each ministry.

The MoF should be strengthened in its key areas of budget preparation, treasury, and accounting, so that it can provide adequate policy analysis and advice to the government, and to ensure that its functions continue to be performed effectively despite staff turnover.

A comprehensive training programme for ministry staff, covering the analysis of budgetary proposals, and revenue and expenditure forecasting, should be put in place. This training could later be extended to include staff from line ministries, who should receive training in budgetary processes and in forecasting revenues and expenditures.

#### *3.3.1.6 External assistance*

The World Bank has in place a significant project to strengthen the Treasury, which is expected to continue until mid-2006. This project includes supply of hardware, implementation of an interim treasury software solution, and supply and configuration of a long-term solution. The US Treasury Department will provide long-term advisors to assist the Combating Money Laundering Department and the Treasury and Debt Department. DfID has provided assistance in drafting a new Organic Budget Law. There is also a CARDS project to assist the Tax Department.

#### *Possible areas for further sectoral assistance:*

Advice and assistance to the Ministry of Finance in relation to the alignment of the new Organic Budget Law with good European practice

The Accounting Department requires assistance with the translation of international accounting and control standards, the development of national accounting standards for the public sector, and also on procedures for the consolidation of accounts.

Training in the evaluation of policy proposals from line ministries

Provision of an IT backbone for government financial information: Currently, the MoF, the Tax Department and the Customs Department each propose to establish separate IT networks to link regional offices across the country. Considerable savings could be realised if a single backbone were to be utilised by all three organisations.

### 3.3.2 Public procurement

#### 3.3.2.1 Legal framework

*The Procurement Law is based on the UNCITRAL model.*

On 26 July 1995 Parliament adopted the Public Procurement Law (PPL) no. 7971, which became effective on 1 November 1995. The PPL is based on the UNCITRAL Model Law but also reflects influences from other sources, such as the World Bank, the WTO Government Procurement Agreement (GPA), and the European Directives on public procurement. Between 1995 and June 2003, Parliament amended the PPL five times: no. 8039 dated 23 January 1995; no. 8074 dated 22 February 1996; no. 8112 dated 28 March 1996; no. 8767 dated 5 April 2001; and no. 9064 dated 8 May 2003.

Since 1995, the Council of Ministers has adopted various implementing regulations in the form of decisions and instructions. The implementing regulations in effect as of June 2003 are: (1) Decision no. 335 dated 23 June 2000 as updated by Decision no. 228 dated 24 May 2002; (2) Decision no. 675 dated 20 December 2002; (3) Instruction no. 1 dated 1 January 1996 as updated by an Instruction issued in the *Fletorja Zyrtare*, June 2002; and (4) Decision no. 45 dated 11 March 2003. Each of these regulations elaborates the legal framework set out in the law. Decision no. 335, as amended, sets thresholds and deadlines as required in the PPL. Decision no. 45 describes the staffing and organisational plan for the Public Procurement Agency. The Instructions set out very specific rules and procedures for planning and conducting the procurement process.

*Procurement has now been centralised and standard documents prepared.*

However, Decision no. 675, issued in December 2002, drastically changed the operations of the public procurement system by centralising most procurement proceedings. Designated ministries are given exclusive responsibility to conduct all procurement in assigned categories. For example, the Ministry of Economy is now charged with conducting all procurement for computers and other IT equipment.

Further, the World Bank has twice provided assistance to develop standard tender documents and operational guidance. A complete set of Standard Tender Documents was developed in 1997 along

with a handbook of general operational guidance. In 2003 a second complete set of Standard Tender Documents was developed with a User's Guide providing instructions for using the Standard Tender Documents. This guide also includes standard forms for maintaining procurement records. If the Council of Ministers mandates use of the new Standard Tender Documents, the rules, procedures and conditions set out in these documents will further expand the legal framework regulating public procurement.

*Further work is required to align the Law with EU Directives.*

Therefore, as a general framework, the PPL and its implementing regulations and documents establish the basic principles for procurement reform. However, they are not fully in compliance with the European Directives or with the GPA.

A number of areas, including the following, need improvement:

- The secondary legislation needs to be more transparent. The decisions and instructions implementing the law are set out in numerous documents, and each is subject to frequent amendments. This makes it difficult to establish with certainty the current state of the law. There needs to be a single point of access where all updated and current procurement laws and regulations are readily available.
- The secondary legislation needs to be drafted with greater clarity. Many provisions are vague or ambiguous. This has created confusion and leads to conflicting interpretations of the law.
- Standard Tender Documents (STDs) need to be adopted and made mandatory. Equally important, a process needs to be in place to ensure that the documents are kept current as the law is amended. The STDs developed in 1997 were never used because they were never properly implemented or updated.
- The newly established system of centralised procurement should be monitored closely. This structure may adversely impact on small businesses and also significantly increase the potential to create monopoly power, rendering the system more vulnerable to corruption.

*Other issues* The budgeting process and rules for announcing the budget limit distort the procurement process. The Instructions require that the procuring entity must establish and publish the budget limit for the procurement in its advertisement. In practice, the "funding limit" significantly impacts on the entire procurement process. This limit operates as the ceiling price as well as the desired minimum contract value, even though the Instructions

*The procedures*

*mean that bidders are not competing on price.*

specifically state that no ceiling or minimum prices are allowed. Consequently, during a procurement process, procuring entities usually seek to acquire the most – in quantity, quality or both – they can get with the funds allocated for the procurement rather than to get the lowest price for a definite, specific object of the procurement. In effect, this means that bidders are not actually competing on price despite the rhetoric and regulation that price must be the major evaluation criterion, weighted at no less than 80% for goods and 70% for works.

The process for preparing the specifications of the procurement needs improvement. Users should be more involved in identifying the needs and requirements of the procurement. Considerably more guidance is needed in developing technical specifications.

The rules and procedures for announcing procurement proceedings need to be more efficient. The PPL requires that procurement opportunities be announced in the Public Procurement Bulletin and in two national publications. In Open International Tendering, the advertisement must also be published in an international publication. The Bulletin prepared by the Public Procurement Agency (PPA) is published only three times per month, which is too infrequent to be efficient. Further, all three publications (all four in International Tendering) are considered “official publications”, so the time limit is considered to run as from the date of the last publication. The result is a chaotic notice procedure that can unreasonably delay the procurement process and can be manipulated to give advance notice to favoured bidders.

*Procedures are very restrictive*

Bid submission procedures are very restrictive. In Open Tendering, the bids must be submitted at the place, time and date specified in the Invitation to Bid. This is interpreted and applied literally. The bid must be hand-delivered personally by the supplier or its authorised representative at the bid opening. No early delivery is accepted. Further, the supplier or its authorised representative must have attended the bid opening. An exception is made in Open International Tendering for accepting bids before the designated opening.

The process for qualifying bidders needs to be improved. Presently, the bidder qualification process focuses almost solely on formalities and documents. Except for procurement of works and design, there is little or no assessment of the actual capability of the suppliers or contractors to perform the procurement contract.

Procedures need to be in place to provide fair notice and due process rights for rejection of bids for illegal activity. The PPL adopts the UNCITRAL Model Law provisions that require bids to be rejected if the bidder engages in illegal activity. However, the Model Law lacks procedures to implement this requirement fairly, and the rule is therefore very vulnerable to abuse and corruption. The same

gap is found in the PPL.

The mandatory use of Tender Evaluation Commissions is in line with practice in most central and eastern European (CEE) countries. Tender Commissions have a tendency to dilute the focal point of responsibility and make it more difficult to draw clear lines of accountability.

The 2003 amendments introduced a unique rule that needs to be clarified. In the situation where the first selected bidder fails to sign the contract, the new rule makes it possible to award the second bidder, but only if the difference between the first and second bids is greater than the amount of bid security collected from the first bidder. The purpose of this limitation is not clear.

*The Law does not cover contract administration.*

Too little attention has been given to key issues of contract administration. The PPL and implementing regulations are silent about contract conditions and administration, except that the PPL states that the Civil Code applies to procurement contracts. However, the Standard Tender Documents, if approved, will advance significantly the regulation and administration of procurement contracts. These documents include general and special conditions of contract for each category of procurement (goods, works and services).

#### *3.3.2.2 Institutional framework*

*The Public Procurement Agency is not a central purchasing authority.*

The Public Procurement Law (PPL) establishes the Public Procurement Agency (PPA) and defines its role and functions in article 8. The PPA is not a central procuring entity. Rather, its main responsibilities are to draft legislation and regulations, monitor procurement activities, produce the Procurement Bulletin, perform administrative review of complaints, and assist procuring entities with advice and other support to ensure proper and uniform application of the PPL. In addition, the 2003 amendments expand the statistical functions of the PPA. The Director of the PPA is appointed by the Prime Minister, but prior to the 2003 amendments, the PPA reported directly to the Council of Ministers. With the 2003 amendments, all authority and responsibility previously held by the Council of Ministers is transferred to the Prime Minister. Further, the Prime Minister has appointed an inter-disciplinary Consultative Board, composed of representatives from major procuring entities at central and local government levels. The role of the Board is to provide advice on the overall functioning of the procurement system and on proposals prepared by the PPA for consideration by the Prime Minister.

On 11 March 2003 the Prime Minister issued Decision no. 45, setting out the organisational structure of the PPA. The Decision authorises a staff of 25, including the director and his/her assistant,

and organises the PPA into four functional departments: Procurement and Law (with a section chief and six specialists), Control (with a section chief and four specialists), Statistics and Finance (with a section chief, four specialists and one operator) and Administration (with a staff of five). Given the broad duties and responsibilities of the PPA, these staffing levels are low, especially in the Department of Procurement and Law.

*The PPA is poorly equipped and its staff lack training*

Since its establishment in 1995, the PPA has had numerous directors. The staff have also suffered from frequent turnover, although most of the present staff have now served one year or more. Historically, members of the PPA have not been under the Civil Service Code, but with the 2003 amendments to the PPL, section chiefs and specialists now have civil service status, and other staff members are under the Labour Code. Still, the pay for PPA staff is low and the working conditions are difficult, as office space, technical equipment (computers, photocopiers, etc.) and other resources and supplies are inadequate. The fact that the PPA still lacks its own reliable e-mail service is indicative of the present circumstances.

The lack of training and procurement expertise seriously hampers the functioning of the PPA. Although some donors have supported various training opportunities for PPA staff over the past eight years, due to the high turnover very few of the current staff have received training or benefited from professional development opportunities.

The PPL designates the PPA as responsible for the handling of administrative complaints concerning public procurement proceedings. The PPA is responsible for issuing corrective measures with respect to complaints from dissatisfied suppliers and for imposing fines on the responsible persons in the procuring entities concerned.

*The PPA acts as an appeal tribunal in the complaints procedure.*

The complaint procedure is a two-stage process. The complainant first lodges a complaint with the procuring entity and thereafter, if the complainant is not satisfied with the decision, the complainant can appeal to the PPA. The time limit for suspension of the procurement proceedings is 15 days in the first instance. In cases where the PPA is involved in the review, the suspension period may be extended to a maximum of 30 days. The decision of the PPA is final. A complainant is not entitled to request damages through the courts.

While the structure of this review process raises several issues, it absolutely fails to provide adequate due process. It lacks independent, objective review, which is fundamental to ensure due process. Decisions are made and issued by the same unit within the PPA that provides advice on conducting the procurement. Basically, the staff are the judges at their own trial. This is a

fundamental flaw that must be remedied. At a minimum, a separate office of complaints should be established within the PPA, and decisions of the PPA should not be issued by the same officer (or director) who had previously provided formal or informal advice to the procuring entity during the procurement proceedings.

Current procedures for handling complaints do not meet recognised international standards. A new complaints review mechanism in line with EC Directives and the GPA needs to be elaborated and implemented.

Raising the professionalism of the procurement function in the procuring entities has been an uneven process marked by only a few significant milestones. Instruction 1, as updated in 2002, requires procuring entities to establish procurement units staffed with one or more procurement specialists. However, the government has not yet established a certification system for procurement professionals, and there is no formal post description or classification for a procurement specialist in the government. Informally, however, procuring entities attempt to staff these positions with persons who are familiar with the PPL and who have some level of experience in procurement. Given this lack of professional standards, formal post descriptions and recruitment experience, the level of professional competence and procurement expertise varies greatly among procuring entities. This problem is compounded by the lack of any formal system for delivery of procurement training.

*There is no provision for procurement training.*

Although the PPL has been in effect since 1995, Albania still lacks a strategy and the resources to deliver procurement training. The PPL does not charge the PPA with responsibility for procurement training, and this is reflected in the organisation of the PPA, where there is no department or person responsible for training-related activities. Given this framework, procurement training over the past eight years has been a haphazard and ad hoc process. It appears that the most significant training has been carried out through donor programmes aimed at building capacity in a particular ministry, which has also included procurement training for the ministry staff. For example, the procurement staff of the Department of Defence have benefited from various procurement training opportunities as part of NATO programmes.

The lack of training and professional development is also slowing down the development of the procurement system itself. Basically, the law, procedures, process and contract forms are still at the first level of sophistication. More complex procurement techniques have not been introduced. Even the framework contracting mechanism is not yet understood or in use.

Training opportunities in the private sector are even fewer than those available in the public sector. The PPA has not developed an

information outreach programme, and no formal training has been conducted. Nevertheless, the attractiveness of the public procurement market for private sector companies is obvious. There are many participants in the public procurement process, and the response to invitations to bid is generally satisfactory in all categories of procurement.

#### *3.3.2.3 Reform agenda and capacities*

*A national strategy for reforming the public procurement system is required.*

No coherent and systematic approach has yet been taken to the process of reforming the public procurement system, other than the steps described above. A desirable next step would be to formulate a national strategy for advancing the reform process, including the elaboration of a set of clear objectives, identification of priorities, and formulation of an action plan – in short and medium-term perspectives, as well as allocation of the budget means required for the reform process. It is important for the government to realise that a successful reform process relies heavily on the availability of adequate capacity and ability to lead the reform process. It also must determine the basis and conditions in which co-operation with external partners should be planned and conducted by the government's representatives.

#### *3.3.2.4 Assessment*

The frequent amendments to the PPL and implementing regulations demonstrate a certain capacity to improve the system. However, frequent changes also suggest a lack of capacity to analyse and evaluate external recommendations and pressures for change. Fundamentally, considerable effort still needs to be focused on building capacity at all levels and among many disciplines in both the public and private sectors. This capacity-building is a prerequisite to putting in place a modern, efficient and effective public procurement system.

In summary, procurement reform in Albania is moving forward, but progress has been exceptionally slow. Based on experience elsewhere, we know that passing laws is far easier than building the capacity to implement provisions efficiently and effectively.

#### *3.3.2.5 Recommendations*

The existing PPL provides some of the elements required in a modern procurement system. However, substantial work is needed to build the capacity for operating an efficient and effective procurement system with adequate safeguards to protect public funds from waste and corruption.

The main areas for development should include:

- Review and correction of procedural flaws;
- Review of the institutional capacity of the PPA and elaboration of an action plan for strengthening its capacity to perform its functions, including the provision of adequate equipment and resources;
- Elaboration, in co-operation with the training institute, of a national training strategy to institutionalise procurement training;
- Implementation of a training development programme, with specialised training courses for practitioners within procuring entities and programmes for the private sector; in addition, special training programmes for auditors and investigators to provide training in identifying procurement fraud schemes;
- Support for the use of electronic information systems to disseminate procurement contract information, collect and compile procurement statistics, and increase accessibility to guidelines and official documentation;
- Complete revision of the complaints review article of the PPL and procedures so as to give responsibility for these procedures to an independent administrative and/or judicial review body.

#### *3.3.2.6 External assistance*

**World Bank** – PAR Project - Component 1.9: “Strengthening public procurement capacities” – the technical assistance for this project is being funded in part by the Public Administration Reform Project Credit (No. 3328 – ALB). Work was carried out in 2003.

**European Commission** – A draft € 3M CARDS 2002 fiche for “Support to public procurement” has been prepared.

**USAID** – A number of training seminars have been conducted during the past two years, mainly at local level. USAID does not foresee any further assistance in this area.

### 3.3.3 Internal financial control

#### 3.3.3.1 Legal framework

*There have been a number of recent changes in internal financial control.*

The systems for financial management, financial control and audit of the Albanian public sector are in a period of rapid transition. An upgrading of these sectors has already been initiated and in some areas a new legal framework has been set up. Issuing new laws, however, is one thing, and applying them and fostering new basic management values in line with the intentions and ambitions of these laws, is something else.

The Organic Budget Law no. 8379, adopted in 1998, requires a decentralised system of internal control by assigning primary responsibility for internal control to each budget spender. At the same time, it gives the Ministry of Finance the right to inspect all accounting records of budget institutions, special funds and local authorities. The Minister of Finance is authorised to determine the inspection procedures, and such inspections can be conducted periodically and/or without previous notice.

*There are some serious gaps in the system.*

Some important gaps exist in the financial control system, e.g. there is no requirement for a double signature nor a systematic *ex ante* Treasury control for all expenditures. The preparation of a new budget law has accordingly been discussed during the past year, which would offer the possibility, among others, to fill this gap. However, the amendments have been removed from the Government's agenda until the summer of 2004.

The regulation on financial control, dating from 1984 and based on a planned economy, is not applied, but it has not been formally abolished either. This regulation deals with some of the gaps mentioned above. Internal control at both the Treasury and budget spending unit levels are otherwise regulated in various ways by different rules and decrees. The Ministry of Finance is currently carrying out a mapping activity aimed at getting a better overview of the overall internal control requirements.

Each budget institution is required to have a finance office responsible for first-level control in the budget institution. The finance officer insures the completeness of documentation, availability of budget allocation, and compliance with department rules. The Treasury exercises the following *ex ante* controls over selected expenditures: verification of documents as to correctness and completeness; availability of budget appropriation; and cross-verification with receipts (taxes deducted at source and its subsequent deposits).

The Albanian Government established in 2000 (Government Decree No. 217 dated 5 May 2000) a central 'Public Internal

Financial Control' structure in the Ministry of Finance and decentralised 'Financial Control' units in line ministries and central institutions.

*The MoF provides overall guidance to ministries.*

In 2003 (Law No. 9009 of 13 February 2003 on Internal Audit of the Public Sector) internal audit was more clearly defined and the structure changed. The formerly named Public Internal Financial Control Department was renamed 'General Directorate of Public Internal Audit' (GDPIA) within the Ministry of Finance. This directorate is now responsible for the overall methodological guidance, supervision and quality assurance of the internal audit function in the entire country and has professional authority over all internal audit units. The GDPIA is responsible for the operative internal audit function within the Ministry of Finance.

The internal audit units in line ministries and other public units have audit responsibilities only for their respective unit. The new legislation provides a regulatory framework for the GDPIA and defines the objectives, scope, and functions of internal audit, as well as the rights and responsibilities of internal auditors.

According to the External Audit Act, the Supreme Audit Institution (SAI) is also responsible for supervising internal audit.

#### *3.3.3.2 Institutional framework*

*Treasury checks all transactions before payment is made*

With regard to internal financial control, the Treasury has government-wide responsibility for budget supervision and internal control. All payment orders are checked and verified against the relevant appropriation, any recorded commitment, available balance of funds, and the original documents by Treasury staff before processing of the payment. Currently, data is entered manually into ledgers, but this will be replaced during the first half of 2004 by a new computerised system.

In accordance with the Law on Internal Audit, an Audit Committee to advise the GDPIA has been created, and a Government Decision on its functions was prepared recently. The Internal Audit Directorate in the Ministry of Finance has 22 staff. There are 117 internal auditors spread across the administration, 95 of whom operate in ministries.

Internal auditors are still not professionally trained and carry out activities of a financial inspection type. There is no uniform system of implementation and the internal auditors lack guidance and technical capacity to perform adequate audits to internationally accepted standards. The central co-ordination function to help guarantee uniform application of audit methodology across ministries is still in its early days. An Internal Audit Manual has recently been drafted, although there are still discussions about the

Internal Audit Charter.

*There is confusion between internal audit and internal control.*

There is currently insufficient and inconsistent understanding at both administrative and political levels of what public internal financial control and internal audit actually mean. A number of internal auditors, in fact, perform internal control.

Furthermore, within government institutions, internal control is often seen as the responsibility of specific central level functions. The concept of responsibility has not yet been internalised as applying to everyone.

#### *3.3.3.3 Reform agenda and capacities*

The necessary elaboration of a Public Internal Financial Control (PIFC) policy has not yet been placed on the political and administrative agenda. Laws and regulations in the area are not consistent. Various donors have been assisting the Ministry of Finance with the preparation of individual reforms, but there is no coherent strategy or action plan. An integrated strategy for reform should be developed. However, external and internal audit have elaborated a roadmap for their own development and are assisted by donor projects.

#### *3.3.3.4 Assessment*

A Public Internal Financial Control (PIFC) system, establishing a comprehensive and consistent legal framework, is still lacking, creating uncertainties and sometimes confusion. A consistently reliable system for Public Expenditure Management and Public Internal Financial Control, based on values and standards in line with good European practice, has yet to be developed. Financial management and control concepts are still in the early stages and in need of development and modernisation. Managers in budget spending units must be given the necessary tools for carrying out their responsibilities.

#### *3.3.3.5 Recommendations*

It is recommended that current resources, mainly within the Ministry of Finance, be applied to strengthen the elaboration of policies and establishment of a legal framework for PIFC, prerequisites for its implementation. This activity should be carried out preferably before the amendments to the Organic Budget Law are addressed.

#### *3.3.3.6 External assistance*

A CARDS 2001 project to introduce a sound and modern system of

public internal audit and to define internal control standards has been launched.

In addition, projects to encourage sound financial management within the public sector are in progress under the auspices of the World Bank and DfiD/UK.

No donor activities currently support directly public internal financial control.

### 3.3.4 External Audit

#### 3.3.4.1 Legal framework

The Supreme Audit Institution (SAI) of the Republic of Albania – the High State Control – was established in 1992 as a parliamentary institution independent from the government.

Concerning external audit, the Albanian Constitution establishes:

- authority and functioning of the SAI;
- election of the Chairman of the SAI;
- remit of the audit;
- reporting requirements and relations with the Assembly ;
- relations with the government; and
- legal protection of the Chairman.

The audit remit of the SAI is essentially in line with the requirements of the INTOSAI Lima Declaration and INTOSAI standards, although, according to the most important stakeholders, the basic functioning of the institution can hardly be described as being in compliance with the principles set out in the INTOSAI Preamble. The SAI audits all bodies financed totally or partially by the state budget. Its remit also includes different state funds (employment, retirement and health) adopted by the National Assembly, including the National Bank, and entities partially or totally owned by the state. The SAI can still audit municipalities, but only for those funds provided by the state (which represents nevertheless the main part of their budget). It is foreseen that internal audit will cover the remaining part of the budget.

*The SAI has a broad remit to audit all entities funded from the state budget.*

*The SAI has no explicit authority to audit end-users of EU funds.*

Following the latest amendment of 10 April 2002 to the Audit Act of 1997, the SAI is now a monocratic, office-model institution, headed by a president. The Act gives clear authority to the SAI to audit the services of the state and “other state judicial persons”, namely national public entities endowed with a distinct judicial nature. With regard to state-owned companies, the amended Act restricts the

competence of the SAI to audit companies in which the state has a majority of shares or whose debts are guaranteed by the state. This solution has been adopted by many countries.

The SAI has the right to audit state funds provided to private organisations and funds from foreign donors provided via the state budget. This provision is appropriate. It should be clarified, however, that the SAI has the right to audit the end-users of EU resources.

The SAI has the authority, under the present Act, to carry out the full scope of audit. This includes financial audit, performance audit and other specific audits (“legality; regularity; financial management; and performance aspects”).

The annual statutory audit covers the execution of the state budget, budget support to municipalities, state funds, and the National Bank. Performance audit is still not well developed, although some of its elements have been used occasionally.

The SAI is an independent institution, although in practice further safeguards of its financial independence would be desirable. The National Assembly elects the SAI President by majority vote for a term of seven years. This term can be renewed. Whether the post of president should be regarded as a political or non-political post has been the subject of intense discussions in the National Assembly and in the media in recent months. Today there seems to be an informal agreement between the leader of the largest party in power and the leader of the largest opposition party that the opposition, among others, would have the right to nominate the SAI President.

The legal design, with a term of office for the President of the SAI of seven years, promotes some stability and independence, as general elections to the National Assembly occur every four years. According to the present Audit Act, based on the requirements of the Lima Declaration, the head of the SAI may be dismissed only on grounds expressed by law: upon conviction for a criminal offence; absence from work for more than six months; mental or physical incapacity; or accepting duties that are incompatible with the duties of the president. Such a dismissal would be initiated by means of a petition of the President of the Republic to the National Assembly, whose decision would then be sent to the Constitutional Court for checking and declaration of the vacancy.

The Constitutional Court last year stated that in principle it would be possible for the Albanian President, upon a proposal from the National Assembly, to dismiss the President of the SAI from office on any grounds in addition to those stated in the Audit Law. Several international organisations, however, have supported the view that the President of the SAI should be regarded as a non-political post,

*A recent court decision has broadened the grounds for dismissal of the President of the SAI.*

and that any possible action taken with regard to dismissal must be in line with the Lima Declaration and with national law.

#### 3.3.4.2 Institutional framework

*Regional staff were transferred to the Ministry of Local Affairs to conduct internal audits.*

Internal reorganisation took place after the latest legal amendment to the Audit Law, and a Secretary-General appointed by the SAI president is now second in command. Audit activities are led by the heads of the five audit departments. SAI includes some 140 posts, of which 100 are operational. In 2001 the previous regional delegations, with some 170 staff, were transferred to the Ministry of Local Affairs in order to carry out internal audit under the authority of the prefects responsible for the financial management of local government units (regions, urban municipalities and rural communities).

The SAI is a member of INTOSAI (1994) and EUROSAI<sup>9</sup> (1996); it also participates in the co-operation network organised by the Presidents of SAIs in CEE countries and the European Court of Auditors.

#### 3.3.4.3 Reform agenda and capacities

Since 1999 the SAI has progressed dramatically, despite a rather complicated and unstable public sector environment.

#### 3.3.4.4 Assessment

In short, the Screening Report mentioned above stated that the SAI had:

- Developed its **core audit processes** well in its present stage of development, bearing in mind the resources at its disposal. Further major improvements, however, must include clarifications of the SAI's role in the accountability process and a notable shift of audit approach in line with EU SAIs, including the use of audit standards, manuals, guidelines and IT support.
- Developed suitable **support processes** for current operations, considering the resources at its disposal. Limited funds have impeded the development of modern IT support, which has hampered efforts of the SAI to upgrade itself in line with the SAIs of the EU.

<sup>9</sup> EUROSAI is the European Organisation of Supreme Audit Institutions. EUROSAI is not a body of the European Union having a broader membership.

- Implemented, from a **human resources management** viewpoint, basic tools and approaches, but there is room for further improvement.

As these reforms cannot be implemented overnight, more precise audit and corporate planning and priority-identification need to be developed in a Strategic Development Plan and roadmap for change.

In the short term, the biggest challenge for the institution and its future international partners is to move forward successfully across the whole range of needed improvements in core operations while at the same time giving greater attention to the processes aimed at developing financial management and control in the public service.

#### *3.3.4.5 Recommendations*

It is recommended that the SAI carry on with planned development activities, while addressing the following main actions:

Focus attention on the highest priority goal, which should be to develop and implement a proper financial attestation audit process and audit of financial management systems (the core process in accordance with internationally accepted audit standards and guidelines).

Further develop management and administrative processes affecting general management, human resources management, and external relations, which will in turn better support the core process (the audit).

Take steps to develop a better formal process between the institution, parliament and the government in handling reports and recommendations.

Take steps to clarify the responsibilities in relation to internal audit.

Prepare the institution for future technical assistance (including extensive language training), but recognise the need for a proper balance between operational tasks, absorption capacity, and development activities over time.

The SAI should also, within its own remit, take an appropriate interest in, and encourage the development of, public financial management and control and internal audit.

#### *3.3.4.6 External assistance*

The SAI has been subject to limited bilateral assistance. The institution participates in technical activities organised by the network of Presidents of CEE SAIs in co-operation with the

European Court of Auditors and SIGMA.

Following the conclusions of the Sigma Screening Review, the SAI will receive technical assistance, IT investments, and training support (through the Phare AL 9906 project and through further Sigma assistance). A technical assistance project will be launched in 2004, focusing on strategic planning, introduction of IT support in the audit process, and preparation of a foreseen twinning project.

Preparation of a fiche for an EU twinning project is under preparation in the EC Delegation.

### 3.3.5 Fraud

For the purposes of this report, fraud and corruption are distinguished as follows: in this context we have adopted a version of the generally accepted definition of "corruption" as it relates to public officials – "abuse of public office for private advantage". Corruption as thus defined overlaps with the concept of "fraud", which is taken to mean (in relation to fraudulently obtaining a financial benefit involving public funds) "a severe irregularity in expenditure or revenue, which involves deliberate misrepresentation to obtain a benefit, by providing false, misleading, or incomplete information, or by the non-disclosure of required information. Fraud also includes the misapplication of funds for an unauthorised purpose."

Thus both private citizens and public officials, in dishonestly obtaining a benefit to which they are not entitled from a public agency, may commit fraud, which may or may not involve an act of corruption on the part of a public official – for example, taking a bribe to accept a false claim for payment.

This report therefore does not deal with corruption matters as such, or with the other forms of fraudulent misrepresentation, such as obtaining licences or permissions or identity fraud, which do not involve public (i.e. EC) funds.

*The government has no specific anti-fraud policy.*

There is no government action programme specifically devoted to anti-fraud matters, and no government policy on the subject. There is at present no centralised anti-fraud co-ordination service in place, and none is planned. Individual agencies, such as those responsible for taxation and customs, are responsible for combating fraud within their jurisdictional responsibilities.

Fraud is generally defined as a criminal offence in the Criminal Code, and is dealt with specifically in other laws, such as the law relating to money-laundering. Fraud is also covered specifically in certain administrative procedures, such as those covering contracting and public procurement.

The definition of fraud committed against EC interests and its criminalisation is not specifically included in the Albanian Criminal Code. No specific attention has been devoted to identifying and assessing weaknesses in the national system for the management of Community funds. A multi-disciplinary service responsible for the co-ordination, co-operation and communication between relevant national institutions, fulfilling the role of a liaison function with OLAF, needs to be created.

#### *3.3.5.1 Assessment*

*Arrangements in Albania do not meet EC minimum requirements.*

The minimum requirement, as defined in the European Commission's concept of financial control and in particular the protection of EU financial interests – an anti-fraud co-ordination service – is not in place and the Albanian Government is not contemplating its creation.

In the Criminal Code there is a basis for the development of a comprehensive anti-fraud policy and programme, but administrative capacity is lacking.