



SIGMA

Support for Improvement in Governance and Management

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ALBANIA

POLICY-MAKING AND CO-ORDINATION

ASSESSMENT MAY 2008

1. Coherence of the Policy-making Framework

The legal framework for the work of the Council of Ministers (CoM) is set by Law 9000 "On the Organisation and Functioning of the Council of Ministers" of 2003, which sets out the general competences and rules of conduct of the Prime Minister and other members of the CoM, the procedures for preparation and submission of proposals to the CoM, and the agenda and voting procedures for weekly meetings.

The framework is developed in more detail in the "Regulation for the Council of Ministers" (Regulation 584) approved in 2003 ("the Regulation"). The Regulation establishes reasonably clear rules for the preparation of draft laws and includes a number of good features, notably:

- the planning process for the preparation of the annual Analytical Legislative Programme;
- a process for drafting laws within ministries, including the respective role of the line and legal departments, internal approval procedures, and a requirement for policy analysis that should be approved by the minister prior to legal drafting;
- a requirement for fiscal impact assessment;
- procedures for inter-ministerial consultations, including consultation with the ministries of Justice, Finance, Economy and other interested ministries;
- procedures for resolving conflicts between ministries before an item is discussed by the CoM;
- adequate requirements for timing and deadlines for inter-ministerial consultations and submission of items to the Secretary-General of the Government.

The Regulation was amended by a decision of the CoM in 2006, which required each draft law to be accompanied by an assessment of the level of approximation to, and a table of compliance with, the *acquis communautaire*.

However, there are several weaknesses in the legal framework:

- Regulation 584 was not amended to take account of the requirements introduced by the Integrated Planning System (IPS) so at present the annual Analytical Legislative Programme process is not linked to the IPS.
- The process for policy preparation in ministries is still not sufficiently defined.
- The role foreseen for the Secretary-General of the Government and the apparatus supporting the CoM is purely technical and legalistic. For example, the power to review and return items to proposers is limited to technical grounds, rather than policy grounds.
- The legal requirements are only partly implemented in practice, as described below.

The legislative framework for policy-making has good features, but has a number of serious weaknesses and is only partly implemented in practice.

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2. Inter-ministerial Consultation on Policy Proposals

Capacities for policy-making in line ministries are still widely recognised as weak, but there seems to be gradual and perceptible improvement. While in most cases laws appear to be initiated without any prior stage of policy analysis, there have been a growing number of instances in which line ministries have engaged in problem analysis, identification of options, exploration of the consequences of different courses of action and consultation with stakeholders. (The development of the recent Law on Spatial Planning is cited as an encouraging example.) There appears to be slightly greater use of working groups to discuss laws before drafting starts. However, it is still the most common practice to draft a law without prior analysis. This absence of prior policy analysis, coupled with law-drafting capacities that remain weak in ministries, often leads to legislation that works badly and will soon need to be amended.

The inter-ministerial consultation arrangements with regard to draft laws that are required by the Regulation work poorly in practice. Papers are often circulated late, and ministries are not given adequate time to examine draft laws. The apparatus supporting the CoM is not involved at this consultation stage of the process and the only institution that might take the lead in resolving problems is the Ministry of Justice. Consequently, consultations tend to focus on issues of legal drafting rather than on issues of policy substance. The Legal Department of the CoM, which has few staff, is not involved at this stage of the process.

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* appear to work well. These assessments and tables of compliance are reviewed and must be approved by the Ministry of Integration, which is regarded by other ministries as carrying out this function quite rigorously.

Capacities for policy-making in ministries are weak, but are gradually improving. The inter-ministerial consultation arrangements with regard to draft laws that are required by the Regulation work poorly in practice, although checks for compliance with EU legislation are effective.

3. Work Planning

The main work-planning mechanism remains the annual Analytical Legislative Programme, which is broken down into four-monthly plans. However, this programme has a number of drawbacks:

- It is essentially a reactive exercise, within which the Legal Department of the CoM simply compiles a list of proposed legislation put forward by each ministry. There is no review of content by the centre of government, nor any check of the proposed legislation against the Government Programme.
- This process does not appear to be linked to the Integrated Planning System (IPS). The documentation on the IPS lists the Government Programme as one of the elements that should be reflected in the IPS, but generally omits any mention of the Analytical Legislative Programme.
- While the items presented by ministries for inclusion in the four-monthly plan should include policy justification for each item, in practice this is often superficial and formulaic and provides little real analysis or justification.
- A substantial number of laws put forward each year by line ministries had not been included in the Analytical Legislative Programme. Some of these laws could genuinely not have been foreseen, although many could have been foreseen but were omitted.

In reality, the immediate agenda of the Council of Ministers is set mainly by the availability of laws put forward by ministries.

Work-planning arrangements are not linked to the Integrated Planning System. Planning is essentially a reactive compilation of proposals from ministries and lacks strategic cohesion or central management.

4. Dispute-resolution Mechanisms

The “Regulation for the Council of Ministers” provides for the appointment of inter-ministerial committees, but these are not established as a regular feature of the system. Occasional ad hoc committees are created but they do not seem to have a significant role.

The Regulation prescribes various flexible mechanisms by which disagreements between ministers can be resolved, essentially by mediation led by the Secretary-General of the Government and, if needed, conciliation or arbitration by the Prime Minister. While these mechanisms seem to be effective, they appear to place a heavy burden on the Prime Minister personally. They also come at a very late stage in the process.

Dispute resolution mechanisms seem to work, but it would be more efficient, and reduce the burden on the Prime Minister, to establish resolution mechanisms at an earlier stage.

5. Central Co-ordination Capacity

Logistical and administrative support to the CoM is provided by the Secretary-General of the Government, assisted by a co-ordinator and two assistants.

The Legal Department of the CoM reviews all draft laws submitted to the CoM for legal and procedural compliance. This department has stable staffing and a strong institutional memory. However, it has only four staff, which is too few, given the responsibilities of the department.

Between them, these staff provide the bare minimum of logistical, administrative and legislative support needed by the CoM.

The staff have the legal authority to enforce the procedures, but in reality the time deadlines specified in the regulations are often breached – in as many as 50 or 60% of cases – and many items are submitted late to the Secretary-General and to the Legal Department, leaving insufficient time for the process of legal review and for resolution of outstanding issues before the meeting of the CoM.

The current government’s policy of restricting civil service numbers inhibits any expansion of the staff supporting the CoM.

There is no mechanism for monitoring the implementation of government decisions. Indeed, monitoring generally is a weakness within the governmental system. No very effective monitoring has yet been undertaken with regard to the IPS (see section 6 below). The Ministry of Finance has asked ministries to report on all Medium-Term Budget Programme (MTBP) outputs as well, but it is not clear what the Ministry of Finance will do with this information.

The bare minimum of required logistical, administrative and legislative support is provided to the CoM. The centre of government is seriously understaffed and lacks the capacity to enforce procedures. There is no monitoring of government decisions.

6. Central Capacity to Advise on Policy and Strategic Matters

Advice on overall strategic issues

In 2005 the Albanian Government introduced an integrated planning system (IPS). The IPS Handbook states:

“The Integrated Planning System (IPS) is the key national decision-making system for determining strategic direction and the allocation of resources. The aim of the IPS is to provide a broad planning framework within which the Government’s core policy and financial planning processes function in a coherent, efficient and integrated manner. The sixcore processes include:

- National Strategy for Development and Integration (NSDI);
- Medium-Term Budget Programme (MTBP);
- Government Programme;
- European Integration and NATO Membership;
- Public Investment;
- External Assistance.”

Within each ministry, a strategy, budget and integration working group has been established to develop a sector strategy – 21 in all. In addition, 14 cross-cutting strategies are being developed by inter-ministerial working groups. Each of these strategies is being developed by an advisory group representing domestic policy stakeholders outside the central government.

The overall process is overseen by the Strategic Planning Committee, an inter-ministerial committee chaired by the Prime Minister, which meets monthly, sets priorities and discusses key sector strategies.

The process is managed and co-ordinated by the Department of Strategy and Donor Co-ordination (DSDC), which is part of the apparatus supporting the CoM. It has eight staff, which is not adequate for its tasks. It has a realistic grasp of the magnitude of the challenges that the system faces.

The Government of Albania has invested enormous effort in the IPS process, with extensive donor support. It is an ambitious system, and not surprisingly has encountered a number of delays. To date, the emphasis has been on completing the NSDI, which is now complete, and the sectoral strategies (by March 2008, 25 of these strategies had been approved or their approval was pending and 10 had been delayed). In parallel, the ministerial integrated plans (MIP), which provide a one-year framework for implementation of the seven-year sector strategies, had been developed.

The IPS embodies the principles that the government should have a clear and coherent set of policy priorities that are linked to the budget process. It has received sustained support from the top level of the government, and strong support from the donor community. However, the IPS is very complex and is clearly making great demands on the limited capacities of line ministries. The DSDC has identified the need to remedy this problem through training, although it will come rather late in the process. Implementation of the cross-cutting strategies, which by their nature will be difficult to implement, will be further complicated by the difficulties involved in costing them.

The arrangements for monitoring the implementation of sectoral and cross-cutting strategies have also yet to be worked out in detail, although the intention is that the advisory groups (which have external members) should have a role in this process. To date, monitoring of implementation has been a problem because strategies and plans have tended to contain inadequate verifiable indicators, and so yield little useful information.

There are early, although tentative, signs that the IPS system is beginning to have an impact. For example, interlocutors in the Ministry of Finance indicate that it is beginning to influence the three-year budget ceilings, to bring greater cohesion to the policy system, and to help improve the quality of budget costings from ministries (although this last improvement is also being helped by other factors, such as the new MTBP software). The important words are nevertheless "early", "tentative" and "beginning".

A serious weakness is the inadequate incorporation of the European integration (EI) process -- one of the six key processes covered by the IPS – into the IPS process. The National Plan for the Implementation of the Stabilisation and Association Agreement appears to a great extent to be operating independently of the IPS process. A planning system that excludes EI cannot seriously be described as "integrated".

Advice on policy issues

There is little or no central capacity to advise on policy issues. The support staff available to the Secretary-General of the Government concentrate on administrative and secretarial issues. The Prime Minister has a *cabinet* of a dozen advisers, who provide a commentary to the Prime Minister on some but not all items coming to the CoM.

The IPS provides a comprehensive framework for strategic development and, after a long development process, is beginning to show early positive results. However, the European integration process is not sufficiently integrated into the IPS process. The Strategic Planning Committee should urgently order the DSDC, the Ministry of Finance and the Ministry of European Integration to produce and implement proposals to remedy this situation.

There is little or no central capacity to advise on policy issues.

7. Co-ordination of European Affairs

The Ministry of European Integration (MEI) provides the central co-ordination focus for EI work in the government.

Collective political direction for the EI process is provided by the full CoM or indirectly by the Strategic Planning Committee. The inter-ministerial committee on EI chaired by the Prime Minister meets rarely.

There is no systematic lower-level mechanism for co-ordination between ministries – such a mechanism was found to be essential by all of the countries that recently joined the EU.

All line ministries have EI units, but these are small, usually between one and three staff. The MEI describes this situation as a deliberate approach, designed to ensure that EI work is carried out principally by the operational departments and units of ministries, rather than by the EI units alone.

The current "soft" arrangements for co-ordinating European affairs will need to be strengthened as the demands of European integration grow.

8. Involvement of the Council of Ministers in Budget Decisions

The most influential forum for ministerial discussion of budget issues currently appears to be the Strategic Planning Committee chaired by the Prime Minister, which provides overall direction for the IPS process.

At present the Council of Ministers agrees initial budget allocations at the start of the budget-making cycle and approves the final draft budget for submission to the National Assembly at the proposal of the Minister of Finance. The draft Budget Law submitted in the spring of 2008 to the National Assembly confirms that arrangement.

As long as the IPS system operates, it makes sense for the Strategic Planning Committee to continue to play the leading role in shaping the budget and in reporting to and making final recommendations to the CoM for approval.

9. Impact Assessment

There is at present a requirement for fiscal impact assessment. The Government Rules of Procedure require any draft law submitted to the government to be accompanied by a budgetary costing. The Ministry of Finance must comment on the costing and, if it objects to the proposal, the CoM will usually refer the matter back to the ministry for further work. The process appears to work but the quality of the data provided is variable and needs to be improved. Consequently, the quality of the assessment is variable and needs to be improved.

In addition, the IPS is, in effect, gradually introducing a fiscal impact assessment of each ministry's strategic plans.

However, there is no requirement for impact assessment in other areas. There are a few voluntary initiatives, such as the environmental impact assessment unit in the Ministry of the Environment supported by SIDA.

A World Bank project to introduce a system of regulatory impact assessment is due to begin work in late 2008. Thinking on the subject within government has not really started to develop yet.

The fiscal impact assessment process works effectively but the quality of the data needs to be improved. There is little or no impact assessment in other areas, although work on introducing regulatory impact assessment is due to start in late 2008.

10. Better Regulation

There is no explicit policy on better regulation but elements of such a policy are emerging. For example, a project will start in mid-2008 to develop a more sophisticated methodology for impact assessment, and the government has a general policy of reviewing all licensing arrangements with a view to their abolition or simplification.

11. Transparency, Consultation and Communication with the Public

The Government Rules of Procedure contain a rather vague requirement to carry out external consultations, including with civil society. However, there is no guidance for line ministries as to when this consultation should be done or how it should be undertaken. Despite this fact, there have been some excellent recent

examples of systematic and meaningful consultation that have clearly affected the content of policy. These include:

- The extensive consultation exercise carried out to shape the content of the IPS. The National Strategy for Development and Integration (NSDI) was discussed at a series of nine workshops and ten television debates, many of which were held in the regions, involving civil society, specialists, local government, students and academics. The government judged that the comments that had been provided during these events “improved the document significantly”. Similarly, the advisory groups that were established to comment on the evolving sectoral and cross-cutting strategies involved some 350 people and organisations in more than 90 meetings and debates.
- The Business Advisory Council, which was established by law in 2006 and set up by the Ministry of Economy, discusses all draft legislation affecting business.
- An impressive consultation and public participation exercise lasting two years, organised by the Urban Planning Directorate, included development of the National Planning Policy through detailed discussions by a working group of stakeholders, which held between 30 and 40 meetings in total, followed by public consultation on a draft policy document and further consultation on the final draft law.

Examples of good consultation practice are found in the ministries of Environment, Health, Transport and Finance.

There is an effective system for public communications, which is centred in a unit of five staff who answer to the Prime Minister; the unit is responsible for disseminating information to the public and liaising with the national and international media. The unit has informal but effective links with public information officers in line ministries and with ministers. The Minister for European Integration also serves as Government Spokesperson, and this role has usefully raised the profile of EI issues in government information work. This system appears to both react capably to events – for example, the tragic munitions explosion near Tirana in March 2008 – and to undertake proactive work, such as the major publicity effort accompanying the public debate on the national strategy development and integration as part of the IPS. A separate unit deals with communications addressed by members of the public to the Prime Minister, an area of work to which he apparently attaches great importance.

An operational law on freedom of information exists, but it is more common practice for people to obtain information about government activities informally, through personal contacts within the public administration.

Legislation is published in the *State Gazette*.

The formal framework for public consultation is weak, but there are some excellent examples of effective good practice. Legislation is published in the *State Gazette*, and freedom of information legislation exists but is rarely used.

12. Summary and Next Steps

The system in relation to the capacities of the centre of government has changed very little since the last assessment in 2006. The apparatus supporting the Prime Minister and CoM remains highly fragmented organisationally, and cannot ensure a coherent approach to supporting the collective work of the CoM. This apparatus does not have sufficient mandate and capacity to operate as an effective or sustainable centre of government. It lacks capacity for policy co-ordination, for ensuring that the Analytical Legislative Programme corresponds to the government's priorities, and for ensuring that material reaching the CoM for decision is of sufficient quality. Even its capacity for legal review remains insufficient.

Policy-making capacities in ministries, and middle management capacities generally, appear to be improving but still have a long way to go and need external support.

The multiple strategies that make up the Integrated Planning System (IPS) have now been drafted and the system is now in the early stages of implementation. There are signs that the strategies are beginning to influence budgeting decisions, but the effectiveness of this linkage has yet to prove itself fully. Despite its complexities, now that so much effort has been invested in the IPS, the government should continue to implement it. However, European integration activities seem to be much less well incorporated into the IPS than other activities, and perceptions are that the Ministry of European Integration is less engaged in IPS

than other ministries. This situation should be remedied. The Analytical Legislative Programme should be linked to the IPS.

Recommendations:

- Despite its complexities, now that so much effort has been invested in the IPS, the government should continue to implement it. The Ministry for European Integration should lead efforts to incorporate EI work more closely into the IPS. The Analytical Legislative Programme should be linked to the IPS.
- There remains an urgent need to begin the process of reforming the apparatus supporting the Prime Minister and CoM and to equip it with the necessary policy planning and co-ordination functions, ideally under the Secretary-General of the Government.
- Policy-making capacities in ministries need further development and should be the focus of additional donor support.
- The government should build on the various promising initiatives in public consultation and public participation in policy-making. The existing requirements for public consultation in the Government Rules of Procedure should be amplified to specify more clearly the circumstances in which consultation is required, the forms it should take, and a format for reporting results to the government. Donor-supported training in policy-making should include public consultation and public participation in the policy-making process.