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ASSESSMENT

ALBANIA

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DEMOCRACY AND THE RULE OF LAW

In November 2011, the two main political parties signed an agreement to examine and discuss important laws requiring qualified majority. Following this agreement, only laws related to technical issues have so far been passed by the Parliament.[1] As SIGMA's 2012 assessments show, the situation in Albania remains unsatisfactory from a number of perspectives.

Democracy

The political stalemate caused by the contested results of the June 2009 election has been addressed but still remains an issue. The effectiveness of the Parliament remains limited, particularly as regards bills which require approval by three-fifths of the Assembly. This situation impacts negatively on the balance of power and limits the effectiveness of the exercise of checks and balances normally associated with a parliamentary democracy based on the rule of law.

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

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

Rule of Law

The limited extent to which the public governance system puts the rule of law into practice remains a serious matter of concern. The separation between the executive and legislative branches of the state is problematic, with the former dominating the latter. The Government's compliance with the law is not assured. The independence of the judiciary is also questionable. Individuals do not have full confidence in the legal system to solve legal conflicts. The poor quality of legislation is still a problem. Major reasons for this include: limited law drafting capacities in ministries and administrative bodies; inadequate consultation with regulated communities; poor translations of European laws; and adoption of laws drafted by international consultants not familiar with the Albanian context.

Constitution

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

[1] Roads Code and Code on Air Traffic Control.

Parliament

Albania has a unicameral parliamentary system with an 'Assembly' consisting of 140 deputies. Despite progress on settling the dispute over the contested results of the last general election, there is still something of a stand-off between the Government and the Opposition in the Parliament, which weakens the impact of this progress. There is little understanding that Parliament requires an opposition as well as a government to function effectively. In addition, the Parliament does not adequately oversee the Executive. It is not a full participant in the process of developing policies or legislation. The opportunity to question ministers in Parliament is rarely used and written questions are hardly ever submitted. Investigative committees rarely produce results and tend to be a forum for political quarrels rather than analysis of issues.

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

Government

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

Ministries have European Integration Units but their quality varies. At the level of ministries, the quality of policy-making and legislative drafting needs to be improved. More attention should be paid to the implementation and the enforcement of legislation generally.

Public Administration

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

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

An Integrated Planning System lies at the heart of public expenditure management. However, in Albania, the design of that system is complex, but in practice it is rather inefficient. The enactment of the Organic Budget Act (OBL) 2009 has improved the legal framework for public expenditure management and the integrated budgeting processes that Albania is introducing. The Act creates a structure to divide the roles and responsibilities for budget execution. Authorising officers and executing officers have been appointed. However, the full effectiveness of the new budget execution system has not yet been evaluated as it is too soon to undertake such an evaluation.

A legal framework for Public Internal Financial Control is in place. Internal audit is now separated from financial inspection, which became operational in 2011, but ministers and mayors still request

from heads of internal audit units that they carry out financial inspection type activities. Financial management and control is progressing but is still not in line with good international practice.

Public Procurement

The Public Procurement Law (PPL) is mostly in line with the *acquis*, although some areas still need to be improved. In particular, the PPL has its origins in the UNCITRAL Model Law, meaning that some of its elements do not entirely reflect the provisions of the EC Directives. There are now three main bodies responsible for procurement. Co-ordination problems have arisen because of the multiplicity of review entities. This creates risks of duplications and even of contradictory findings, and dilutes the proper implementation of the Law. Concerns about co-ordination at an overall policy level also arise. Finally, the provisions on concessions and defence procurement are deficient.

Judiciary

As a whole, the judicial system lacks integrity. There is a general disrespect for decisions of the courts, including the Constitutional Court. The judiciary is seen to be inefficient, too vulnerable to corrupt dealings, and not fully independent. Professionalism, independence and accountability mechanisms within the judiciary and prosecution services need to be strengthened. Some judicial decisions have been ignored by the Government and there is a prevailing culture of disrespect for the judiciary. To strengthen legal certainty, more efficient mechanisms to protect legality and ensure judicial control over the Government need to be developed. The constitutional-legal regime on immunities for politicians and judges is too large, which increases the potential for corruption.

Integrity

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

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

Recommendations

To Albania

- Pursue the adoption of the package of administrative laws, which includes fundamental pieces of legislation, and fully and effectively implement it. This package includes the laws on administrative procedures, judicial review, civil service and state organisation.

- Develop a strategy for building a framework for better policy making and law drafting capacities. The strategy should include the development of a set of principles to underpin good quality policy making and law drafting. It should also take account of any institutional changes necessary to build these capacities.

- Further strengthen and develop the structures for European Union Integration so as to enhance the capacity of the public service to accelerate and make more effective the European Integration process.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments Since the Last Assessment (May 2011)

Despite the number of activities carried out during the period assessed, Albania has not made any progress in reforming its state administration or in furthering the professionalisation of its civil service or public employment in general. Personnel management, especially recruitment, in all institutions remains based on political affiliation or personal affinity with members of the ruling parties. No progress has been registered concerning the adoption of structural legislation necessary for the functioning of a democratic state ruled by law.

The political stalemate, ongoing for some years now, has been blocking the adoption of legislation fundamental for the modernisation and democratisation of public governance, which requires a three-fifths majority in Parliament. This is the case concerning legislation relevant to the implementation of the Inter-sectoral Public Administration Reform Strategy 2009-2013, namely the Laws on Administrative Justice, Law on General Administrative Procedures, Law on the Status of Civil Servants, Law on the Organisation and Functioning of the State Public Administration, and the revision of the Law on Government and the Law on Prefects. A political agreement in November 2011 between the ruling party and the main opposition parties has only led to consensus to discuss in Parliament the Law on Administrative Justice. At the time of writing (March 2012) the remaining legislation had not been approved by the Government.

The Ministry of Justice is still preparing the new Code on General Administrative Procedures; the working group has not yet finalised the draft. In the wake of a recent change of minister, the members of the working group were replaced, creating difficulties for continuing the work and for finalising the draft. The need for a comprehensive approach to modernising administrative procedures and aligning them with European principles is best illustrated by the example of the tax administration, where some progress is noticeable. A new electronic system for the declaration and calculation of taxes is slowly being implemented. The new system reduces the direct contact between taxpayers and tax administration officials and so may reduce the possibilities for corruption. However, implementation is not well steered by the General Department of Taxes, several important decisions are still being taken on an *ad hoc* basis, and taxpayers are rarely informed about the new procedures and rules, creating confusion and legal uncertainty. Even if the tax reform is important and progress is notable, it is regrettable that the lack of an adequate general legal framework on administrative procedures, coupled with weak management, are negatively affecting the implementation of the tax reform.

The Department of Public Administration (DoPA) prepared a new draft Law on Civil Service and widely consulted with most stakeholders. Attempts were made to involve the opposition in these consultations, but with limited success. The draft incorporates all the objectives of the PAR Strategy as well as the issues that have been raised on the implementation of the Law since 1999. The draft provides for recruitment procedures more clearly based on merit principles and promotes the career development of civil servants as well as a better set up for the management of the civil service by DoPA, an institution depending on the Ministry of the Interior, and the control of that management by the Civil Service Commission (CSC), an institution reporting to Parliament. It also echoes all of the criticisms voiced in successive European Commission Progress Reports and the 2010 Opinion on Albania's application for EU membership.

Inexplicably, the parliamentary majority and the opposition reached a consensus on the Civil Service Commission while discussing the draft Law on Administrative Justice: they decided to disband the institution, so depriving the Parliament of an instrument of control over the management of the civil service by the executive at the central level and by local self-Governments at the sub-national level. The Government, in the still to be adopted draft Law on Civil Service, reinstates the CSC and gives it stronger powers. These inconsistencies need to be dealt with, under the close supervision of the European Commission.

The draft Law on Administrative Justice was adopted by the Parliamentary Committee on 12 March 2012, but there are no guarantees that it will actually be discussed and even less that it will be passed. Attention should be paid to whether or not the existing draft Law on Administrative Justice is well aligned with European standards governing the judicial review of administrative acts. An analysis of the current draft text by the European Commission is recommended.

The Government and the Opposition seem to be irreconcilably divided into two opposite camps arguing mostly about procedural issues, not substance or policy: the Government declares it will not adopt any bill of law requiring a three-fifths majority in Parliament unless the opposition displays a clear engagement to effectively participate in the parliamentary discussions and approval. The opposition in turn claims that the Government should group all of the laws that cover a particular field into a package in order to hold a thorough discussion on the package as a whole. But if a law is not approved by the Government, it cannot be discussed in the Parliament. Therefore, political negotiations between parties are needed in the first place. In addition, the Opposition requests the inclusion of more political laws (*e.g.* the Electoral Law) in the package, which the parliamentary majority does not seem ready to accept.

Given the fact that restructuring has been used since 2006 as the main tool for dismissing civil servants and replacing them by political or personal affiliates, in 2011, DoPA proposed to regulate the procedures related to restructuring public administration institutions in order to counteract this tendency. As a result, the Government issued a decision "On standards and procedures for the internal organisation of public administration institutions". The regulation has two main parts. The first part establishes specific quantitative and qualitative standards to design public organisations as well as a -- somehow questionable -- classification of the various functions and their allocation to public administration institutions. This part seems to be geared towards filling the gap caused by the lack of proper regulation on the organisation and functioning of the state administration.

In its second part, the decision establishes a specific procedure for the elaboration and approval of internal organisational structures. Institutions are obliged to submit all new job descriptions to DoPA in advance, and they need to justify the proposed changes. Specific requests for submitting quantitative analysis are set by the regulation. From now on, intra-institutional discussions on plans for re-positioning staff into the new organisational charts are to take place prior to the actual approval of the new structure and institutions have to submit those plans to DoPA prior to initiating any restructuring. A greater, but still somewhat soft, role is awarded to DoPA, whose opinion on the planned restructuring is binding. The success of this regulation will, however, depend on DoPA's capacity to impose the right solutions to institutions. Otherwise, the regulation will be useless.

At face value, a step forward has been the introduction of private bailiffs to ensure compliance with court decisions, even if it has a downside that, if left unaddressed, may lead to more corruption and malfunction. The Government, with advice from the international community, created a private bailiffs' service, which is to operate in parallel with the existing public one. The first private bailiffs were trained and licensed during 2010 and 2011 and have started to operate in the field. Initial feedback is positive regarding more effective and timely enforcement of court decisions, especially in cases where the creditor or the beneficiary of the court decisions can afford to pay for the service.

Feedback on the enforcement of court decisions when the state is the debtor is also positive. Despite current positive opinion, the state institutions, especially the Ministry of Justice, should establish the mechanisms still missing to monitor effectively this newly created private trade and pre-empt likely misbehaviour and abuse. It is crucial to preserve the capacities of the public bailiffs' office in order to prevent the development of a private monopoly in enforcing court decisions and to allow citizens who cannot afford the private service to enjoy the same rights as the richer users of the justice service.

The implementation of the reform on the inspection function, introduced by the Law on Inspections (June 2011), has proceeded very slowly. The parliamentary passing of the Law was facilitated by the fact that only a simple majority was required. However, the appointment of the General Inspector and the recruitment of the staff of the general inspectorate only took place at the end of 2011. The review of existing laws has not yet begun and required secondary legislation to the Law is still missing. The Law on Inspections is only one component of an administrative simplification policy undertaken by the Ministry of Economy, Trade and Energy to improve the business environment. The Law is also known as the "Horizontal Inspection Law" as its scope extends over all inspections of business and economic activities. The Law covers the organisation of inspection bodies and inspection procedures while setting limits to the inspectors' prerogatives while carrying out their duties, establishes obligations for those inspected, and foresees the legal remedies available.

A new Ombudsman was elected in December 2011. This development is expected to enliven the activity of the institution, which had been paralysed for more than six months. The recommendations of the Ombudsman are, however, rarely taken into consideration by the public administration institutions. A fully functioning and respected institution is a goal that has yet to be achieved.

Main Characteristics

The public administration is heavily politicised and remains fragile. There is intensive rhetoric by the Government regarding the professionalisation of the administration and the implementation of principles regarding fair recruitment, equality of chances and protection of the civil servants, but practice too often contradicts this rhetoric. Changes of ministers are usually accompanied by staff turnover, even in cases where the new minister belongs to the same political party as the preceding one. Polarised politics between Government and Opposition lead to reform deadlock.

The administrative system has the characteristics of a partitocratic political regime, in which the state apparatus is seized by partisan interests while the system of checks and balances is very weak, almost non-existent. This includes the dominance of the Parliament by the executive and a *de facto* lack of parliamentary control over the executive branch. The judiciary is also to a large extent subjected to the political needs of the executive, as it is hardly independent.

The civil service has a narrow scope, with large areas of public employment falling outside of it. For these categories, the implementation of principles of professionalism, impartiality and equality of chances is even more difficult. These non-civil servant officials remain extremely vulnerable to political influence and protection is weak.

The management capacities of the civil service remain weak. The Government is not in favour of DoPA fully expanding its potential, while it completely ignores the Civil Service Commission. The managerial instruments to increase motivation and efficiency have failed. Performance appraisal has no effect at all on improving individual or institutional performance. The Civil Service Commission reports that everyone's performance in the civil service is rated as excellent.

Employment with temporary contracts continues to be problematic. Despite the order of the Prime Minister (October 2010) to limit temporary contracts to 2.5 % of civil servants and the obligation to follow strict criteria, DoPA was not able to lower the number below 9.2 %. What is worrying is the fact the phenomenon has not stopped and that ministries continue to recruit civil servants on temporary contracts.[2] Despite the fact that, in order to regularise the situation, DoPA organised recruitment procedures for most of the positions occupied with temporary contracts, institutions still continue to sign new ones. Although secretary generals are responsible for enforcing the reduction of temporary employment, no disciplinary measures have been imposed on them. Furthermore, those in temporary contracts are often the winners of subsequent tailor-made competitions, thereby becoming permanent civil servants. This is leading to the progressive downgrading of the quality and capacity of the public administration.

Supervision of the way in which the civil service is managed remains very weak. The institutions in charge of monitoring the civil service are mistreated by the ruling majority, sometimes in unison with the opposition. The Civil Service Commission is especially under attack. The beleaguered CSC has had a commissioner position vacant for more than a year, a fact that obstructs the normal functioning of the institution. As said, the decisions of the CSC are ignored by ministries and state agencies. This fact demonstrates the institutions' lack of willingness to properly comply with the existing law and a deriding of the rule of law. Despite the several shortcomings of the current Civil Service Law, the main problem remains disrespect for its legal provisions, a behaviour indicating that the Government sees itself as above the law. This sort of attitude is very dangerous for the appropriate functioning of a democratic state ruled by law. DoPA monitors a limited part of public employment (less than 3 %). The sectors outside DoPA's supervision are more vulnerable to abuse by the heads of institutions. The CSC confirms this conclusion for the institutions belonging to local self-Governments. Partisanship and personal connections are decisive factors for employment in these institutions.

In 2011, the CSC focused on monitoring the implementation of the Civil Service Law in institutions outside the management scope of DoPA, *i.e.* institutions that do not depend on the Government. Apart from regular hearings, the CSC carried out 26 monitoring missions, 11 of which were to central state institutions and 15 to local self-Governments, where the implementation of the 1999 Law on Civil Service continues to be more problematic than in the central state administration where DoPA plays a more prominent role. In local self-Governments, recruitment is generally carried out in ignorance of any established legal rule, and the legal protection of employees is very weak. As the Civil Service Commission does not have any sanctioning powers, its decisions are systematically ignored by government bodies. Individuals need to address the court in order to have the decision enforced. Courts uphold the decisions of the Civil Service Commission in 97 % of cases.

Civil service training mostly depends on international funds. The Training Institute of Public Administration (TIPA), reporting to the DoPA, is not well supported by the Government. Its budget is not sufficient to support the training needs. The TIPA co-operates well with international projects and compensates for the scarce national funds with international funding. The TIPA remains the reference institution for all training programmes and keeps a database and curricula for training delivered by technical assistance projects.

However, the Government lacks a strategy and is multiplying training initiatives, presumably to attract investment from external donors. The Government created the Fiscal Academy to provide specialised training in customs and tax administration, but its establishment and the start of activities has been delayed. The director has not yet been appointed and no training has been delivered.

[2] In the monitoring reports, the CSC highlights the fact that temporary contracts continue to be used in two ministries and were applied even in the period between two monitoring visits. The number of temporary contracts in the Ministry of Defense was lower in the first inspection visit and higher in the second.

Notwithstanding, the TIPA has not been allowed to deliver any training in the fiscal area since the creation of the Academy. In a new move, the Government (Ministry of Education) intends to create a private school of public administration to provide academic teaching for public administration employees. This proposal does not appear to be well grounded because, among other things, in Albania, the public university and many private ones already provide university and post-university academic studies in public administration, and because what Albanian civil servants need is professional or vocational in-service continuous training, not a general academic education. Given the country's reduced market and its small public administration, which are both unable to ensure employment to all those who graduate from public administration faculties, the usefulness of a new academic outlet should be questioned. The Government should instead strengthen the capacities of the existing institutions, such as the TIPA, rather than undermine them.

Managerial opaqueness is a key characteristic. It is very difficult to obtain reliable data on the management of the public administration. Although foreseen in the Action Plan for the implementation of the anti-corruption strategy and in the PAR Strategy itself, DoPA does not publish indicators on the implementation of the Law on Civil Service and other laws. Other institutions also very rarely do so.

The weak accountability of those in charge remains another main characteristic. Delegation is rarely used and decision-making is concentrated at the top level of the institutions. The functional reform promoted by DoPA and the creation of the position of general director in ministries were not accompanied by a delegation of duties. These positions have now become an additional bureaucratic level rather than a functional level aimed at professionalising the decision-making process. The lack of delegation prevents professionalism in management and increases the likelihood of corruption at the top levels.

Reform Capacity

Public administration reform "capacities" that have an overall, cross-sectoral impact on the public sector are hard to identify. This is not surprising in a state where the political system is split into two irreconcilable, polarised camps. The small reform initiatives of the past few years have been carried out under international pressure, which puts their sustainability at risk. Despite the stability of the legal framework, which is exclusively due to the constitutional requirement of a qualified majority to change it, no reforms seem to be sufficiently rooted in the politico-administrative culture of the country for them to be durable. The impossibility of formally changing the legal framework has led to the political class plainly ignoring it.

The Department of Public Administration somehow struggles to push for reforms but it is powerless to play a key role in the development and implementation of the civil service reform. DoPA's regulatory and monitoring capacities have de facto been continuously weakened. The future of the TIPA is unclear as it is too dependent on political expediency. The CSC is in an extremely difficult position because, as a control institution, it is disliked by the political class.

The Ministry of Justice, in charge of reforming administrative justice and administrative procedures, is being sluggish. In addition, the preparation of laws was further slowed down by yet another change of staff in key positions. Even if the Ministry worked faster, it is quite unlikely that the Parliament would pass these legal instruments.

The small reform capacities that may exist at the technical level in the public administration are counterbalanced by the political class, which seems little interested in reforming the status quo. Failure to reach consensus between the two main political parties hampers further reforms. Technocratic reforms cannot replace or precede the political reforms needed in the first place.

In this political context, a possible reform driver could be the pressure that the business community, especially small and medium-sized enterprises, may exercise on the political structures of the country in order to "oblige" the main political parties to create a climate of co-operation in state-building related issues, with the aim of setting common and long-term goals that have the support of the majority of society. Such a climate requires ample political negotiation and compromise and reducing the existing political polarisation.

Sustained pressure from the European Commission and other bilateral stakeholders, such as individual EU member states and the United States, has so far been relatively unsuccessful in driving reform, as neither the Government nor the Opposition seem to be moved by them beyond feeling compelled to express certain rhetorical utterances.

Recommendations

To Albania

- The Government needs to create a climate of co-operation with the opposition, with the aim of setting common and long-term goals that have the support of all of the main political parties. Such a climate requires political negotiation and compromise in order to build a consensus.

- The adoption of the package of laws, which form the most important structural elements of the state administrative legal framework, is required. The Ministry of Justice will need political support and technical assistance for the implementation of the two new pieces of legislation, namely the Law on Administrative Disputes and the Law on General Administrative Procedures, should the political situation allow for their adoption. The same applies to the DoPA concerning a new Civil Service Law.

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

- The civil service oversight bodies, such as the Civil Service Commission, need to be strengthened and their decisions respected by all administrative and political bodies.

- A Law on Organisation and Functioning of the State Administration should bring about a new, clearer state organisational policy, which should include amending, where necessary, the current Law on Government and Law on Prefects.

INTEGRITY

Main Developments Since the Last Assessment (May 2011)

Although some activities have been carried out, no progress has been made during the period assessed. The situation even seems to have worsened. Parliamentary works have mostly been blocked due to lack of political consensus to pass legislation.

In November 2011, the two main political parties signed an agreement to examine and discuss important laws requiring qualified majority. Following this agreement, only laws related to technical issues have so far been passed by Parliament.[3] At the time of writing (March 2012) amendments to the Criminal Code and the Code of Criminal Procedures were under parliamentary discussion to introduce the recommendations of GRECO and MONEYVAL into domestic legislation and further criminalise some corruption-related offences. However, aggravating the punishment of corruption-related offences only deters corruption if the penal system is solid. The more serious the punishment, the longer the criminal investigations tend to be. As a consequence, the judicial system cannot effectively deal with the backlog of criminal cases. Moreover, aggravated punishments are sometimes regarded as disproportionate and judges tend to be indulgent or to discharge the defendant for procedural reasons, thus further undermining the credibility of the system.

In the framework of the electoral reform, both parties have agreed to amend the provisions on political party financing with a view of making the distribution of public funds more equitable for the smallest parties through more proportionally reflecting the votes received, regardless of the voting threshold achieved by a given party. These amendments follow the February 2011 legal amendments to the Law of 2001, providing for more transparent and independent supervision of parties' finances. However, challenges still remain concerning the still defective legal framework and its effective implementation.

The work of the joint investigative units (JIU) created some years ago continue to produce results as they allow for a certain degree of specialisation of the anti-corruption prosecution services, in line with the European Criminal Law Convention. They are composed of prosecutors, judicial police, tax inspectors, customs officials, state police, the financial intelligence service, the High State Control and the High Inspectorate of Declaration and Audit of Assets (HIDAA). They are usually able to work in a smooth and co-operative manner. Judges, however, are not specialised and are not up to the task, a fact which counteracts the still incipient benefits for professionalisation that the JIU scheme may bring to specialised investigative bodies, in particular prosecutors. The judiciary therefore continues to be ill-equipped to deal with corruption. As a result, corruption remains widespread and systemic in the public sphere.

The Department for Internal Administrative Control and Anti-corruption (DIACA), dependent on the Prime Minister, monitored the implementation of the action plan related to the Government's Strategy for the Prevention and Fight against Corruption and for Transparent Governance 2008-2013 (hereafter referred to as the Anti-corruption Strategy). The monitoring report is presented in a bureaucratic, formalistic way, simply listing the activities carried out but without any analysis of the effects of these activities. The DIACA also developed a new Action Plan for 2011-2013. The DIACA

[3] Roads Code and Code on Air Traffic Control.

seems powerless to fully co-ordinate the efforts for anti-corruption activities and has limited capacities. Progress in the implementation of the strategy is imperceptible.

The High Inspectorate for Declaration and Audit of Assets continues to monitor the declaration of public officials' assets and to prevent cases of conflict of interest in decision making. In 2011, it reported 16 cases constituting possible criminal offence to the prosecutor; applied administrative sanctions for failing to declare or for incorrect declarations of assets in 109 cases, and issued 8 administrative fines for officials in conflict of interest situations. The HIDAA signed a Memorandum of Understanding (MoU) with the Agency for Legalization, Urbanization, and Integration for Informal Areas (ALUIZNI) and the Department for Vehicle Registration and now has direct access to their electronic databases. It also signed a MoU with the Office of Registration of Immovable Properties to facilitate the control of public officials' properties. However this MoU has limited effect in practice because there is no electronic database for immovable properties and all checks are done manually. The control of these properties is thus rather theoretical.

The Ministry of Education introduced anti-corruption and integrity enforcement related matters in the curricula of elementary and secondary schools.

Main Characteristics

Weak rule of law and corruption are major stumbling blocks for the functioning of the democracy and the economic development of the country. Surveys continue to show widespread mistrust of citizens in the state's ability to solve collective problems. Albanian citizens rank corruption as the second most important problem, after unemployment. When it comes to bribery, a code of silence is well established and functioning.[4]

Despite the usual anti-corruption political rhetoric, institutional arrangements are not strong enough to prevent and combat corruption. Improvements are lacking, especially in areas highly vulnerable to corruption. The Albanian Government lacks a strategic vision for setting priorities in the fight against corruption. The current approach, which concentrates on legislation -- which itself is partially inconsistent and too rapidly changing -- has led to confusion in enforcement and has resulted in legal uncertainty. As a consequence, although policy papers and a regulatory framework for fighting corruption do exist, the absence of implementation remains a huge problem.

The immunity of high-level officials and judges is a major obstructing block for the investigation of high-level corruption. This immunity is too large, as it prohibits the prosecution from not only investigating but also from undertaking any police activities geared towards collecting evidence. A conference to discuss this issue was organised in 2011 in co-operation with EURALIUS and PACA, EU-funded projects, where all participants supported proposals[5] to reduce the immunity of high officials (MPs and judges) and to facilitate investigation. However, no progress has been made in practice as this would require amending the Constitution, which is unlikely to occur as the Socialist Party would like a large revision of the Constitution while the Democratic Party wants to review only the immunity regime.

[4] UNODC (2011), "Corruption in Albania: bribery as experienced by the population".

[5] PACA Project elaborated a proposal with options and recommendations for reducing the immunity of MPs http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/1917-PACA-TP%2019%20IMMUNITIES-Sept'11-final.pdf, and EURALIUS prepared a proposal for reducing the immunities of judges http://www.euralius.eu/images/downloads/recommendations/recommendations/Immunity%20of%20judges%20in%20Albania.pdf

The impact of corruption is aggravated in Albania by serious doubts regarding the existence of a real rule of law and the proper functioning of the democratic institutions. The executive dominates almost all other powers of the state and exerts permanent pressure on the other institutions, including the independent ones, hampering the system of checks and balances.

In this regard, the situation of the judiciary is most problematic. It negatively affects the efforts to combat corruption. The Supreme Court is politicised and is not subject to control, bar by the political parties. The judges of the Supreme Court are not necessarily career judges and are outside the scope of control of the High Council of Justice. All cases of corruption involving high-level officials have so far been resolved void of any convictions by the Supreme Court. Albania has a small number of judges compared to countries of similar size. In general, judges lack professional capability and require further training, especially for newly emerging offences in the penal code, including corruption-related ones.

The unsatisfactory qualification of judges to deal with corruption-related offences is a cause for concern. Attempts to train judges in anti-corruption have been made, with little results. Judges are reputed to be corrupt and uninterested in strengthening their independence or their ability to combat corruption and abuse of power. They do seem quite interested, however, in increasing the efficiency of judicial offices. The constitutional immunity of the judiciary does not facilitate the investigation and prosecution of corrupt judges. The High Court (Supreme Court) is politically appointed; the judiciary is also politicised.

There has been no change in the weak role of Parliament in the state system of checks and balances. The continued parliamentary stalemate since the June 2009 elections has undermined Parliament's ability to exercise its oversight functions and to initiate any important legal reforms related to improving public sector integrity and combating corruption. The parliamentary investigation commissions, ideally conceived as a tool for the opposition to control the executive, do not perform that role.

The public administration remains heavily influenced by cases of corruption at top levels and despite some efforts from particular segments; it is very hard to promote integrity and professionalism in the public administration. Political controversies, where representatives of both parties accuse each other of being corrupt without following legal action to denounce corruption,[6] create a situation where anyone can accuse anybody else, but nobody is actually investigated and convicted. The generally weak independence of the media aggravates this situation as well. The public health sector and property registers are still considered the most corrupt, after judges.

In general, the public administration is characterised by a lack of accountability at high levels. Decisions in the public administration are centralised and usually only taken by top officials. This lack of delegation hampers efficiency and effectiveness and increases the chance of corruption of these officials, who are appointed on the basis of political affiliation, not professionalism, and subject to uncertain office terms.

The DIACA is designed to be the administrative body in charge of implementing the Anti-corruption Strategy. Its major task is to co-ordinate the activities designated by the inter-ministerial anti-corruption working group. However, the DIACA suffers from meagre resources. Its low institutional capacities, as well as its limited power, contradict the Government's statements about the "war against corruption" and the ambitious objectives of the Anti-corruption Strategy. The budget allocated to the implementation of the action plan seems insufficient. Perhaps this is the reason why it mainly focuses on legal reform.

[6] Recently a minister publicly accused the President of the Republic of corruption in cases related to the appointment of judges, with no legal consequence.

The HIDAA is putting all of its efforts into fully implementing the legislation related to the declaration of assets and prevention of conflict of interest. However, its efforts are undermined by the lack of infrastructure and effective controls, especially on immovable properties. As a result, the HIDAA carries out a mere formalistic control of asset declarations without proper investigation of the origins of the assets. As a result, it can hardly ascertain the reliability of the information provided.

Reform Capacity

The governmental rhetoric on anti-corruption is mostly a public relations exercise, which is not translated into action actually capable of improving the situation. The weakness of the institutional set-up raises questions about the genuine political will to reform the *status quo*. Apparently, reform initiatives aimed at improving public sector integrity and fighting corruption are mainly undertaken in response to pressure from outside sources, especially from the EU and international organisations, and these initiatives are therefore not sufficiently internalised and not meant to be durable. This raises evident concerns regarding the ownership and medium-term sustainability of the reforms.

The role of civil society is limited and cannot be considered as putting pressure on the Government. Some NGOs have been invited to participate in a review of the Anti-corruption Strategy. Despite certain weaknesses, civil society could contribute to advancing anti-corruption policies if the political atmosphere were less polarised. While the political climate remains as it is now, NGOs ineluctably tend to side with one or other of the two political camps.

The DIACA, with its limited human resources capacity, insufficient budget, and lack of control capacities, does not have a noteworthy impact on processes within line ministries and other administrative bodies. If it is to play a central position in the implementation of horizontal anti-corruption activities across the public administration, it needs a complete overhaul and redesign.

Recommendations

To Albania

- A stronger role for Parliament in the system of checks and balances is urgently needed. Regarding its institutional weaknesses, better working conditions for its members, such as appropriate equipment and research and analysis services, could contribute to better legislation and to increased transparency in the public sector through effective control of the executive.

- Amendment of the Constitution is required to limit MPs' and judges' immunity regarding criminal offences related to the offer or acceptance of a bribe. The legislative initiative for amending the Constitution needs to emanate from the Parliament (one fifth of its members).

- The regulatory framework on conflicts of interest and asset declarations requires a thorough review, in order to allow for different prevention measures and sanctions for conflicts of interest according to the different statuses of the various categories of public officials. As far as civil servants are concerned, the drafting of the pertinent provisions of the Civil Service Law fall under the responsibility of the DoPA (Ministry of Interior); as to the status of members of Parliament, the Parliament holds the right to self-regulate and self-control. Matters regarding other appointed or elected public officials should be regulated in the Law on the Government, for which the Ministry of Justice should take the drafting initiative.

- High priority should be given to the implementation of existing laws. It is first and foremost the responsibility of the executive level of administrative authorities (ministers, directors, heads of

departments and units) to ensure -- by exercising internal managerial control within their respective remits -- administrative compliance with the law.

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

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments Since the Last Assessment (May 2011)

Annual GDP growth in Albania remained relatively weak in 2011, slowing to 2.5 % compared with 7 %-9 % between 2005 and 2008 (IMF[7]), and substantially below the forecasts of the Ministry of Finance. The budget deficit in 2010 was 3.7 % and the forecast for 2011 is 3.7 %. Public debt in 2010 and 2011 reached 58.3 % and 59.4 % of GDP respectively (IMF, 2011), just below the limit of 60 % set in the Organic Budget Law.

The National Strategy of Development and Integration (NSDI), first published in 2008, was reviewed in 2010 and revised in 2011. It now covers the period until 2020.

Further steps have been taken to improve **Public Expenditure Management (PEM).** General Secretaries of ministries should have been appointed as authorising officers in all ministries as of September 2011 (prior to this date, in some ministries this position was held by ministers). The Central Harmonisation Unit for Financial Management and Control (CHU/FMC) is currently undertaking a survey to establish if this has actually occurred. Executing officers have been appointed, but it is not clear whether this was done in accordance with the requirements of the Organic Budget Law 2008 (OBL) and the Financial Management and Control Law 2010. The CHU/FMC will verify the compliance of the appointment process. Strategic management groups consisting of programme directors were set up in 2010 in all ministries to decide on the allocation of budget resources between programmes. At the level of separate programmes, management teams have been formed to take decisions on programme adjustments and the allocation of resources among line items.

The **Public Internal Financial Control (PIFC)** Management Board has become operational. The Management Board consists of nine top managers of the Ministry of Finance and is chaired by the Minister of Finance.

In order to provide practical guidance on the introduction of **Financial Management and Control (FMC)**, a pilot project in the Roads Directorate of the Ministry of Public Works and Transport was prepared in 2011. The aim of this pilot project is to define the managerial structures, the operational information, the financial information and the accountability arrangements that ought to exist to secure the effective implementation of FMC. The outcomes of this project are designed to provide a model for the application of FMC throughout the Albanian public sector.

The Central Harmonisation Unit has been issuing the instructions and guidance to public organisations to implement the FMC procedural requirements set out in the Financial Management and Control Law 2010.

In 2011, the General Directorate of Internal Audit (GDIA) started implementing the new Internal Audit (IA) Law of 2010. A new IA manual was introduced.

[7] IMF (2011), "Albania Article IV Consultation – Staff Report", IMF, Washington, DC.

A **Financial Inspection** Directorate has been established within the Ministry of Finance under the provisions of the Law on Public Financial Inspection 2010. It became operational in August 2011. This directorate currently has six staff including the Director. Under 2010 Law, the Directorate is limited to a small co-ordinating team with the ability to "call on" selected officials from other ministries on an *ad hoc* basis. In 2011, 126 such persons were selected as inspectors.

The Albanian **external audit** institution, **the High State Control (HSC)**, has a new Chairman, following the expiration of the previous Chairman's seven-year mandate on 1 November 2011. The new Chairman was appointed by Parliament on the proposal of the President, as required by law. His term of office started on 23 December 2011. During the hearing of the candidate by the Parliamentary Committee on Finance and Economy, the new chairman of the HSC presented several initiatives, including improving the quality and impact of audit; strengthening co-operation with other institutions in respect to financial control and the fight against corruption; improving communication; and strengthening relations with Parliament, the general public and civil society. A new initiative has also been undertaken to prepare amendments to the Law on the HSC to be submitted to the competent committees in Parliament in the spring of 2012.

Main Characteristics

Strategic Planning System

In 2007, Albania introduced an integrated planning system, which in principle consists of three components: long-term sectoral plans for separate programmes (NSDI), the Integrated Planning System (IPS) that integrates sectoral and intra-sectoral plans, and the Medium-Term Budget Plan (MTBP) that contains budgetary ceilings for line ministries and programmes for the budget year and three out-years. The Strategic Planning Committee, chaired by the Prime Minister, discusses all important national planning documents as well as draft Instrument for Pre-Accession (IPA) programmes, both annual and multi-annual. At the operational level, plans for foreign assistance are co-ordinated by the Department for Strategies and Donor Co-ordination of the Prime Minister's Office, which also takes part in IPA programming activities led by the Ministry for Integration.

The Organic Budget Law is key

The annual budget contains estimates for the budget year and is made consistent with the first year of the Medium-Term Budget Plan. The development of a fiscal framework and the setting of sectoral ceilings within that framework have provided the budget process with more rigour and strategic direction. For the development of **PEM,** the OBL of 2008, which came into force in 2009, has been a key factor. This law has considerably improved the legislative framework for the integrated budgeting processes in Albania. However, in practice the current set up, a hierarchy of various plans, appears to be very ambitious and complicated. It supposes that superior plans are continuously adjusted if lower level plans, and ultimately the budget, cannot accommodate the objectives set in the superior plans. This elaborate planning system leads to a large amount of paperwork that detracts the small groups of financial experts in the Ministry of Finance and the line ministries from more urgent tasks, such as checking baseline estimates and providing advice on effectiveness and efficiency.

Programme classification is implemented

The programme classification of the budget has been fully implemented. As a result, programme managers (and management groups) have become more focused on outputs and outcomes, but here too, the requirements for reporting in the MTBP and the national plan leads to a lot of paperwork and bureaucracy that could be avoided if the responsibility for outputs and outcomes were

attributed more explicitly to the line ministers and their staff, rather than to the cabinet as a whole or the Minister of Finance.

Difference between baseline estimates and ceilings is not understood

A basic problem in the Albanian budget formulation process is that there is no clear understanding of the distinction between baseline estimates, as empirical estimates of the future costs of current policy, and ceilings, as normative constraints on future expenditures. The understanding of this distinction is lacking both among officials of the Ministry of Finance and among budget staff of some line ministries. The consequence is that when the MTBP is put forward, both in the spring and summer rounds, expenditures flowing from current policies and part of those flowing from new spending initiatives are made until the ceilings imposed by the Ministry of Finance are reached. Since the ceilings are usually too low to include new spending initiatives, this leads to so-called additional requests (such requests were forbidden during the preparation of the 2012 budget) or the artificial squeeze of the future costs of current policy.

Connected to the lack of distinction between baseline estimates and ceilings is the lack of control on the baseline estimates both inside line ministries and in the Ministry of Finance. Another consequence is the lack of reporting on changes in the MBTP and the budget from year to year. Budget transparency requires that the Ministry of Finance, the Council of Ministers and the Parliament be informed of why a programme estimate for a given year deviates from what was forecast the previous year. These distinctions are at the core of an orderly budget process and should be at the heart of budget negotiations inside the Government and carefully spelled out in the budget documentation. This is currently not the case in Albania.

The independence of the Macro-Economic Policy Department is not guaranteed

The Macroeconomic Policy Department of the Ministry of Finance produces forecasts three or four times per year. The department uses appropriate tools, given its small size and the size and structure of the Albanian economy. It consults widely with other forecasters. The department does not, however, conduct forecasts of major spending programmes (education, health, social security) nor does it conduct cost-benefit analysis of investment projects. Cost-benefit analysis is often non-existent. Investment projects are mainly decided on political criteria. The macroeconomic forecasts of the Ministry of Finance are not entirely free from political interference; in recent years GDP and revenue forecasts have been far too optimistic. The quality of the forecasts could be improved by increasing the independence of the Macroeconomic Policy Department.

The new Treasury system works satisfactorily

The new automatised Treasury system works appropriately. The Treasury records all commitments and payments and checks compliance with regulations as well as the completeness of payment documentation (including invoices). However, there is no good information on arrears. According to the Treasury, arrears can only occur if spending units do not comply with their obligation to submit contract commitments to the Treasury for registration. Under the IPA 2008 programme, a project was recently launched and will select five pilot institutions to test the new rules of the ICT system. The system will later be extended to 50 other institutions. At this stage, the improvements made to the Treasury ICT system relate to expenditure input arrangements to allow direct user input in the Treasury system by 50 budget institutions by 2014 and to fully automate the budget formulation process for all spending units. Currently, the budget formulation process uses a separate ICT system which does not cover all spending units (some 1,500). Some local spending units are not connected to the system. This implies that line ministries have to rely on their own regional centres to co-ordinate the budget formulation process with local spending units. The technical assistance

project does not yet intend to provide a full financial management information system, which includes supporting management accounting and costing information systems.

Cash management could be improved

Cash management is still underdeveloped. Cash plans are based on historical cash patterns and not on the financial plans of spending units. Because cash plans have to be revised frequently, the Debt Department' auction schedule is disturbed, often leading to changes in auction schedules (more and larger auctions than planned). It also leads to temporary transfer of cash surplus to the Central Bank. The Debt Management Department sees itself as the main beneficiary of improved cash management, but the responsibility lies with the Treasury. Local government expenditures are relatively low in Albania (around 10 % of general government expenditure). Since local government lacks sufficient own resources, the financing of local government is largely dependent on central government grants. The distribution formula for the non-earmarked equalisation grant is contained in the annual budget, which leads to annual discussions about its adjustment. The legal framework for the introduction of **Financial Management and Control (FMC)** is set out in the Organic Budget Law of 2008 and the FMC Law of 2010. They provide an adequate legal framework for the introduction of FMC, although some amendments are required.

There is a narrow understanding of the new FMC Law

The CHU/FMC has been promoting understanding of the laws through seminars and training programmes. However, this work has had limited success in that there is generally only a narrow understanding of the full implications of the introduction of FMC. For example, in the Twinning project of 2008-2010, training in risk management was provided but its success has been limited. The narrow understanding is a reflection of the traditional Albanian administrative arrangements with decisions largely being centralised on the head of the budget user (generally the minister or mayor, with the mayor also being required to undertake the functions of the authorising officer).

The control and accountability arrangements that should exist between first and second-level organisations, regardless of the importance and size of the second-level organisation, are not well defined in the OBL 2008. The requirement that the authorising officer in a municipality is the mayor is inappropriate. Responsibility, at least in the larger municipalities, ought to fall onto the most senior full-time appointed official.

The position of executing officer is unclear

In Albania there is no finance director as such and the role can be divided among several officials. The official responsible for the co-ordination of budget formulation and the executing officer are two different functions. This split into different functions has recently been exacerbated by new management structures defined by the Department of Public Administration of the Ministry of the Interior and approved by the Council of Ministers (COM) in November 2011. This COM instruction specifies that organisational structures are to be grouped into four main areas: policy making functions, regulatory functions, service delivery functions, and support services functions (for further details, see the Civil Service and Administrative Law assessment report). The usual arrangement is for the budget formulation co-ordinator to be regarded as part of the policy directorate and for the executing officer part of the support services directorate. There can also be several executing officers in one ministry depending on how the ministry is organised.

Executing officers are usually only responsible for one part of the ministry's activities and there is no overall executing officer responsible for the overall financial management and control of the whole organisation (*i.e.* covering both first and second-level spending units). The focus of financial control is to ensure that spending does not exceed budgetary limits (and cash limits agreed with the Treasury) rather than to achieve performance targets within the budget limits.

To increase effectiveness, the official responsible for the overall financial management and control of the finances of the spending unit ought to be positioned at the highest levels of management and report directly to the authorising officer. This is what the FMC Law of 2010 requires, but it conflicts with the Council of Minister's recent decision. The solution to these difficulties may well lie in a redefinition of the role of the executing officer with, as a consequence, a reconsideration of the COM's decision.

Internal audit versus financial inspection

The 2010 changes to the Law on **Internal Audit,** separating inspection from internal audit, have already helped to clarify the role of internal audit (IA) as a support to management. There is more awareness among top officials of the purpose of internal audit. But ministers and mayors still request from heads of IA units that they carry out financial inspection-type activities, despite the establishment of a specific financial inspection function in the MoF. The quality of IA still needs to be improved. The new manual could help in that respect and is regarded as an improvement of the IA methodology but IA units still perceive it as too general and require practical guidance. The CHU/IA has started reviewing the quality of IA, but it lacks a methodology. Its work overlaps with the review of the IA function of ministries carried out annually by the High State Control. Besides its ongoing training activities, the CHU/IA may be required to undertake a major training programme for authorising and executing officers and the executive level of administrative authorities such as ministers, directors of agencies, heads of departments and units, as well as for internal auditors.

Awareness of the importance of EU fund structures is lacking

There is hardly any interaction between **IPA structures** responsible for programme implementation (after the decision for decentralised management) and the related departments in the Ministry of Finance. The accounting and project management system developed for IPA programmes is separate from the Treasury system, although the bank accounts managed by the National Fund for IPA Programmes are part of the Treasury Single Account. The IPA structures recognise their (future) role, although the National Fund and the Audit Authority are not fully aware of the importance of their future roles as foreseen in the IPA regulations.

The financial inspection function is operational

The **Financial Inspection Directorate** conducted three financial inspections in 2011. A further six cases have been proposed, with two more investigations commencing in January 2012. Overall, the Directorate has received about 140 requests for investigations. The focus of the financial inspection work is on anti-corruption. In practice, two main problem areas emerge from the Law on Financial Inspection. The first is that the powers of the Directorate are unclear, which hinders its ability to give guidance to the inspectors and to comment on reports. The second relates to the powers of the Minister of Finance as set out in the Law. It is unclear whether the Minister is limited to only providing "advice" on the results of an inspection or whether he can make "decisions" as well. In order to be effective, further instructions of the MoF are needed.

The independence of the High State Control is guaranteed

The **HSC is an independent supreme audit institution**, based on the Constitution (articles 162-165) and the Law on the State Supreme Audit Institution, which dates back to 1997 and was amended in 2000. The legal basis is generally sufficient to guarantee the independence of the institution and to allow the HSC to audit all public sector institutions and to carry out all types of audits. Amendments to the Law have been prepared and discussed for the past several years, but have not yet formally been submitted to the Parliament for consideration. These amendments include, among others, proposals to create a legal foundation for criteria for dismissal of a chairman before his or her term of office ends. So far, no criteria have been laid down in law, and this might potentially affect the

independence of the Chairman, and the HSC in general. Other proposed amendments would lay down the legal foundation for audit opinions and make annual audits of all ministries mandatory.

The HSC currently has 156 staff, of which 115 are audit staff. Recruitment is under way for existing vacancies.

The development of the High State Control is slow

During the last couple of years the pace of development of HSC has been slow. It proved to be a challenge to maintain the level of quality achieved after the twinning project 2007-2008, and even more to further develop audit quality and audit impact. HSC carries out all main types of audit as defined in the INTOSAI standards, but the large majority of its audits deal with the financial inspection type of regularity/compliance issues. In 2011, 139 out of 152 audits were compliance audits. Reports on compliance audits list non-compliance issues with all of the necessary details for the management of the entities to follow up on recommendations from HSC. Compliance audits do not result in formal audit opinions. The focus on compliance audits has resulted, for example, in a high public profile of HSC as an institution which plays a role in fighting corruption and fraud.

The High State Control's remit is broad

Since all public institutions and local governments, including all public enterprises or companies in which the state holds a majority interest, are subject to audit by the HSC, financial and compliance audits cannot be carried out on all subjects on an annual basis. Approximately 50 % of all potential auditees are covered annually, representing around 70 % of the public budget. The selection of auditees takes place on the basis of criteria covering volume of budget, number of employees, risk, and results of previous audits, with the principle of covering each bigger entity at least every two years. Taking the current phase of development of the HSC into account, this approach for covering its remit is sensible.

The development of performance audit is stagnating

Performance audit was developed during the 2007-2008 Twinning project. The number of performance audits then carried out annually reached seven, whereas in 2011 only two were carried out. The gradual development that was originally planned has evidently come to a standstill. In an attempt to boost performance audit, the HSC has set the number of planned performance audits in 2012 at five, which would indeed imply a substantial increase but is still not sufficient. The further development of performance auditing is certainly needed.

Contacts with the Parliamentary Committee on Economy and Finance are limited

Relations with the Parliamentary Committee on Economy and Finance are limited to the discussion on the annual activity report of HSC, issued in April, and the annual report on the budget execution, submitted in October. The committee does not deal with individual audit reports, and ideas to establish a separate body or subcommittee to deal with those reports have never materialised. Neither the committee nor the Parliament have appointed an independent body to audit the accounts of HSC, as foreseen in the Law on HSC. Instead, HSC's own internal auditors audit the accounts, which is not an optimal situation.

The number of impact audit reports is growing

The impact of audit reports therefore depends on the reaction of the auditees. The percentage of the compliance-related recommendations implemented by auditees has increased over the years, demonstrating both a growing acceptance by auditees of the recommendations and the HSC's increased realism in providing them, which is a positive development. However, performance

audit-related recommendations, which could surely increase the impact of the work of the HSC, are still missing.

The premises of HSC hamper further investments in IT infrastructure, which are needed to increase efficiency and quality control of audit procedures.

Reform Capacity

Public finance reform is underway

The need for reform is broadly recognised and the preparation of **public finance** reform is, in fact, already underway or almost completed. The extension of the Treasury's ICT system with modules for budget preparation, the handling of multi-annual contracts and internal transactions between budget holders, is an example of a generally accepted reform that is in an advanced stage of implementation.

The need for the further development of cash management is widely recognised, but a concrete plan is thus far lacking.

The prospects for certain other reforms are far less promising. This applies first to the need to develop reliable baseline estimates and to have them carefully checked by the line ministry, the Budget Directorate of the Ministry of Finance and, as far as major entitlement expenditures are concerned (health, education, social security) by the forecasting department of the Ministry of Finance. Secondly, awareness needs to be raised concerning the need for simplifying planning procedures which may free up resources for more urgent tasks.

The reform capacity of the Ministry of Finance is sufficient

In principle, the Ministry of Finance has the capacity to take the lead in further developing the public finance system arrangements in Albania. Indeed, it is one of the few ministries that has not been affected by high staff turnover with the change of Governments over the last ten years. However, there is a role here for international organisations too, to bring international good practice to the attention of the Albanian authorities, especially for the above-mentioned technical subjects.

Development of FMC capacity in ministries is needed

The legal foundations exist for **FMC**. However, they are to some extent in competition with other laws. There is, in effect, an asymmetry of legal requirements and perceptions, especially over the role and responsibilities of the executing officers and their position within organisations. The inability of the Ministry of Finance to secure the position of executing officers is of concern and suggests that the real importance of the role of financial management has yet to be realised.

The development of a cadre of well-trained officials responsible for all aspects of financial management, including establishing an analytical and questioning capacity, will be a major task. It will also require a change of managerial approach throughout the public organisation. This will require significant assistance in professional training in managerial skills and financial matters.

The CHU/FMC is the potential driver for the FMC reform, but it does require support. Such support may be provided as part of the proposed pilot project but the experience and skills base is relatively limited within the CHU and could benefit from extensive practical assistance.

The High State Control is at a turning point

The HSC has chosen a more ambitious development path for which external assistance is essential. Over the past three years such assistance has not been provided, which explains the relatively slow pace of development. However, the new strategic orientations themselves are already making a difference by demonstrating the willingness to accept reform as a prerequisite for further development. This implies a huge challenge for the HSC, since the reform path chosen implies substantial changes in all areas, including a reallocation of resources needed to invest in audit quality, human resource management, public relations and ICT in the absence of possibilities to increase staff resources substantially.

With the drive of the new Chairman, his strategic orientations, and the 100 days Action Plan, a foundation for strengthening the quality and impact of audits and for increasing the efficiency of audit procedures has been established.

As stated in previous SIGMA Assessments Reports, the HSC needs external support for its further development. Such assistance needs to be accommodated by the HSC so that development achieved is sustainable once the project ends.

Recommendations

To Albania

For Public Expenditure Management

- The Prime Minister's Office needs to substantially simplify its planning procedures. Most EU member states only have sectoral plans under the responsibility of line ministries and a Medium-Term Expenditure Framework integrated with the annual budget. Responsibility for outputs and outcomes should rest with the line ministers, not with the Minister of Finance. This will free up resources for finance officials, which should be used to improve the quality and control of baseline estimates, to support improvements to effectiveness and efficiency, and to conduct cost-benefit analysis of investment projects.

- The Minister of Finance should amend the 2008 Organic Budget Law to ensure that when funds pass through a first-level organisation to a second-level organisation, the first-level organisation remains accountable for the use of those funds for the purposes intended and retains overall responsibility for the efficient and effective use of those funds. The Law should also be amended to appoint the most senior full-time paid official to the role of authorising officer in local government instead of the mayor.

- The Ministry of Finance should increase the independence of its forecasting division. Its tasks could be extended to checking baseline estimates of major spending programmes and cost-benefit analysis of large investment projects.

- The Ministry of Finance should base cash plans not only on historical cash patterns but also on annual and monthly financial plans of budget institutions. In combination with independent macroeconomic forecasting, this can lead to more efficient debt management and savings on interest expenditures. The Budget Department of the Ministry of Finance should carry out a study on the savings resulting from this reform (mostly through smaller idle government balances in the Central Bank).

- The Ministry of Finance could pursue the extension of the Treasury' ICT system with new modules, including for budget formulation, as soon as possible.

For Financial Management Control

- The Prime Minister's Office, the Ministry of Finance and DoPA should together rethink the financial management arrangements within line ministries to avoid the present conflicts between the OBL 2008 and the FMC Law 2010 on the one hand, and the Council of Ministers decision of November 2011 on the other. This would involve the creation of an effective finance director function bringing together all the related budgeting, accounting and other financial information systems and ensuring that one person has overall responsibility for financial policy under the direction of the authorising officer.

For Internal Audit

- The CHU/IA of the General Directorate of Internal Audit in the Ministry of Finance should anticipate the consequences of the FMC Law for internal audit and, among other aspects, ensure that the impact of FMC policy is reflected in the training of internal auditors. Emphasis should also be placed on training the executive level of administrative authorities such as ministers, directors of agencies, heads of departments and units and the highest levels of management in the objectives of internal audit.

For External Audit

While preparing a new Strategic Development Plan, the HSC should:

- Pay attention to the necessary capacity to accommodate technical assistance, so as to ensure that the assistance brings about sustainable improvement in the areas of audit targeted.

- Analyse carefully how it can save resources on financial and compliance audit by reducing the audit procedures applying professional audit sampling techniques.

- Consider the introduction of software for audit documentation for increasing efficiency in audit procedures, and find ways to solve the technical problems caused by the limitations in infrastructure and premises.

- Consider making use of press briefings in order to raise the attention of the media and general public on audit reports.

- Adapt the format of the reports to better serve the interest of stakeholders. This might include using a more detailed management letter format for auditees, and shorter reports for external use and publication.

PUBLIC PROCUREMENT

Main Developments Since the Last Assessment (May 2011)

There were no significant changes in the legal framework on public procurement over the last year. The governing law remains Law No. 9643 of 2006 on Public Procurement, as amended (henceforth "PPL"). Following changes in the institutional structures in 2010, there has been a period of consolidation and re-organisation to allow the new structures to become operational. One small change was made in respect of the supervision of works contracts -- Guideline of the Council of Ministers No. 1, dated 16 June 2011 on some changes to Guideline No. 3, dated 15 February 2001 of the Council of Ministers "On the supervision and testing of construction works". Previously, this secondary legislation suggested that supervisors could be "nominated" without specifying that this nomination should be made after a procurement procedure. This formulation was misunderstood and misused by contracting authorities. The new Council Guideline has clarified this issue. The PPA continues to work on preparing amendments to the Procurement Law to improve alignment with the *acquis* but these will not be formally proposed at least until later in 2012.

At the same time, some confusion remains over the legal framework applying to concessions. The Concessions Law (Law No. 9663, dated 18 December 2006, as amended) neither fully complies with EC Directive 2004/18 nor reflects the fundamental principles of the EC Treaty applicable to concessions. The law is based on the UNCITRAL rules rather than on the EC Directives. This can be seen, among other things, in the procedures available for the award of concessions and, in particular, in the possibility of applying an unsolicited proposals procedure.

Recently, some limited amendments have been proposed to the Law on Concessions by entities other than the Public Procurement Agency (henceforth PPA), which has been responsible for concessions since 2010. In a similar vein, amendments were made to the Law on Mining giving responsibility to the Public Procurement Commission (henceforth PPC) over licensing disputes, a function which only became apparent to the PPC when the first case was brought to its attention. The opacity of these legal developments is a cause for concern.

The PPA drew up the following guidelines in 2011 to help contracting authorities:

1) Guideline No. 1, dated 9 March 2011 "On the small purchase (low value tender) procurement procedure" for the purpose of facilitating the procedures of procurement of small purchases. *2)* Guideline No. 2, dated 28 March 2011. This guideline reflects the changes made to Decision No. 53, dated 21 January 2009 of the Council of Ministers "On entrusting the Ministry of Interior with the conducting of public procurement procedures on behalf and in the name of the Prime Minister's Office, ministries and subordinate institutions, for some goods and services". *3)* Guideline No. 3, dated 26 May 2011 "On the conducting of the suspension process in the procurement electronic system". *4)* Guideline No 4, dated 22 July 2011 instructing the contracting authorities on how to proceed, in accordance with Decision No. 472, dated 2 July 2011 "On the disciplining of budget funds for 2011".

In 2011, a total of 4,835 contract notices of procurement procedures were published in the **52** Public Notice Bulletins and on the PPA's official website. This was 346 more than in 2010. The total number

of offers in the electronic procurement system in 2011 was 27,446 -- an average of 6 offers per procedure.

Main Characteristics

The governing law on procurement is mostly in line with the *acquis*, although some areas still need to be improved. In particular, the PPL has its origins in the UNCITRAL Model Law meaning that some elements of the PPL do not entirely reflect the provisions of the EC Directives. This can be seen most notably in the conditions that apply to the use of the restricted procedure and to the procedures that apply for the procurement of consultancy services. A distinctive feature of the system is the extensive use made of mandatory electronic procurement. The total number of suppliers registered so far in the electronic procurement system is 109, 369.

Notwithstanding reliance on electronic procurement and reference in the Public Procurement Law to definitions of electronic auctions and dynamic purchasing systems, there have not been any substantive provisions in this regard and these systems have not been rolled out. There is no mention of the competitive dialogue procedure and no provision for reliance on environmental characteristics within the tender documentation or indeed as award criteria. Other differences with the *acquis* include the provisions which apply to abnormally low prices and the absence in the Public Procurement Law of a distinction between priority and non-priority services. The exemptions in respect of utilities companies reflect those of the earlier Directive 93/38 rather than the now relevant Directive 2004/17. The thresholds applying to high-value contracts are also higher than those of the directives and may ultimately require alignment

In addition, the provisions on defence procurement are deficient. In respect of concessions, the available statistics also show that the majority of concessions (by some accounts, at least 90 %) are awarded based on unsolicited proposals and, therefore, in the absence of competition. Following a boom in concessions in the hydro-power sector, the number dwindled to eight in 2011. However, the PPC reports that it received complaints in respect of eight concessions over the same period (although some complaints may refer to earlier awards), suggesting that almost all grants of concessions give rise to dispute.

At the institutional level, and following the amendments made in 2009 and 2010, there are now three main entities involved in regulating procurement. The central body responsible for public procurement policy is the Public Procurement Agency (PPA). It has also formally been given responsibility for concessions. The Public Procurement Commission (PPC) is now responsible for providing the complaints review mechanism, a function it took over from the PPA thus removing the potential conflict that existed previously.

The PPA, which currently has a staff of 18 (no change), functions in compliance with the Orders of Prime Minister No. 84, dated 10 May 2007 “On the adoption of the structure and organizational chart of the Public Procurement Agency”, as amended, and No. 143, dated 6 July 2010 “On the adoption of the structure and organizational chart of the Public Procurement Agency”.

The PPC, with 16 staff, is composed of a chairman, deputy chairman and three members plus support staff. These two bodies are supplemented by the Public Procurement Advocate (PPAd) which has the role of safeguarding the legal rights and interests of suppliers through monitoring and investigating administrative procedures in public procurement. As a transitional body towards an independent review body, the creation of the PPAd served a useful purpose. However, now that the PPC has been created, it is open to question whether this is now a duplication of sorts. It serves as a distraction from the PPC, and the possibility of contradictory findings (which have occurred) could well lead to confusion and a lack of confidence in the overall system.

Finally, the Ministry of Interior has been designated as the central procurement body for a defined list of common use items. There was one significant change to the list, namely the removal of security guard services which proved impossible to procure centrally because of issues relating to authorisations required to carry firearms. Of the 500 complaints heard by the PPC in 2011, some 80 % were connected to the award of contracts for such services indicating that this was a serious practical issue. The removal of these services from the scope of central purchasing may greatly reduce the number of complaints. In respect of centralised purchasing, there are two possibly related issues of practical significance. First, the Ministry of the Interior does not use framework agreements but rather enters into a procedure to award a contract (usually based on a single common specification) with a single tenderer who is given a long-term contract for fixed quantities and prices. Moreover, the value of the total requirements is so high that tenderers are often required, as a matter of practice if not law (and certainly encouraged), to enter into joint ventures to enable supply. The combined effect of these practices reduces flexibility and lowers competition, thereby increasing the risk that the benefits normally associated with centralised purchasing will not be achieved.

In addition to these issues regarding the implementation of the law, the major concern raised by the current system is one of co-ordination. This arises in two ways. First, there is a risk that the multiplicity of control entities will dilute the proper implementation and enforcement of the law. The existence of two bodies responsible for review (one with the power to take decisions, the other to make recommendations) has the potential to create conflict. The fact that procedures before the PPAd are free of charge and those before the PPC give rise to a fee of 0.2 % of the contract value creates in itself some unhealthy competition between the institutions which tenderers are beginning to exploit. There have been inconsistent findings and although the relations between the two entities are good at present, there is a danger that this could lead to a battle for supremacy. Similarly, the PPAd has been given a role in monitoring which it is keen to pursue. Responsibility for monitoring is, however, a role formally given to the PPA. In the absence of implementing measures for monitoring (proposed by the PPAd but not approved), the PPA is not pursuing this, whilst the PPAd is becoming rather active. This also has the potential to result in conflict.

The second issue concerns co-ordination at an overarching policy level. The role of the different entities in the legislative arena remains unclear. In addition to the issue of monitoring mentioned above, a similar concern is evident in the case of concessions. An amendment to the Concessions Law formally gives responsibility to the PPA but proposed amendments have also been made by other entities. Again, amendments made to the Mining Law were so lacking in transparency that the PPC only discovered its newly created function of reviewing complaints under the Mining Law when the first complaint was made.

This lack of co-ordination both at entity level and at the legislative level is a serious cause for concern. It demonstrates a lack of common vision or common policy. There are two practical consequences. First, the regulatory agencies, contracting authorities and tenderers can never be sure what laws actually apply thus diminishing legal certainty. Second, external interlocutors such as donors or the EC are unable to rely on information coming from one ministry. They will need to carry out enquiries at various points in the hierarchy of all entities that may potentially have some responsibility in related areas in order to be confident that they have the full picture.

Reform Capacity

The public procurement system has over the past years undergone a number of positive changes, in particular with regard to the adoption of the new PPL, based on the EC Directives, a comprehensive set of implementing regulations, templates of standard bidding documents and other documents, and training of contracting authorities and suppliers. Review mechanisms have also been made available and e-procurement introduced. However, further work is needed to improve the

professionalism of contracting authorities. Unfortunately, the area of concessions and public-private partnerships (PPPs) remains a problematic issue.

Furthermore, the Albanian authorities do not seem to have a coherent, comprehensive strategy concerning the further development of the procurement system in either a medium or long-term perspective. In practice, almost all of the actions that have been taken recently were the result of dispersed initiatives of various stakeholders, undertaken on an ad hoc basis. There is considerable risk that such a dispersal of initiatives may undermine the efforts previously made with regard to the implementation of public procurement reform.

The biggest danger here stems from the lack of co-ordination evidenced both at entity level and at the level of legislative initiation. At best, this leads to practical difficulties in identifying and implementing the applicable legal and regulatory framework. At worst, it indicates a lack of strategic thinking which could undermine future reform. In either case, it leaves the regulatory agencies in a state of uncertainty which has already resulted in some instances of inaction and could cause conflict between the agencies (*e.g.* potentially between the PPC and PPAd and between the PPA and PPAd).

In order to finalise the actions mentioned above, the Albanian authorities may require additional support in the form of external assistance.

Recommendations

The current PPL is not fully aligned with the *acquis* and requires further work. The differences are not great, other than perhaps in respect of concessions, although a number of provisions could be improved (including defence). Full alignment is a medium-term objective at this stage but the lack of co-ordination is a serious problem that has the potential to undermine future reform efforts.

To Albania

- The Council of Ministers will need to address the issue of co-ordination as a matter or priority: *i)* at the entity level, this implies a greater effort to establish a clear and appropriate division of labour between the various regulatory agencies (and could imply reducing their number); *ii)* at the legislative level, this implies ensuring that the responsibilities assigned by law are respected.

- The Council of Ministers should be encouraged to adopt a new Concessions and possibly a PPP Law(s) which are consistent with EU law and with the relevant provisions of the PPL.

- In the medium term, work towards full alignment with the *acquis*.

PROCUREMENT/CONCESSIONS STATISTICS for 2011[1]

Number of contracting entities[2]		
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total number of contracting entities	**1700**	
Awarded[3] ***public contracts/Contracting entities***	**Total (estimated) value (million EUR)**	**Total number**[4]
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total public contracts awarded	407 146 539	5930
Awarded concessions/Contracting entities		
Central Government	153 346 233	8
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded	153 346 233	8
Awarded public contracts above the EU thresholds[5]		
Works[6]	140 926 168	8
Services[7]	17 327 069	43
Goods[8]	51 344 698	97
Mixed contracts		
Total public contracts above the EU thresholds	209 597 935	148
Awarded concessions above the EU thresholds[9]		
Works[10]		
Services[11]		
Other		
Total concessions above the EU thresholds		
Procurement methods used[12] ***(above the national thresholds***[13]***)***		
Open procedure	266 445 273	2266
Restricted procedure	59 535 040	1
Negotiated procedure with prior publication of a notice	3 076 713	1
Negotiated procedure without prior publication of a notice[14]	42 164 847	1713
Other procedures (competitive dialogue, *etc.*)	35 924 666	1949
Low- value procurement (estimated)		
Participation rate (average number of submitted tenders)		**6 offers per procedure**
Works		
Services		
Goods		
Review procedures		
Number of complaint received		
Number of complaint treated		
Number appealed to the Court		
Number of decisions with interim measures		

Note: Data delivered by the PPA

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

1. Drejtoria e Pergjithshme e Rrugeve
2. Drejtoria e Pergjithshme e Policise se Shtetit
3. Ministria e Brendshme
4. Termocentrali Vlore sh.a
5. Universiteti Aleksander Moisiu Durres
6. Universiteti Luigj Gurakuqi Shkoder
7. Sh.A Ujesjelles Mirdite
8. Sh.A Korporata Elektroenergjitike Shqiptare Tirane
9. Drejtoria e Pergjithshme e Ujesjelles Kanalizimeve Tirane
10. Autoriteti Portual Durres

A list of the 10 biggest public contracts/concessions awarded and/or advertised in 2011 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

Public Contracts[15]

1. Construction of Tunnel in the road section Tirane – Elbasan; Contractor: Actor s.a; value: 8 334 905 605
2. Uniforma e Policise se Shtetit Shqiptar; Contractor: GJERGJEFI ; value: 1,813,816,640
3. Loti I. Furnizim me lëndë djegëse për automjete-Karburant Diesel (Gazoil) ; Contractor: SKENDERI G ; value: 1,020,102,163
4. Prokurimi i sherbimit te Operimit dhe Mirembajtjes se TEC; Contractor: Bjoern Luthardt ; value: 430,739,886
5. Ndertim i kampusit te ri Universitar per Universitetin "Aleksander Moisiu", Durres; Contractor: KEVIN CONSTRUKSION; value: 401,198,367
6. Ndërtim Godinë e re Fakulteti Ekonomik Universiteti i Shkodrës; Contractor: CURRI; value: 304,386,488
7. Furnizimi me uje i zonave rurale Rreshen, rrjeti shperndares, Faza e II; Contractor: ''K.A.E.XH.'' SH.P.K. ; value: 257,379,277
8. Punime ndërtimi emergjente në anën e poshtëme të H/C Fierzë; Contractor: C.A.E.; value: 231,456,326
9. Përfundimi i rrjetit të Kanalizimeve të Ujrave të Zeza në zonën Përroi i Agait-Qerret, Loti i I (Fshati Golem, Linjat KUZ Stacioni i pompave nr.2 deri tek stacioni i pompave nr. 4) ; Contractor: ALBA KONSTRUKSION.; value: 226,160,636
10. Kryerje e remontit te pergjithshem te dy elektrovincave portual 16-27.5 ton; Contractor: 3A-PROFILE; value: 189,004,720

Concessions Contracts[16]

1. Dhënie me koncesion e formës "BOT" e Hidrocentraleve "NE pellgun e lumit Fan. Shfrytezimi hidroenergjitik i rrjedhes se lumit Fan i Madh (rrethi Puke) dhe Fan i Vogel (rrethi Mat)"; CA:METE; value 13,600,000,000
2. Dhënie me koncesion e formës "BOT", "E manaxhimit, operimit, mirembajtjes dhe permiresimit teknik te terminalit te kontenierеve ne portin e Durresit ; CA:MPPT; value 3,191,825,000
3. Dhënie me koncesion e formës "BOT" e Hidrocentraleve " që shfrytëzojnë rrjedhën e lumit Suha" ; CA:METE; value 3,181,563,000
4. Dhënie me koncesion e formës "Zalli I Tarit" Rrethi Mirdite ; CA:METE; value 499,200,000
5. Dhënie me koncesion e formës "BOT" e Hidrocentraleve "Qafe Shuli 1,2,3 ne rrjedhen e ujrave te perroit Sheja Librazhd; CA:METE; value 492,775,800
6. Dhënie me koncesion e formës "BOT" e Hidrocentraleve "Germani 1,2,3" Rrethi Mat; CA:METE; value 348,238,001
7. Dhënie me koncesion e formës "BOT" e Hidrocentraleve "Helmes 1 dhe 2", Rrethi Kolonje; CA:METE; value 108,000,000
8. Dhënie me koncesion e formës "BOT" e Hidrocentraleve "Ostren I vogel ne rrjedhen e ujrava te burimeve te Ostrenit dhe perroit te Tucepit), Rrethi Bulqize; CA:METE; value 46,870,792

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1 Statistics should cover contracts awarded in the period 1 January 2011-31 December 2011

2 As of 31 December 2011

3 Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

4 Please indicate whether the data include the low value contracts

5 Please indicate whether the data include contracts awarded by the utilities sector

6 Above €4,845,000

7 Above €125,000 for public institutions, €387,000 for utilities

8 Above €125,000 for public institutions, €387,000 for utilities

9 The legislation of concessions does not foresee any monetary thresholds.

10 Above €4,845,000

11 Above €125,000

12 Both for public contracts and concessions

13 Including contracts above EU thresholds

14 Including single-source procurement

15 The value of these contracts is given in the Albanian currency (LEKE).

16 The value of these contracts is given in the Albanian currency (LEKE).

POLICY MAKING AND CO-ORDINATION

Main Developments Since the Last Assessment (May 2011)

The National Strategy for Development and Integration 2007-2013 (NSDI) is being drafted for the period 2013-2020. It purports to be a strategic document for Albania that will attempt to harmonise and provide a basis for economic and social development, integration into European Union structures, as well as to achieve the UN Millennium Development Goals.

The Department of Strategy and Donor Co-operation (DSDC) has evaluated the operation of the 2007-2013 NSDI and is in the process of ensuring that lessons learnt from the earlier experience will be applied. Notably, there will be a comprehensive linkage between the NSDI, the Medium-Term Budget Framework and the plans for European integration. The underlying information systems for the formulation, execution and monitoring of both Integrated Planning System and budgeting processes are being improved as part of the process for the development of the revised plan. In addition, methodologies are being developed so as to ensure consistency in planning.

In 2011, the Ministry of Economy, Trade and Energy launched an Electronic Registry for Business Legislation.[8] The Electronic Registry contains all legislation and ministerial orders relating to business. It has been designed to aid SMEs, as well as the general public, to find information regarding starting up and developing businesses. Its distinctive features are that it contains legislation in force, forms, and decisions of the Council of Ministers, Orders and Instructions of the Council of Ministers and ministries, and Orders and Instructions of regulatory and other independent institutes with legislative or regulatory powers. It also makes available draft proposals for comment.

In the area of European integration, the Government has concentrated on consolidating the structure for managing the European integration policy. Some training activities for officials involved in European integration have been carried out. However, comparatively little attention has been paid to institution building and human capability development. The main capacity building development is turning the Stability and Accession Agreement Action Plan into a plan addressing all aspects of the implementation of the *acquis*. A further development during the period assessed was the focus on building capacities to achieve accreditation as an Instrument for PreAccession (IPA) co-ordinator.

The inception phase of a new IPA project supporting legal drafting finished in January 2011 and training courses are underway. The initial focus of the training sessions is on developing drafting skills in the Ministry of Justice. Training will be provided for other ministries later in 2012.

Main Characteristics

The overall framework within which policy is developed is set out clearly in the Law on the Organisation and Functioning of the Council of Ministers (CoM)[9] and the Law on the Approval of Regulations of the Council of Ministers.[10] There arrangements for co-ordinating policy between

8 http://www.rlb.gov.al/

9 Law No. 9000 of 30-1-2003.

10 Law No. 584 of 28-8-2003.

ministries before proposals are submitted to Government are well-established. These increasingly ensure that the budgetary, economic, European integration and legal implications associated with proposals submitted to Government are adequately addressed and that all relevant ministries are consulted.

The systems in place for planning the work of the Council of Ministers are reasonably good. Effective processes for inter-ministerial consultation on policy proposals are in place and the procedures for dispute resolution appear to operate effectively. However, while the systems and processes are in place, some questions regarding their efficacy arise but cannot be easily addressed in a brief assessment.

There is a central administrative body in the form of a Government Secretariat, which is designed to ensure that co-ordination arrangements are enforced, to provide logistical support to the cabinet, and to record and circulate decisions. An e-government tool has been developed to provide support for these activities. However, the extent to which these activities are carried out well and the ability to monitor the implementation of decisions is, to some extent, constrained by the small number of staff employed in the Government Secretariat.

There is a Department of Legislation and Coordination. It is responsible for co-ordinating and ensuring the constitutionality and legality of proposals submitted to Government. Despite having a small staff, it manages to review all legislation submitted to the Government for approval and, frequently, manages to improve the quality of legislation by pointing out constitutional problems or issues relating to the general principles of law in need of further attention. It also has the power, which it exercises from time to time, to send materials back to ministries on the grounds that they are not ready to be presented to the Government, either for substantive or procedural reasons.

The Ministry of Economy website provides a tool for comments to be made on proposed legislation of interest to or impacting on business. This tool facilitates consultation with stakeholders. However, in general, other ministries' consultation with stakeholders to improve the quality of policy proposals remains variable across Government. There is not enough operational guidance to the ministries on good practices for consultation. Public awareness of the value of consultation or the role civil society can play in the development of national policy remains limited. There is, as yet, no separate policy to improve the quality of legislation and regulation such as better regulation policy adopted by a number of EU member states.

There are requirements in place for each draft law to be accompanied by an assessment of the level of approximation and for the provision with drafts submitted to Government of table of compliance with the *acquis communautaire*. These requirements appear to be complied with, although the expert capacity of the ministry's departments to comment on proposals originating in materials associated with the adoption of the *acquis* remains variable. The Ministry of Economy has developed proposals for an RIA "light" project to be piloted in the agriculture and environment sectors. It is intended that this would commence during 2012 and be reviewed at the end of 2013.

European integration (EI) work is co-ordinated by the Ministry for European Integration, in conjunction with the Ministry of Foreign Affairs. Collective political direction for the EI process is provided on strategic issues (including IPA matters) by the Strategic Planning Committee and on other EI issues including implementation of the Stabilisation and Association Agreement by the Ministerial Committee on EI. Both are chaired by the Prime Minister.

The Minister of European Integration chairs an inter-institutional co-ordinating committee whose membership is at general secretary or director-general level. It meets monthly and acts as the preparatory body for the ministerial committees. Below it, 35 expert working groups covering each

of the chapters of the *acquis* have been established. Each of these committees is chaired by the secretary-general of the lead ministry on a given issue.

Reform Capacity

Reform capacity remains constrained by limited capacities in the public service (financial and human). There is an inevitable sense of disappointment amongst officials about the failure to achieve candidate status. Given that this failure was attributed more to "political" issues than to "technical" ones, there is frustration with the "political" environment. This frustration may have adverse consequences for the reform momentum. The challenge for Albania remains the need to allow sufficient time for reforms to bed in and to develop and maintain a consistent group of officials to follow through on reform activities. The preparation of a new NSDI and a willingness to learn from the mistakes of the previous one demonstrate a commitment to reform and improvement which is being sustained despite global and local challenges. Ultimately, reform potential is constrained by the small size of the public service and there is no immediate solution for that problem.

Recommendations

To Albania

- Develop guidelines on public consultation and establish and implement a policy to build awareness of the value added by public consultation. The policy should target officials and participants in civil society organisations.

- Make the manual and guidelines on law drafting developed by EURALIUS binding to line ministries.

- Set out more clearly on the introduction of new laws who has responsibility for implementation and under which provisions of the draft or other law this responsibility lies. This requirement should be included in the guidelines/manual on law drafting.

- Start work on building capacity to include performance indicators in laws to enable a move to better monitoring, evaluation and ex post assessment.

- Develop a Better or SMART Regulation agenda.