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Albania Assessment Report 2013

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ASSESSMENT

ALBANIA

APRIL 2013

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ASSESSMENT PRIORITIES

Albania faces crucial parliamentary elections in June 2013. The political impasse between the main political parties has been well documented. In October 2012, the European Commission (EC) recommended that Albania be granted European Union (EU) candidate status, subject to completion of key measures in the areas of judicial and public administration reform and revision of the parliamentary rules of procedures. These can only be enacted through a degree of political unanimity. The outcome of the elections will determine whether that situation can improve or not.

Following discussions with the EC, it was agreed to give priority in the SIGMA assessment of Albania for 2013 to priority areas in relation to the EC's recommendations and to those areas where actual reform is either being implemented or planned.

Against this background, SIGMA's 2013 assessment of Albania has focused on:

- [Administrative Law and Administrative Justice](#)
- [Public Expenditure Management, Focussing on Financial Management and Control](#)
- [Internal Audit](#)
- [External Audit](#)
- [Public Procurement \(including Concessions\)](#)
- [Regulatory Management, Focussing on the Legislative Drafting Process and Related Consultation Processes](#)

Each assessment area is presented in a separate thematic report, each including a brief description of the state of play and recent developments. An overall assessment is followed by a more detailed analysis and conclusions. The assessments were undertaken with reference to the SIGMA baselines.

Administrative law and administrative justice was assessed on the basis of its importance to the development of the capacities necessary to adopt and implement effectively the European *acquis*. Progress in this area has been slow due to irreconcilable differences between the major political parties and the necessity for certain key laws to pass with a 3/5 majority.

Public expenditure management, focussing on financial management and control, was assessed on the grounds that this is a critical feature of governance and there have been some developments in this area.

Internal and external audit were assessed on the grounds that progress was made in 2012. However, in contrast to external audit, little progress on internal audit has been made, so it was necessary to maintain some kind of pressure for improvement on the latter and further progress on the former. For this reason, the internal audit assessment concentrates on the functioning of internal audit in practice and on the role of the Central Harmonisation Unit (CHU) in relation to internal audit and in developing wider capacities in internal audit.

Public procurement, including concessions, was assessed on the grounds that some progress has been made in the development of public procurement but that the legal arrangements for concessions lag far behind and are in need of development. This is particularly so given the potential contribution concessions can make towards economic development.

Regulatory management (specifically, the legislative drafting process in the Executive branch of Government and related consultation with the public about draft laws) was assessed this year on the grounds that the EC's 2012 Progress Report expressed concern about these issues.

ADMINISTRATIVE LAW AND ADMINISTRATIVE JUSTICE

**ALBANIA
APRIL 2013**

1. State of play and main developments since last assessment

1.1. State of play

For the past several years, Albania has been trying to complete and modernise its administrative legal framework. Reforming the administrative justice system, the general administrative procedures and the civil service are key reforms. Albania has relevant internal capacity – reinforced by international support – to analyse the problems and find solutions in line with European principles and good practices. However, the lack of political dialogue is blocking advancement of these reforms.

For the time being, administrative justice is carried out through courts of general jurisdiction (non-specialised) and using the Code of Civil Procedures¹. The current law on administrative procedures² has shortcomings, which lead to lengthy and very formal procedures, insufficient protection of citizens' rights and difficulties in the execution of administrative decisions. The civil service remains regulated by the Civil Service Law³.

1.2. Main developments since last assessment

Some positive signs of the political will for reforms exist, such as the proposal and/or adoption of crucial new legislation. However, uncertainty remains over the implementation of the administrative justice system, and over the approval and implementation of the reforms on general administrative procedures and on the civil service, which depend on a consensus among political parties. To date, no effective change has occurred in these areas.

2. Analysis

2.1. Administrative justice

The draft Law on Administrative Justice submitted by the Government underwent various amendments during the parliamentary deliberation process. Although these might have created some inconsistencies, the law as approved establishes a good base for an independent and efficient administrative justice in line with European Union Member States' practice. The Law now needs to be implemented.

The Albanian Parliament adopted the Law on Administrative Courts (LAC) (Law No. 49/2012 on organisation and functioning of administrative courts and adjudication of administrative litigation) in May 2012. However, the law is not yet effective and, in practice, the situation remains unchanged.

The LAC establishes (article 70/5) that the administrative court system shall start functioning on a date to be determined by a Decree of the President of Republic upon proposal of the Minister of Justice. This proposal is conditioned by the enforcement of amendments to the Law on the Supreme Court and the establishment of the needed infrastructure (human and physical) for the administrative courts system.

Organisation of the administrative court system

Based on the Law on Administrative Justice, the President of the Republic approved Decree No. 7878 of 16 November 2012 "On determining the number of judges for each court of first instance, courts of appeal and administrative courts, as well as the determination of territorial jurisdiction and the seat of the administrative courts". The decree provides for six administrative courts of first instance (Tirana, Durrës, Shkodër, Vlora, Korça and Gjirokastra) and one administrative court of appeal (seated in Tirana). A specialised administrative chamber is also to be created at the Supreme Court.

¹ Law no. 8116 of 29 March 1996, amended several times.

² The Code of Administrative Procedures (Law no. 8485 of 12 May 1999).

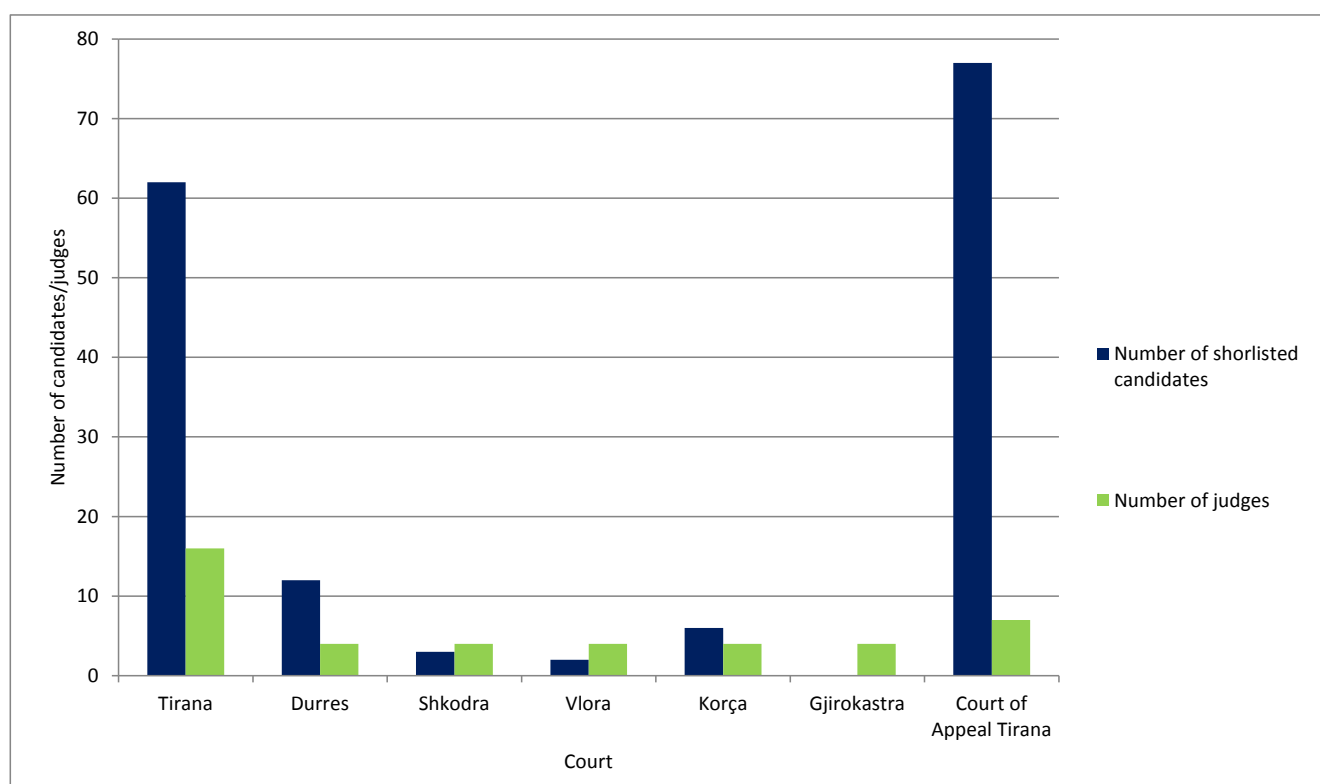
³ Law 8549 of 11 November 1999 entered into force on 15 January 2000; it is complemented by several pieces of secondary legislation and has been amended several times.

The members of the courts shall be judges (in accordance with the Law on Judiciary). The first members shall be selected from among existing judges at the ordinary courts based on a competitive procedure. A special commission⁴ was created to select the administrative judges. Disagreements regarding the role of the commission (i.e. monitoring role only, or also decision making) led to the resignation of the international donor representatives and postponement of the selection process.

The High Council of Justice approved the detailed procedures for selecting candidates for judges in the Administrative Court of First Instance and Appeal (Decree No. 299/1 of 30 November 2012) and launched the selection procedures (i.e. advertising vacancies and short-listing candidates). Due to technical reasons, the written selection exam planned for January 2013 actually took place in March. In the meantime, the Ministry of Justice is completing the infrastructure (i.e. premises) for the new administrative courts.

The steps already taken to select administrative judges have shown some flaws in the judicial system, such as poor working conditions in some courts and low salaries. Positions in Tirana courts had a high number of candidates, while some district courts had no or very few candidates.

Figure 1. Distribution of vacancies and short-listed candidates



Source: Official web site of the High Council of Justice

Access to the judicial review of administrative action

The right of access to judicial review is well formulated in the Law on Administrative Justice. Any person whose rights or lawful interests are affected by administrative actions and any association and/or interest group whose collective or diffused interests are affected by the administration can lodge an appeal with the administrative court. The plaintiff must exhaust all administrative legal remedies before going to the court.

The Law provides for a wide scope of judicial review including administrative acts, other administrative actions (real acts) and normative acts (excluding statutory laws). Judicial control also includes administrative contracts.

⁴ Comprising one representative from the School of Magistrates, one from the Law Faculty of the University of Tirana, one from the High Judicial Council and two international donors supporting reforms in the judiciary.

Intensity and powers of judicial control

Judicial control extends to discretionary actions of the administration. The court has full jurisdiction either to annul, confirm or impose certain actions on the administration.

Interim relief

The Law properly regulates the suspension of effects, injunctions or other provisional remedies preventing potentially harmful administrative actions and decisions. It establishes an accelerated procedure on interim relief, based on *fumus boni iuris*⁵ and the risk of irreparable damage.

Two-tier system

The Law provides for the right of appeal against first-instance decisions, except for claims of limited objective value.

The court procedure

It is efficient, clear and provides for due process and speedy adjudication of administrative disputes.

Enforcement of court decisions

The court's decision is binding to the administrative body and the administrative judge has an active role in the enforcement procedure. Should the administration fail to execute the judicial decision within the deadline, the court – on request or *ex officio* – may impose a coercive fine for every day of delay of execution on the head of the competent body. As a last resort (if the judicial examination proves all facts necessary to issue the act) the court shall issue a new decision that replaces the administrative act as issued by the competent body.

Government and other relevant institutions have progressed on establishing a proper human and physical infrastructure. However, adoption of the amendments to the Law on the Supreme Court is dependant on political agreement among parliamentary political parties. While a proposal has been submitted to Parliament, the required majority is needed to pass the necessary amendments to the Law.

2.2. Administrative procedures

The Ministry of Justice recently resumed reviewing and finalising the new law on general administrative procedures (Code of Administrative Procedures). The objective of the review is to ensure full consistency and coherence of the draft with newly approved legislation on administrative justice and state administration. The ministerial working group has recently become operational and plans to finalise the review process within the first half of this year. Approval of the draft law is part of the Government's legislative plan for 2013.

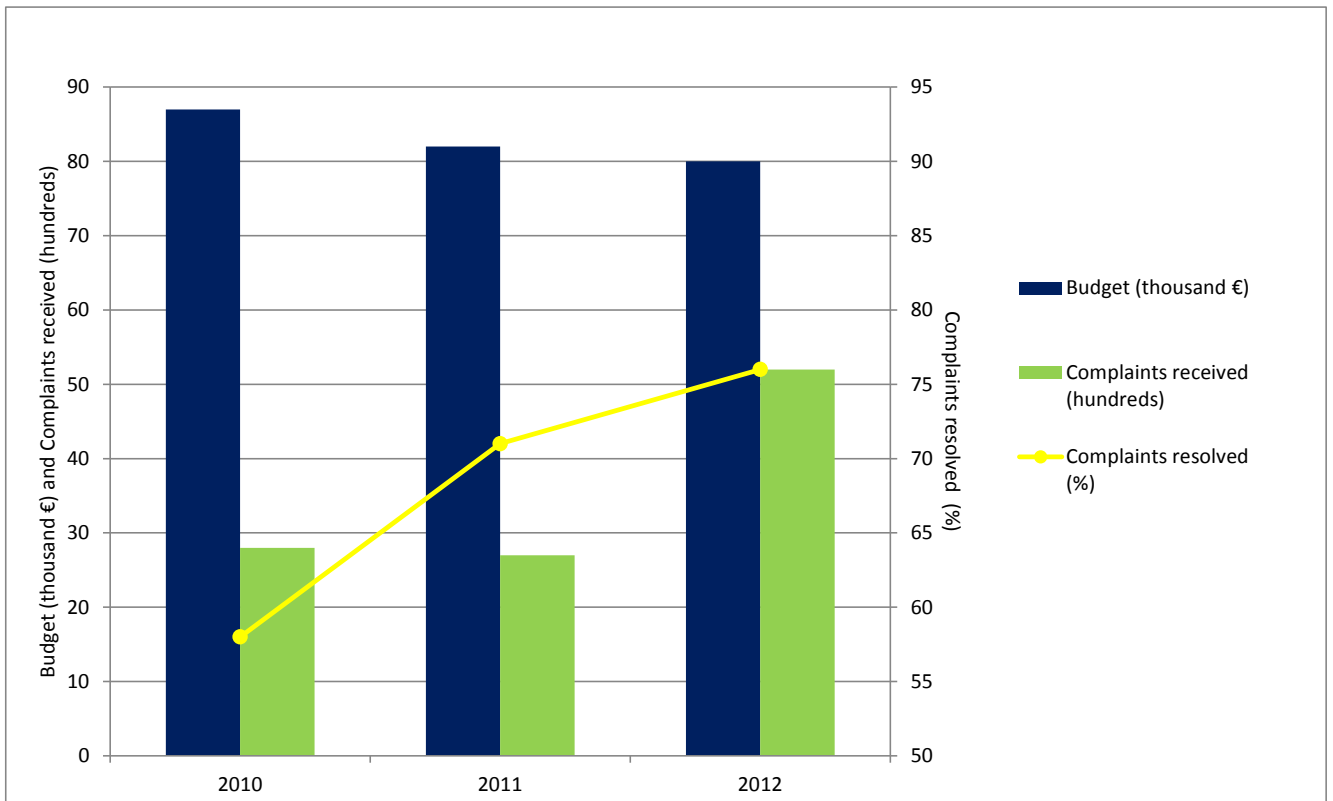
2.3. People's Advocate (Ombudsman)

While the Office of the Ombudsman continues its action in promoting transparency and human rights, it still lacks resources and effectiveness. Parliament does not discuss its reports, nor endorse and follow its recommendations. The administration is still unreceptive to recommendations from the Ombudsman, only 50% of which are enforced. Figure 2 below presents some indicators related to the resources of the People's Advocate, the complaints received and the results achieved⁶.

Figure 2. **Resources and activity of the People's Advocate**

⁵ Presumption of sufficient legal basis for a final decision in favour of the applicant.

⁶ Data provided by the People's Advocate Office. Additional information can be found on the People's Advocate webpage (<http://www.avokatipopullit.gov.al/?lang=en>).



Source: Data provided by the People's Advocate Office

The Law on Administrative Justice, when implemented, and the draft Law on General Administrative Procedures, if adopted, along with the adoption of a new law on civil service, will constitute significant changes in Albania's core administrative legal system. Due to the political climate and uncertainties, how and when these change will become effective is unclear.

**PUBLIC EXPENDITURE
MANAGEMENT, FOCUSING ON
FINANCIAL MANAGEMENT AND
CONTROL**

**ALBANIA
APRIL 2013**

1. State of play and main developments since last assessment

1.1. State of play

Financial Management and Control (FMC) in Albania operates within the legal framework established by the Organic Budget Law of 2008⁷ as well as the FMC Law of 2010⁸, which develops the structures in more detail. The central harmonisation unit for FMC (CHU/FMC) tries to ensure that the laws, regulations, instructions and guidelines for implementing FMC procedural requirements are followed by the budget users and in this regard organises trainings for key officials.

An FMC pilot project was established at the Ministry of Public Works and Transport (MPWT) in September 2012 with the support of the Swedish National Financial Management Authority (ESV) to explore in detail the practical application of the principles of FMC so that at a later stage it could be rolled out to other public administration institutions. The pilot began six months later than planned and so far it is not clear what has been achieved.

While the legal basis is in place for a functioning FMC system that supports managerial accountability, the actual implementation of FMC is lagging behind despite the efforts of the CHU/FMC.

1.2. Main developments since last assessment

A pilot initiative in the Government Financial Information System⁹ has been introduced under which five budget institutions can input information directly into the system and execute their budgets through the system. From an FMC perspective, this shifts responsibility for accurate data input (and as a consequence, managerial accountability) from the Treasury district offices directly to the budget institutions (without additional checking from a Treasury district office). The aim is to increase the number of institutions from 5 to 30 in the near term.

A “pre-contract” recording process has been established that provides the Treasury and the budget user with a comprehensive record of potential commitments before they are agreed and provides the budget users with information on whether there are sufficient funds available before entering into contracts. This applies only to the five pilot institutions so far.

The Ministry of Finance (MoF) and Department of Public Administration (DoPA), which is responsible for public administration reform (PAR), have co-operated to provide that the executing officer (i.e., finance officer) and financial planning officer functions should be merged into a new directorate of finance, to be headed by a person who is appropriately qualified in accordance with the FMC Law¹⁰. This decision affects about 1 400 budget users. The MoF plans to enforce this arrangement by refusing to recognise the signature for Treasury purposes of an executing officer who does not have these merged responsibilities or the specified qualification, although exceptions may be made for small budget users. The MoF will in future approve the appointment of all executing officers (finance directors).

⁷ The Law on the Management of the Budget System in the Republic of Albania, 2008.

⁸ The Law on Financial Management and Control 2010.

⁹ The Government Financial Information System is the official name for the Treasury system. Hereafter, “treasury system” is used.

¹⁰ Article 12 of the Law on Financial Management and Control 2010.

2. Analysis

2.1. FMC in practice

The statutory base

The organic budget law (i.e. the Law on the Management of the Budget System in the Republic of Albania 2008), came into effect in 2009. Among other things, it provided for the basic organisational structures of a budget institution. The Law on Financial Management and Control 2010 developed these structures in more detail. The Law on Public Financial Inspection, which provided for the establishment of a financial inspection service, was introduced in 2010. That same year, the Law on Internal Audit was amended to separate inspection from internal audit (IA) and clarify the role of IA. The inspection function continues to be developed and the distinction between inspection and IA is better understood.

Thus the legal basis is in place for a functional internal financial control system that supports FMC, including managerial accountability. The principles into practice is however a more challenging task. The legal basis is a prerequisite for a functioning system but does not guarantee it.

CHU/FMC

The key role and responsibility for the development and implementation of FMC rests with the MoF, which fulfils its role through the operations of the CHU/FMC. The CHU/FMC is a Directorate within the CHU General Directorate, which also incorporates the CHU/IA. The CHU/FMC consists of a director and five specialists. It co-operates with the Treasury Department and the Budget department. It has prepared standards for budget preparation, budget execution, risk management, management of assets, and audit trails on public procurement. Its main functions are to:

- Establish and co-ordinate laws, strategies and methodological guidelines for financial management and control (including accounting);
- Provide training;
- Monitor FMC in public sector bodies, as part of which it annually reviews the instructions for FMC.

The CHU/FMC has worked to develop a better understanding of the legislation and the principles of internal control throughout the administration. Much of this work is highlighted on the MoF website.¹¹ Despite this work, however, the CHU has identified FMC weaknesses in its 2011 Annual Report on “Functioning of Internal Public Financial Control System at General Governance Units”. It highlights the fact that there is only a narrow understanding in many institutions of the full implications of the introduction of FMC and of the concept of managerial accountability.

In 2011 the CHU/FMC proposed, as part of a strategic implementation plan for introducing FMC in Albania, that a pilot project should be established to provide practical guidance on the introduction of FMC in the Albanian public administration. The CHU/FMC wanted the pilot project to explore in detail the practical application of the principles of FMC so that at a later stage it could be rolled out to other public administration institutions. The FMC pilot project was established at the MPWT in September 2012 with the support of the Swedish ESV. The project’s objective is to improve management of highway construction and maintenance, including financial management and control arrangements. This project was launched six months later than planned and so far it is not clear what has been achieved.

The CHU/FMC is actively pursuing training on risk management, which is an important component of FMC. The CHU/FMC devoted 1½ days of each of three 3-day training modules to the topic. So far, this does not seem to have had much impact. For example, one agency considered that the risk management requirements in the FMC Law 2010 related only to administrative risks, even though it was clearly aware of operational risks with the potential to cause far greater damage should they materialise. Furthermore, it provided no evidence of

¹¹ www.minfin.gov.al/minfin/Central_Harmonization_Unit_on_Financial_Management_and_Control_20_2.php.

how it identified or managed these risks. Another organisation viewed risk management as a “box-ticking” administrative activity requiring the completion of a “template”, rather than as an essential requirement allowing management to meet the organisational objectives under its purview.

Despite the work carried out by the CHU/FMC, there remains a limited understanding of the principles of FMC and the concept of managerial accountability. For instance, despite receiving training on risk management, one organisation so far has failed to recognise the threat that operational risks can pose while another regards it as a box-ticking exercise.

Management and control systems and procedures

The main tool for financial control is the Treasury system. This system is currently being upgraded to provide improved (real-time) access for budget institutions and improved control over commitments. However, it mainly is designed for budgetary control purposes and does not provide management accounting information. The current highly centralised financial management and control procedures do not encourage demand for this information. Little practical emphasis is therefore placed on value for money and managerial accountability is not well developed. For example, ministers are still required to sign off on even routine expenditures and there is little delegation by senior officials, even though there is scope for this under the FMC Law.¹²

Within each budget institution, processes have been developed to define audit trails and ensure controls over both commitments and payments. So far, the controls over commitments mainly have ensured that the proper authorisation process has been respected rather than whether commitments made can be funded from available budgetary resources.

The initiative to record commitments in the Treasury system before a contract is signed has the benefit of securing a much stronger link between commitments and resource availability. This provides the Treasury with a comprehensive record of potential commitments before they are agreed and informs budget users as to whether there are sufficient funds available before entering into contracts. Another benefit is that the accumulated arrears of commitments outstanding from previous years (often as a result of private agreements between a contractor and a ministry) will be included in the Treasury system. Such arrears represent a form of informal borrowing that has not been subject to rigorous control until now and has not been included in the public debt.

The recording of commitments at the pre-contract stage creates a stronger link between commitments and available revenue. The focus on controlling the accumulation of arrears is another important development. Nevertheless, the emphasis is on financial control through the Treasury system rather than financial management.

Current operational development of FMC practice

Despite the transfer of administrative responsibilities for FMC from the minister to the authorising officer, traditional Albanian administrative arrangements, with the emphasis on control and with every activity having to be prescribed in law or regulations, hinder the practical implementation of financial management, as opposed to financial control.

Financial control dominates managerial perceptions of FMC and accounting focuses almost entirely on ensuring that spending is within budget. Financial management does not yet focus on improving the quality of public expenditure by using indicators to assess this quality. Some managers still believe that deferring payments from one year to the next represents savings even though they are merely accumulating debt.

The position and responsibility of the executing officer is unclear. Executing officers consider it impossible to fulfil all the responsibilities of the post because of their small staffs. However, they also are not delegating even routine tasks to subordinates.

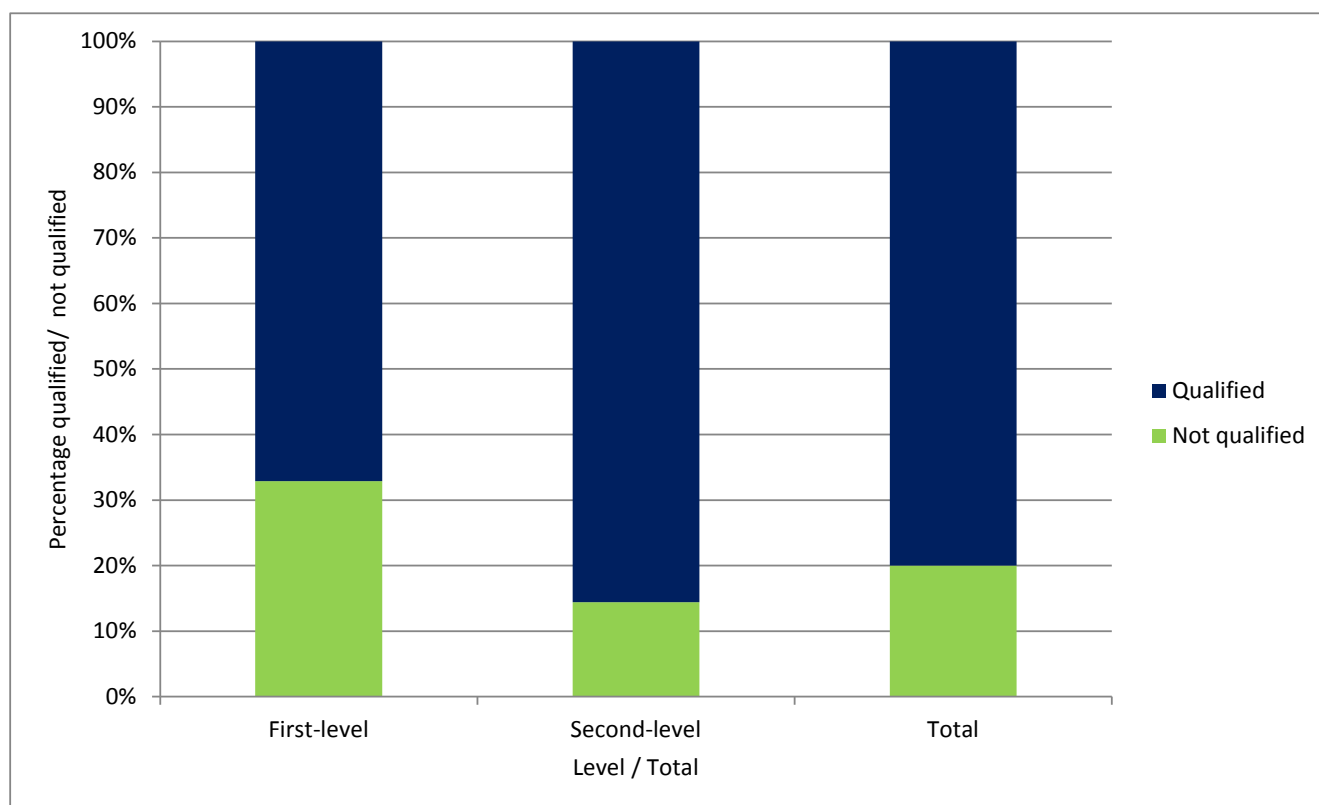
¹² See article 15 of the Law on Financial Management and Control 2010.

The relaxation of central controls is prevented by the MoF which says that managerial discretion over (for example) staff employment and salaries may be abused. This obscures managerial responsibility for conducting efficient and effective operations and improving efficiency. For instance, a director general who wishes to reduce the number of employees in one category in order to increase the number of employees in another category cannot do so without central ministry approval, even if the cost is neutral.

Nevertheless, the changes of the past 12 months are steps towards reducing these weaknesses to some extent. First, the treasury system reforms – and especially the requirements for pre-contract commitment recording – potentially create the conditions for executing officers to engage more in strategic financial planning. Second, combining the roles of executing officer and planning and budgeting officer into a new finance director role will lead to better integrating the accounting, planning and budgeting roles – and hence the feedback of information from practical budget execution experience into the budgeting process. Full implementation of this process will be a major step for FMC, although it will take time and commitment from all those involved.

Furthermore, the head of the CHU/FMC is collaborating with DoPA on revising the role and functions of the executing officer. As mentioned above the MoF intends to enforce the requirement that the executing officer be appropriately qualified in accordance with the FMC Law. In October 2012, the CHU/FMC reported that about 20% of executing officers were not qualified and that this was split between first and second-level users. Figure 3 below shows the breakdown of qualified and non-qualified executing officers.

Figure 3. Executing officers with appropriate qualifications



Source: Central Harmonisation Unit/Financial Management and Control

The head of the CHU/FMC is also a member of the Public Administration Reform (PAR) Strategy Group responsible for the public administration development strategy, which includes arrangements for delegation of functions. The likely impact of the wider public administration reforms on FMC development is unclear at this early stage.

Finally it should be noted that some institutions are attempting to improve the quality of the financial information available to managers. The Health Insurance Fund, for example, requires hospitals to introduce a costing system that will allow the costs of different procedures to be measured and compared. The fund is also encouraging rationalisation of health facilities and was able to give examples of inefficient use of health resources. Another example is the Queen Geraldina Maternity Hospital, whose financial system provides managers with information about total available budgets. However, in neither one was it possible to establish to what extent this additional information affected management performance.

The transfer of administrative responsibility for FMC from the ministers to authorising officers has so far had little effect on strengthening managerial accountability. While existing weaknesses will not be eliminated overnight, steps are nevertheless being taken. The treasury system reform, the creation of a finance director role and the participation of the CHU/FMC in the PAR Strategy Group are notable as is the fact that managers in some institutions are using management information to improve efficiency and effectiveness.

Financial management information system

The treasury system is the key tool for controlling expenditures. It needs to work efficiently and effectively. The current treasury system has been fully operational since March 2010 and a project to extend it was initiated in 2012.

Prior to the implementation of the system, SIGMA carried out an information technology (IT) audit and made recommendations on the way the IT environment and systems should support the core business of the MoF. In February 2013, SIGMA conducted a follow-up audit to see whether the original recommendations had been fulfilled, if major risks were being managed, and if the extension project was being managed. Its findings were

mostly positive. The MoF has fully or partially resolved significant risks regarding technological infrastructure, knowledge, and dependence on third parties. While minor risks remain in IT management and treasury system performance and capacity, good progress has been made overall towards establishing a modern IT system, management and infrastructure.

Thanks to the treasury system, the number of transaction errors has dropped significantly. The strong built-in controls of the SWIFT system, which is the main source for reporting errors, have helped improve the quality of transaction data.

While a help-desk exists for solving IT problems, the lack of internal rules and guidelines, and the failure by users to report incidents means that not all of them are recorded and resolved by the help-desk specialists. The more experience the specialists gain, the better they will become at resolving problems, thus reducing costly reliance on outside experts.

One of the most positive developments is that the system covers all transactions and hence can generate comprehensive daily reports. However, the reporting system is not well defined.

There is also a strong interface between the treasury system and other systems, mainly belonging to the national bank and commercial banks. Interfaces with other internal systems is part of the scope of the Treasury extension project, where a data warehouse will be used as a platform for sharing information with other systems, such as debt management, human resource management and mid-term budget planning.

The IT system is physically located in a new data centre at the MoF that complies with basic standards for safe data storage and a back-up system in the event of failure. The data centre has the required technology and the back-up system is equipped with disks and is fully operational.

The establishment of the Treasury System Administration Directorate has reduced dependence on outside experts for supporting and maintaining the system. The directorate has four staff. Its main objectives are to resolve incidents and problems, support system users and define ad hoc and regular reports.

The rules for using the treasury system are being developed slowly. Although rules exist for major user areas, rules for IT management have not yet been issued – the IT department has prepared internal rules, but in English only. These rules need to be translated into Albanian and fully adopted.

The project to extend the treasury system has three main areas:

- It covers the development of new tools in cash management and cash-flow forecasting, reporting analysis and decision-making.
- It establishes a direct connection between the treasury system and major budget institutions so that the institutions can execute their budgets through the treasury instead of using separate financial accounting systems. This is being done on a pilot basis in five institutions (the MoF, the Ministry of Transport, the Council of Ministers, the Albanian Roads Authority and the National Agency of Information Society) covering over 25% of the annual state budget. The next step is to connect 15 more institutions, covering around 60% of yearly state budget needs.
- It also integrates and shares information with other applications, such as debt management, human resource management and mid-term budget planning.

This extension will decrease pressures on the primary Oracle treasury system by moving reports from the primary Oracle database to the data warehouse.

The treasury system covers all transactions and can generate comprehensive daily reports as required. Although the reporting system is not well defined, there is a project ongoing to extend the system, the objectives of which are to develop new tools for cash management, establish direct links with the largest budget institutions, and share information with other areas of the administration. In recent years, the MoF has fully or partially resolved risks that existed regarding technological infrastructure, knowledge and dependence on third parties. In particular, the number of transaction errors has dropped significantly.

2.2. Making FMC reform work

The role of the finance director

FMC covers the whole spectrum of activities from planning to financial reporting but many managers are lacking in financial expertise and awareness as to what FMC is about.

In some organisations, the finance director is perceived as the person who approves orders and invoices for payment. This is a limited perception of the role. The CHU/FMC is working to change this perception by merging the executing officer and planning and budgeting roles.

Finance directors are still personally engaged in routine tasks such as the signing of all invoices and orders irrespective of the size even though they have some authority to delegate¹³. A consequence of the failure to delegate is that managers do not produce or make use of basic managerial financial information such as knowledge of their total budgets (including employee costs, running expenses, property costs, transport costs and overhead charges that they may incur or generate), how those budgets are actually being spent and for what purpose.

The primary responsibility for cash planning rests with the Treasury rather than with the budget institution finance director. The reliance on the 'top-down' cash planning role of the Treasury is more arbitrary in the absence of timely information from the budget institutions. In such circumstances, cash planning can become cash rationing.

Accounting

Accounting is currently seen as essentially a process for recording income and expenditure against the approved budget, ensuring that the budget provision is not exceeded and all transactions are properly recorded.

The treasury system is the main source of financial accounting information. However, it is designed essentially for purposes of cash management and to meet the needs of the MoF. It is not yet a management accounting system though the ultimate aim is to meet the needs of the institution. It does not present information to budget users in a form that indicates what each manager has spent or received from own-source incomes. The executive officer must re-sort the information to provide this information. Managers are generally not informed at all about financial performance against the budget, or are informed only at quarterly intervals. Even then, they may only receive details of procurement spending. It is left up to the individual managers to seek out information if needed. When they do, the information is limited to variations against budget. There was no evidence of other aspects of financial management being considered, such as why unit costs vary or what is driving the costs.

In summary, each budget institution downloads every month from the MoF website the treasury monthly financial report in excel format. It then filters the report with its organisational code, exports it to its own computer and checks the transactions with those in its own accounting system. The checking or reconciliation process is usually done by the executive officer or a person on his/her staff. Once the check is completed, the authorising officer signs a copy of the printout and the spreadsheet is returned to the Treasury. The budget institution is also responsible for ensuring that the accounts for any second-level institutions are checked. This arrangement will change as individual budget institutions connect directly to the treasury system and executing officers are able to receive information in "real time". However, the basic format will remain the same.

The spreadsheet is essentially equivalent to a bank account statement, which reinforces the executive officer's focus on overall budgetary control rather than financial management.

The information contained in the spreadsheet does not facilitate ready analysis. Nor does it allow an executing officer to inform every manager within the organisation of spending against the budget without a great deal of

¹³ Article 15.2 of the Law on Financial Management and Control 2010.

manual analysis. Only those managers (generally only programme managers) who can be identified through the coding structure can be informed.

Executing officers do not systematically distribute the information in the spreadsheet every month to managers below the programme manager level. Managers have no incentive to seek out this information if they do not know the available budget broken down over all expenditure items and have little or no discretion to make decisions that would affect the quality of spending or income collection.

Line managers seem to maintain accounting records on an ad hoc basis. They do not routinely request accounting information because they consider financial management as the function of the executing officer and Treasury, rather than their own responsibility. Furthermore, managers are not encouraged to seek this information because they are not asked regularly to justify systematically what their costs are and why. When they do require certain types of information, they are expected to maintain their own records, which can lead to different managers within a single organisation maintaining several accounting systems. In one organisation the head of strategic planning maintains an accounting system independently of other accounting systems in the organisation. No data sharing occurred, nor was there knowledge of the existence or scope of other systems.

The relationship between first and second-level organisations

The necessary control and accountability arrangements between first and second-level organisations, regardless of the importance and size of the second-level organisation including state-owned enterprises – remain weak. For example, article 18 of the Law on State Administration provides that the head of a second-level budget user reports to the responsible minister, but not to the ministry's authorising officer.

In principle, a first-level organisation ensures that:

- The second-level organisation's strategic plans conform with those of the first-level organisation;
- Its operational objectives are consistent with those strategic plans;
- Its strategic and operational objectives are observed in practice;
- It does not enter into commitments that cannot be financed;
- It adheres to the standards of internal financial control and financial management specified by the MoF.

To comply with these principles, a first-level authorising officer has to ensure an open communication channel with second-level organisations and second-level authorising officers. The authorising officer will thus have an idea of key policies, financial management and control standards, risk management and changes in circumstances that may affect the second-level organisation's performance. While the manner in which this relationship operates will depend partly on the personalities involved, internal organisational regulations and general regulations can provide a broad outline of the main issues.

First-level executing officers and second-level executing officers ought to have a similar relationship, especially given the establishment of the finance director positions. So far, however, executing officers of first and second-level organisations operate in isolation. All formal communications from second-level to first-level are required to go through the second-level authorising officer. The only exception is the monthly treasury report, which allows a first-level executing officer to access the total spending and income details of a second-level organisation (the Law on FMC permits this¹⁴).

State-owned enterprises

All state-owned enterprises operate under a board of management, with very little direct ownership control. One example is the National Air Traffic Agency¹⁵ (NATA), which operates in accordance with the Albanian

¹⁴ Article 12 of the Law on Financial Management and Control 2010.

¹⁵ See NATA report at http://www.anta.com.al/doc/katalog_2012_pdf.pdf.

legislation that governs all commercial bodies. It is run by a management board that includes officials from the Ministry of Economy Trade and Energy, the Ministry of Public Works Planning and Transport and the MoF. The chairman of the NATA board is a civil servant drawn from one of these ministries and is elected by and from among the board members. The 100% shareholder is the Ministry of Economy and the policy ministry is the Ministry of Public Works Planning and Transport. The board is responsible for the company's efficient and effective operation, operating policies, financial management and control policies and is not subject to any form of ownership control. The MoF does not specify any financial policies to be followed by NATA, or impose any requirements upon its chairman. The agency's annual report does not contain any financial information. The Albanian administration holds the view that agencies which do not receive funding from the state budget do not need to be monitored. Indeed, there is no suggestion of any financial problems with NATA. However, financial liabilities of which the Government is unaware may emerge in other state-owned enterprises. This could leave the state exposed because if adverse events occur (e.g. severe financial losses or difficulty in refinancing borrowed capital), the ultimate responsibility lies with the Government.

Finance directors are still personally engaged in routine tasks with the result that there is little time for producing or seeking financial information from line managers to facilitate financial management. Line managers seem to maintain accounting records on an ad hoc basis and there are sometimes cases where different managers within the same organisation keep different accounting records that they do not share. The formal arrangements for monitoring and control of second-level organisations by first-level organisations are weak. Furthermore, the finances of state-owned enterprises are not directly monitored by the MoF even though the State would be liable in the event of financial difficulties emerging.

INTERNAL AUDIT

ALBANIA
APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

Internal audit (IA) in Albania has a solid legal foundation in line with international standards.¹⁶ Secondary legislation had been developed. The IA manual was renewed in 2010, but auditors perceive it as too general. Audit charters have been implemented in almost all internal units. An audit committee functions in keeping with the requirements of the IA Law¹⁷.

The driver for IA implementation is the Central Harmonisation Unit (CHU/IA). While this unit is fully staffed, they lack practical IA experience. The general director of the CHU/IA does not hold regular meetings with senior management of the MoF and the annual CHU/IA report is not tabled for discussion at Council of Ministers meetings.

The CHU/IA is responsible for training internal auditors. Around 1 500 people have obtained a certificate in internal auditing.¹⁸ Quality assurance (QA), a new task of the CHU/IA, is still in development.

Management still requests IA to carry out activities related to financial inspection, although less so than in previous years. While IA units draft strategic and annual plans, risk assessment is underdeveloped. IA units carry out transaction-based compliance audits. They do not perform systems audits.

The relationship of the CHU/IA with the Supreme Audit Institution (SAI) of Albania, the High State Control (HSC), has improved¹⁹. While the relationship of IA units with the CHU/IA is good, their relationship with the HSC is still problematic.

1.2. Main developments since last assessment

The main developments since April 2012 have been the laws and regulations relating to IA. They are:

- Regulations on the activity of the Qualification Commission (QC) relative to procedures for certification of public sector internal auditors and continuous professional development of public sector internal auditors. These procedures were approved by the Minister of Finance in early 2013. They regulate training activities in 2013, but will be revised after Parliament adopts the amendments.
- Declaration No. 212, 30 March 2012, by the Council of Ministers setting the criteria and methods for establishing IA in institutions. The declaration intends to provide greater clarity to all organisations, reduce costs and improve efficiency by allowing two or more smaller organisations to establish shared IA services.
- Instruction 12, 5 June 2012, by the MoF setting guidelines to interpret and implement the IA manual. The instruction intends to help improve the quality and effectiveness of individual audits.

2. Analysis

One of the baselines of the Public Internal Financial Control (PIFC) system is a functionally and operationally independent IA function. This implies that in practice, the IA function:

- Is independent from management and operational functions
- Has an adequate audit mandate (in terms of scope and types of audit) covering at least the State budget

¹⁶ The 2003 Internal Audit Law was changed twice (in 2007 and 2010) to bring it into line with international standards and practice.

¹⁷ Articles 12-14 of the 2010 Internal Audit Law.

¹⁸ Only 27% actually work in public sector internal auditing. The certification programme is open to every Albanian citizen. However, it is costly and takes up a great deal of CHU/IA time.

¹⁹ The Minister of Finance and the HSC signed a co-operation agreement in 2012.

- Works according to internationally recognised IA standards
- Is supported by a well-respected and adequately staffed (both quantitatively and qualitatively) CHU/IA
- Co-operates to a certain extent with other audit institutions, such as the SAI and the Audit Authority for IPA funds or Financial Inspection Services
- Above all, has sufficient professional staff available to perform internal audits.

2.1. Institutional framework

Legal framework

The concept of IA was introduced in the public sector in May 2000. It was initially performed by the then-central financial control department of the MoF, responsible for IA of the MoF customs and tax departments and authorities under MoF control. IA units were established in all line ministries and central institutions and a CHU/IA (called General Directorate of Internal Audit) was established at the MoF. The 2003 law enshrined the functional and organisational independence of IA. It has been amended twice – in 2007 during the first PIFC twinning project and in 2010 during the second PIFC twinning project. While the 2007 IA Law still referred to auditing financial decisions on incomes, expenditures, assets and debts, the 2010 law is more in line with international IA principles and standards. It defines all IA issues (scope, types of audit, independence, standards, MoF and CHU powers, audit committee, rights and responsibilities of auditors, conflict of interest and relations with the HSC). In some instances, it could be more precise (for example, it does not define the reporting line of the CHU and the requirement for employers to hire certificated internal auditors is not clear). The 2010 IA Law also gives the MoF discretionary power to draft secondary legislation specifically for the audit manual²⁰, audit committees²¹, criteria for IA outsourcing²² and the QC²³.

The IA manual was drafted under the second twinning project approved by the MoF in 2010 (see below). The activities of the audit committee were governed by Regulation 24270 of 29 December 2011 (also below). The role and function of the QC were also defined in 2010, but are now under discussion (see section 2.2 below). The CHU/IA drafted Instruction No. 12 of 5 June 2012 to provide additional guidance for the IA manual.

By Decree 212 of 30 March 2012, the Council of Ministers approved the criteria for establishing an IA function. Among other things, it states:

All the units of the sector shall be subject to internal audit, which shall be organised as follows:

- a. The central units of the general Government units, commercial companies with more than 50% public capital, and joint authorities, which are controlled, financed, or whose funds are guaranteed by the general Government units, shall have their own IA unit, except when they have no subordinate spending units.
- b. The spending units under a central unit, which have three or more subordinate spending units, shall have their own IA unit.

The aim of the decree is to introduce a cost-effective IA function in the Albanian public administration. This can be done through establishing an organisational IA unit, representation by an IA unit of another organisation, or even outsourcing.

However, using the number of subordinate spending units as the *sole* criterion for needing an IA function raises questions about the criterion's adequacy. For example, the requirement under a. seems to indicate that central units such as the Ministry of European Integration do not need an IA function because they do not have subordinate units. The requirement under b. is also peculiar, since complex subordinate spending organisations (such as the customs and tax offices) do not have their own IA function. They are forced to rely

²⁰ Article 10.

²¹ Article 14.

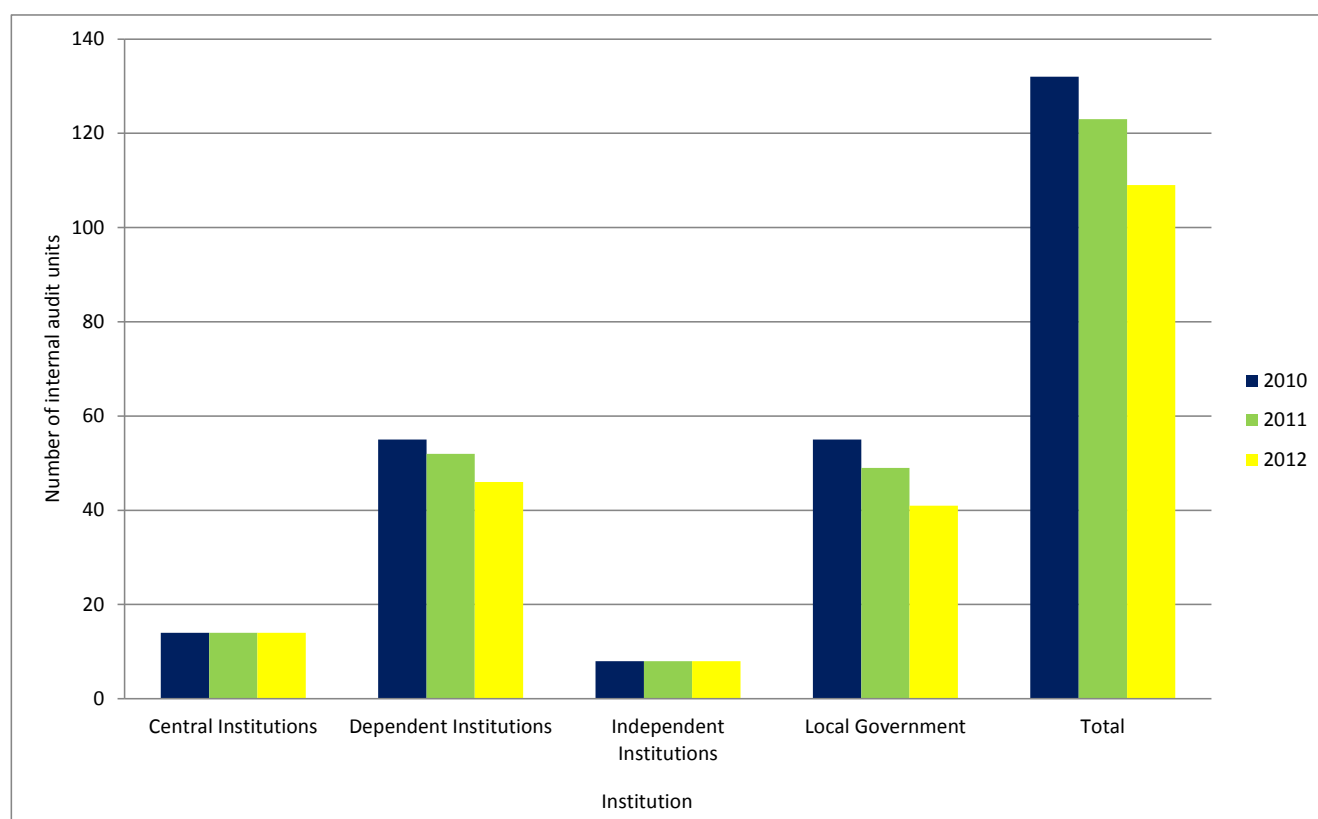
²² Article 17.

²³ Article 20.

on the IA unit of the MoF because although they have more than two regional offices, they have at most two subordinate spending units. These two examples illustrate that a mixture of criteria would be more appropriate to justify establishing IA units. Practice in other countries show that criteria such as budget, number of staff, complexity of organisation or legislation are applied to define the real need for establishing an IA unit.

In any event, using the criterion laid out in Regulation 212, the number of IA units has already been reduced from 140 to 109.

Figure 4. Internal audit units



Source: 2012 annual report of the Central Harmonisation Unit/Internal Audit

While regulations and instructions can sometimes be a quick and easy way to get things done, the high number of legal instruments can make it difficult to establish exactly what internal auditors should be doing. This SIGMA assessment found that several auditors were confused about the instructions and audit manual. Although Instruction 12 clearly commands that its guidelines be followed, auditors find it less clear than the audit manual (e.g. the manual's templates for quality control are more concise than the example in the instruction).

The legal framework for IA in Albania, consisting of several pieces of legislation, is in line with international IA standards. Since it is a criterion for establishing the IA units, it is understood that it is insufficient to reach decisions about establishing IA units.

Internal audit manual

The IA manual was produced in 2010 under a second twinning project. It is intended for daily use by heads of IA units and internal auditors. The manual comprises nine sections: managing the IA function; developing strategic and annual planning; completing an individual reporting; monitoring the quality of audit work, documentation and evidence obtained; rules and requirements for IA of European pre-accession funds; international IA standards; a checklist and supporting guidance for CHU/IA staff when monitoring the quality of IA work; and frequently asked questions. It provides a useful starting point for performing risk-based systems audits. However, it tends to be too theoretical. It fails to describe clearly and precisely the steps an

auditor should take when performing a systems audit. It also focuses too heavily on financial areas. It does not stress that IA should be auditing not only financial systems, but all operational and support systems.

Further, the manual discusses the need for a risk-based approach, but at a high abstract level, rather than relating risk to key control objectives for each system. It should explain in more detail the process of preparing strategic and annual audit plans. Neither does it contain complete requirements for audit charters (see below). The impact of these shortcomings became apparent when SIGMA reviewed the audit plans and audit files prepared by the IA units. The additional guidance in Instruction 12 does not help. While it is prescriptive, it does not really explain how internal auditors should use the IA manual.

The IA manual is a useful starting point for performing risk-based systems audits. However, it focuses on financial areas and does not contain practical information on how to carry out a systems audit.

Audit committees

Chapter III of the 2010 IA Law²⁴ introduces the IA committee as an advisory body to the MoF. The committee consists of nine members (including the chairman) – eight representatives from a mix of public sector organisations and one from the private sector. The chairman is an independent, well-respected economics professor. The committee²⁵ is charged with evaluating IA methods and advising the MoF on all aspects of IA. It considers the semi-annual and annual reports on IA work and the proposed annual audit plans. It meets four times annually and holds ad hoc meetings as necessary. MoF Decree 24270 of 29 December 2011 regulates the functioning of the committee in more detail.

Two committee members are IA directors. Strictly speaking, their active role does not constitute “good practice” for an audit committee. While IA should certainly be asked to attend audit committee meetings, current IA unit members should not be full members of the committee. While this arrangement is not currently a critical problem, it will eventually need to be reviewed.

The audit committee functions in line with requirements set in the 2010 IA Law. It is an important tool for IA implementation in Albania. Member representation is not entirely in line with good practice.

Audit charters

According to the IA manual, every IA unit should prepare an audit charter.²⁶ The purpose of the charter is to clearly define the role of IA and the environment necessary for IA to function effectively and add value to the organisation. The charter also sets out the working relationships between IA and the organisation. It is key to ensuring that IA can carry out its work.

SIGMA noted that five out of the six visited IA units had prepared an audit charter, approved by the head of their organisation. Upon examination, the charters appeared to meet the requirements of the IA manual. However, the IA manual does not clarify that the charter should specify the responsibilities of the head of organisation in respect of IA, nor does it specify the arrangements for liaising with the HSC.

Audit charters, an important tool for communicating the powers and tasks of IA units, have been introduced in the IA manual and implemented in almost all of the IA units SIGMA visited.

2.2. CHU/IA

The CHU/IA has 14 staff, including the general director and an assistant. It consists of two directorates: the department for methodology, monitoring and QA (seven employees, including the director) and the department for professional development and reporting (five employees, including the director). Not all CHU/IA staff is certified (although 10 are) and none has carried out IAs in keeping with the IA manual.

²⁴ Articles 12-14 of 2010 IA Law.

²⁵ Article 13 of 2010 IA Law.

²⁶ Annex Chapter 1, “Model IA Unit Charter”, gives guidance to heads of IA units.

The CHU/IA is fully staffed, but the staff lacks practical IA experience.

CHU/IA profile

The IA Law does not specify the reporting line for the general director of CHU/IA. A general director would generally be expected to report directly to the Minister of Finance. However, the general director of CHU/IA does not meet with the minister on a formal and regular basis.

A key role of the general director should be to ensure awareness of developments, changes and important issues affecting CHU/IA and IA units in ministries and other organisations. By virtue of the office held, the general director of CHU/IA should operate as a member of the senior management team to keep updated on MoF developments and plans. Currently, the general director has regular (but unscheduled) meetings with the MoF general secretary, but does not participate in regular meetings with other senior managers. While the meetings with the general secretary are useful, they should not be the only point of contact with management. EU good practice is that the head of CHU/IA is kept informed and up-to-date through attendance at the weekly MoF meeting. We understand that such meetings are not current practice at the MoF. However, good practice would suggest that regular meetings of MoF senior management (including the general director and possibly chaired by the secretary general) would benefit both the MoF and the CHU/IA.

Another important tool for raising the profile of the CHU/IA is the annual report, based on information received from the IA units and the QA department of the CHU/IA. After approval by the MoF, the CHU/IA annual report is sent to the Council of Ministers²⁷. It is not tabled for discussion in Council of Ministers meetings.

The general director of the CHU/IA does not have regular meetings with senior MoF management. The annual CHU/IA report is not tabled for discussion in Council of Ministers meetings. The CHU/IA does not have a high profile in the MoF and Government.

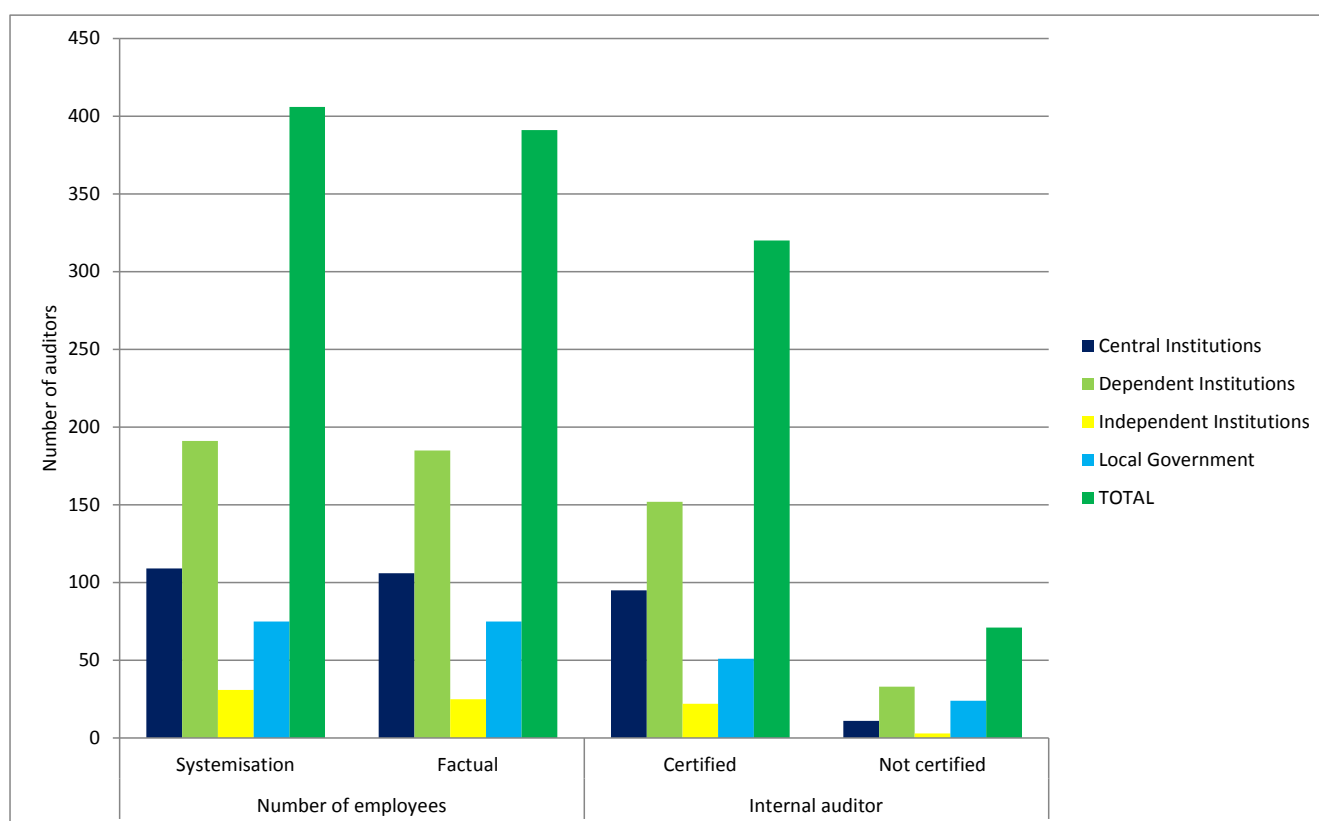
Certification

A lot of good work has gone into developing and running the current certification training programme. Around 1 500²⁸ people have completed the certification programme since 2006. In 2012, 282 trainees completed the certification process; 290 more trainees will go through the programme in 2013. Public sector organisations currently numbers 391 internal auditors.

²⁷ Article 10f of the 2010 IA Law.

²⁸ Source: CHU/IA.

Figure 5. Auditors in the public sector



Source: 2012 annual report of the Central Harmonisation Unit/Internal Audit

The CHU/IA and the QC administer the certification programme. Although the QC is only involved on a part-time basis and not all its members are IA professionals, it had some operational tasks until just recently. However, the roles and powers of the CHU/IA and CC were revised in the new regulations approved by the MoF in early 2013. These regulations pertain to the activity of the QC for certifying public sector internal auditors, procedures for certifying public sector internal auditors and continuous professional development of public sector internal auditors. The procedures regulate 2013 training activities, but will be revised after Parliament adopts the amendments to the IA Law.

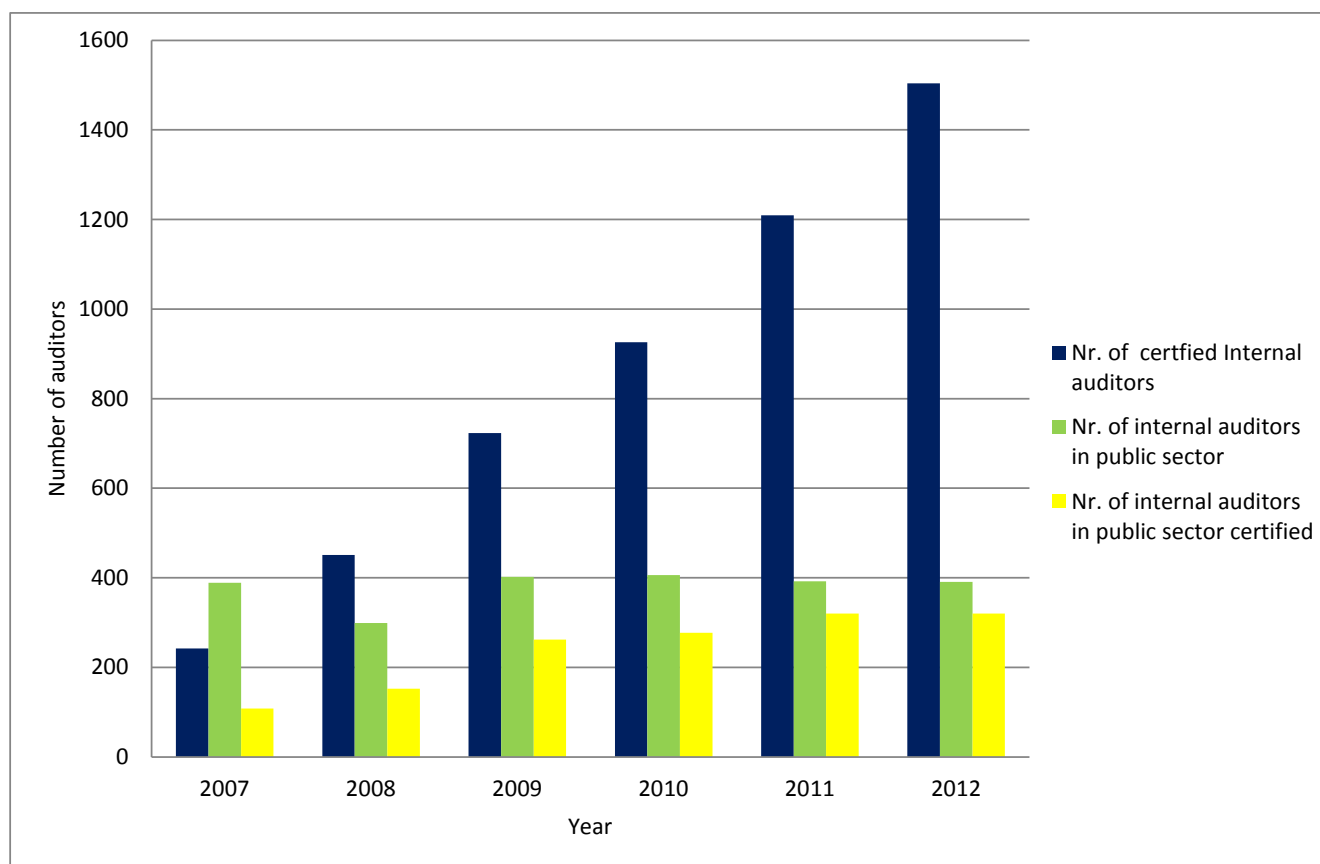
The certification programme comprises four modules: accounting and financial reporting; legislation; governance and control; and audit standards (including the audit manual). Participants take a written exam. The programme also included an oral examination, but this requirement was cancelled two years ago. A large part of the training is developed by staff of ministries and universities, although CHU/IA staff provided some of the training until 2012. Each trainer is required to prepare a description of the module. Following approval by the CHU/IA, the trainer prepares and presents the module training materials. The current certification programme does not require candidates to demonstrate they can apply their theoretical knowledge by performing audits. Certification programmes in EU Member States generally require trainees to show they can actually perform an audit and pass an oral examination on the audit.

As the law currently stands, anyone (including people not employed in the public sector) can attend the training for an annual cost of EUR 300. Part of the training fee goes to paying the lecturers and the rest goes to the Treasury. While such training is arguably always a “good thing”, the role of the MoF is not to act as a commercial training organisation for the general public.

It is clear from the numbers of people sitting the certification examinations, that far more are being trained than are needed. Training on this scale represents a substantial investment in terms of time (of CHU/IA staff and QC members) and money (to fund the trainers, examination facilities, etc.). While no training is entirely wasted, trainees will lose most of the knowledge acquired unless they start applying it very quickly (usually within six months of completing training). This means that the vast majority of the 1 500 people who took the

training, sat for the exam, but did not go into IA work, will need to be retrained before they can start working in IA. This does not constitute the best use of scarce resources, badly needed to run the currently underdeveloped continuous training activities.

Figure 6. **Certified internal auditors and internal auditors in the public sector**



Source: 2012 annual report of the Central Harmonisation Unit/Internal Audit

Around 1 500 people have obtained a certificate in internal auditing. Only 27% actually work in public sector IA. The certification programme takes up a great deal of CHU/IA time, is costly and does not really prepare the auditors for actual audit work. It will be totally revised in 2013.

Continuous professional development

The draft regulation on continuous professional development requires all certified internal auditors to attend training every year according to the training programme approved and published by the CHU/IA. Each auditor is expected to complete 40 hours of training annually. This important step in developing and maintaining high professional standards among IA staff is in line with good international practice.

CHU/IA is to be responsible for identifying the focus of training (taking into account the needs identified by audit staff) and arranging for trainers to develop and present the necessary courses. Due to the time-consuming activities of the certification programme, the CHU/IA only offered a continuous training programme to internal auditors in 2011. The CHU/IA indicated that around 100 out of the 400 internal auditors were trained. Our conclusion after assessing IA units is that continuous training activities are urgently needed.

Continuous training activities have a legal foundation. However, the CHU/IA has not organised any training (except in 2011) due to the time-consuming activities of the certification programme.

Quality Assurance

The 2010 IA Law²⁹ defines the responsibility of the CHU/IA for quality assurance (QA) of work done by IA units. The department for methodology, monitoring and quality assurance is responsible for QA. The team consists of six staff, mainly recruited from the former Directorate of Audit, Surveillance and Investigation of the General Directorate of Internal Audit. The department has no director since July 2012.

The QA team started work in 2011, using the QA checklists contained in the IA manual (amended by the team as necessary). A methodology for QA is still under development. QA work has focused solely on compliance with the IA manual. It has not addressed the quality of IA units' operations.

The 2013 QA team submitted its work programme to the CHU/IA general director for approval. The programme was then approved by the audit committee and Minister of Finance. While the 2012 work programme focused primarily on ministries, the 2013 programme focuses on municipalities with IA units. It provides for the performance of 30 QA audits, together with a number of follow-ups to work done in 2012. The QA team has considerable experience in conducting "traditional" internal audits (i.e. financial inspections). None of its members has actually performed an IA as described in the IA manual. This means that none has any first-hand experience of conducting a systems-based audit or the kinds of problems faced by staff in IA units. Although this is not a reflection on team members' capacities and commitment, their lack of real IA experience obviously limits the value of their reviews.

QA is a new task for the CHU/IA. It is still in development. The QA team of the CHU/IA does not have IA experience. This can influence the quality of its reviews of the operations of IA units.

2.3. Operation of IA Units

Profile of IA units

The organisational positioning of the 6 (out of the 109 existing units) IA units SIGMA visited varied. Our discussions with the CHU/IA and a number of IA unit heads indicated that the head of IA formally reports to the head of the organisation. However, only two of the IA heads interviewed had regular direct contact with the organisation head. In all other cases, they had mainly written contact (relating to reporting, planning, etc.). The practice with regard to contact with senior managers also varied. One head of IA attends weekly senior management meetings; other IA heads did not attend regular meetings. In general, meetings with the general secretary (or equivalent) of the various organisations took place on an ad hoc basis. In all cases, IA heads claimed to have easy access to their general secretary. This was confirmed by the only general secretary we were able to meet.

IA units have an average profile within their organisations. IA heads have differing levels of contact with senior management. Some have regular contact, others do not.

Strategic and annual planning of audits

Each of the IA units we visited had prepared strategic and annual work plans in strict keeping with the IA manual³⁰, taking into account risks to determine audit frequency. The plans had been discussed and agreed with management and endorsed by the head of organisation. Clearly, much thought and effort had gone into preparing them.

However, SIGMA's brief review of the plans indicates that:

- The plans tend to focus on organisational units rather than existing systems within the organisational units. This makes it more difficult to prepare detailed annual plans and more likely that high risks in cross-organisational or cross-sectoral systems will not be given enough priority.

²⁹ Article 16 of the 2010 IA Law.

³⁰ Annex Chapter 2 of the IA Manual.

- Audit work focuses mainly on financial systems, rather than on auditing the entire range of organisational activities.
- Risk assessment tends to be based on judgement and/or a single risk factor (e.g. unit, division or department size) rather than on a “basket” of five or six risk factors.
- The strategic plans are not used to establish the number of staff required to achieve the necessary coverage and provide assurance to the head of organisation. Instead, the strategic plans tend to reflect the current staffing of the IA unit.

The IA strategic and annual plans follow the template in the IA manual. However, they are limited to organisational units and financial systems. Risk assessment is underdeveloped.

Conducting the audit

A review of audit files and discussions with heads of IA made it clear that the audits performed were compliance and transaction-based rather than systems audits. For example, the files did not contain evidence of:

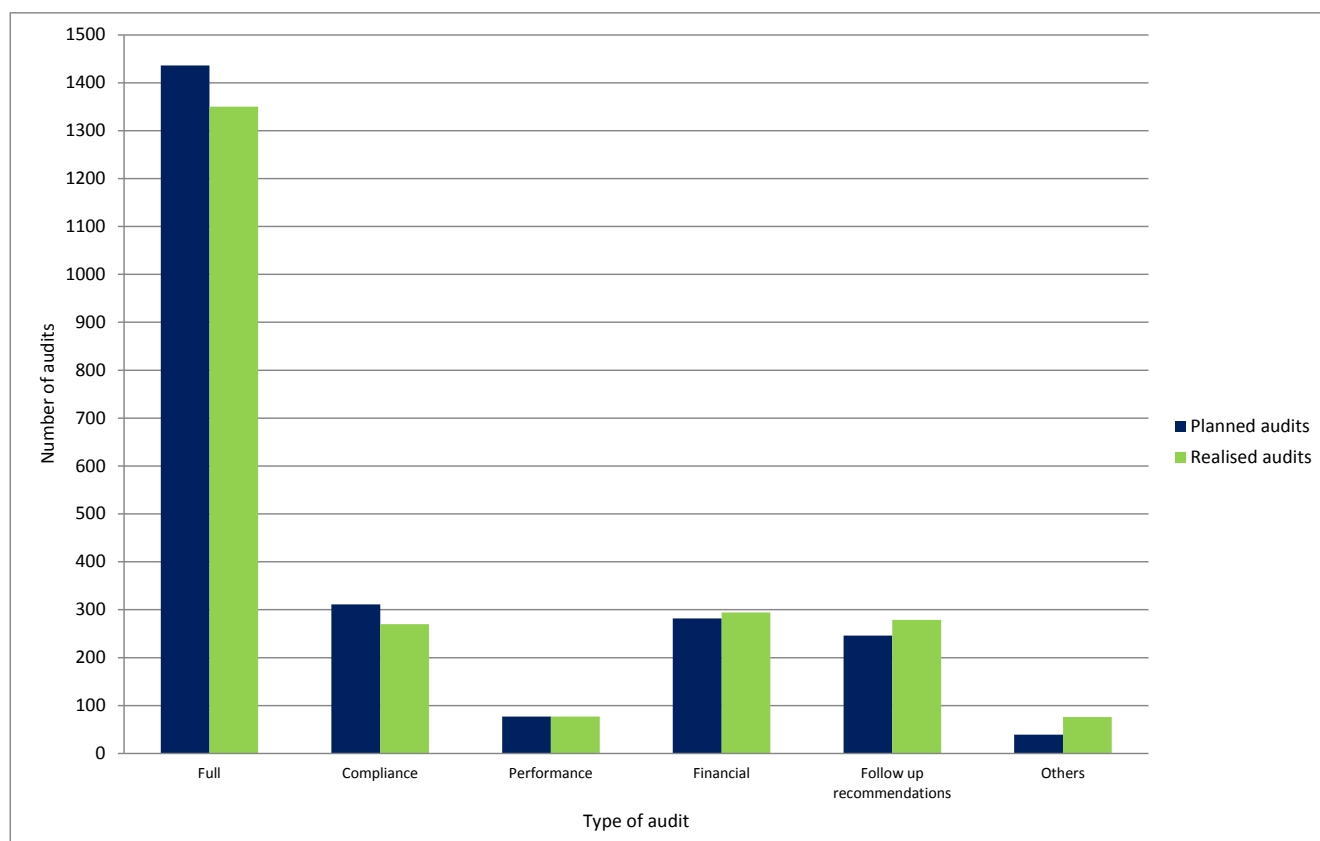
- Use of flowcharts or systems descriptions
- Evaluation of risks
- Use of test programmes and sampling
- Use of templates contained in the audit manual – e.g. important templates such as Template 8 (“Risk Assessment”) and Template 11 (“Testing”) were not evident in the files.

The lack of specific IA training on performing a systems audit could explain the emphasis on transaction-based audits.

We also found no clear evidence of any quality control checks by unit heads or team leaders *during* the audit – although we were told these did occur. However, we did find some evidence of quality control checks at the draft and final reporting stages.

Finally, none of the audit files was structured according to the guidelines of the audit manual. In some cases, the papers in the files were not even properly secured in the binders.

Figure 7. Number of planned and conducted internal audits in 2012



Source: 2012 annual report of the Central Harmonisation Unit/Internal Audit

The audits performed by IA units are transaction-based compliance audits rather than systems audits. In practice, they do not follow the procedures described in the IA manual for quality control during audits and the filing of working papers.

2.4. Relationships with other bodies

HSC

The Minister of Finance and the HSC signed a co-operation agreement in 2012 providing for co-ordinating activities and sharing information. A Technical Secretariat overseeing this co-operation has also been established. It comprises three members of HSC, one of CHU/IA and one of the Financial Inspection Service. The secretariat meets every six months. The CHU/IA general director is satisfied with its operations.

However, the situation in the IA units was far less satisfactory. All heads of IA stipulated that the communication process was entirely one-way – from the IA to the HSC. The HSC does not inform IA of when it will perform audits. This is likely to lead IA units to work inefficiently if they have to re-arrange audits at the last minute to avoid overlap of activities. It will almost certainly leave line managers with a very unprofessional impression of IA and the HSC.

CHU/IA

No regular meetings take place between the CHU/IA and the heads of IA units. Most communication is done in writing. Once a year, the CHU/IA organises its “annual report analysis” meeting, which is attended by heads of IA units.

All heads of IA units confirmed they were generally satisfied with the help and support they receive from CHU/IA. However, they also mentioned the need to receive more practical guidance and continuous training activities.

The relationship of the CHU/IA with the HSC is good. The relationship of the IA units with the CHU/IA is also good. However, their relationship with the HSC is still problematic.

EXTERNAL AUDIT

ALBANIA

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The High State Control (HSC) is an independent Supreme Audit Institution (SAI) based on the Constitution and the 1997 Law on the State Supreme Audit Institution, amended in 2000. The institution's legal basis is sufficient to guarantee the functional and operational independence of the institution. Its remit is broad and allows the HSC to audit all public sector institutions. While the HSC can carry out all types of audits, it mostly undertakes compliance audits. Financial audits (i.e. certifying Government financial statement) do not yet result in professional audit opinion. Performance audits, which had stagnated since 2008, started anew in 2012.

The HSC is committed to applying the international auditing standards of the International Organisation of Supreme Audit Institutions (INTOSAI). While existing manuals for financial and performance audit follow international standards, they need to be updated and aligned with the new framework of International Standards for Supreme Audit Institutions (ISSAIs).

The Albanian Parliament pays limited attention to HSC reports. Ideas to set up a subcommittee have been floating around without any concrete follow-up. The HSC has invested in organising support from Parliament for proposed amendments of the HSC Law.

A new HSC chairman was appointed in December 2011. The institution numbered 156 staff in 2012, including 110 auditors.

HSC development was slow until the new chairman started to shake up the institution upon taking office in 2012. The chairman introduced organisational changes and new procedures to improve audit efficiency. He increased training activities, intensified public relations and sought co-operation at the national and international levels. He also began to develop a strategic development plan (SDP) for 2013-17.

1.2. Main developments since last assessment

Since assuming office on 23 December 2011, the new chairman has taken numerous initiatives to develop the HSC institution and staff. In line with the priorities outlined in the paper submitted to Parliament, his first year of mandate focused on strengthening the role of the HSC in combating corruption; improving co-operation with other institutions and bodies; improving the professionalism of audit staff, including through stricter selection and training; strengthening performance audit; and improving transparency and communication.

On 30 November 2012, the chairman submitted to Parliament the already in 2008 drafted amendments to the law on HSC, which have not yet been adopted. An important component of these amendments is the obligation for HSC to submit to Parliament an audit opinion on the Government's consolidated annual report of the budget execution.

In September 2012, the HSC began drafting a new SDP for 2013-17. By early April 2013, this report had not been finalised.

In August 2012, in a move designed to foster its development, the performance audit function was organised into a separate department. Auditors recruited for the new department were selected from existing staff and a new director was recruited from the outside. In total, the department will number 16 auditors – 10% of the total HSC staff.

Other organisational changes include the appointment of two new general directors and the division of responsibilities among these top-level civil servants and the chairman. A new Department for Research and Development (R&D) was established. It is responsible for disseminating knowledge about public sector auditing within HSC and contributing to academic discussion on public sector auditing (including by publishing a magazine).

Training activities have considerably increased, from an average of 2.1 days per audit staff in 2011 to an average of 19 training days per person in 2012 (17 training days for existing staff and 24 for new staff). This average number includes trainings organised by SIGMA, the MoF and sister organisations such as the Slovenian, Polish and Turkish SAIs.

2. Analysis

The SAI needs to have clear authority to audit satisfactorily all public and statutory funds and resources, bodies and entities, including all European Union resources.

The HSC has a broad constitutional remit.³¹ It covers all central and local government bodies and institutions, including enterprises in which the State owns more than half of the shares or whose debts, credits or obligations the State guarantees. The law on HSC also covers political parties, insofar as they receive funds from the State budget. The law also avers that audit includes the management of State funds and execution of the State budget and should be performed according to INTOSAI standards. Among other things, the amendments tabled on 30 November 2012 grant the HSC the mandate to audit the use of EU funds in Albania, an authority which it lacks so far. Parliament had not yet adopted these amendments by April 2013.

The current law states that audit covers the areas of legality, regularity, financial management and performance and that the HSC receives all documents and other information needed for its work. The amendments clarify the mandate of the HSC and refine the definitions and descriptions of audit and audit subjects.

They also include proposals to create legal criteria for dismissing the HSC chairman before the end of the chairman's term of office. The current law does not establish dismissal criteria, possibly hindering the independence of the chairman and HSC in general. The amendments would further lay the legal foundation for the audit opinion on the annual consolidated report of the budget execution and the certification of audit staff.

The amendments to the HSC Law have been discussed in roundtable meetings with members of Parliament and representatives of the Government, non-profit organisations and the media. Representatives of the European Commission Services (DG Budget) also attended those meetings.

The current legal provisions make it clear that the HSC has the authority to audit all public and semi-public entities, including (semi-) public enterprises. The amendments submitted to Parliament would clarify the remit and regulate the foundation for auditing the use of EU funds. This function is currently outside the legal mandate.

The type of audit work performed should cover the full range of regularity and performance audits set out in INTOSAI auditing (ISSAI 100.38-100.44).

The HSC performs financial audits, compliance audits and performance audits and – in principle – the full range of audits defined in INTOSAI standards. However, ISSAI 100.39(a) stipulates that opinions should be issued on financial statements, which is not yet the case in Albania. In principle, **the financial audit** work performed so far is based on the financial audit manual. This manual does not deal with audit opinions, but does provide a good basis for audit work on certifying the consolidated report on the budget execution (including the financial statement).

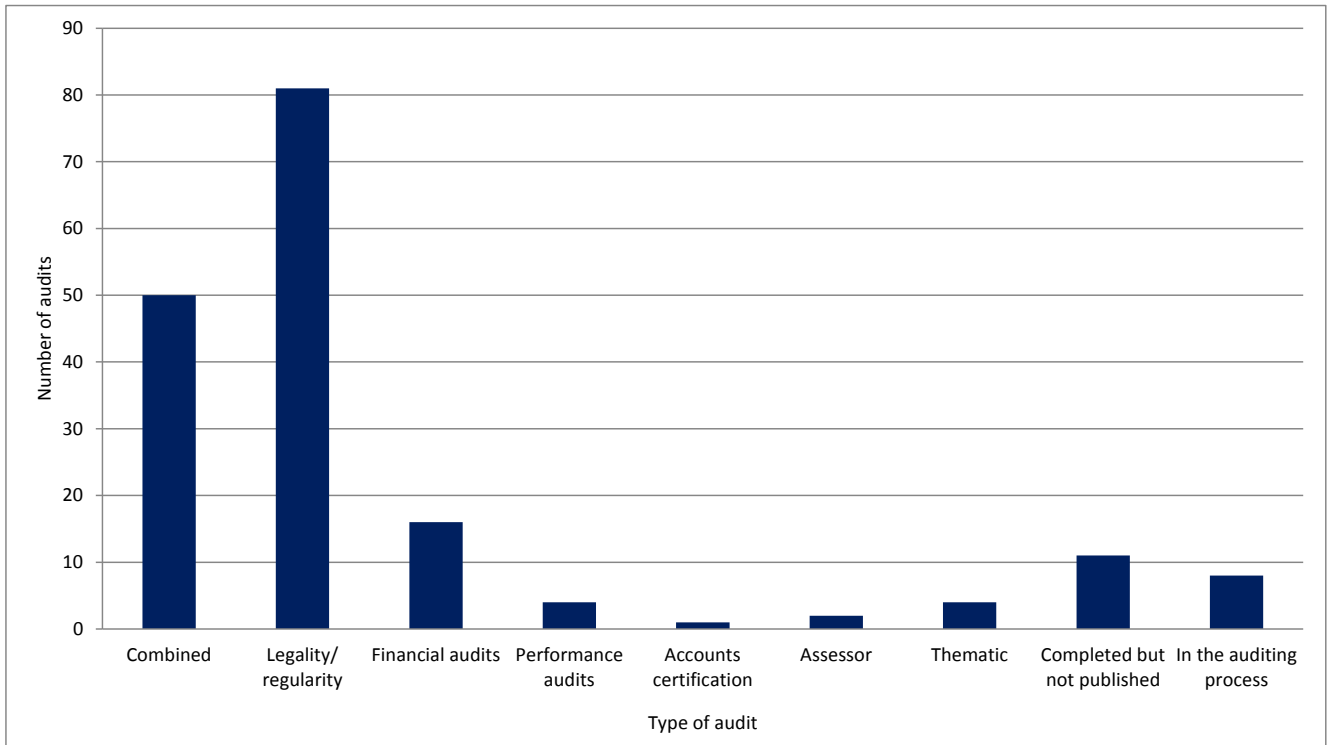
While no manual exists for **compliance audit**, internal rules on the subject (updated in 2012) do exist. A large part of actual audit work focuses on questions of compliance or non-compliance (see the graphics below). The compliance audit approach is not in line with ISSAIs 4100/4200. Until now, compliance audit focused on individual cases of non-compliance. It did not reach more general conclusions or opinions on the level of non-compliance or systemic causes of continued non-compliance. The focus of compliance audit on individual cases of non-compliance is understandable in the environment of Albania, where irregularities in public

³¹ Article 163 of the Constitution of Albania.

expenditure and even corruption remain widespread³². Since the HSC wishes to play a prominent role in combating corruption, it risks being viewed as a judiciary institution rather than as the external public sector auditor.

While performance audit was developed under the 2007-08 twinning project, it only took off in the second half of 2012. The performance audit manual was updated in late 2012. Four performance audits were finalised in 2012 – fewer than the ambitious seven performance audits originally planned (the remaining audits will be finalised in 2013), but double the two audits carried out in 2011. Auditors recruited for the new performance audit department were selected from existing staff; a new director was recruited from the outside. The department will contain 16 audit staff – 10% of total staff employed by HSC.

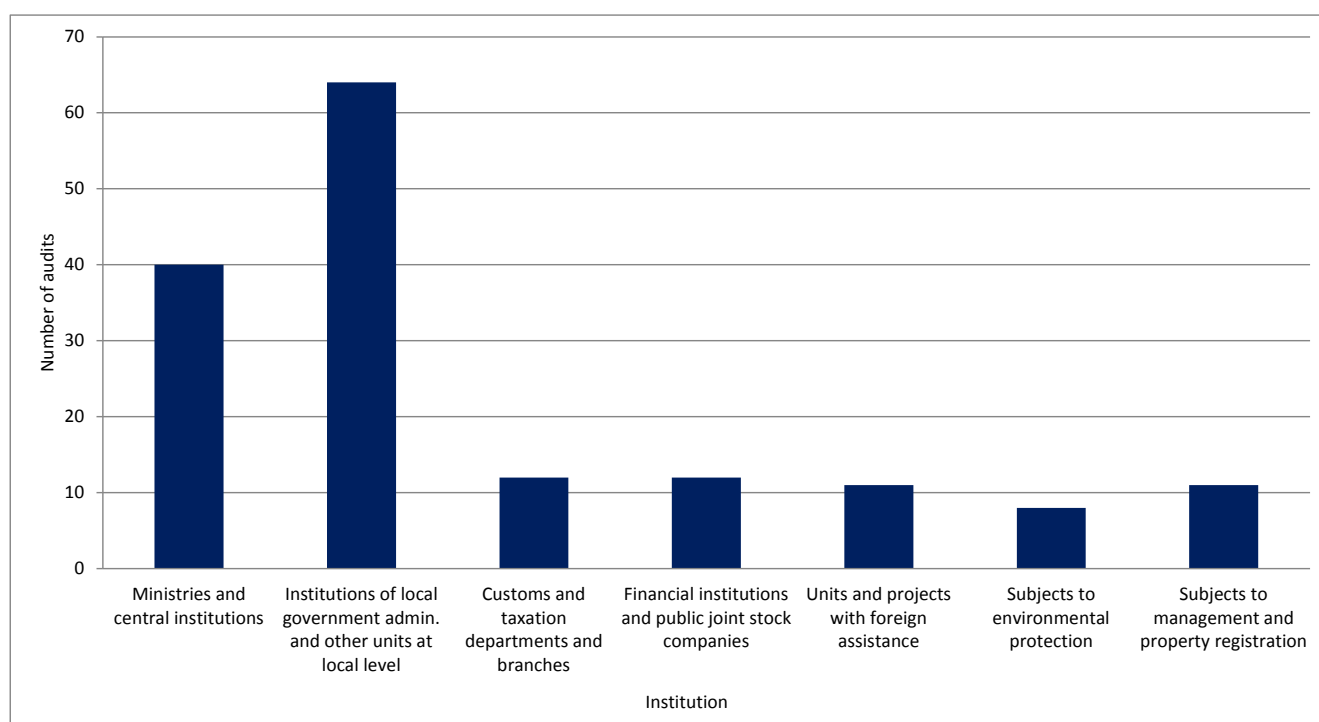
Figure 8. **Types of audit in 2012**



Source: Newsletter of the High State Control, 1st quarter 2013

³² In the Transparency International Corruption Perception Index, Albania scored 113th out of 176 countries. In 2011, Albania scored 95th out of 182 countries.

Figure 9. Subjects of audit in 2012



Source: Newsletter of the High State Control, 1st quarter 2013

While the HSC carries out the full range of audits as defined in the current ISSAI (under revision this year), financial audits do not yet result in professional audit opinions. The current focus of compliance audits on individual cases of non-compliance is transaction-based and is not in line with the new ISSAIs 4100/4200. As for performance audit, it made a new start in 2012.

The SAI should have the necessary operational and functional independence required to fulfil its tasks.

The Constitution³³ ensures the independence of the HSC as the external auditor of the public sector. The HSC chairman is appointed by the Albanian Parliament on the proposal of the President of the Republic of Albania. While Parliament also dismisses the chairman, it lacks legal criteria. The amendments to the HSC Law foresee such criteria, thus strengthening the chairman's position. In other respects, the HSC is relatively independent. Its work programme is established by the chairman and its mandatory audits are limited to the annual Government reports on budget implementation and the Bank of Albania. Overall audit resources are so limited that only about one-half of potential auditees and one-fifth of municipalities are covered annually. One objective of the draft SDP 2013-17 is to develop a strategy for using the limited resources efficiently and effectively. The HSC Law³⁴ ensures that the HSC can submit draft budget proposals to the competent committee in Parliament. However, this provision is absent in the Organic Budget Law of 2008. In practice, this results in the HSC submitting (as is the case for other budget users) the draft budget to the MoF. Like the 2012 budget, the 2013 budget is constrained by government-imposed austerity measures. This limits the possibilities for the HSC to conduct audit missions and set up adequate training facilities.

Staff recruitment is done by the HSC itself. The chairman is the appointing authority and follows the rules of civil service law. This arrangement is in line with INTOSAI standards and allows for sufficient autonomy in the recruitment process.

Overall, the HSC has a sufficient level of operational and functional independence. The procedure for establishing the budget is not optimal and the available resources do not allow HSC to deal with the high number of entities under its remit.

³³ Articles 162-165.

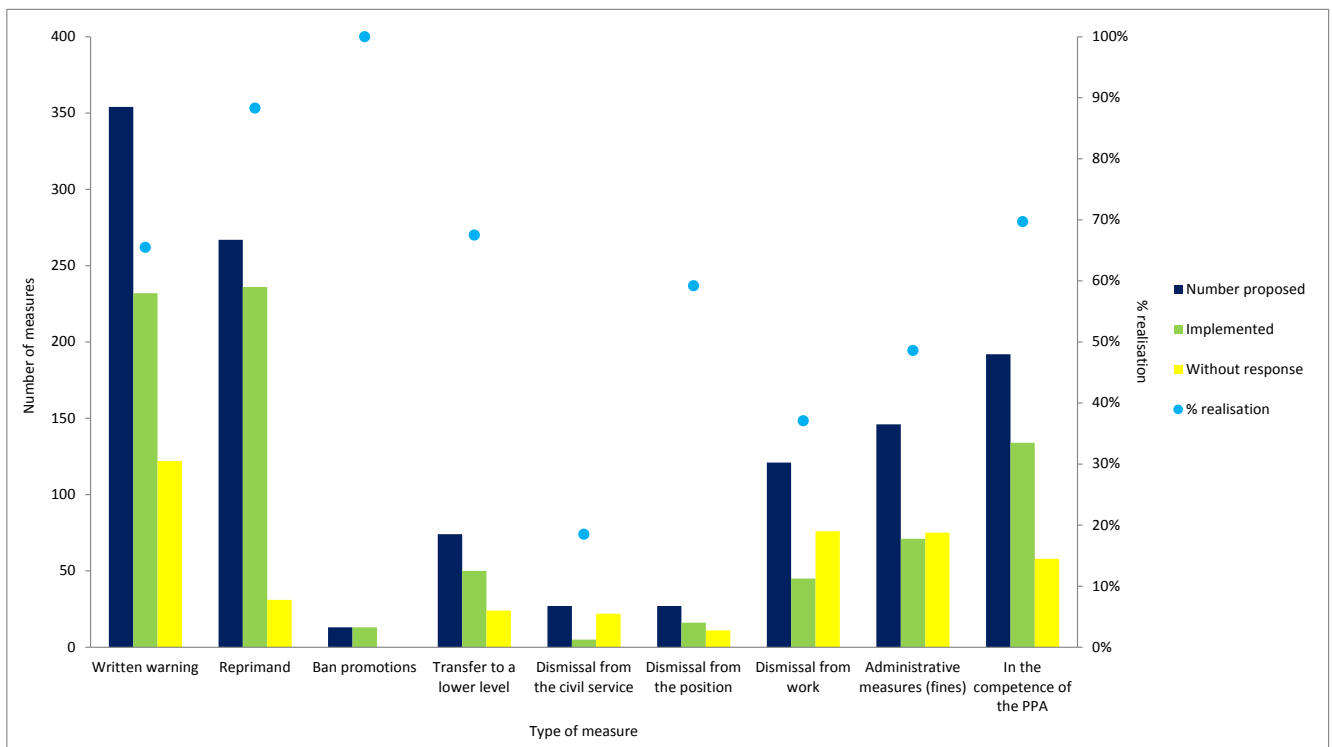
³⁴ Article 3 of the HSC Law.

The annual and other reports of the SAI should be prepared in a fair, factual and timely manner.

The HSC Law³⁵ states that auditees have the right to comment on the draft report and that their comments are reflected in the final report. This provision is translated into more detailed procedures in the audit manuals. Quality control procedures should ensure that it is followed. In practice, auditees sometimes question the factual correctness – and more often the fairness – of reports. They complain that their reaction to the draft audit report is not sufficiently taken into account. They do not always consider the recommendations (particularly on administrative or disciplinary measures) to be fair and justified. The overall level of implementation of this type of recommendations is around 65% (see graphic below). It is much lower when more severe sanctions (such as dismissal) are proposed. While the low implementation may simply reflect a lack of attention from the heads of audited institutions, auditees claim it results from insufficient grounds for the proposed sanction. Moreover, this type of recommendation requires substantial resources to identify the person to be held responsible.

The HSC proposed that managers of relevant institutions take 1 221 administrative measures in 2012, divided among the following categories:

Figure 10. Administrative and disciplinary measures taken in 2012



Source: Newsletter of the High State Control, 1st quarter 2013

The annual Government report on the budget execution contains many findings and recommendations on financial management and control (FMC) systems. To a large extent, these findings relate not so much to weaknesses in FMC systems themselves as to shortcomings in their legal and regulatory framework. These weaknesses include the number of internal auditors not certified within the legally set two-year timeframe after enactment of the law on internal audit (IA) in the public sector.

As foreseen in the HSC Law, the HSC publishes its own annual activity report in March, as well the annual Government report on the budget implementation in October. It publishes other reports as soon as they are finalised throughout the year.

While the HSC has established procedures to ensure the factual correctness of its reports, auditees sometimes complain about them. The practice of recommending administrative and disciplinary measures

³⁵ Article 6 of the HSC Law.

against individual civil servants considered responsible for specific irregularities raises doubts about the report's fairness. The findings and recommendations on FMC systems are largely formal and do not contribute to improving these systems.

The work of the SAI should effectively be considered by Parliament, e.g. by a designated committee that also reports on its own findings.

The Parliamentary Economy and Finance Committee is competent to examine HSC reports. So far, the committee only deals with the annual HSC activity report and the annual report on the budget execution report. While Parliament discusses these two documents, it does not take a formal decision to give discharge to the Government. The HSC chairman is invited to present during both the committee and plenary sessions. The debate on the annual activity report leads to a resolution that discharges HSC and recommends to it topics requiring particular attention. The 2012 resolution required the HSC to develop a performance audit and increase the efficiency of audit processes. The individual audit reports are published in the quarterly HSC bulletin, of which copies are sent to Parliament. However, Parliament does not deal separately with these reports. Proposals to establish a parliamentary body to deal systematically with a higher number of HSC audit reports have not been implemented.

The HSC chairman actively tried to get support from Parliament for amending the HSC Law. He has organised roundtable meetings with members of Parliament to generate more substantial discussion on audit reports – and particularly performance audit reports.

The Albanian Parliament pays limited attention to HSC reports. Ideas to set up a dedicated subcommittee have floated around without concrete follow-up. HSC invested in organising parliamentary support for amendments to the HSC Law and dealing more effectively with audit reports.

The SAI should adopt internationally and generally recognised auditing standards compatible with EU requirements and implement those to the extent possible.

The HSC is committed to fully implementing the international INTOSAI auditing standards. This commitment is reflected in the HSC Law³⁶, in the HSC chairman's policy paper submitted to Parliament on 14 December 2011 and in the draft SDP 2013-17. The current audit manuals are largely aligned with the INTOSAI standards of 2008, when the HSC organised training for all auditors. But the framework of INTOSAI standards was updated in November 2010 and application of the manuals is incomplete. The manuals need to be continuously updated to apply the new INTOSAI standards (ISSAIs).

To facilitate full application of the ISSAIs, the ISSAI framework needs to be available in Albanian. Since portions of the standards are already translated, only the practice notes for the public sector in the core ISSAIs on financial and compliance audit still require translation. Together with the Audit Office of Kosovo, the HSC is engaged in a project to translate the ISSAIs into Albanian. So far, this has resulted in the translation of a portion of the ISSAI framework (ISSAIs 1450-1700).

The performance audit manual was updated in late 2012. However, the draft SDP states that the manual will need to be further aligned with ISSAI 3000, the international auditing standard for performance audits.

The practical application of the ISSAIs is limited due to insufficient past professional training and a culture of audits focusing on individuals rather than systems. While quality control and quality assurance procedures exist, until recently only one permanent staff member worked on quality control. As of March 2013, teams of experienced HSC staff from departments other than the one under audit perform the quality control overseen by the legal department.

The analysis underlying the draft SDP considers quality assurance to be weak. Developing methodology and audit guidance has been a responsibility of the human resources and methodology department, which now

³⁶ Article 2 of the HSC Law.

shares it with the new R&D department. The precise delineation of responsibilities between the two is not clear and quantitative and qualitative resources are not sufficient to perform these duties.

The HSC is committed to applying international INTOSAI auditing standards. The existing audit manuals for financial and performance audit follow the existing international standards at the time of drafting. They are largely used as practical guides. The challenge is to update these manuals to align them with the current ISSAI framework; develop a manual for compliance audit or include a module on compliance audit in the financial audit manual; organise staff training in financial, performance and compliance audit; and sufficiently resource these activities, both quantitatively and qualitatively.

The SAI should be fully aware of the requirements of the EU accession process.

The HSC is well aware of the requirements for the institution itself, which stem from ongoing negotiations on chapter 32 of the *acquis* on financial control. It has been in close contact with DG Budget on the draft amendments to the HSC Law to ensure their alignment with requirements. To a large extent, this boils down to applying the fundamental auditing principles of INTOSAI. In its draft SDP 2013-17, the HSC identified a number of EU accession-related developments it needed to factor into its strategy. First, the level of EU funding for Albania is likely to increase, which will entail a challenge for HSC as soon as it is mandated to audit the use of EU funds in the country. Second, the implementation of the law on FMC will gradually lead the HSC to adopt another audit approach focusing on risk management. Third, the development of IA requires the HSC to build further on IA results while enhancing its capacity to assess IA quality and functioning. The May 2012 co-operation agreement with the MoF also covers co-operation in building a strong audit structure.

In the context of Albania's future accession to the EU, the HSC has identified areas of necessary focus in coming years. These are being laid down in the SDP for 2013-17. The previous SDP did not include these challenges.

**PUBLIC PROCUREMENT
(INCLUDING CONCESSIONS)**

**ALBANIA
APRIL 2013**

1. State of play and main developments since last assessment

1.1. State of play

The public procurement system has undergone a number of positive changes, particularly with regard to the adoption by Government of the new Concessions and PPP Law (CPPPL), Public Procurement Law (PPL) based on EC Directives, a comprehensive set of public procurement implementing regulations, templates of standard bidding documents and other documents, and training of contracting authorities (CAs) and suppliers. Review mechanisms have also been made available and e-procurement and e-concessions introduced, but further work is needed to improve the professionalism of CAs.

1.2. Main developments since last assessment

Law No. 131 on Public Procurement of 27 December 2012 (PPL) introduced certain changes to the current PPL No. 9643 of 20 November 2006 and entered into force immediately upon its publication in the Official Gazette.

The most important amendment refers to the abolition of the Public Procurement Advocate (PPAd). Alongside the Public Procurement Agency (PPA) and Public Procurement Commission (PPC), the PPAd was one of the entities involved in monitoring and review of the public procurement system. Such an institutional setup always risked harbouring contradicting decisions/opinions among institutions, thus generating lack of confidence in the overall system. This potential conflict has now been eliminated.

Another important amendment is that the PPA regains the powers and instruments to initiate and conduct monitoring of procurement procedures. As a result, the administrative monitoring and control system covering the application of public procurement rules has become more comprehensive.

Besides the classical procurement procedures provided for in EC Directives, the “consultancy service procedure” is now explicitly nominated as a distinct procurement procedure. On the other hand, the PPL still makes no mention of the competitive dialogue procedure.

With regard to concessions, legislative progress is reflected in the new Concession and PPP Law and its adoption on 27 March 2013 by the Council of Ministers. The new law, if adopted in Parliament, will introduce a new legislative framework for concessions and PPPs in Albania based on EU principles and practice and aligned with *acquis*.

The Law introduces public works and service concession definitions aligned with the *acquis* and a PPP definition that respects EC interpretative documents on concessions and PPPs as well as EU practice. Thus the Law entitles Contracting Authorities to enter into concession and PPP agreements for the purpose of realization of public investments in a number of areas and sectors also listed by the Law.

The Law prescribes that both concession and PPP award procedures are undertaken in accordance to the provisions of the Public Procurement Law applicable to works and service contracts. Award procedures are preceded by preparatory actions which consist of project identification, preparation of feasibility studies and tender documentation as well as of appointing an award commission.

Concessions and PPP contract notices shall be published in the same manner as all other public procurement notices i.e. electronically on public procurement electronic platform and Public Procurement Bulletin, using standard forms. Contracts are signed with the selected bidder following a standstill period. Legal protection is instituted in accordance to the PPL before the PPC.

Contracts shall be concluded for a determined time period while contract modifications are possible if envisaged during the award procedure in relevant documentation. Rules on subcontracting, award of additional works and services as well as rules applicable to works contracts awarded to third parties by public works concessionaire have been aligned with relevant Directive 2004/18/EC provisions.

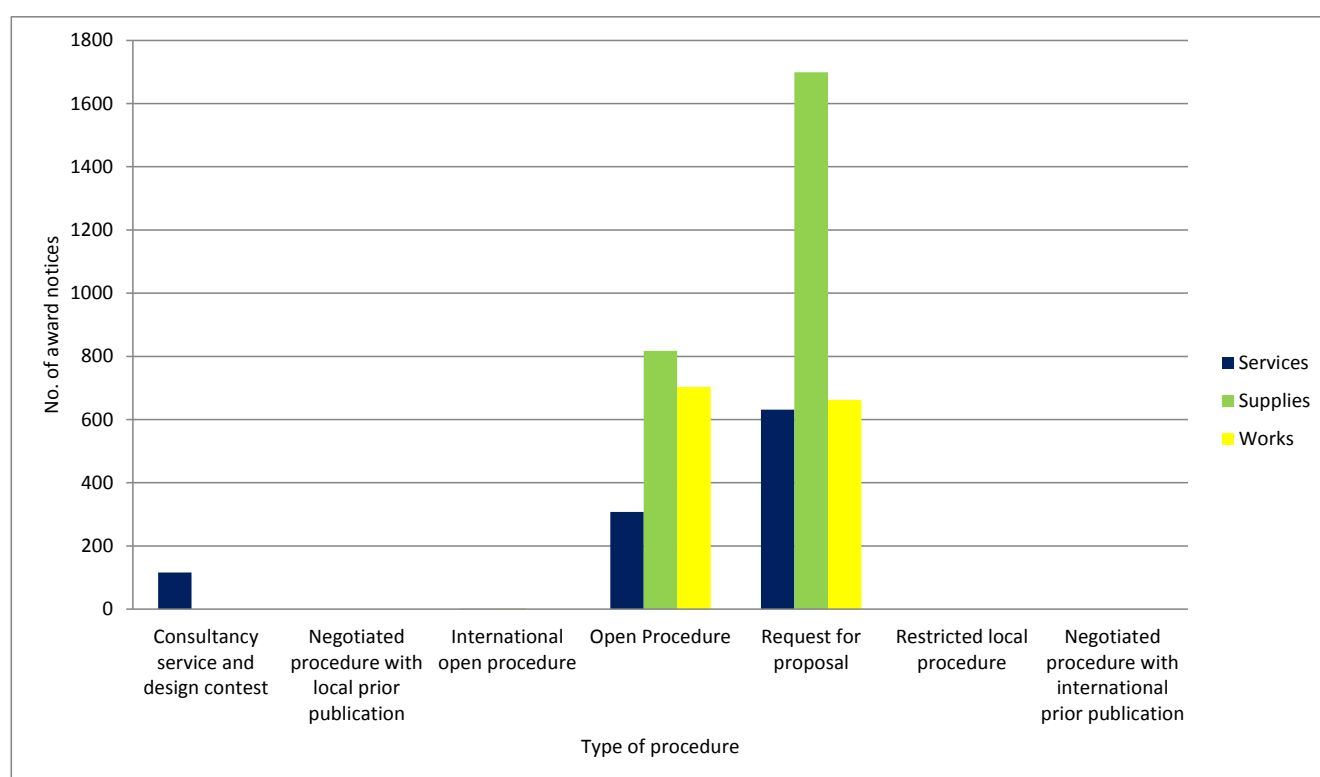
In accordance to the Law, PPA shall be the competent authority for concessions and PPPs. ATRAKO will remain as the unit providing technical assistance to CAs while MoF will be in charge of analyzing business conduct of concessionaires and concession fee collection.

Law foresees the adoption of a Concessions and PPP Strategy in no later than 3 months. Same deadline applies for all implementing regulations. Exclusions from the Law include HPP concessions, which shall continue to be awarded as they currently are. Transitional period for this exclusion is set at 4 years, in accordance to transitional provisions of the Law.

The administrative capacity of the PPA with regard to concessions has been increased by two experts. This is still not nearly enough to deal with reform dynamics and quality of implementation, especially if the new CPPPL is adopted in the Parliament.

The total number of procurement procedure contract notices as published in 2012, according to the type of contract, service, supply and work, in the PPA official website was 4 939³⁷.

Figure 11. Procedure notices Jan-Dec 2012



Source: Public Procurement Agency

The total number of published award notices was 3 869, for a total budget of EUR 2,9 bn³⁸.

A total of 538 procurement and 8 concession review cases took place in 2012.

2. Analysis

2.1. Legislative framework

Concessions in Albania remain regulated by the Concession Law from 2006³⁹ as amended and implementing legislation. Concessions are defined as agreements between the Contracting Authority and the concessionaire

³⁷ PPA 2012 Annual Report.

³⁸ PPA 2012 Annual Report.

³⁹ Law no 9663, dated 18.12.2006 "On concessions".

under which the concessionaire carries out an economic activity which would otherwise be carried out by Contracting Authority related to a concession project, management contract or other public services and where concessionaire assumes all or substantial part of risks related to such economic activity. Concessionaires are remunerated by way of direct payments paid by or on behalf of contracting authority; tariffs or fees collected from users or customers; or as a combination of such direct payments and tariffs.

The Concession Law allows for concessions to be offered to local or international investors for the symbolic price of EUR 1. The concession award procedure consists of either a competitive procedure or an unsolicited proposal procedure. In case of unsolicited proposal procedure, the proponent of such a proposal is awarded a bonus of 10 points during the subsequent tender procedure.

Amendments to the Concessions Law in 2012⁴⁰ introduce an e-concessions platform which enables publication of tender documentation and submission of tenders in concession award procedures

Implementing legislation further expands on the Concession Law provisions governing concession award procedures and handling of unsolicited proposals as well as technical issues relating to HPP concessions and the functioning of Government expert working groups in charge of conducting technical evaluations and approving unsolicited proposals.

According to PPA data, a total of 37 concession award procedures were initiated, six of which were completed i, while 1 procedure was cancelled. Fifteen contracts were signed, six of which on the basis of notices published during the same year.

Table 1: Total number of concessions procurements in 2012

| CONTRACTING AUTHORITY | ELECTRONIC PROCEDURES | | |
|-----------------------------------|---------------------------|-----------|-----------|
| | Completed | Ongoing | Cancelled |
| METE | - | 8 | 1 |
| Himara Municipality | - | 1 | - |
| Albanian Road Authority | - | 1 | - |
| MPW | - | 1 | - |
| Sub-total | | 11 | 1 |
| | NON-ELECTRONIC PROCEDURES | | |
| | Completed | Ongoing | Cancelled |
| METE | 6 | 17 | - |
| Ministry of Finance | - | 2 | - |
| Sub-total | 6 | 19 | - |
| TOTAL NUMBER OF PROCEDURES | 6 | 30 | 1 |
| TOTAL NUMBER OF APPEALS | | 8 | |

Source: Public Procurement Agency

Most concession award procedures in Albania, since coming into force of Concession Law, have been conducted in accordance to the unsolicited proposals procedure.

The unsolicited proposals practice has hindered the development of a publicly driven investment policy. The system participants, being on the policy or operational side, are significantly dependent on even the most basic directions given by central government. Information gathered during interviews with stakeholders, including additional research, also did not reveal any initiatives by the business community aimed at initiating changes to the legislative framework for concessions.

With over a 100 projects realized and total capital value of EUR 2,1 bn,⁴¹ concessions for construction and management of hydropower plants (further; HPP concessions) are the most frequent concession projects in

⁴⁰ Council of Ministers Decision 268/2012 "On electronically conducting the competitive procedures of granting concessions" and Council of Ministers Decision 269/2012 "On some additions and amendments to Decision 27/2007 "On the approval of rules for the evaluation and granting of concessions".

⁴¹ http://www.mete.gov.al/doc/20091103101433_1aaa_tabela_e_fundit.xls.

Albania. Even with all the resources and commitment directed at promoting and streamlining this type of investment there are still some problematic issues occurring in this segment of the system, most notably relating to the process of obtaining the necessary construction and operating permits.

Table 2: **Public-Private Partnership/Concessions projects under implementation**

| CONTRACTING AUTHORITY | PROJECT TITLE |
|--|---|
| City of Tirana | Tourist info points |
| | Passenger Terminal |
| Himare municipality | Boardwalk |
| Ministry of Culture | Tourism urban development |
| Ministry fo Finance | Customs scanners |
| | Pertoleum trade monitoring and marking |
| Ministry of Enviroment | Sasaj Water Resource |
| | City of Durres Landfill |
| | Electronic waste management |
| Ministry of Public Works and Transport | Thumane-Rogozine bypass |
| | Milot-Morine highway |
| | Durres port container terminal |
| | Durres bulk cargo terminal |
| | Durres tourist port |
| | Tourist port Synej Communes |
| | Tourist Port Kalaja e Turres |
| | Tourist Port Porto Palermo |
| | Tourist Port Spille |
| | Passenger Ferryboat Terminal |
| | <i>100 HPP concessions total CAPEX of EUR 2,1 bn - average value per project EUR 20,5 m</i> |

Source: ATRAKO (Concessions Treatment Agency)

Note: Data on Hydro-power plants concessions extracted from the Ministry of Public Works and Transport web-site

This is quite indicative of one permanent system feature; it being overly dependent on the core concessions legislation by expecting said legislation to function as a strategic document, guidance tool or policy.

There is no specific PPP legislation in Albania. Interviewed officials consider this issue the main obstacle for realization of investments based on availability fee PPP schemes. Missing legislation on PPPs has impeded development of capacity and practice specific to PPPs.

The provisions on public works and service concessions are not aligned with the *acquis* and still there is no specific legislation on PPPs. Concession definition and concession award procedure do not transpose provisions of Directives 2004/17/EC and 2004/18/EC. Unsolicited proposals procedure represents a breach of EC Treaty fundamental principles. Most of said problematic areas will be tackled by the new CPPPL, if adopted in the Parliament.

2.2. Institutional framework

As of 2012, additional investments and efforts have been made by the PPA in managing the concessions system reform, most prominently its legislative part by focusing on developing a new Concessions and PPP

Law. The PPA took over the responsibility over monitoring and managing concessions in accordance to amendments to the Concession Law in 2010⁴².

The PPC continued to deal with legal protection side of the process, thus maintaining its role as review body for public procurement and concessions⁴³.

In addition to these central public procurement and concession system stakeholders, concession project preparation and implementation relies first and foremost on line ministries, most notably Ministry of Economy, Trade and Energy (*further; METE*) and Ministry of Public Works and Transport (*further; MPW*) which are heavily assisted by ATRAKO (concessions unit formally under METE).

The MPW is the policy maker and Contracting Authority (*further; CA*) for concessions in the area of transport infrastructure (inland and coastal). It is currently undertaking several concession award procedures for marine ports and a motorway concession project (Milot-Morine highway). MPW has a total of 4 experts and is struggling with limited capacity needed for autonomous project preparation. MPW officials report the low capacity issue as the main reason for resorting to and relying on unsolicited proposals.

Similar conclusions can be drawn for the Municipality of Tirana (hereafter City), although it did gain certain experience in dealing with concessions while working on the Tirana Airport concession project⁴⁴. In accordance to ATRAKO data the only concession/PPP project in the City currently underway is the underground parking lot that is to be constructed on Italy square. The project was initiated in 2008 and procured as an unsolicited proposal with contract being signed in 2012⁴⁵. The concessionaire is still working on obtaining all the necessary construction, a problem that is reportedly in close correlation with still unresolved issue of liens and lenders rights over the property and concession cash-flow.

The fact that City reports struggling with understanding and handling the treatment of liens on property engaged in the project points to the scope of unresolved and open issues that are still present in project realization in Albania. Only recently the Law on Concessions experienced amendments that deal with the issue of liens and step-in rights. City's representative report a persistent need for guidance, training and education, i.e. capacity building at all levels.

In accordance to the regulations on local governments⁴⁶ CA's are required to obtain an approval from Council of Ministers for use of public land in projects under their jurisdiction. In practice that would mean that if the Council of Ministers doesn't approve of the project it could sidetrack the process by not issuing the approval for use of public land required for project implementation. There are no reports of this risk being materialised, but the said concern has been brought up on several occasions by different public officials. The same applies to the process for approving additional sectors in which concessions may be used. In accordance to the Concession law this approval is also under Council of Ministers authority and local municipalities considering use of concessions in sectors not listed in the law (which is not all encompassing) have to request such an approval from Council of Ministers.

The main obstacles for efficient enforcement, in addition to missing PPP legislation and mentioned problematic issues arising from the Concession Law, are low administrative capacity and lack of practical implementation guidance and manuals based on best international practice.

The Government hasn't adopted any official strategies, action plans or any similar official document which would set out a roadmap towards reforming the concession system in Albania.

PPA doesn't have a dedicated concessions/PPP Unit⁴⁷ and, since it's not a contracting authority, its practical experience with concessions and PPPs is limited. There haven't been any changes in the internal organisation

⁴² Law No.10281, Date 20.05.2010 on amendments to the Law No. 9663 of 18.12.2006 "on concessions".

⁴³ Including "non-EU" concessions i.e. mining concessions (licence type of agreements).

⁴⁴ 20 year BOT concession project signed in 2005.

⁴⁵ See text box on City of Tirana two major concession projects in the pipeline (Passenger terminal and Underground parking lot).

⁴⁶ Law On Organization And Functioning of Local Governments, No. 8652, Dated 31.07.2000.

⁴⁷ PPA's internal organisation: General Director of PPA, Legal, Monitoring and Publication Directorate, Directorate of Information Technology, Human Resources and Finance, Legal Monitoring and Publication Directorate, Directorate of Information Technology.

of the Agency which would directly focus on the concessions and PPP work, even though the Agency did employ two new experts (of legal background) whose work mostly focuses on said issue⁴⁸.

ATRAKO, established in 2007,⁴⁹ functions as a promotional tool for concessions as well as technical expert support vehicle for the CA's (*assistance in drafting of tender documentation, evaluation of proposals, contract signing negotiations etc.*). ATRAKO budget has been decreased in the previous and present year⁵⁰, resulting in reduction of staff by 4 experts. The Unit now has a total staff of 12 experts of various backgrounds. The Unit mostly co-operates with METE on HPP concessions while contacts and communication with PPA are limited.

None of the described institutions operate under any specific strategies or action plans. Institutions are understaffed and are lacking specialised training on concessions and PPPs. Furthermore the system lacks a dedicated concessions/PPP strategy or at least some sort of statement in which way concessions/PPP should be integrated in public investment policies (sectorial or general ones) as a financing option alternative to traditional procurement. There is no clear delamination between the scope of work of individual stakeholders. Most of mentioned problematic areas, lack of strategy most notably, will be tackled by the new CPPPL, if adopted in the Parliament.

2.3. Operational practice

Even though dedicated concessions/PPP policies do not always guarantee significant added value to the system or practice, in the case of Albania examples of sectorial strategies described below have a direct impact on the number of project realized. Three examples can be accentuated in this regard; primarily Marine ports master plan and secondary Transport infrastructure strategy and City of Tirana urban development plan.

In accordance to information provided by MPW, last year Council of Ministers adopted a decision in accordance to which all marine ports infrastructure developments and investments as well as operation and management of existing port facilities shall be realized as concessions. Exact scope, type and value of foreseen investments are set out in the Marine Ports Master Plan. The Council of Ministers decision resulted in at least 5 projects being signed or in preparatory and procurement phase.

⁴⁸ Prime Minister's Order No. 74, dated 02 July 2012, two concessions specialists were added to the PPA Legal, Monitoring and Directorate, therefore bringing the number of employees in this directorate to 7.

⁴⁹ Decision No. 150 Of 22 March 2007 On The Organization And Functioning Of The Concessions Treatment Agency (Atrako).

⁵⁰ Exact data on budget allocation still pending (requested by SIGMA).

Box 1: Ministry of Public Works and Transport selected project description

Durres Container Terminal

A 35 year concession contract for this project was signed in 2011. It was procured under the unsolicited proposal procedure and concluded with a consortium led by a Turkish based company. Due to differentiating business interests consortium fell apart resulting in renegotiation of the contract with the same leading consortium member. With construction still pending, MPW authorized Durres Port Authority for its monitoring. Concessionaire is obliged to take over the existing staff for at least 2 years and to pay the Port Authority a concession indemnity equal to 21% of net earnings. Additional 1% of net earnings are paid to MPW.

Milot-Morine Highway

Highway forms part a of the National Roads network, linking Milot, approximately 60 km north east of the Adriatic port of Durres, with Morine at the Kosovo border. Route forms the central section of the wider Albania to Kosovo Highway, connecting Tirana and Durres with Kosovo. MPW as the CA for this project is heavily supported by IFC. Project is realized as a service concession i.e. includes only operation and management of the facility. Prequalification round was completed in mid-2012 with 5 companies/consortiums (*Strabag & Consortium Intertol; J & P-Avax & Egis Consortium; Hochtief PPP Solutions GmbH; Highway Brescia-Verona-Vicenza-Padova Spa; Vinci Concessions Sas - Actress Concessions Sp*) going through submit their bids in February this year.

The same line ministry is in charge of road infrastructure. Currently investments are realized in accordance to the Transport Strategy dating from 2008, while the new Transport strategy is still under Government adoption procedure. These relate to two concession projects, one for construction and operation of a 64 km Thumane – Rogozine bypass around city of Tirana (BOT) and other for the operation and maintenance of Milot-Morine highway. While the former one is being realized through an unsolicited proposal procedure the latter is set to be procured through a two-stage tendering procedure in accordance to the Concession Law⁵¹. Requests for participation in the Milot-Morine highway project were opened end of February this year with the foreseen deadline for submitting of final bids being set for end of March 2013.

While on central government level METE and MPW are currently managing most if not all investment plans and concession award contracts procedures, on a local government level the City of Tirana is the municipality that is most active in the concessions area. In September 2012 City adopted the Urban Regulatory Plan of Tirana (including a strategic environmental impact assessment). In May 2012, following an international design competition the City has selected the winning Tirana master plan proposal developed by a foreign company which covers a large area of city expansion. The most notable project foreseen by city's development plans, in addition to the underground parking lot concession, is the new central passenger terminal⁵² covering 80.000m² and servicing all railways, tram and bus transport in the City.

⁵¹ See text box 1.

⁵² See text box 2.

Box 2: City of Tirana Multi-modal Passenger Terminal

In accordance to its urban development plan, City of Tirana engaged in seeking technical and financial support for the development of a feasibility study for a new multimodal passenger terminal. City for that purpose approached EBRD. Feasibility study drafted in that accord by an Italian company (Ital-Hell) envisages a BOT project covering 80.000m² under a 15 year contract. The terminal will provide necessary facilities for train, tramway and bus transport. Terminal will interconnect to mentioned new boulevard being developed under City expansion master plan. In addition to core facilities, new building will include commercial spaces as well as an underground garage. Consultant's terms of reference cover also project preparation and concession tendering support. EBRD's total financing of said services amount to 500 thousand EUR. Total CAPEX is foreseen at EUR 25 m and will also include EBRD participation.

If successfully contracted this will be the second urban transport development project procured by City of Tirana. Mentioned underground parking lot BOT on Italy square was signed in 2012 and carries a 12 m EU capital investment. Albanian company Gener2, concessionaire in his project, assumed the obligation of constructing a fully digitalized 4-level underground parking facility with 1.000 parking slots.

During the past year there were two almost separate streams of reform processes and stakeholders leading them. One was led by PPA and the other by METE and MPW respectively. Process led by PPA focused on legislative initiative with regard to *acquis* transposition, with the primary objective being adoption of a new law on concessions and PPPs and previously mentioned e-concessions platform.

METE and MPW work focused on not so much reforming as much as improving and streamlining the existing concessions award system, notably HPP concessions and transport infrastructure (ports and partly highways).

Additionally, it is quite difficult to assess the efficiency and value for money of concession practices in Albania since it is extremely difficult to obtain reliable and comparable data on for example number of projects procured vs. contracts signed vs. contracts renegotiated⁵³. Information differs among different authorities with PPA monitoring procurement notices, ATRAKO registering a limited set of data on contracted and projects pending and Contracting Authorities being the only ones with real time access to information on project implementation and renegotiations. There is a notable lack of understanding between different purposes and risk profiles of project preparation, tendering, contracting and implementation monitoring. Awareness and capacity rising in that regard and monitoring system integration is second to none in importance.

Reform dynamics do not show a linear trend of positive development. Administrative capacity is low and investments in that regard are limited. Reform is primarily focused on legislative changes while reforms on the institutional and practical enforcement side are secondary. PPA is identified by the Concession Law and by Government appointment as the authority leading the reform. Still, PPA recorded only a marginal increase in number of staff and specific expertise on concessions and PPPs.

The draft a new Concessions and PPP Law, if adopted, will introduce a wide and complex scope of new responsibilities for stakeholders and CAs. In that regard legislative reforms not supported by reforms in institutional setting and capacity present a threat to sustainability.

⁵³ See Annex I for concessions related statistics.

**REGULATORY MANAGEMENT
FOCUSSING ON THE
LEGISLATIVE DRAFTING
PROCESS AND RELATED
CONSULTATION PROCESSES**

ALBANIA

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

This assessment examines regulatory management in Albania with a specific focus on concerns about law drafting and public consultation expressed in the European Commission's 2012 Progress Report on Albania.⁵⁴ It does not examine other aspects of regulatory management, such as administrative simplification.

The process of legislative drafting is prescribed by two laws⁵⁵. The practice of legislative drafting is a function of the capacities of officials formulating policy and the legal staff in each ministry. There has been no co-ordinated effort to train these officials in law drafting. Low salaries in the public sector mean that there are few incentives to join or remain in the public sector. Law drafting is regarded as a task to be undertaken as part of normal legal duties and is not regarded as a discrete expertise. As a result, the quality of legislation varies.

Consultation with the public is also prescribed in those laws in general terms, leaving discretion to each ministry to decide the approach to be taken in each case. For historical reasons, civil society has been slow to develop in Albania. Consultation is usually effected by means of conferences or working groups. Both activities are structured to include individuals who are seen to be representative of particular interest groups. Consultation with business interests is achieved through the functioning of the Business Advisory Council.

There are no obligations to undertake Regulatory Impact Assessments when preparing legislation and there is no better regulation or regulatory management policy as in European Union institutions and Member States, and as recommended by the OECD and to be found in its member countries.⁵⁶

1.2. Main developments since last assessment

There have been no developments in legislation regarding the drafting of legislation in 2012. Nor have there been any improvements in the approach to training or developing officials involved in the drafting of legislation.

As regards consultation, a draft law on public consultation is being developed by the Ministry for Innovation, Information and Communication Technology in conjunction with the Open Society Foundation for Albania (Soros Foundation).

The National Agency for Information Society (NAIS) is working enabling citizens to access government information electronically. A government information portal site – *e-albania.al* – was launched in November 2012. At present, it only provides information on services, but an update, planned for later in 2013, will enable direct engagement with ministry officials for citizens who register on the site.

2. Analysis

Main aspects of legislative drafting process

This assessment focuses on primary legislation, for which the legislative drafting process involves five stages:

- An initial decision by a minister, in consultation with the Council of Ministers
- Policy formulation
- Drafting of legislation

⁵⁴ http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf.

⁵⁵ Law 90000/1999 on the organisation and functioning of the Council of Ministers (LCoM), Decision of the Council of Ministers No. 589/2003 on the Rules of work of the Council of Ministers (RoW).

⁵⁶ <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>.

- Consultations within a ministry, between ministries and with the general public or specific interests to be affected
- The submission of a draft bill to the Council of Ministers.

A preliminary analysis of the policy issues for a particular proposal is undertaken by the policy development unit in the ministry concerned, in consultation with the legal unit of the ministry. The depth and breadth of this analysis depends on the complexity of the legislation and, according to many interviewees, rarely amounts to the sort of quantitative analysis to be found, for example, in the analysis conducted by the European Commission in its policy-making process.

Regulatory Impact Assessment has not yet been introduced, although many officials interviewed are aware of the potential uses for the tool and its advantages.

Once a decision has been taken to develop a policy and implement that policy by means of legislation, the official concerned with the policy refers the policy proposal to the legal directorate of the ministry. The task of drafting a particular piece of legislation is assigned to a member of the legal directorate who is available at a particular time to do the work.

The legislative drafting process is well defined in law. However, its implementation is constrained by the lack of experience of most officials in the highly specialised work of drafting and by the absence of a coherent and consistent training process.

Main aspects of consultation

Consultation within and between ministries

During the legislative drafting process, the policy development units concerned organise consultations⁵⁷ with other units within the ministry, with other ministries or institutions, as well as with relevant civil society organisations. There is also an interministerial consultation process prior to submission of draft legislation to Government.

Once the drafting is completed to the satisfaction of the Policy Directorate concerned, the draft and the accompanying report, which sets out an explanation of the draft and related matters, is sent for an opinion to the Minister of Justice, Minister of Finance, Minister of European Integration (when the proposal involves approximation) and to other relevant ministries (depending on the subject matter).

Consultation with the public

In many cases there are no consultations with the public, but in cases where there are, two main approaches to consultation exist. The first is by means of involvement of relevant interest groups in the working group formed to develop the policy. The second is by holding a conference on the issues under consideration. In both cases, the consultation takes place at the stage the legislation is drafted so consultation does not take place on the initial policy proposal.

Working groups

Some legislation is drafted by the formation of a working group. It is composed of officials (legal and technical) from the ministry promoting the legislation and other relevant ministries. Once a preliminary draft of the legislation is available, the group may be expanded to include relevant external stakeholders – primarily relevant NGOs, though academics may also be invited – to discuss the draft legislative text.

There can be significant variation in the size and composition of such working groups and their efficacy. One working group within the Ministry of Justice had over 70 members and met over 50 times on one legislative proposal, but could not agree on a text. The Ministry of Environment, Forestry and Water Administration faces

⁵⁷ Paragraph 14 of the Rules of Government.

different challenges in that there are few NGOs who expressly focus on environmental issues, making it difficult to get public or external views on draft texts.

Conferences

The Ministry of Justice and other ministries have started to supplement such working groups with conferences in order to hold discussions and consultations with relevant NGOs, and in some cases, the wider public. Attendance at these conferences is usually by invitation, though ministries indicated that members of the public are welcome to attend. There is no set process, however, for alerting the public about such events. Some conferences may be partly televised, giving the public an opportunity to view proceedings, but without offering any opportunities to comment. The usual format for such conferences is that before they conclude, the internal drafting staff (legal staff, advisors, policy development officials) go into a closed session to review the comments received, then return to the main conference and present the 'final' draft that will be circulated to the Council of Ministers.

Business Advisory Council

Albania has developed a separate system to ensure appropriate consultation with business on regulatory proposals. The Business Advisory Council (BAC) is a statutory advisory body⁵⁸ of the Council of Ministers to develop economic policies. All legislative proposals that have an impact on business must be routed through the BAC and its conclusions and recommendations are sent to the Council of Ministers. In essence, the BAC is a statutorily based 'standing' working group with a broad focus on all legislation that could impact on the business community.

The BAC is chaired by the Minister for Economy, Trade and Energy and is composed of no fewer than 15 and no more than 20 members. The majority of its membership is drawn from business and includes representatives from: the Chambers of Commerce and Industry; local and foreign business associations; civil business representatives; relevant state institutions; and local government bodies.

The Union of the Chambers of Commerce in Albania, a member of the BAC, indicated that while it is pleased with the level of consultation and engagement that the BAC provides, it faces difficulties in adequately addressing all of the potential laws needed to align with the *acquis* because of the limited time allowed for consultation.

Online consultation

The launch of the Government information portal site – e-albania.al – in November 2012 offers the potential to improve consultation. However, much remains to be done. There are no rules for how websites should be structured or where draft legislation for consultation should be placed. Some ministries have a dedicated page for policies and legislation. There is no requirement to have a 'consultation' page or to clearly flag where such documents may be found or what is currently being considered. While most ministries will have a webpage related to policies and legislation, they tend to focus on legislation already enacted. The Ministry of Environment, Forestry and Water Management has a dedicated page under its publications section that lists documents open for public comment. Similar pages for other ministries can be difficult to find or are listed as being under construction.

There are no guidelines on how to alert NGOs or the broader public about issues that are currently open for consultation. There are no criteria for how long material should be made available for comment on websites. There is no central webpage or website (or information within the e-albania.al portal) where information on all planned and current consultations by Government can be found.

⁵⁸ See Law No. 9607 dated 11.09.2006 on Business Advisory Council.

Final stage of legislative drafting process

The ministry finalises the draft law and the accompanying report is also revised to include what has been taken into consideration from the opinions of other ministries, as well as the respective reasoning. When other ministries suggest alternative solutions or object, in whole or in part, to the basis of the content of the draft, the proposing minister may decide to: withdraw the proposal of the draft law in whole or in part; review its content through consultations with the respective ministers; send to the Prime Minister a request for co-ordination and resolution of the disagreements, when the objections and disagreements are not solved through a process of bilateral consultations between the respective ministers.

Explanatory statement

A key feature of the process is that, in parallel with the drafting of the instrument (or immediately after), the officials responsible for the policy prepare an explanatory statement. It is required to contain, among other matters: the purpose of the draft law and the intended objectives; a political analysis and a statement on whether or not the draft law is related to the political programme of the Council of Ministers; the documents that have approved the principal directions of overall state policy or other documents relating to developmental strategies and policies; a preliminary assessment of legality and conformity with the Constitution of the form and content of the draft law, as of well as its harmonisation with the legislation in force and the norms of international law binding on Albania; argumentation for proposing the draft law, performing an analysis regarding the advantages and possible problems in its implementation, the level of effectiveness, the ability for implementation.

According to the MoF, which sees all proposals, this level of detail is rarely obtained and most explanatory statements simply recite the number of articles in a proposal and provide a bland statement of the content of the measure.⁵⁹

Once finalised, the file consisting of the draft legislation, the accompanying report and the opinions of other ministries are submitted to the Secretary General of the Council of Ministers. The files are reviewed by the Legal and Coordination Department in the Council of Ministers. The process involves a review of the file in relation to: formal completeness; conformity with the Constitution, ratified international agreements and the local legislation; and conformity with legislative technique rules. The Legal and Coordination Department, is a very small unit, consisting of one director, three co-ordinators and one archivist.

While every effort is made to ensure all draft legislation submitted to the Council of Ministers is adequately prepared, the system is constrained by the number of people to undertake the work and the experience available to the system as a whole to draft high quality legislation.

The design of the system and compliance with EU requirements

There are no EU requirements for the drafting of legislation other than an implicit requirement that, where appropriate, legislation conforms with the *acquis*. The European Commission and most Member States have guidelines for legislative drafting. There is some degree of convergence in the institutions of the European Union and in Member States that legislation be drafted bearing in mind the principles of better regulation and regulatory management articulated in the European Union⁶⁰ and the OECD⁶¹.

As regards legislative drafting, it should be noted that there are two fundamentally different approaches in the European Union: the common law approach, where policy making and legislative drafting are fully separated, and the civil law approach where policy making and legislative drafting are closely interlinked. According to the applicable law which prescribes a separation between policy making and law drafting, the approach in Albania

⁵⁹ This observation was also made by a member of Parliament.

⁶⁰ For Better Regulation, see http://ec.europa.eu/governance/better_regulation/index_en.htm; for OECD, see <http://www.oecd.org/fr/reformereg/34976533.pdf>.

⁶¹ <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>.

is similar to that in common law countries, meaning that legislation is drafted by lawyers who are specialist in this task.

A number of different training opportunities have been offered to those interested in legislative drafting⁶² and a Law Drafting Manual has been prepared with donor support.⁶³ Training in legislative drafting is always at the top of the list in the Training Institute of Public Administration's⁶⁴ annual survey of training needs amongst officials.

All of the persons interviewed expressed concern regarding the time-pressures imposed on officials when preparing legislation. Despite the legislative planning process, which requires proposals to be agreed in September for the following year, things are left to the last minute by politicians, putting great pressure on those involved in drafting. There is a general lack of understanding by ministers of the complexity of the drafting process and the need for good quality legislation. Some interviewees expressed concern about the coherence of legislation drafted by 'outsiders' with local practices.

Drafting is not considered to be a discrete expertise. It is a task which every lawyer is expected to perform and so there is limited scope for individuals to develop the essential skills needed for the task.

⁶² These include workshops organised as part of the EURALIUS project and initiatives by the Council of Europe. Some officials have received training from Universities in Romania as part of their undergraduate studies and, as well, one attended a course in the Royal Institute of Public Administration in the United Kingdom of Great Britain and Northern Ireland, training courses run by ReSPA and EAAL.

⁶³ Law Drafting Manual, a Guide to the Legislative Process in Albania, March 2007, EURALIUS, Council of Europe and European Union - see also the Addendum to the Albanian Law Drafting Manual: Avoiding Corruption Risks in Draft Legislation.

⁶⁴ The body responsible for training and continuing education in the public service in Albania.