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PUBLIC ADMINISTRATION REFORM ASSESSMENT OF ALBANIA

APRIL 2014

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ASSESSMENT OVERVIEW AND RATIONALE

The international election observation mission positively assessed the conduct of the elections in Albania on 23 June 2013, which resulted in a clear victory for the opposition coalition Alliance for European Albania. The new Government, comprised of the Socialist Party of Albania and the Socialist Movement for Integration, was sworn in on 15 September 2013.

On 16 October 2013 the European Commission (EC) released its annual Progress Report, which concluded that the Albanian election had been carried out in an "orderly manner". The report also indicated that progress had been made in meeting the EC's 2012 recommendations on the completion of key measures in the areas of judicial and public administration reform (PAR) and the revision of parliamentary rules of procedures. The EC consequently recommended that Albania be granted European Union (EU) candidate status. However, the Council of the EU, at its meeting in December 2013, postponed the decision on candidate status until June 2014.

Following discussions with the EC, SIGMA gave priority in its 2014 assessment of Albania to areas of PAR and in particular those areas where actual reform was being implemented or planned. This report covers the period from April 2013 to March 2014.

Each assessment area is presented in a separate thematic report, which includes a brief description of the state of play and recent developments. This overall assessment is followed by a more detailed analysis with conclusions.

SIGMA's 2014 assessment of Albania focused on:

- [LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT](#) – This assessment concentrated on [Public Service and Human Resources Management](#) that promote the professionalisation of civil servants.
- [POLICY MAKING](#) – This assessment followed the changes that the new Government has introduced in the [Co-ordination Structures](#) of the policy making system, including the [Management of European Integration](#) process and [Policy and Strategic Capacities](#).
- [PUBLIC PROCUREMENT](#) – This assessment focused on recent changes in public procurement legislation, giving particular attention to the strategic framework, the co-ordination of the institutional set-up, and the implementation of the new PPP and concessions regime.

SIGMA, working in co-ordination with the EC's Directorate-General for Enlargement (DG ELARG), has developed a draft set of principles of public administration, designed to define key requirements for good public governance and to serve as a basis for measuring progress over the years. The 2014 assessments were used to pilot these draft principles concerning the above topics.

The principles of public administration are due to be released in November 2014.

**LEGAL FRAMEWORK AND CIVIL
SERVICE MANAGEMENT**

**ALBANIA
APRIL 2014**

1. State of play and main developments since last assessment

1.1. State of play

The new Law 152/2013 “On the Civil Servant”, the Civil Service Law (CSL) approved by the Assembly of Albania on 30 May 2013, institutes a set of core values in line with the civil service fundamental values and principles adopted in the EU countries: professionalism and respect of the merit principle, political impartiality, accountability, integrity, stability and continuity of the civil service¹. However, the Government has not created sufficient institutional capacities nor allocated the resources needed to translate these values and principles into practices.

The new civil service secondary legislation was only fully adopted on 26 March 2014, hindering the timely and consistent implementation of the new legal framework (both primary and secondary legislation).

The capacity of the key institutions to implement a merit-based and coherent civil service system, including recruitment, promotion and dismissal of civil servants, is not ensured.

There is no clear and reliable information system needed for the management and monitoring of public administration at the central level.

1.2. Main developments since last assessment²

Several major initiatives were taken to improve the legal framework applying to public administration. Law 90/2012 “On the Organisation and Functioning of the State Administration”, enabling the Government to put in place a more coherent structure of public institutions, was approved in September 2012. Law 49/2012 “On the Organisation and Functioning of Administrative Courts” was approved in May 2012, and administrative courts began functioning on 4 November 2013.

Following approval of the new CSL on 30 May 2013, it should have entered into force on 1 October 2013. At that date, however, the by-laws of the new CSL were not prepared³ and the change of the Government slowed down the operational functioning of the administration, including drafting the new civil service secondary legislation. At the same time, the transitional provisions of the new CSL required the Council of Ministers (CoM) to adopt all pieces of secondary legislation on 1 January 2014 at the latest, and to enter them into force by 1 April 2014. Because of these two factors, the new Government decided to change article 72 of the new CSL by postponing the Law’s effective date to 1 April 2014 in order to avoid any legal vacuum related to its implementation⁴.

The Government did this through the adoption of a Normative Act of the CoM with the force of law⁵ on 30 September 2013 (adopted by the Assembly on 17 October 2013). On 6 February 2014, a decision of the Constitutional Court ruled that this normative act had been taken in violation of the provisions of the Constitution and repealed it as unconstitutional. Meanwhile, a number of public employees and civil

¹ OECD (1999), “European principles for public administration”, *SIGMA Papers*, No. 27, OECD, Paris.

² March 2012.

³ Article 6 (a) of the CSL. Additionally, article 71 paragraph 2 specifies that by-laws, as envisaged in article 69 of the CSL, should enter into force no later than six months after the entry into force of the new law. Therefore, the foreseen timeline for the entering into force of the new civil service legislation was the following: (a) CSL in force on 1 October 2013; (b) by-laws adopted no later than 1 January 2014 and in force no later than 1 April 2014. Beginning new recruitment procedures three months before the new law becoming effective was forbidden (article 68 paragraph 1).

⁴ Article 72 of the CSL, as adopted by the Normative Act No. 5 of the Council of Ministers “On Some Amendments to the Law 152/2013 ‘On the Civil Servant’” of 30 September 2013: “This law enters into force on 1 October 2013 and becomes effective six months later. Till this law becomes effective the Law No. 8549/1999 shall apply.”

⁵ Article 101 of The Constitution of Albania provides that the Council of Ministers, in cases of necessity and emergency, may issue, under its responsibility, normative acts having the force of law for taking temporary measures. These normative acts shall be immediately submitted to the Assembly. If they are not approved by the Assembly within 45 days, these normative acts lose force retroactively.

servants had been dismissed, and others appointed, under the provisions of the active legislation⁶. The Constitutional Court decision came into force upon its publication in the Official Journal, i.e. on 26 February 2014, with no retroactive effect. Following the publication of the court decision, all ongoing administrative procedures, e.g. recruitment of civil servants, have been suspended until all relevant pieces of new secondary legislation are adopted and have entered into force⁷.

The new CSL extends the scope of the civil service, which will after its enforcement also include public employees of subordinated institutions and of all local government units. The former law had instituted a predominantly position-based civil service. The new law creates a career-based system and introduces, accordingly, new human resource management concepts and practices (pool recruitment, horizontal and vertical mobility, career development of civil servants).

The following by-laws needed for the implementation of the new CSL were adopted by the CoM on:

- 1) "The annual recruitment plan to civil service" (26 February 2014);
- 2) "The performance appraisal of civil servants" (26 February 2014);
- 3) "The status of the existing civil servants and employees who benefit the civil servant status under Law 152/2013 "On the Civil Servant"" (5 March 2014);
- 4) "The procedures of the appointment, recruitment, management and termination of civil service relationship of the top level management civil servants" (5 March 2014);
- 5) "The defining the disciplinary proceedings and rules of establishing, composition and decision making of the Disciplinary Committee of the Civil Service" (5 March 2014);
- 6) "The keeping, the procedure and the management of the personnel files and Central Personnel Registry" (5 March 2014);
- 7) "The description and classification of job positions in the public administration institutions and independent institutions" (12 March 2014);
- 8) "The procedures of recruitment, probation, lateral transfer and promotion of civil servants at the expert level, low- and mid-level management category" (12 March 2014);
- 9) "The rules of the organisation and functioning of the Albanian School of Public Administration and training of civil servants" (12 March 2014);
- 10) "The permanent and temporary transfer of civil servants, the suspension and dismissal from civil service" (26 March 2014).

⁶ See also the special report *Public Administration and Regulation of Working Relations*, February 2014, Ombudsman of Albania.

⁷ The Department of Public Administration has made public on its website the following information: "With the publication in the Official Journal on 26 February 2014 of the Constitutional Court's Decision No. 5, dated 06.02.2014, the new Law 152/2013 "On the Civil Servant" provides for new rules for admission in the civil service All those interested to be employed in the public administration will be notified further on the new rules and procedures that will be followed to that end. The Department of Public Administration would like to thank you for your understanding and invite you to follow us on our website www.pad.gov.al for updated information."

PUBLIC SERVICE AND HUMAN RESOURCES MANAGEMENT

2. Analysis

Human Resource Management policy and strategy

1: Policy and managerial documents establish core values for a professional civil service which are aligned with European administrative law principles and civil service core values.

The new CSL includes a set of civil service (CS) core values, to be applied to the whole CS⁸, which is in line with EU standards. These values include professionalism and respect for the merit principle, political impartiality, accountability, integrity, stability and continuity of the civil service. The law establishes a separation between the public and private spheres⁹ and between politics and administration¹⁰. It clearly defines the rights and duties of civil servants, offers job protection and establishes the right of the civil servants to a fair remuneration¹¹.

Although indirectly, the merit principle is enshrined in the Constitution¹².

The CS fundamental values and principles set out by the new CSL and secondary legislation are also in line with the related European administrative law principles: reliability and predictability, openness and transparency, accountability, efficiency and effectiveness.

Preconditions to allow the European CS core values and administrative law principles to be reflected in the institutional practices are not ensured: there is an absence of a central information management, circulation and monitoring system, a lack of transparency and openness related to the administrative decision making process, and an insufficient co-operation and co-ordination system between ministries. This situation threatens to undermine political and institutional efforts to create a merit-based and professional CS, and to promote and monitor the accountability, efficiency and effectiveness of civil servants.

CS human resource management (HRM) core values in the Albanian legal framework are well in line with the EU CS fundamental values and administrative law principles. However, the conditions to allow these values to be reflected in institutional practices are not ensured.

2: Vision and policy options to develop and sustain the professional CS are defined in the relevant policy document and its action plan, and they are disseminated within the public administration.

Vision on the desired situation of the CS (its expected organisation, profile, capacity and outputs) is very briefly presented, together with a related set of strategic objectives and priorities, in the two global national strategies for development and integration (NSDI) (2007-13; 2014-20). The first document was later further developed in the inter-sectorial public administration reform (PAR) strategy 2009-2013 with a simplified action plan. The inter-sectorial PAR strategy for the period 2014-2020 is still being prepared. The final draft of this strategy is expected to be sent for approval to the CoM at the end of 2014.

These policy documents were elaborated with the active participation of the main stakeholders and disseminated within the public administration (PA)¹³. The PAR strategy 2009-2013 provides a broad

⁸ In particular Articles 1, 5, 20, 26 and 32 in particular of the CSL.

⁹ Article 1 (1) of the CSL.

¹⁰ Article 5, and more generally, the whole set of articles included in Chapters IV-XII of the CSL.

¹¹ Articles 33-47, Chapter VII of the CSL.

¹² Article 107 (2) of the Constitution states that "employees in the Public Administration are selected through examinations, except when the law provides otherwise." Article 107 (3) states that "guarantees of tenure and legal treatment of public employees are regulated by law."

¹³ Actions undertaken by the Government to ensure the participation of stakeholders in the preparation of the new PAR strategy, and to disseminate the vision and policy options to develop and sustain the professional CS, include meetings of (i)

reference frame for the management of civil servants, using a simplified methodology. The relevance, as well as the external and internal coherence, are made apparent, but the applicability and sustainability of the strategy are not worked out and fully demonstrated, and the targets in the action plan are not clearly and precisely established (SMART targets). This weakens the utility of the document as a guidance tool.

The PAR strategy 2009-2013 was not revised and adjusted during its period of implementation. Measures to support implementation were not effective enough, and the six priority strategic objectives of NSDI 2007-2013 were not completely fulfilled. In particular, the establishment of a modern HRM system, including a central database for civil servants, was not achieved.

Vision and policy options to develop and sustain the professional CS were broadly defined in the previous relevant PAR policy document and its action plan, and they were disseminated within the public administration. The CS strategy is integrated into the PAR strategy. The new policy document is being prepared with the participation of the main stakeholders, but has not yet been completed.

Civil Service and HRM legal framework

3: Primary and secondary CS legislation establish the legal status of civil servants and the scope of CS, ensuring that a uniform system is in place.

The new CSL incorporates all the main objectives of the PAR Strategy 2009-2013. This law replaces the old CSL, in force since 1999. The new CSL clearly specifies the scope of the CS, the legal status and classification of civil servants, the HRM principles and procedures, and the rights and duties of civil servants¹⁴. It was designed to be the main piece of a coherent corpus of legislation to be completed by a set of detailed by-laws. The new legal framework covers the main areas of HRM. The law regulates the issue of hierarchical subordination versus external control of legality¹⁵, and introduces non-discrimination provisions, and grants trade unions the right to participate in negotiations and consultations on the general working conditions of the civil servants and to protect the rights of individual civil servants¹⁶.

The new CSL creates a more homogeneous legal regime for civil servants. Following its enforcement, the scope of the CS will encompass civil servants working for the central state administration institutions, subordinated institutions, independent institutions and local government units (LGUs) (including the communes)¹⁷. The newly defined scope also establishes a clear separation between political and professional CS positions, and means a substantial change in numbers. In 2012, according to the statistics provided by the Civil Service Commission (CSC)¹⁸, there were 7 068 budgetary work posts in the CS, of

the *Advisory Group* (composed of representatives of civil society and academia), (ii) the *Tecnical Working Group* (composed of experts from the line ministries), (iii) the *Inter-institutional Working Group for PAR* (composed of deputy ministers from line ministries, and chaired by the Minister of the Interior), and (iv) the *PAR Special Group* (co-chaired by the European Union, with the participation of public institutions and representatives of the donor community and civil society organisations). These meetings were held between September 2012 and November 2013. A series of new meetings and consultations are planned for 2014.

¹⁴ Articles 2, 19 and 20 and Chapter VII of the CSL.

¹⁵ Article 43 of the CSL.

¹⁶ Articles 5, 20, 36 and 39 of the CSL.

¹⁷ In Albania there are 12 counties (*qark*), 36 districts (*rreth*), and over 370 "municipalities" (*sensu lato*), both urban (*bashki*, "municipalities" *stricto sensu*) (around 70) and rural (*komunë*, communes) (over 300). The number of cities is close to 70, and the number of villages close to 3 000. Law no. 8653, dated 31 July 2000, "On the administrative-territorial division of local government units in the Republic of Albania", amended, organises *local self-government* into two levels: the first (basic) one encompasses *municipalities (stricto sensu)* (69) and *communes* (304) (in total, 373 LGUs); the second level of LGUs are the *regions* (12). In total, there are 385 LGUs. Districts, which are no longer considered LGUs, remain sub-units of the regions. The regions can set up administrative bodies in the districts for supplying their services. Districts also represent the minimum territorial level in which central administrative bodies set up their branches. The Government is expecting to enforce the new Law on Territorial Organisation currently being prepared in September 2015.

¹⁸ *Report on the Activity of the Civil Service Commission for 2012*, I (1).

which 1 700 (24%) were in the central administration (Prime Minister's Office and line ministries), 1 830 (26%) in the administration of independent institutions (constitutional institutions and those established by law), and 3 538 (50%) in LGUs (urban municipalities and regional councils). The extension of the scope of the CS, which will also embrace the civil servants working in the subordinated institutions of ministries and communes, will raise the number of civil servants to 25 000 (i.e. 3.6 times more). Given the problems already encountered in relation to the capacity of the existing HRM units, which are more critical at the local government level, this extension will pose a serious challenge in implementing the new legal framework.

The new CS by-laws on the classification of job positions, the procedures of recruitment, selection, probation, lateral transfer and promotion of civil servants, and performance appraisal of civil servants, abide by high international standards. The key issue now is the quality of the implementation of the new legislation.

A clear policy for promoting integrity and preventing corruption in the CS, sustained by suitable and effective legal and institutional arrangements and tools, only partially exists. Corrupt behaviour of civil servants is criminalised in the Criminal Code¹⁹, but international reports have consistently pointed out that actual practices have not been in line with the legal provisions. The position of Albania in 2013 international rankings (Transparency International and World Economic Forum²⁰) confirms this gap between legislation passed and actual practice, and the worsening of the overall situation. In spite of the adoption of Law 9508/2006 "On the Public Co-operation in the Fight Against Corruption", there is still no single legal act that provides whistle-blowing protection (existing legal provisions are split into several sectoral laws and lack clarity)²¹.

The new CSL includes provisions aimed at preventing conflicts of interest; receiving gifts and benefits is considered a very serious violation of the obligations of civil servants²². These provisions are in line with the contents of Law 9367/2005 "On the Prevention of Conflicts of Interest in the Exercise of Public Functions" and of Law 9131/2003 "On the Rules of Ethics in the Public Administration". However, the legal framework aimed at ensuring CS integrity still needs to be made more consistent and reinforced. Recommendations from international organisations and good practices in EU member states were only partially followed (e.g. wider protection of whistle-blowers).

The new CSL is in line with EU standards and good practices, but the delay in adopting secondary legislation has hindered the uniform system to be put in practice across the entire new scope of the CS. The legal framework to ensure CS integrity is not comprehensive and consistent.

Civil Service and HRM institutional set-up

4: Political responsibility for the professional CS is clearly established.

The Government has responsibility for passing secondary legislation and approving the CS annual staffing plan. Within the new Council of Ministers, the Minister of State for Innovation and Public Administration (minister without portfolio) was appointed to hold political responsibility for civil service policy. The mandate of the Minister encompasses a wide range of responsibilities, including design and co-ordination of policies in the fields of (i) information technology and electronic communications infrastructure, (ii) geo-spatial information, (iii) the postal service, (iv) audio-visual reform, and (v) the modernisation of the public administration (PA). The institutional capacity of the Office of the Minister,

¹⁹ Criminal Code, articles 244, 245, 259, 260, and 319.

²⁰ Transparency International, "Corruption Perceptions Index 2013"; World Economic Forum, "Global Competitiveness Report 2013-2014".

²¹ *Whistleblowers protection in Albania: An assessment of the legislation and practice*, November 2013, Institute for Democracy and Mediation, p. 2.

²² Articles 46, 47 and 57 (paragraph 2 d) of the CSL.

however, is not in line with this broad mandate. In addition to the Minister, there are only a chief of cabinet, a secretary and a specialist in communication.

For issues related to PA, the Minister is assisted by the Department of Public Administration (DoPA).

The Parliament, despite being responsible for approving primary legislation applying to the civil service and exercising general oversight of the Government and public administration, has paid little attention to the reports and recommendations of the Civil Service Commission (CSC) and of the Ombudsman, which provide key information and orientations to help improve the situation of the CS and promote good practices in the PA. The eleven Ombudsman special reports to the Parliament in 2012 and 2013 were not included in the Parliament's agenda. They therefore cannot be published and are not officially acknowledged.

Political responsibility for CS policy design and evaluation, and for directing and monitoring its implementation, is formally and clearly assigned to the Minister of State for Innovation and Public Administration. The institutional capacity of the Office of the Minister is weak.

5: A central co-ordination unit, sufficiently empowered and capable to lead, support and monitor the implementation of the values, policy, laws and homogeneous managerial standards of the CS is in place.

The responsibilities of the DoPA are established in the new CSL²³. These duties give the DoPA the role of the central policy and management unit in the overall CS.

According to the Prime Minister's Order No. 204 of 1 November 2013, the DoPA belongs to the Prime Minister's Office with an allocated staff of 22. This institutional change still requires amendments of the new CSL²⁴. The new position will strengthen the DoPA's institutional authority and will facilitate its key co-ordination and monitoring tasks.

The DoPA is organised into two main units and a sector for legal co-ordination. One unit is "Development, HRM and innovation" (9 staff members), and the second one is "Organisational and functional development of salaries, projects and policies" (8 staff members).

Although the DoPA has a unit responsible for a CS database, there is no global human resource management information system (HRMIS) for the whole CS providing real-time, accurate cross-sectoral information.

A new, enhanced structure of the DoPA, including four main departments and a total staff of 43, has been designed to respond to the requirements of the new CSL. The new organigram was approved by the Prime Minister's Order No. 91 of 21 February 2014.

The co-ordination, oversight and assistance capacity of the DoPA suffers from the overload of administrative tasks and from the lack of a functioning HRMIS and Central Personnel Registry, which hinders information management on the global situation of HRM and workforces in the CS institutions. There was no joint (methodological, team building, procedural) training of the DoPA, ministerial and other institutions' HRM teams to introduce harmonised modern HRM methodologies and tools, and network regarding managerial practices. Poorly co-ordinated HRM practices in governmental bodies weaken the overall capacity of the DoPA and, more generally, the CS HRM system.

The application of homogeneous standards across the administration is only partially ensured by a few networking events and information provided on the website of the DoPA. Co-operation is irregular among the HRM units in ministries and other CS institutions, the Civil Service Commissioner (CSC), the Albanian School of Public Administration (ASPA), the National Institute for Statistics (INSTAT), and also with the Ombudsman, the High State Control (HSC), the Administrative Courts, civil servants' most

²³ Article 7 of the CSL.

²⁴ Article 7, paragraph 1 of the CSL establishes that DoPA shall be put under the direct authority of the Minister of the Interior.

representative unions and interested academic teams. Comprehensive information on the CS, including staff numbers and costs, is not provided to partner institutions, civil servants or citizens in general.

The DoPA still has a limited capacity to effectively provide the Minister of State for Innovation and Public Administration with relevant, real-time (ongoing), detailed and accurate data on the CS, which is necessary for establishing and controlling a proper HRM policy.

The central co-ordination unit exists. The capacity of the DoPA to effectively promote the implementation of a merit-based and coherent CS system, to monitor and support HRM units in ministries, independent institutions and LGUs, and to effectively assist the Minister of State for Innovation and Public Administration in the design and monitoring of an appropriate CS policy, is not sufficient.

6: All administrative bodies have HRM units with sufficient capacity to manage the workforce placed under their administrative supervision in accordance with the standards established by the CS central co-ordination unit.

HRM capacities in the ministries and independent institutions are diverse. Several ministries (e.g. the Ministries of Social Affairs, Economic Development, Agriculture, Energy and Industry) have experienced HRM staff, and some of them (e.g. the Ministry of Defence) are using modern HRM databases and information systems. Other ministries (e.g. the Ministry of Culture) still need substantial assistance to reinforce their HRM capacity²⁵.

HRM practices in the ministries and independent institutions are not harmonised. Currently, each ministry's secretary-general meets with the DoPA and the Ministry of Finance to get their approval for the ministry's annual staffing plan. International good practices recommend, instead, the adoption of more strategic (and better integrated) workforce planning and HRM, through regular meetings of the key HR managers of the different ministries, under the guidance and supervision of the central co-ordination institution (i.e. the DoPA). The ministerial HRM information systems are not sufficiently coherent and compatible to facilitate the co-ordination and oversight of HRM practices by the DoPA, and the overall management of HR-related information across the civil service.

Although routine administrative HRM tasks are currently carried out in all institutions, and the staff numbers in HRM units are more than adequate (Figure 1), the HRM information, methodologies and tools available in the HRM units do not allow for quick implementation of modern strategic HRM practices. This hinders the Government's ability to introduce and take advantage of these new practices.

Figure 1. HRM staff in selected ministries, 2014

| Ministry | Number of HRM staff | Number of civil servants (CS) | Number of public employees (PE) | Total number of staff (CS+PE) | Ratio of HRM staff/total staff ²⁶ |
|---|---------------------|-------------------------------|---------------------------------|-------------------------------|--|
| Ministry of Finance | 5 | 154 | 178 | 332 | 1/66 |
| Ministry of Interior | 5 | 125 | 153 | 278 | 1/56 |
| Ministry of Justice | 3 | 87 | 112 | 199 | 1/66 |
| Ministry of Economic Development, Trade and Entrepreneurship | 3 | 97 | 117 | 214 | 1/71 |
| Ministry of Agriculture, Rural Development and Water Administration | 3 | 93 | 116 | 209 | 1/70 |
| Ministry of Social Welfare and Youth | 3 | 69 | 88 | 157 | 1/52 |
| Ministry of Health | 2 | 82 | 100 | 182 | 1/91 |
| Ministry of Education and Sport | 3 | 70 | 94 | 164 | 1/55 |

Source: Department of Public Administration (response to the assessment questionnaire).

²⁵ HRM capacities were analysed on the basis of the responses to questionnaires, focus group interviews with HR managers and field visits to several ministries.

²⁶ Ratio of 1 HRM staff per 100 total staff members is evaluated as sufficient by international HRM standards.

According to the Council of Europe's assessment of local government units' (LGU) capacities to implement the civil service legal framework, the current capacity of the HRM units in the LGUs is generally very weak²⁷.

Several ministries and agencies are adopting HRM practices in line with good international practices and have enough internal capacity. However, as a general rule, the capacity of the HRM units in the CS institutions is still weak, and often only routine administrative HRM tasks are carried out.

HRM practices, methodologies and tools

7: Selection, recruitment and promotion of civil servants are based on merit and equal competition.

The old CSL established general rules for recruitment, based on open competition and merit²⁸. However, as admitted during the assessment interviews and as perceived by society, appointments were decided very often on the basis of political affiliation or personal affinity.

The new Government wants to put in place a compact and more efficient PA, with a smaller and more coherent workforce. The new ministers were asked to review the structure of their ministries and to reduce the staff by 30%²⁹. The Government also wants to introduce strategic management practices, which reinforces the need for a merit-based CS.

Data on recruitments and dismissals of civil servants in the central administration during the period September 2013 - February 2014 show a wide scale of both activities after the change of government: 272 persons, 17% of the civil servants working in the central administration, have been put on a waiting list due to restructuring actions, and additionally 77, nearly 5% of civil servants, have been released following their resignation. At the same time, 136 new civil servants (9%) have been appointed as a result of open competitions (from 260 competitions in total announced), 68 (4%) by temporary contracts and only 30 (2%) have been reappointed from the waiting list.

The new CS legislation makes a step forward in attaining the principle of selection, recruitment and promotion based on merit and equal competition. This principle is clearly stated in the new CSL and reflected in the detailed procedures established in the by-laws³⁰. The proper implementation of the new recruitment, selection and promotion procedures remains to be seen, as the by-laws have only recently been adopted.

The former position-based CS system is replaced by a career system (with an entirely new approach to the recruitment process), introducing important safeguards to facilitate the respect, in practice, of the merit principle. It establishes a clear distinction between civil servants, cabinet officials and administrative employees³¹. It creates a CS Top Management Corps whose selection is based on open

²⁷ *Report on the national assessment of local government units' capacities to implement the new Law on Civil Service, September 2013* (a report of the project "Strengthening Local Government Structures and Cooperation of Local Elected Representatives in Albania - Phase II (2012-2015)", implemented by the Council of Europe (CoE) and funded by the Swiss Co-operation Agency), pp. 59-66, especially pp. 61-62. Although obligatory, the establishment of HRM units in the large sample of LGUs examined was "missing in most of the municipalities and in almost all the communes ...". Even when they do exist, HRM units ... "cannot be able to perform basic HRM functions properly".

²⁸ Article 13 of Law 8549/1999 "On the Status of Civil Servant".

²⁹ According to the DoPA, the number of civil servants working in the central administration in 2013 dropped from 1 517 in September 2013 to 1 394 in February 2014. The DoPA has also provided statistics on the turnover of civil servants in the central administration for the periods January-September 2013 and September 2013-February 2014. According to these data, during the first period (eight months), 67 civil servants terminated their service for different reasons, 48 because of resignation, and 153 new civil servants were appointed. In the second period (the first five months after the change of government), 76 civil servants terminated their service and 356 new civil servants were recruited (representing 22.65% of the planned number for recruitments). Out of these 356 new civil servants, 260 were recruited through competition processes, 70 had temporary contracts and 26 were appointed from the waiting list.

³⁰ Article 20 of the CSL.

³¹ Article 4, paragraph 1 c-d, of the CSL.

competition and reasserts the principle of political impartiality³². It establishes a classification of civil servants based on job descriptions and reduces the degrees of freedom left in the appointment process³³. It replaces the former *ad hoc* committees by permanent selection committees, thus reinforcing the professional character of the selection process, and ensures that only the best candidates will be offered positions in the CS. Finally, it also requires that promotion and lateral transfer be based on open and fair competition, by means of formalised selection processes³⁴.

In spite of the DoPA's efforts to impose managerial practices and procedures aimed at instituting a merit-based, politically independent CS, the actual practices in central administration and in the LGUs (namely those regarding recruitment, selection and promotion) have not respected this basic requirement, according to the assessment interviews carried out with HRM staff at the central and local levels of the PA. Notwithstanding the obligations imposed by the new legislation, it is not certain that the fundamental culture and deeply ingrained mind-set, which have for many years supported the former practices and which are difficult to eradicate, will rapidly change in PA institutions.

It is too early to assess the impact that the new measures will have on actual HRM institutional practices. The DoPA and ASPA will be in charge of organising the entrance and promotion examinations and tests. Recruitment will be based on post profiles and job descriptions. Unsuccessful candidates are granted the right to appeal recruitment or promotion decisions which they consider unfair³⁵. One of the biggest challenges ahead will be the adequate implementation of the new legal provisions in independent and subordinated institutions and in LGUs, which have specific environments (distinct managerial rules, smaller workforces, limited HRM capacities) and have not previously been part of the CS scope. The independence and professionalism of the National Selection Committee of the Top Management Corps and of the Permanent Recruitment Committees of other civil servants, the establishment of a registry of civil servants and other public employees, and the regular monitoring and oversight of the recruitment of civil servants are important objectives.

The new CS legislation makes an important step forward in attaining the principle of selection, recruitment and promotion based on merit and equal competition. At present, the recruitment and promotion of civil servants are not based on merit and equal competition.

8: Training and continued professional development are recognised in institutional practices as a right and a duty of civil servants. They are organised on an equitable basis, cover all the main training needs of the civil servants, and are related to regular performance appraisals.

To be trained is both a right and a duty of civil servants³⁶. Training programmes, based on a triennial training needs assessment (TNA) (2011-13), are organised by ASPA. A new TNA for the central administration was completed in March 2014, the TNA for the LGUs will be completed by December 2014. ASPA has drafted the first version of the Training Strategy 2014-17 and will begin the consultations.

Training programmes specify the target groups, the training actions and their learning objectives, the estimated necessary resources and their cost, and the foreseen dates. Tailor-made courses are sometimes prepared (e.g. for the Ministry of Finance and Ministry of Economic Development). HRM central units in line ministries ensure the participation of their civil servants in the training actions. The evaluation is made only by ASPA and includes outcomes and impact indicators.

³² Articles 27-32 of Chapter VI, Article 1 (paragraph 1), Article 5, Article 12 (paragraph 3), Article 20, Article 66 (paragraph 1 e) of the CSL.

³³ Articles 19 and 23 of the CSL.

³⁴ Articles 20-26, Chapter IV of the CSL.

³⁵ Article 41, paragraph 3, of the CSL.

³⁶ Articles 38 and 42 of the CSL.

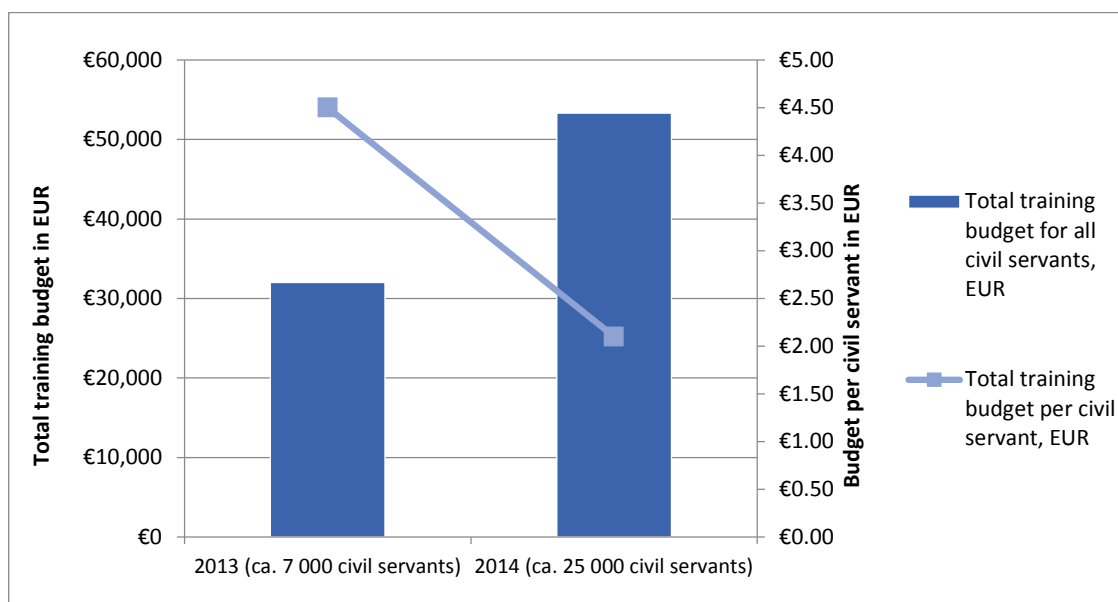
The preparation of the TNA and annual training plans are open processes, to which all main stakeholders contribute, including representatives of the civil servants. According to ASPA, equity and impartiality regarding access of civil servants to training are considered key concerns. Detailed statistics are not available, but more generic data are used to identify the beneficiaries. In 2013, 59% of participants were women and 41% men. Top civil servants represented 1.5% of the participants, middle managers 33.2%, and specialists 65.3%. ASPA and the DoPA produce annual reports providing information on the training actions carried out.

General and special training activities (induction training in particular) are obligatory for civil servants on probation. Induction training is regularly organised by ASPA. It has a duration of 11 days and concludes with a test. The CSL gives ASPA the responsibility to organise pre-entry training for future civil servants.

ASPA's training managerial capacity and institutional performance are in agreement with good standards and practices. However, with the entering into force of the new CSL, ASPA will face several important challenges: the need to organise specific training for the civil servants belonging to the Top Management Corps and to LGU teams, as well as to provide training for any other individual, national or international, who is not part of the CS and who meets the required criteria³⁷. The extension of the scope of the CS will significantly enhance the demands for training. The number of civil servants will be multiplied by about 3.6, and the majority of new civil servants will be working in the subordinated institutions and at the local level. The ability of ASPA to appropriately carry out these new tasks is critical to ensure suitable pools of competencies in the PA.

According to the views expressed during the assessment interviews, the training of civil servants is regarded by managers as an important investment. The Government has increased the budget of ASPA in 2014, but the relative amount of money available for the training of civil servants is very modest (Figure 2): in 2013, for around 7 000 civil servants, the budget was ALL 4 500 000 (EUR ~32 000) or ALL 642 (EUR ~4.50) per CS; in 2014, for around 25 000 civil servants the budget is ALL 7 500 000 (EUR ~53 300) or ALL 300 (EUR ~2.10).

Figure 2. ASPA's annual budget for training activities, 2013 and 2014



Source: Albanian School of Public Administration (response to the assessment questionnaire).

Training and continued professional development are organised on an equitable basis and cover the main current training needs of civil servants. However, very important additional needs, requiring increased capacity, will result from the implementation of the new CSL and its secondary legislation.

³⁷ Article 8 paragraphs 2 and 3 of the CSL.

9: Performance appraisal is fair, transparent and linked to career development, flexible remuneration, prescribed training and disciplinary measures, including dismissal.

Although regularly carried out (yearly according to the old and new CSLs³⁸), performance appraisal of civil servants has often failed to provide the management with objective assessments of the quality of their contributions. In most cases, performance of the civil servants is systematically rated "excellent". According to the interviews during the assessment mission, "familiarity" between the line managers and the civil servants whose performance is assessed, inadequate assessment practices and lack of appropriate training provided to the line managers are some of the main factors which contribute to this situation.

This problem has a negative impact on HRM and, in the end, on achieving the main objectives of the institutions. Flexible compensation cannot be conveniently implemented, the promotion system loses part of its legitimacy, and strategic management – which is a new style of management that the Government wants to promote – becomes difficult, or even impossible, to implement.

The right to appeal a performance appraisal believed to be unfair is granted to all civil servants, but most scores are very high and the number of appraisals formally contested is therefore low: four in 2011, twelve in 2012 and nine in 2013 (data provided by the Civil Service Commission). The new by-law on "The performance appraisal of civil servants" responds to many of the current challenges in implementing performance appraisal but, to a very large extent, the origins of these are also related to an administrative culture which cannot be changed purely with legislation.

Performance appraisal, as it has usually been carried out, is neither objective nor useful, and has not been linked to career development, flexible pay, prescribed training and disciplinary measures. Secondary legislation being prepared creates legal conditions for addressing the main shortcomings.

10: The remuneration system of civil servants, based on a job classification system founded on professional competence, merit and level of responsibility, is transparent and fair. Salaries are paid accordingly and in due time.

The remuneration system of civil servants is transparent and based on an open job classification system. Law 10405/2011 "On the Competences of Setting the Salaries and Bonuses" defines the competences of the Parliament, CoM, regional, municipal and commune councils to set the salaries. General rules for determining the salaries of civil servants in the central administration are established by the CSL³⁹. Law 9584/2006 "On the Salaries, Bonuses and Structures of the Constitutional and other Independent Institutions" establishes the rules of setting salaries in the constitutional and independent institutions.

Current pay practices abide by the rules established. Salaries of civil servants are usually paid on time. The job classification on which the current remuneration system is based is founded on professional levels of responsibility. Although there are no comprehensive research-based comparisons carried out by INSTAT, salaries and other benefits received by civil servants working for central administration are generally considered to be competitive with compensation packages offered for similar jobs in the private sector. In LGUs, however, where career and training opportunities are more limited and where the security of employment has generally been weaker, the compensation package is less attractive.

Both CSLs (1999 and 2013) have established the possibility of introducing a merit-based component into the compensation system. Limited funds and the unreliability of the performance appraisal system have led to abandonment of the system instituted by the old CSL. The current pay system therefore remains quite rigid. Civil servants are remunerated on the basis of their position in the salary grid, whatever their level of professionalism and commitment, and with no regard to the quality of their professional contributions.

³⁸ Article 16 of the old CSL, Article 62 of the new CSL.

³⁹ Article 18 of the old CSL (regulated further by the CoM Decision 711/2001); Article 34 of the new CSL.

The remuneration system is transparent and based on a job classification system, and salaries are usually paid on time. Competitiveness of the pay system is satisfactory in the central administration. Existing legal provisions to reward merit have not been taken into account in remuneration practices.

11: Disciplinary procedures, appeal procedures, and criteria for termination of employment are in line with the set of CS core values and principles, and they are uniform across the whole CS.

Disciplinary measures introduced by article 25 of the old CSL were expanded in the new CSL⁴⁰. Termination of service, regulated by article 21-24 of the old CSL, is now regulated in more detail⁴¹. The new legislation is uniform across the whole CS and is in line with the set of CS core values.

However, according to the interviews during the assessment mission, institutional practices have too often not completely integrated the requirements of legality, predictability, transparency, impartiality, equity and freedom from political interference. In sharp contrast with convergent data by reliable international assessments which establish levels of corruption⁴², the number of sanctions remains low. Cumulated data available for 17 ministries shows that, in 2013, only 18 civil servants were sanctioned (ten were dismissed, six received a warning, one got a written reprimand, and one was temporarily downgraded)⁴³. Disciplinary procedures have not been fully and fairly used as a means to ensure the legality of civil servants' professional behaviour.

Termination of service of civil servants in the assessment period, particularly corresponding to the change of government, has been a subject of controversy. According to the recent report of the DoPA⁴⁴, 91 civil servants (6% of all civil servants in the central administration) had been released since the change of government (September 2013 - February 2014): 77 resigned, 7 were released due to disciplinary reasons, 5 due to retirements, 1 due to incompetency and 1 due to a court decision. In addition to that, however, with a new government structure and strategic management concerns, 272 civil servants (17% of all civil servants in the central administration) were put on a waiting list. Although these civil servants have priority for filling new CS positions if their professional profile fits the requirements (they can apply to bodies in any branch of central administration), they may also be dismissed if they are not accepted for a new position. According to the above report, from 136 new appointments since September 2013, only 30 civil servants (2%) had been selected from the waiting list.

Appeal procedures are legally instituted, but their effectiveness and fairness have been questioned by oversight institutions. After the recent removals in the PA, about 384 cases (including civil servants and public employees) were examined by the courts. Available data (from the Ombudsman) indicates that 29 appeals were entirely or partially accepted and seven were rejected. For 50 others, for different reasons, there was not a Court decision⁴⁵. Between September 2013 and February 2014, 87 complaints motivated by termination of employment in the PA were lodged to the Ombudsman (77 of them in relation to the Labour Code, the other ten to removal from the CS or inclusion on the waiting list).

Dismissal of high-level officials, e.g. heads of subordinated institutions (under the old CSL outside the scope of the civil service), has also been controversial. Effective implementation of the new CSL will help to clarify the boundaries between political appointees and professional civil servants.

⁴⁰ Articles 57-61, Chapter X of the CSL.

⁴¹ Articles 63-66, Chapter XII of the CSL.

⁴² Transparency International, "Corruption Perceptions Index 2013"; World Economic Forum, "Global Competitiveness Report 2013-2014".

⁴³ *Public Administration and Regulation of Working Relations*, February 2014, Ombudsman of Albania.

⁴⁴ *Follow up report on the EU-Albania 2nd Public Administration Reform Special Group*, 24 February 2014, Department of Public Administration of Albania.

⁴⁵ According to the Civil Service Commission, between 1 October 2013 and 10 February 2014, there were 140 complaints for which there were a lack of administrative jurisdiction.

Disciplinary procedures, appeal procedures and criteria for termination of service established by the new legislation (CSL and respective by-laws) are uniform across the CS and in line with the CS core values. However, HRM practices have not fully respected the legal rules established.

12: Measures and tools for promoting integrity and preventing corruption in the CS are implemented.

Albania's position in Transparency International (TI) world ratings, using the "Corruption Perceptions Index" (CPI), dropped from 87/178 in 2010 to 116/177 in 2013, in spite of an Anti-corruption Strategy 2008-13 adopted by the CoM in 2008. NSDI 2007-13 established a 2013 target for Albania to reach a CPI position similar to those of Central and Eastern European countries in the year they became EU members. A comparison of the 2013 CPI values with those of Croatia (and with the average values of other countries assessed) shows that significant gaps still remain regarding the judiciary, health and education, political parties, parliament and the military. Values for the CS were slightly more favourable⁴⁶.

The main critical problem has been the persistent, wide gap between national strategies and political proclamations, and actual implementation of the measures announced. Legislation, decisions and tools intended to promote integrity and prevent corruption in the CS have usually not been fully implemented. The new Government declared it would make anti-corruption a top priority. The CoM adopted its Anti-corruption Plan 2013-14 in November 2013, and the Minister of State for Internal Affairs is finalising a new Anti-corruption Strategy (2014-17) which should be ready by June 2014. It is too early to assess the actual results of the new Government's policy.

There is still no general protection provided to whistle-blowers. The legislation in force includes a code of ethics of civil servants and imposes the declaration of conflict of interests by civil servants⁴⁷. Corruption is recognised by the interviewed secretaries-general of ministries as a serious problem to be resolved. Information provided indicates that ministries are in the process of translating the existing anti-corruption legislation into effective procedures and monitoring the situation. Surveys were designed to facilitate this oversight (Ministry of Social Affairs), and measures were taken to open the competition in public procurement bids and make them more transparent and fair (Ministry of Internal Affairs). No hard statistics were provided to demonstrate that civil servants who are found guilty of corruption are effectively prosecuted, and no specialised training is currently provided to junior and senior civil servants.

Corruption and non-ethical behaviour are still major problems in the PA. Measures adopted in this area have remained largely ineffective.

⁴⁶ Transparency International's "Corruption Perceptions Index" for Albania (2013) was worth 31/100, and the country's position was 116/177 (113/174 in 2012). In a 1-5 scale, where 5 means "extremely corrupt", the most unfavourable 2013 scores were found in the Judiciary and Health (4.3), Political Parties (4.1), Education (4.0), Parliament (3.9), Police (3.7) and Public Officials and Civil servants (3.5). In the World Economic Forum *Global Competitiveness Report 2013-2014*, corruption is cited as "the most problematic factor for doing business" (survey data). Albania gets worrying rankings in several assessment criteria linked to integrity, among which are "favouritism in decisions of government officials" (102/148), "public trust in politicians" (99/148), "diversion of public funds" (112/148) and "judicial independence" (134/148).

⁴⁷ Law No. 9131/2003 "On the Rules of Ethics in the Public Administration".

POLICY MAKING

ALBANIA
APRIL 2014

1. State of play and main developments since last assessment

1.1. State of play

The basic legislative and institutional framework for policy making, including the European integration process, is in place. After extensive reshuffling of functions and staff under the new Government, the Administration has not yet achieved its full capacity. In 2013, there currently is no functioning annual and mid-term planning system, the medium term plan for European integration is outdated and the Medium-term Budget Program (MTBP) was not in force. Also, monitoring of the Government performance was not conducted. The Government's decision making and policy development process is well established, functions routinely, ensures legal conformity and a basic level of interministerial and stakeholder consultation. However, an evidence based approach is only in the early stages of development. In practice, procedures for discussing and adopting Government proposals are not always followed.

The Government has initiated changes to address shortcomings in the planning and monitoring process and further engage with civil society. Institutional changes in the Office of the Prime Minister (OPM), the Ministry of European Integration (MEI) and line ministries have created the basis for reforming key processes.

1.2. Main developments since last assessment⁴⁸

The Government has introduced changes to the number of ministries and redistributed policy responsibilities.

The OPM has been re-organised, the number of planned staff has been increased by 30% and the planned staff allocation for implementing key OPM functions has grown significantly.⁴⁹ Further, the OPM has created new units for delivery, research and policy development, legislation and programme monitoring, and support for strategic business investments. Delivery units or positions responsible for delivery have also been created in line ministries.

The organisational structure of the MEI has changed, planned allocation of staff has increased by 20%, the Sector for Legal Approximation and Sector for Civil Society have been created and EU assistance programming and monitoring functions have been separated into two directorates.⁵⁰

The Government has started developing new planning documents. The six priority sectors and 55 ministerial priorities were developed. Members of the Government were directly involved in priority development through a series of workshops organised by the OPM.

Under co-ordination of the MEI, the roadmap (RM) for meeting the five priorities in the European integration process was developed and, after consultation with civil society, submitted to the European Commission within the framework of the high-level dialogue.

The OPM has strengthened interministerial co-ordination and conflict resolution mechanisms by launching weekly meetings of the Secretary Generals aiming to prepare Government sessions and solve other interministerial disputes.

⁴⁸ April 2013.

⁴⁹ The new structure, organisation chart and the staffing of the OPM are regulated by the Prime Minister's order No. 204 (1.11.2013).

⁵⁰ PM order no 183 (18.10.2013) on Approval of the Structure and Organisational Chart of the Ministry of European Integration.

The Ministry of Economic Development, Trade and Entrepreneurship (MEDTE) has reformed the Business Advisory Council (BAC) into the National Economic Council (NEC) to enable the business community to play a more active role in policy development⁵¹.

⁵¹ The CoM has approved draft Law on National Economic Council (no 162, 26.03.2013) and submitted it to the Parliament for approval.

CO-ORDINATION STRUCTURES AND MANAGEMENT OF EUROPEAN INTEGRATION

2. Analysis

Centre of Government institutions

1: Centre of government institutions fulfil all functions critical to well-organised and competent policy making system and the responsibility of these functions is assigned to units at the centre of government

Centre of Government functions are fulfilled by the OPM, the Ministry of Finance (MoF), the MEI and the Ministry of Justice (MoJ). The MEI co-ordinates European integration affairs. The MoJ ensures legal conformity of Government decisions as a joint responsibility with the OPM. The MoF ensures that the policies are affordable and co-ordinates planning of public sector resources. The co-ordination functions of the MEI, the MoJ and the MoF are well established and the legal framework defines their capacity to implement the tasks.

The OPM is responsible for other key centre of government functions. Traditionally, the number of staff in the OPM handling the key function of ensuring well-organised and competent policy making has been low and the OPM has had a limited capacity to act as a strong co-ordination centre. It has prepared Government sessions and co-ordinated Government communications. It has also handled long-term planning and monitoring by managing the integrated strategic planning system and undertaking the annual planning and monitoring of the Government legislative performance. However, the OPM has not set clear Government priorities or translated the Government's political objectives into a prioritised administrative planning document and did not have a mandate and the capacity to co-ordinate the policy content of the Council of Ministers (CoM) decisions⁵².

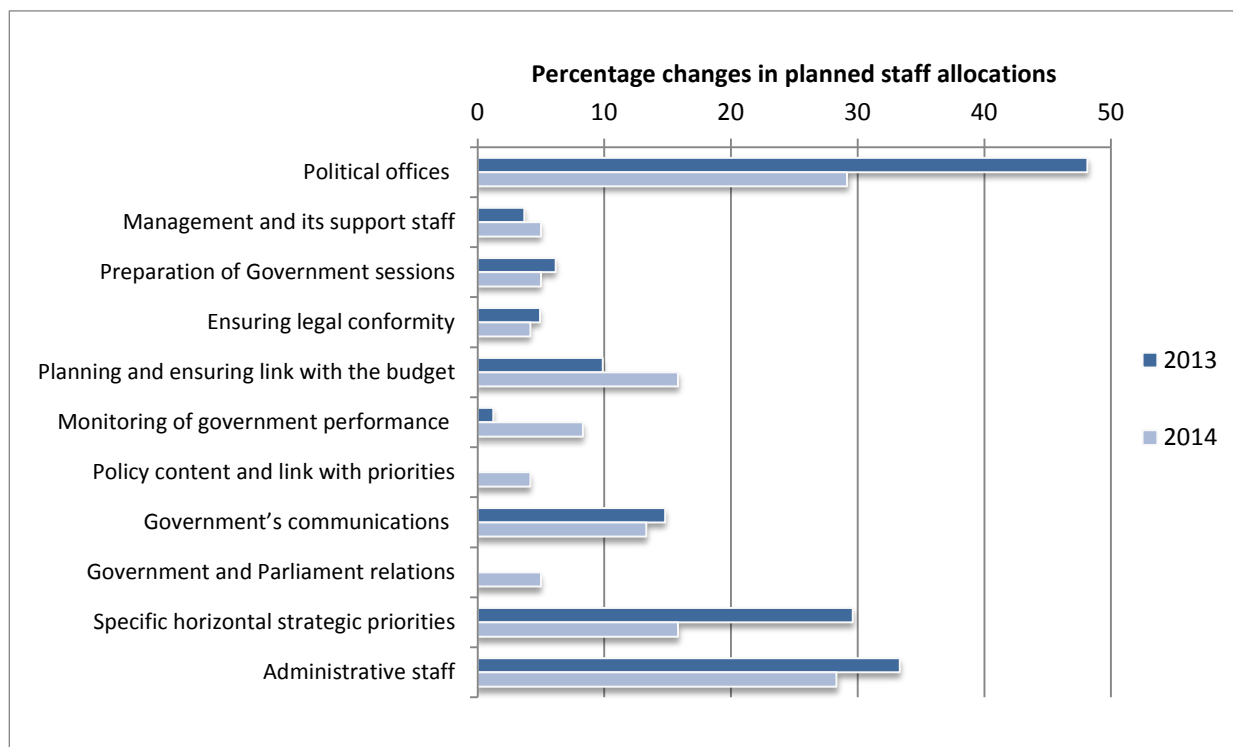
The new Government has reorganised the OPM and increased the staff allocation for key functions, with the overall number of positions growing from 122 to 161. The staffing for checking legal conformity and preparing the CoM sessions remains broadly the same. The Delivery Unit was created for developing and ensuring the implementation of Government priorities. The Unit for Legislation and Programme Monitoring was also created to monitor Government performance. The position of State Minister for Relations with the Parliament was established as well as new units for Research and Policy Development and for Policy Development and Strategic Planning, created under the Department of Development Programming, Financing and Foreign Aid.

The new organisational structure creates preconditions for a stronger centre of government (CoG) and more functional policy making system. Four months after adoption of the new organisational structure, unit formation is still ongoing. Tasks for the new units have been defined but these, together with the descriptions of particular job positions, are not formally adopted yet, recruitment is ongoing. For example, during SIGMA interviews in February 2014, the Delivery Unit numbered two staff members against six established positions, while only the head had been hired in the Monitoring Unit. The Department of Development Programming, Financing and Foreign Aid had 5 staff members against the 29 established positions and the new unit for Research and Policy Development remained on paper. A positive exception is the Office of the State Minister responsible for Relations with the Parliament, which is fully staffed and enables good co-ordination of Government and Parliament relations. In

⁵² The functioning of the CoM is regulated by the Law on the Organisation and Functioning of the Council of Ministers. The new structure, organisation chart and the staffing of the OPM are regulated by the Prime Minister's order No. 204 (1.11.2013). The latest previous structure and staffing of the OPM was regulated by the Prime Minister's order No. 55 (2.05.2013).

conclusion, although the increase in the capacity of the OPM is clearly envisaged, it will take time before it reaches full capacity.

Figure 1. Changes in planned staff allocations in the OPM



Source: Orders on structure and organisation of the OPM (No. 55 from 2.05.2013 and No. 204 from 1.11.2013)

Centre of government institutions are fulfilling most of the functions critical to well-organised and competent policy making. Planning and setting priorities and monitoring of the performance of the Government are areas of underperformance. Co-ordination of the policy content of the CoM decisions is not established. The handling of relations with the Parliament has improved under the new Government.

2: Roles of institutions and institutional units and their authority to act are explicitly established, co-operation and co-ordination between them is ensured through concrete procedures.

The main pieces of legislation regulating the roles of institutions of the Centre of Government are the Law on the Organisation and Functioning of the Council of Ministers, the Decision of the Council of Ministers on the Approval of the Rules of Procedures of the Council of Ministers⁵³ and the Law on the Management of the Budgetary System of the Republic of Albania⁵⁴ (hereafter Organic Budget Law or OBL).

In general, the legal framework assures a robust system of managing the legislative process through the CoM, as well as managing the affairs of the CoM more generally. However, while the legislation defines well the production of legislative acts for the CoM decision making, it is weak in regulating development of policies and strategies.

All CoG institutions are empowered to issue guidelines and set specific procedures. The MoF has set detailed instructions for the development of the MTBP and budget. The MoJ has produced a more thorough Manual of Legislative Drafting. The OPM has authority to provide instructions for planning,

⁵³ Decision No. 584 of 28 August 2003.

⁵⁴ Law No. 9936 of 26 June 2008.

monitoring and preparing the relevant CoM or Prime Minister's decisions for regulating on particular matters. It did so in 2012, outlining the preparation process of the National Strategy for Development and Integration (NSDI), including the calendar and a general methodology⁵⁵. However, revision of the related Prime Minister (PM) order has been delayed under the new Government and no formal instructions outlining a new planning and monitoring process have been developed so far.

Legislation provides for public consultation and policy analysis, but the impact assessment and the public engagement procedures are not precisely defined. As a consequence, the impact assessment part of draft legislation's explanatory notes is underdeveloped, as are the public consultation mechanisms. Another deficiency in analytical procedures is the lack of distinction in the budget process between existing commitments and new policy initiatives.

In the planning process, co-operation of the centre of government institutions is institutionalised through the Interministerial Strategic Planning Committee⁵⁶. In the legislative process, the CoM, MoJ and MoF co-operate and exchange information informally.

The procedures establish the roles of institutions and clearly delineate how to prepare legislation, develop the NSDI, sectoral strategies and the budget. Co-operation of CoG institutions is institutionalised in the strategic planning process, but remains informal in the legislative process. The procedures for impact assessments and public consultation are not precisely defined.

3: Clear horizontal procedures for governing national European integration process are established and enforced under co-ordination of responsible unit/body.

Overall, the legal framework clearly defines the procedures for governing the national European integration process and differentiates between the powers and co-ordination responsibilities of the MEI and line ministries. The overall mandate of the MEI was defined after the new Government reshuffled the ministries in October 2013⁵⁷. It does not differ in broad terms from the responsibilities and rights of the MEI already established in 2004. The mandate established all key European integration (EI) functions to be fulfilled by the centre of the government institutions, thereby avoiding fragmentation among several institutions. The MEI is responsible for planning and monitoring European integration activities, co-ordinating EU assistance, co-ordinating transposition of the *acquis* and also handling relations with the European Commission and other key EU stakeholders. It is also established as a secretariat for the interministerial co-ordination bodies.

The tasks of line ministries are also clearly defined in rules of procedure and EI-specific legal acts⁵⁸. These are aligned with the general legal framework and enable effective management of the European integration process and transposition of the *acquis*.

The MEI has gone through restructuring under the new Government. Changes made in line with the recommendations of the EU assistance project "Support to the European Integration Process – Phase III" (SMEIII) aimed to strengthen the policy co-ordination function and improve transparency and accountability of EU assistance co-ordination. More specifically, a single directorate for co-ordinating

⁵⁵ Prime Minister's Order No. 12 (02.02.2012) "On the Preparation of the National Strategy for Development and Integration 2013-2020".

⁵⁶ Prime Minister's Order No. 18 (22.01.2014) on the Establishment of the Inter-Ministerial Strategic Planning Committee.

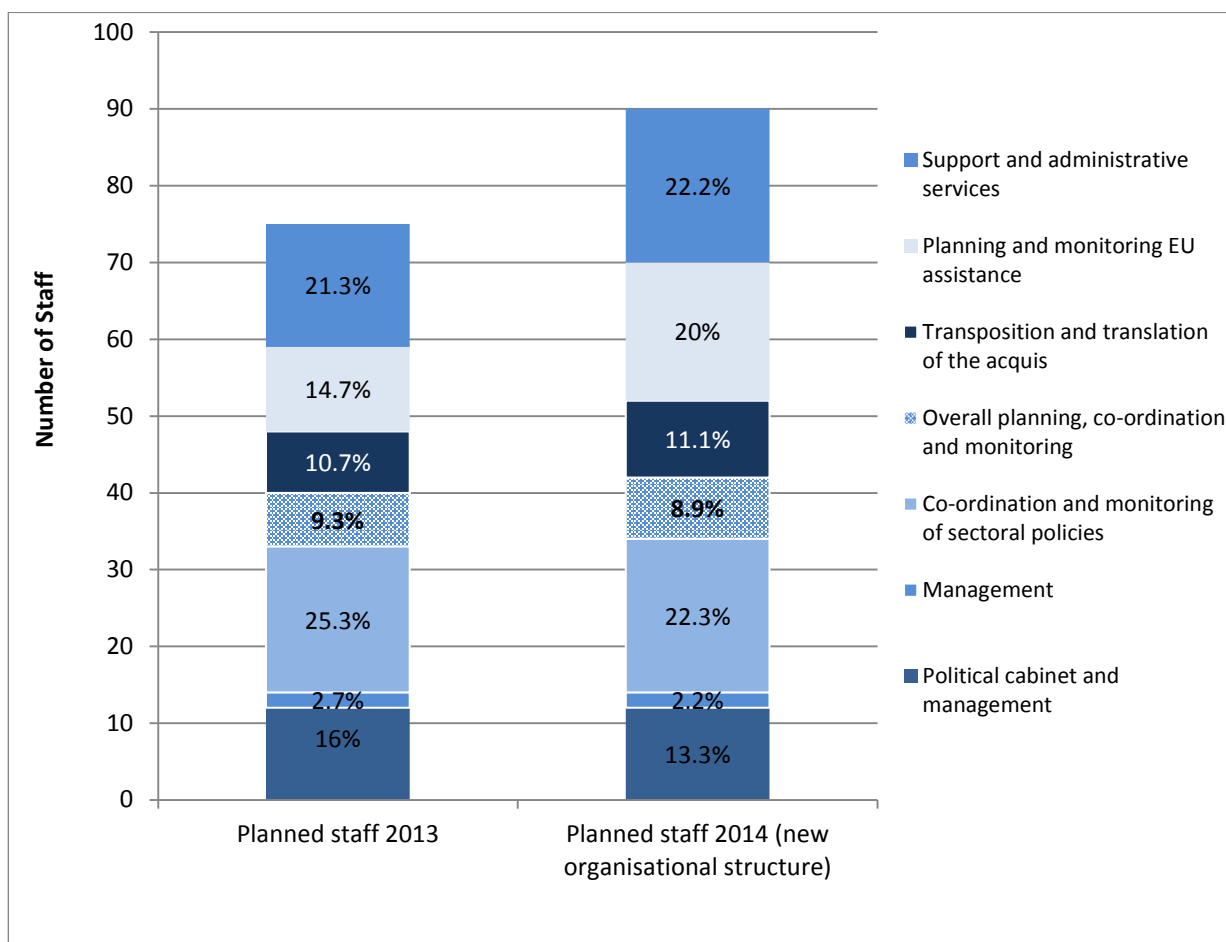
⁵⁷ Council of Ministers Decision No. 201 (29.03.2006) on some amendments and additions to the Decision of the Council of Ministers No. 584 (28.08.2003) "On the approval of the Rule of Procedure of the Council of Ministers"; Council of Ministers Decision No. 946 (09.10.2013) on "Defining the area of responsibility for the Minister of European Integration".

⁵⁸ Council of Ministers Decision No. 179 (22.02.2006) on "The establishment of European Integration Units in the line ministries"; Prime Minister's Order No. 46 (1.04.2009) on "The establishment, composition and functioning of interministerial co-ordination structures, for the implementation of commitments undertaken under the Stabilisation and Association Agreement".

sectoral policies was created through merging the two Directorates of Internal Market, and Justice and Home Affairs into the Directorate of Sectoral Policies overseen by the Deputy Minister. At the same time, a separate Sector for Legal Approximation was created under the Directorate of EU Laws. Also, programming and monitoring of funds has been improved by separating the programming and monitoring functions into two directorates and creating the Internal Audit Sector, which is directly responsible to the General Secretary. To reflect the overall Government policy of more active engagement with civil society, a separate Civil Society and Strategy Sector was created under the Directorate of Priorities Delivery and European Secretariat.

The MEI headcount has increased from 75 to 90. However, the allocation of staff between key functions could be further improved. The highest number of additional staff (a 25% increase in administrative staff) was allocated to planning EU assistance. The creation of a Sector staffed by lawyers with responsibilities for approximation was necessary to begin a systematic *acquis* transposition, which is an important precondition for being able to undertake new commitments as a candidate country. Yet the capacity of the Ministry in that respect is still low. Including *acquis* translation, only two additional positions are planned for the directorate. Even after the increase, 11% of the ministry staff deals with EU laws, while less than 5% is directly engaged with transposition.

Figure 2. Allocation of staff to key functions of the MEI



Source: Decisions of the CoM

Personnel changes related to the change in Government have also had an impact on MEI capacity due to the replacement of all high- and middle-level managers and also to staff leaving the ministry. In early February 2014, 67 positions out of 90 have been filled. Taking into account the freeze in civil service recruitments until June 2014, reaching full planned capacity will take time. However, according

to interviews with both internal and external sources, the real impact of staff changes has been modest.

The legislative framework clearly defines responsibilities and obligations of the different parties that fulfil the integration function and the process is in line with the general legal framework. The MEI is firmly established, but its capacity for policy planning and steering the transposition of the acquis is still limited.

Policy planning at the Centre of Government

4: Processes and documents for planning the work of the Government are harmonised and enable medium-term planning and setting for the whole of the government priorities

The Government's policy objectives are outlined in the Government Programme for the period of its term in office (2013-2017). Nine months after the parliamentary elections, there is still no planning document that would turn political objectives into concrete actions. The CoM has developed six cross-Government priorities (FDI, water, property, energy, structural reforms and innovative governance) and 56 ministerial priorities. The Government also plans to develop a three-year action plan for implementation of the priorities and link new priorities with the integrated planning system. However, the envisaged planning system is not yet formally in place.

The only existing planning documents are the ministries' annual analytical legislative plans, which are then compiled into the legislative plan of the CoM. The plan does not have a direct link with Government objectives. It consists of a number of items per ministry and is supplemented by a significant number (roughly one-third of the total in one specific ministry's case) of additional items presented to the Government for decision making during the year⁵⁹. At the same time, the implementation backlog of the plan is high. 80 legal acts were re-scheduled for approval in 2014 out of the 198 legal acts included in the Legislative Program for 2013⁶⁰. This translates into a workload that is difficult to plan for the Government and the Parliament.

Albania's national, sectoral and sub-sectoral strategies are decided in the course of preparing the NSDI, which provides a long-term overall strategic framework for the country. The OPM is responsible for establishing rules for developing sectoral strategies, managing and guiding the development process and ensuring quality control. For the NSDI 2014-2020, the list of strategies to be developed was established in 2012 by the OPM and contains 27 strategies, including some which remain valid and new strategies yet to be adopted. Compared with 2007-2013, the number of strategies has been reduced by seven and their overall structure has been improved. With 27 planned strategies, areas (such as health) without long-term planning documents will be covered by a sectoral strategy. In many areas, narrow policy plans will be merged into the strategy covering the whole sector.

However, after the change of Government, the list is being reviewed and this has led to delays in developing strategies for 2014-2020. While the Strategic Planning Committee is in a position to decide on the future list of strategies, it has not made any final decisions on their nature and scope. Only one strategy from the list has been adopted and only ten strategies are currently valid. Of these, only two (energy and justice) have a scope covering the whole sector. In addition, the planned menu of strategies does not fully streamline planning for the duration and end-date of long-term plans, which varies from 4 years (e.g. the National Cross-Cutting Strategy for Gender Equality 2011-2015) to 16 years (e.g. the National Sector Strategy for Energy 2006-2020). Finally, no procedure is in place for periodic updating of strategies and creating a link between long-term planning and Government priorities.

⁵⁹ Interviews with the CoM, two line ministries and members of Parliament.

⁶⁰ The Office of the Prime Minister.

There is no planning document that turns political objectives of the Government into administrative actions. Medium-term documents for planning Government work and setting priorities do not formally exist. Annual legislative plans are developed, but are not linked with Government priorities, have a high implementation backlog and are often bypassed when planning activities. While the framework for developing long-term cross-cutting and sectoral strategies is in place, its implementation has been delayed for over a year. The list of envisaged 27 sectoral strategies is under review. The strategies in force do not cover many policy areas and often have a narrow scope.

5: Policy planning is linked with the annual and medium-term financial planning and aligned with financial circumstances of the Government.

The Organic Budget Law (OBL) articulates the outputs of the budget process well and requires the CoM to follow a precisely defined timetable. It stipulates that the MoF, upon approval by the CoM, shall issue a budget preparation instruction, including the expenditure ceilings of the MTBP and procedures and deadlines for the preparation of the MTBP and annual budget. Based on this requirement, the MoF produces detailed guidelines for preparing the MTBP, which are then presented to the interministerial Strategic Planning Committee for adoption. According to a previous comprehensive review by the Organisation for Economic Co-operation and Development (OECD), the procedure is clear and well established⁶¹. Due to the change of Government, the MTBP adopted in 2013 was denounced and no valid medium-term financial planning document currently exists. Preparations for the MTBP 2015-2017 are ongoing.

The requirement to assess budgetary impacts stems from the Rules of Procedure of the CoM. Besides the explanatory note, a separate report on the budgetary impacts is required in the case of legal acts, which should contain:

- the total amount of annual expenses for implementation of the act;
- an analysis of budgetary expenses for first three years of implementation; and
- where public funds are used, an indication of budgetary allocation.

The sectoral and sub-sectoral strategies should also contain similar budgetary assessments. Of the three strategies analysed⁶², one had a detailed estimate of financing needs per strategic area for the entire strategy period, the other had a reasonable estimate of budgetary costs in the medium-term and the third had no budgetary assessment attached. In cases where budget estimates were made, no explanations of assumptions were provided. There is currently no concrete link between strategies and either the medium-term budgetary framework or annual budget. The MTBP does not allocate resources in direct relation to the strategies, which impedes full implementation of the strategies.

The NSDI 2014-2020 development process envisages explicitly mapping the links between sectoral and sub-sectoral strategies and Government budget programmes. However, since the new strategies have not yet been adopted and the MTEF is not in force, it is not possible to assess the future functioning of the envisaged system.

Although the MoF indicated that the quality of fiscal impact assessments was reasonably good, the general impression among Government stakeholders and the Parliament is that the overall quality of fiscal impact assessments (FIAs) is falling short of expectations⁶³. The MoF has also not issued detailed guidelines on conducting FIAs, nor is the Manual for Legislative Drafting helpful in this regard. The MoF

⁶¹ Budgeting in Albania, OECD, GOV/PGC/SBO(2013)3/Final, 16 September 2013.

⁶² Business and Investment Development Strategy 2014-2020, National Land Consolidation Strategy 2014-2028, (final draft from January 2013), and Strategy for Prevention and Repaying of Arrears (2014).

⁶³ Interviews in the Council of Ministers, two line ministries and the Parliament. In order to confirm conclusions derived from interviews, SIGMA required random examples of conducted FIAs; the MoF, however, failed to provide any examples of budgetary impact assessments.

is the only institution that conducts quality control over FIAs, as the CoM relies on its assessment and does not return FIA drafts back to the initiator when they do not meet FIA requirements.

There is no MTBP to ensure that policy planning is linked with medium-term financial planning. While legislation articulates the requirement to assess fiscal impacts, it is often not followed in practice. The quality of FIAs of strategies' varies. In cases where such assessments exist, they do not articulate the assumptions behind the costing. Quality control of FIAs is done by the MoF.

6: Harmonised planning system of all relevant processes for European integration exists and is integrated into domestic policy planning.

Preparations for European integration have been based on two planning documents: the Action Plan Addressing Recommendations of the EC Opinion (AP)⁶⁴ and the National Plan for the Implementation of Stabilisation and Association Agreement 2012-2015 (NPISAA)⁶⁵. The AP is complemented by a new roadmap (RM) for 2014-2015 to meet the five key priorities in the EI process.

In 2013, the Government decided not to continue with rolling NPISAA, has not updated the plan and has started with the development of the National Plan for European Integration 2014-2020. It has mainly focused on the AP and RM to address the five key EI priorities, which has led to gradual irrelevance of the NPISAA in guiding the administration's activities. This is shown by the lack of systematic monitoring of NPISAA implementation and the lack of priorities in the NPISAA itself. While the NPISAA is a very comprehensive 1 000 page-document that includes many detailed activities (such as organising training courses), there is no prioritisation between the chapters and it is not up to date and consistent with newer planning documents. The document includes basic financial estimates that concentrate on costing legislative development rather than enforcement.

Planning and co-ordinating European integration is influenced by two trends. First, the MEI bases its activities on preparing and following up on concrete events, such as publishing EC progress reports, as well as high-level and technical dialogue forums with the EU. No systematic mechanism exists for translating the commitments made in the European integration process into domestic policy planning and development. During the planning phase, the main focus is on the timeline for meeting EC conditions rather than on how to meet the conditions, whether the list of activities is complete, whether there are sufficient capacities for implementation, and the preferred outcome. Avoiding discussion on these key issues in the planning phase may lead to poor implementation and a high backlog. The PAR area provides a good example, where the AP for 12 priorities states that the draft decision for the Human Resource Management Information System procedures is to be submitted to the CoM on April 2012, while the 2014-2015 roadmap sets January 2014 as a new deadline.

Second, strategic documents are to a large extent a compilation of input from ministries. The capacity of the MEI to guide the ministries in planning, setting priorities, handling duplicate activities and initiating new activities for meeting EI requirements is limited⁶⁶. Monitoring happens in the form of reporting for concrete dialogue forums and for EU documents – for example for the Progress report – and does not enable a systematic overview of Government or ministry-based performance in meeting European integration commitments. The Roadmap 2014-2015 is equipped with regular reporting mechanisms and is therefore a positive exception.

A European integration planning system only partly exists and is not integrated with national planning. The medium-term plan for European integration, the NPISAA, is outdated and cannot be

⁶⁴ Action Plan Addressing the Recommendations of the European Commission Opinion for Albania, adopted by the Ministerial Committee for European Integration on 21.03.2012.

⁶⁵ The CoM decision No. 486 (25.07.2012).

⁶⁶ This conclusion can be drawn based on the analysis of working procedures, planning documents, conducting interviews with the MEI managers and two line ministries and reports from the SMEI III EU assistance project.

co-ordinated with national medium-term planning as there is no annual or medium-term work plan. Various short-term European integration plans are not fully aligned with the medium-term NPISAA.

7: Regular monitoring of government performance enables public scrutiny and ensures that the Government is able to achieve its objectives.

Performance monitoring was an integral part of the Integrated Planning System introduced in 2010. Performance Assessment Matrix Guidelines were developed by the OPM. Two reports – the Annual NSDI Progress Report and the Ministry Annual Reports – were introduced⁶⁷. The OPM was charged with conducting hearing sessions with line ministries from May to June and November to December of each calendar year. Reports on national, sectoral and sub-sectoral strategies were collected to this effect in 2010, 2011 and 2012. Until 2013, the OPM has also produced a report on the implementation of the annual legislative plan. No such reports were prepared for 2013 due to the change of Government and a continuation of the existing system is not envisaged.

The newly established Unit of Legislation and Programme Monitoring of the Department of Legislation, Programme Monitoring and Anti-Corruption of the OPM (DLPMA) will be responsible for monitoring. The Delivery Unit in the OPM is also entrusted with monitoring implementation of Government priorities. However, a new system has not yet been formally outlined.

The Government produced a “100-Day Report”⁶⁸ providing an overview of its main activities on the Government Programme 2014-2017. The report does not allow for tracking accountable institutions and assessing the outcome of Government work based on measurable indicators.

Currently, the only active reporting tool is the consolidated budget implementation report required by the OBL and published annually in October. The budget execution report relies on the quarterly budget execution and monitoring reports of the line ministries on financial performance, outputs and objectives achieved for each programme, as specified in the first year of the final MTBP. According to the OECD report⁶⁹, the budget monitoring and reporting system present methodological and capacity related deficiencies.

The only reporting and monitoring tool for the time being is the consolidated budget implementation report of the Government, compiled annually by the MoF. As a result of the Government reforming the monitoring system, no monitoring was conducted in 2013. The newly established Delivery Unit and the Legislation and Programme Monitoring Unit in the OPM are responsible for building and implementing the new monitoring system.

Government decision making

8: The Government decisions are prepared in a transparent and reliable manner, ensuring sufficient time for consultation and enabling equal access of stakeholders and conflict resolution

The Rules of Procedure of the CoM⁷⁰ is the main regulation related to preparation of Government decisions. Draft decisions submitted by a ministry to the Government should be complemented by an explanatory note, an estimation of fiscal effects and the opinions of ministries also having responsibilities in that particular policy area. The ministries of Justice, Finance and European

⁶⁷ Order of the Prime Minister No. 137, 1 July 2010.

⁶⁸ http://www.mod.gov.al/arkiv/eng/index.php?option=com_content&view=article&id=2443:public-report-on-the-first-100-days-of-the-government-an-agenda-for-european-albania&catid=87&Itemid=465

⁶⁹ Budgeting in Albania, OECD, GOV/PGC/SBO(2013)3/Final, 16 September 2013.

⁷⁰ Council of Ministers Decision No. 584 on the Approval of the Rules of Procedure of the Council of Ministers, 28 August 2003.

Integration are entrusted with a horizontal role for checking respectively issues of legality, fiscal impacts and compliance with the *acquis*. The legal framework also prescribes how to react to proposals for amendments or reject the act altogether and gives the Secretary General of the CoM the right to return the draft if quality criteria are not met. However, the acts are very rarely returned.

The draft act should be presented to the CoM ten days in advance of the Government session. In exceptional cases, the draft can be accepted later. In practice, the deadline is routinely violated, leading to the OPM having very limited time for quality control and analysis of the content of draft items. The agenda is finalised two days in advance of the Government meeting, which is held every Wednesday. Taking into account draft laws and CoM decisions, the Unit of Legislation and PM's Acts has handled on average 89 items per month (an average of 22 items per week). Considering that it also deals with an average of 44 PM's Orders per month and with a very limited timeframe, it is a high workload.

Figure 3. Number of items handled by the OPM and approved by the Prime Minister and the CoM between 15 September 2013 and 28 February 2014



Source: Office of the Prime Minister

Under the new Government, Albania introduced a mechanism to ensure that conflicts can be solved before they are presented for Government decision making. The Secretaries General of the ministries meet each Monday – two days before the CoM convenes – and discuss all items on the agenda. The meetings have no formal basis, but the Secretaries General see clear added value in the meetings. In addition to providing a managerial-level platform or interministerial discussion, the forum has also stimulated expert-level discussions and led to a more systematic preparation of Government meetings⁷¹.

After the Government session on Wednesday, the Secretary General of the CoM publishes the acts on the Government webpage and also delivers the normative acts to the Official Gazette for publication, after which they become legally effective. Stakeholders indicated that Government decisions and accompanying materials were not uploaded in full every week, or after every CoM meeting. The acts are eventually published in the Official Gazette⁷².

The procedure for preparing and communicating the Government meetings is clear and enables preparations of the meetings in a transparent and reliable manner. However, procedures are

⁷¹ Interviews with three Secretary Generals and the OPM officials.

⁷² Law on Official Publication Centre includes obligation to send all Acts to the Centre no later than five days after approval.

routinely not followed and drafts are regularly submitted after the deadline. The recently introduced weekly meetings of the Secretaries General serve as a mechanism for solving and discussing interministerial issues.

9: The Government decisions are based on professional judgement of the administration, legal conformity of the Government decisions is ensured

The DLPMA is the key department for ensuring the legal conformity of draft legal acts before they are submitted to the CoM for decision making. Three main deficiencies hinder ensuring legal conformity: the unit is not yet staffed as planned (in February 2014 out of 26 planned positions, only 5 are filled); drafts are submitted by the ministries after the deadline; and the unit does not analyse the policy content of the drafts against existing policies to ensure harmonised policy lines.

The DLPMA works with both the legal and policy departments of line ministries and established internal rules on co-ordination with the persons responsible for legislative drafting in the ministries. However, the department has so far not provided systematic guidance to the line ministries on improving the quality of items and support materials submitted to the CoM.

The DLPMA relies heavily on the opinion of the MoJ on the legal quality of drafts, as it is part of the preparation process that the MoJ comments on the legal quality of an act before it reaches the CoM. Department of Legal Opinion (DLO) in the General Directorate of Codification is responsible for providing opinions for all normative legal acts of the CoM, ministers and heads of other central institutions and specialised opinions for the content of draft international agreements. Taking into account that the lawyers in DLO are involved also in drafting legislation legal conformity check workload of DLO is higher than average – 6 lawyers in the department handled in 2013 943 items. Workload is varying and hard to plan by DLO as it depends on ministries' submissions but, on average, 79 items were handled each month (13 items on average per month, per staff member).⁷³

The DLPMA and the DLO get involved in the legislative process rather late. Hence, they have limited possibilities to influence key choices made during the early stages of drafting.

There is a clear procedure to check the quality of legislation in which both the MoJ and the CoM have a role. The responsible unit in the CoM is understaffed, receives drafts too late and does not check the policy content of submitted items. The responsible unit the MoJ has a heavy workload and is the main competence centre for ensuring legal conformity.

10: *Acquis* transposition process and other decisions made in European integration process form integral part of government decision making and are handled through robust co-ordination structures.

The legislative framework establishes rules for transposition of the *acquis*, including authority for quality control and supervision by the MEI and requirements for ministries in the transposition process. Tables of concordance enable monitoring and quality control by the MEI, which provides its opinion in all transposition cases and has the authority to make changes or reject the draft submitted by the responsible ministry.

The legal framework⁷⁴ and institutional setup for interministerial co-ordination and handling of European integration issues in the ministries are robust. The functions and mandate of the interministerial forums at the political (KNIE), administrative (KKNIE) and expert levels are clearly set, providing a good basis for the system's efficient functioning. However, an analysis of daily practice demonstrates that the system's full potential is not exploited. Formal forums are used only for

⁷³ The General Directorate of Codification of the Ministry of Justice.

⁷⁴ Prime Minister's order No. 183 (11.12.2009) on "The Establishment, composition and functioning of the inter-institutional working groups for each chapter of the *acquis communautaire*, including the chapters of political and economic criteria"

adopting certain documents⁷⁵. The political-level forum fulfils its role better than the administrative-level forum. The regular meetings held in 2012 became rarer in 2013, but the interviews confirmed that the PM strongly supports the European integration process and that the forum can be used if needed. That said, in both 2012 and 2013 discussions focused on taking stock of plans that had been adopted and implemented, rather than on setting policy priorities and handling conflict issues⁷⁶. At the administrative (deputy minister and expert working group) level, the new Government rarely used formal interministerial forums, which therefore exist largely on paper⁷⁷. However, the MEI has recently reformed interinstitutional working groups for each chapter of the *acquis*, empty positions were filled and the Deputy Minister of the Ministry responsible for each chapter was nominated as a chair of each group. While the MEI has used often informal gatherings of responsible deputy ministers to co-ordinate compiling the RM, turning those meetings into a transparent and accountable decision making forum remains a challenge.

EI issues in the ministries are handled by the European Integration Units (EIUs), which are responsible for co-ordinating a given ministry's SAA implementation activities and the *acquis* transposition, as well as liaising with the MEI and co-ordinating and monitoring EU assistance. The EIUs also have the authority to recommend human resources priorities and to facilitate necessary sectoral reforms⁷⁸. The EIUs have not managed to establish themselves as key co-ordinating units of EI process and the ministries' policy departments still perceive them as "post offices" for exchanging information⁷⁹.

All ministries went through organisational restructuring under the new Government. Overall, the planned capacity of EIUs (the minimum legal staffing requirement is three officials) is sufficient. The number of planned staff – mainly in the range of five (for six ministries) to seven (five ministries) persons – generally exceeds the minimum three-person requirement. The Ministry of Transport and Infrastructure has the highest staffing, with 16 positions. A more detailed analysis of positions illustrates that the main emphasis is on managing EU Instrument of Pre-Accession funds and concrete assistance projects. The number of staff is determined by the project workload, rather than by the volume of the *acquis* transposition, importance of the area in the SAA or a requirement to meet priorities in the EC opinion on candidate status. This creates an uneven workload for the EIUs with regard to policy and transposition planning or leads to the units playing a limited role in those processes. Policy co-ordination and the *acquis* transposition function receive limited attention from most EIUs.⁸⁰

Staffing challenges are further compounded by a general deterioration in the policy co-ordination roles of the EIUs due to the Government's working practices in 2013. The MEI mainly used newly appointed deputy ministers to co-ordinate and discuss priority European integration issues, e.g. developing the RM for the five priority areas. At the same time, there is no direct link of EIUs with the respective deputy ministers. Stopping previously established routines (such as updating and monitoring the implementation of the NPISAA) has also influenced negatively the role of EIUs.

The legislative framework for transposition of the acquis is in place and is an integral part of overall Government decision making procedures. Formally, the interministerial co-ordination structure is

⁷⁵ Interviews with the MEI and analysis of agendas and minutes of the interministerial co-ordination bodies from 2012 and 2013.

⁷⁶ Agendas and minutes of the KNIE meetings from 21.03.2012, 20.09.2012 and 2.12.2013.

⁷⁷ Agenda of the KKNIE meeting from 31.10.2012.

⁷⁸ The CoM decision no 179 (22.02.2006) on "The Establishment of European Integration Units in Line Ministries"; Council of Ministers decision no 17 (7.01.2009) on "Some Amendments and Addenda to Decision no 179 of 22.2.2006 of the CoM "On the Establishment of European Integration Units in Line Ministries".

⁷⁹ "Support to the European Union Integration Process – Phase III" EuropeAid/131356/C/SER/AL Quarterly Report August-October 2012; interviews in line ministries and in the MEI.

⁸⁰ Source: SIGMA analysis of the organisational structures of all ministries adopted by Prime Minister's decisions in October-November 2013.

robust and avoids duplication. However, formal interministerial co-ordination bodies are used only rarely, and when assembled they are not used as forums for policy discussions and conflict resolution. While co-ordination units for European integration exist in the ministries, their staffing does not reflect the actual policy co-ordination and transposition workload.

11: Government decision making process is co-ordinated with the Parliament.

The section in the Parliamentary Rules of Procedure entitled “The Legislative Procedure”⁸¹ regulate relations between the Government (as the primary subject initiating the law) and Parliament. The new Government has paid great attention to improving relations with Parliament and ensuring separation of powers. Members of Government have voluntarily resigned as MPs on becoming a minister. The new position of State Minister for Parliamentary Relations has been created to foster communication between the two branches.⁸² The State Minister communicates to Parliament the intentions, content and consequences of important reforms (e.g. administrative reform and electoral reform) that the Government intends to undertake. It also receives feedback and proposals from both coalition and opposition MPs. The Minister is present at all Parliament meetings. The arrangement has been well received by the MPs⁸³.

The Government adopts its Legislative Work Plan annually. The 2014 plan was adopted on 22 January 2014. The MPs would like to see the plan earlier so that they can programme their own work better. They would also like the Government to provide them with a more timely advance schedule on when particular drafts will be presented to them. The Legislative Work Plan is conveyed to the Parliament and its Chairs of Committees through the State Minister for Parliamentary Relations. Since April 2013, MPs receive materials online. Combined with the Government providing more background information with draft legislation and a higher number of hearings, this has improved MPs’ ability to take action. In 2013, Parliament approved 185 laws and 70 decisions.

The creation of the position of State Minister for Parliamentary Relations creates preconditions for better co-operation and information exchange between the Government and the Parliament. Advance planning of submissions of the Government is in place.

⁸¹ Articles 68-77 of the Rules of Procedure of the Parliament.

⁸² Decision no 834 (18.09.2013) of the CoM on Contemplating the Public Responsibility of the Minister of State for Parliamentary Affairs”.

⁸³ Interviews in the Parliament.

POLICY AND STRATEGIC CAPACITIES

2. Analysis

Policy development structures

1: The organisational structure of the ministries and the allocation of responsibilities leads to policies that deliver against government objectives.

According to the legislation⁸⁴, each ministry needs to have a proper working definition of its role and responsibilities. The aim is to avoid overlapping functions, responsibilities and tasks. The previous Government worked with 12 ministries. The new Government launched a large re-organisation and introduced a series of changes to its ministries. Policy responsibility for topics such as "Youth", "Water Management" and "Tourism" has been re-allocated. The Ministry of Economy, Trade and Energy (METE) was split. Under the new Government, Albania has 16 ministries and 3 Ministers of State. The formal redistribution of functions went smoothly. The structures and tasks of the ministries were established through adopting individual PM decisions and policy responsibilities are clearly defined. Individual PM decisions are supported by ministerial organigrams indicating the titles and planned staffing levels of the different units.

A deeper analysis has been made of the Ministry of Economic Development, Trade and Entrepreneurship (MEDTE). MEDTE is a new ministry split off from the METE and the decision on the role and responsibilities of MEDTE serves as a proxy for defining a ministry's tasks in Albania. This decision includes a list of the most important pieces of legislation for which it is responsible. By specifically listing these pieces of legislation, the Government clarifies the responsibility of the newly created ministry.

MEDTE also received a function formerly held by the MoF - responsibility for drafting and implementing public investment policies. It carries out the functions in accordance with the Minister of Finance guidelines on the MTBP 2015-2017, which set the procedures for managing investment projects.

The double re-organisation has had a negative effect on the policy and legislative development capacity of the Administration. In fact, policy and legislative development had nearly come to a standstill by the end of 2013 and was picking up only slowly in early 2014 (the new Government since it entered into office has only approved six new draft laws and 1 strategy).⁸⁵

The intended distribution of staff among the different ministry units is homogenous and many units have the same staff numbers. Unit names indicate their specific policy and/or administrative responsibilities. The policy development process in Albania involves the policy units preparing legislative files and the legal units transforming policy and legislative demands into actual legislative proposals⁸⁶. Legal departments have a similar intended staffing level across ministries. However, the number of policy development staff varies, with an average of 23% of total staff working in ministries.

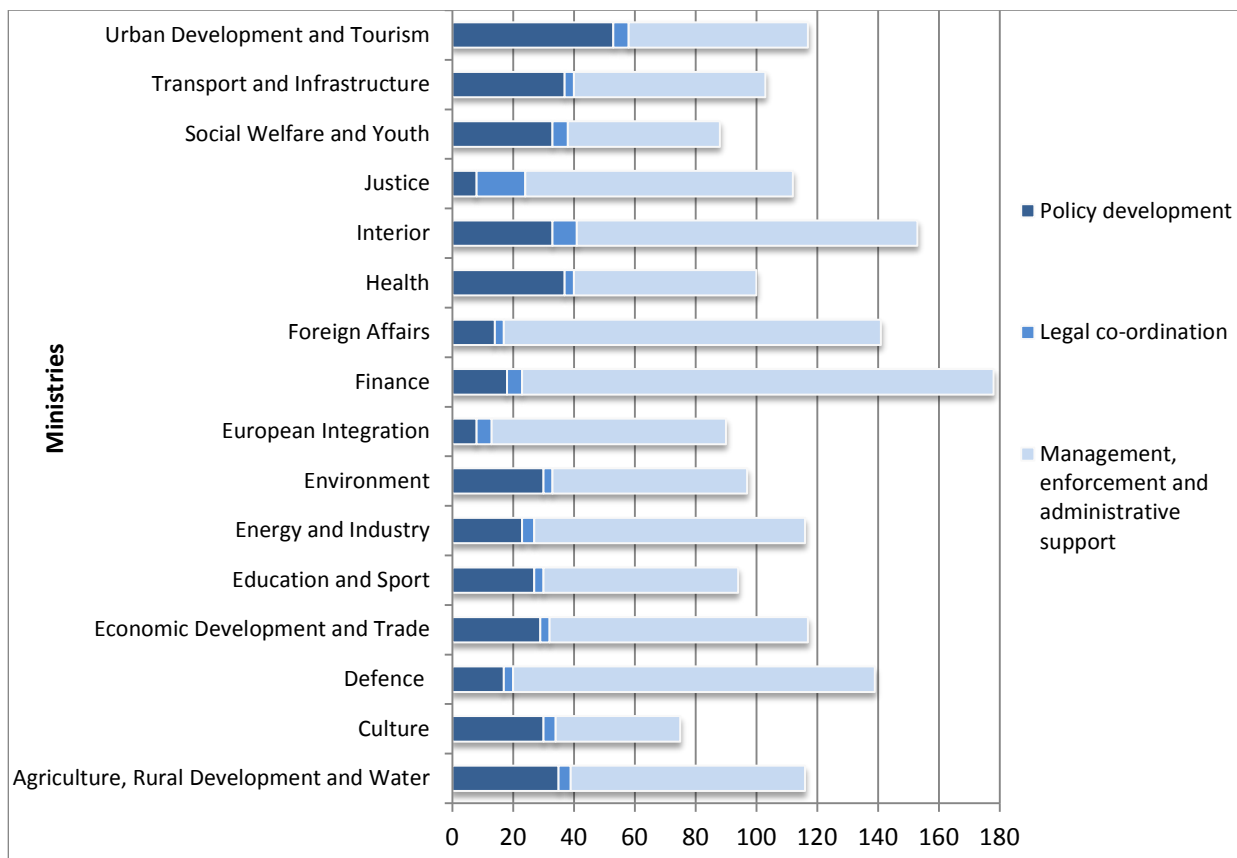
There were significant differences among ministries in meeting the intended staffing levels. Ministries that did not undergo structural changes were less affected by staffing challenges compared to ministries that received new roles and policy responsibilities.

⁸⁴ Article 3 of Law No. 90/2012 on the Organisation and the Functioning of the State Administration.

⁸⁵ Information provided by the OPM.

⁸⁶ This working method emerged from the interviews held and is regarded to be applied government wide.

Figure 1. Estimated staff numbers based on ministerial organograms



Source: CoM decisions on the organisational structure of the ministries

To compare the workload of ministries, SIGMA compared the intended allocation of policy and legal staff to the Government commitments. This comparison serves as a rough measure for assessing the relative workload, since projects and plans can place very variable demands on a ministry and the involved unit(s). However, the assumption is that the number of projects per ministry provides an indication of whether Government priorities and ministry staffing levels are well aligned.

Figure 2. Ministerial plans (2013 and 2014) and decisions proposed (15/09/2013-28/02/2014) set against envisaged staffing levels per ministry⁸⁷

| Name of the Ministry | 2013 plans | 2014 plans | Decisions proposed | Policy staff | Legal staff |
|---|------------|------------|--------------------|--------------|-------------|
| Ministry of Agriculture, Rural Development and Water Administration | 22 | 22 | 17 | 35 | 4 |
| Ministry of Culture | 37 | 13 | 12 | 30 | 4 |
| Ministry of Defence | 15 | 21 | 20 | 17 | 3 |
| Ministry of Economic Development, Trade and Entrepreneurship | - | 24 | 9 | 29 | 3 |
| Ministry of Education and Sport | 49 | 26 | 5 | 27 | 3 |
| Ministry of Energy and Industry | 27 | 43 | 26 | 23 | 4 |
| Ministry of Environment | 29 | 40 | 12 | 30 | 3 |
| Ministry of European Integration | 11 | 5 | 9 | 8 | 5 |
| Ministry of Finance | 60 | 57 | 56 | 18 | 5 |
| Ministry of Foreign Affairs | 73 | 88 | 40 | 14 | 3 |
| Ministry of Health | 18 | 51 | 13 | 37 | 3 |
| Ministry of Innovation and Information Technology and Communication | 24 | - | - | N.A. | N.A. |
| State Minister for Innovation and Public Administration | - | 36 | 9 | N.A. | N.A. |
| Ministry of Interior | 73 | 54 | 15 | 33 | 8 |
| Ministry of Justice | 35 | 48 | 14 | 8 | 23 |
| Ministry of Social Welfare and Youth | 25 | 35 | 24 | 33 | 5 |
| Ministry of Transport and Infrastructure | 31 | 23 | 13 | 37 | 3 |
| Ministry of Urban Development and Tourism | - | 27 | 12 | 53 | 5 |
| Total | 529 | 613 | 306 | 401 | 75 |

Source: CoM decisions on the organisational structure of the Ministries

The figure above shows that the total number of Government plans increased from 529 in 2013 to 613 in 2014. This increase coincided with the new Government's intention to also reduce the number of civil servants. The Administration is thus set to do more work with less staff. The figure also shows that there are considerable differences between the number of plans per ministry, proposed PM and CoM decisions during the first five months when the new Government has been in the office and the available policy development staff. The ratio of workload to policy development staff varies significantly between the ministries, but is low in most of the ministries.

⁸⁷ The figure shows the number of strategies and legal initiatives the Albanian Government was working on in 2013 and those envisaged for 2014, and the number of decisions proposed to the PM and the CoM in the period of 15/09/2013 – 28/02/2014. The numbers are set in relation to staffing levels for policy development and legal development. The comparison of the 2013 and 2014 numbers per ministry does not work well as ministerial roles and responsibilities changed when the new Government took office. For the sake of clarity, only the current names of ministries have been used.

The roles and responsibilities of ministries are clearly defined. The Government has increased the number of plans while reducing overall staff numbers per ministry. The policy development workload between ministries is uneven.

2: The interministerial processes in place for the development of policies across ministries lead to consistent and clear policies.

The Rules of Procedure⁸⁸ stipulate the requirements that need to be fulfilled in order to present a proposal for decision by the CoM. These requirements are widely known⁸⁹.

Communication – both by ministries with the CoM and between ministries – is supported through the E-Acts system of electronic interministerial consultation. While E-Acts significantly lightens the workload necessary for proper interministerial proposal co-ordination, the information uploaded in E-Acts must also be sent in hardcopy version.

The policy development process has several mechanisms for conflict resolution in case two or more ministers or ministries disagree about the necessary action on a specific file. These mechanisms are laid down in the Rules of Procedure. Interministerial committees can be convened to discuss particularly important policy and legislative files. Committees – such as the Interministerial Committee for Strategic Planning and Interministerial Committee for Economic Development – can function as a gateway for agreeing on specific policy areas, allowing the CoM to focus on topics that are relevant to the Government as a whole.

In addition to potential conflicts within the Government being solved through political means, controversial files can also be delegated to special expert working groups for resolution of sensitivities. Experts can depoliticise a file by focusing on underlying data, facts and figures, identify conflicts of interests and suggest mitigating measures to compensate for specific negative impacts.

Mechanisms for monitoring and reporting on the implementation of Government decisions are not applied.

Working procedures for preparing legislative proposals are established in legislation and are well known by the ministries. The interministerial consultation process is supported by the E-Acts system. There is a set of mechanisms aimed at preventing and solving conflicts that emerge during the policy development process. Reporting on the implementation of Government decisions is not applied.

3: Procedures and institutional set-up enable systematic and timely transposition of the *acquis*.

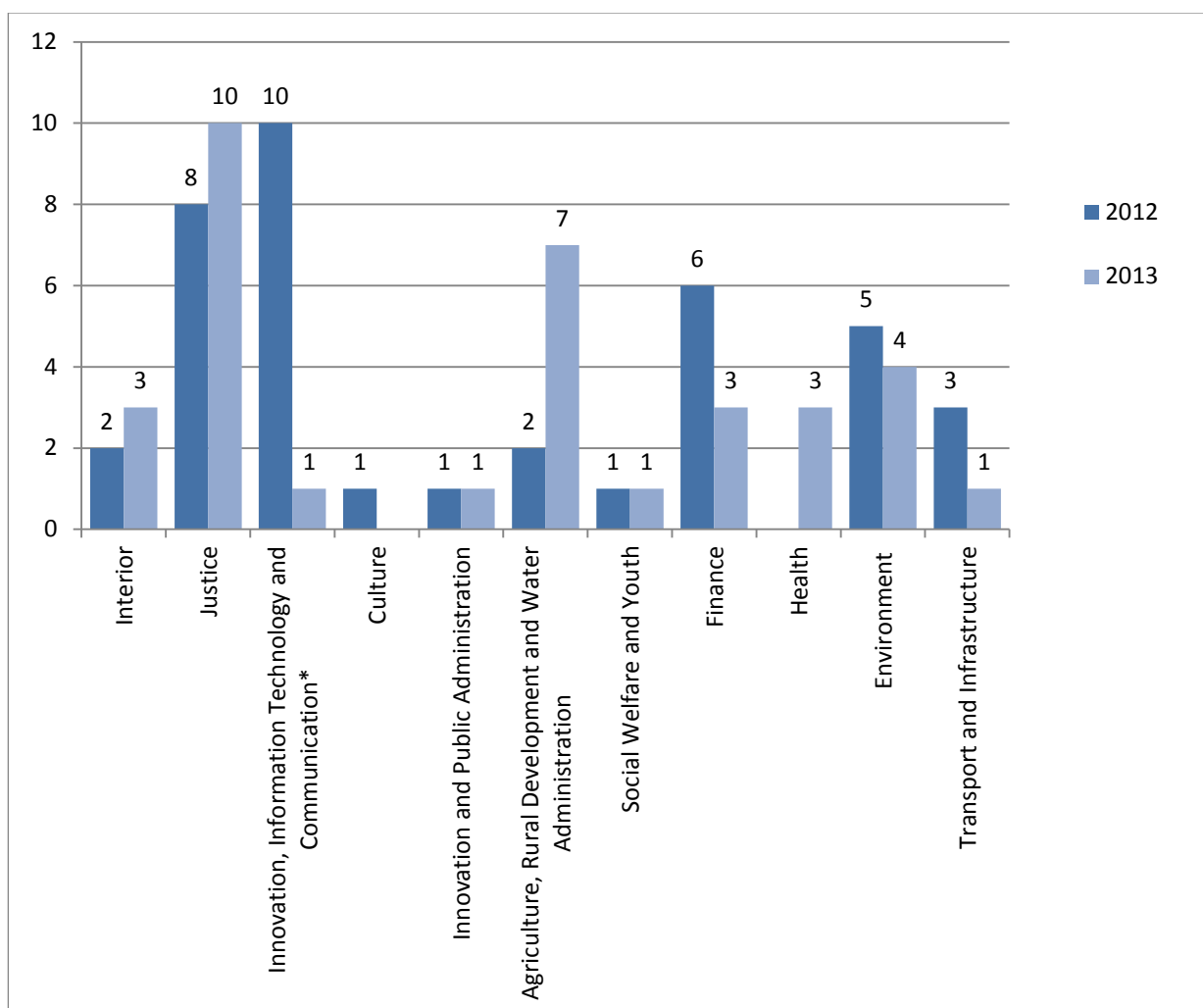
Horizontal procedures for *acquis* transposition, including use of tables of concordance and responsibility for translation of the *acquis*, are in place. An electronic database for monitoring the transpositions has been developed, but is not used currently by the MEI.

The Administration focuses on meeting various commitments deriving from the European integration process and systemic transposition of the *acquis* is still in the early stages of development. The gap analysis of the legislation, a prerequisite for systematic approximation, has been conducted in key areas by the EU assistance project “Support to the European Integration Process – Phase III” (SMEIII). However, the Administration has struggled to turn the results of this exercise into a systemic and planned transposition activity. Approximation of legislation is still a bottom-up process, based on planning and monitoring the development of national legislation rather than transposing EU directives. Short- and long-term planning of *acquis* transposition is rudimentary. It rests on the NPISAA, which has not been updated and the implementation of which is not monitored. Approximation turnout is low – 33 draft laws were submitted to the Government in 2012 and 18 draft laws in 2013.

⁸⁸ Law No. 9000 on the Organisation and Functioning of the Council of Ministers, Chapter III and Council of Ministers Decision No. 584 on the Approval of the Rules of Procedure of the Council of Ministers, Chapter III.

⁸⁹ Interviews with civil servants in four line ministries.

Figure 3. Number of draft laws and CoM decisions related to transposition of the *acquis* submitted to the Government per ministry⁹⁰



Source: MEI

Out of 51 draft laws submitted within 2 years, 35% have been developed by the Ministry of Justice and 16% by the MoF, leaving other ministries with an output of under six draft laws every year. Ministry-based approximation plans do not exist, hence it is impossible to analyse the approximate output against plans and determine the planning backlog.

As a positive development, the MEI has created a separate Sector for Approximation of Legislation with a planned staffing of four lawyers. The Sector is responsible for providing an opinion on the table of concordance and also to guide ministries. With the assistance of the EU-funded SMEI, capacity building is provided to the ministries. However, the current capacity of the MEI is still not sufficient to ensure systematic and quality transposition of the *acquis*. Keeping in mind its potential candidate status, strengthening institutional capacity and developing further procedures to enable planned and systematic law approximation remain two of the biggest challenges to Albania's European integration preparations.

Clear procedures for the transposition of the *acquis* are determined and tables of concordance are used regularly. Functions of the Government bodies' over planning, co-ordinating and monitoring *acquis* transposition are clear. However, the systematic transposition of the *acquis* is still in the early stages of development and does not enable planning and monitoring of harmonisation based on a legal gap analysis. The transposition turnout is low in all ministries, except the Ministry of Justice.

⁹⁰ Ministry of Innovation and Public Administration does not exist under the new Government.

The capacity of the MEI to steer transposition is low in terms of the number of staff and required qualifications.

Analytical tools and consultation

4: The policy making process makes use of analytical tools that systemise the best available information and data to inform governments' decision making processes.

Draft laws must be accompanied by an explanatory note stating the purpose and goal of the draft act. The Note must also identify and compare the potential effects of the draft law with its intended functioning in relation to already applicable laws. Staff at four line ministries indicated they had no difficulties living up to these standards for drafting legislative proposals.

The administration also bases its legislative drafting procedures on a Law Drafting Manual⁹¹. The Manual lists both specific (i.e. how articles should be formulated and a proposal should be structured) and general (i.e. quality aspects for the legislative drafting process) requirements for drafting legislative proposals. It explains the basic principles behind consultation, impact assessment, evaluation and monitoring. The Manual was well known among ministry interviewees.

To assess the practical implementation of the rules and procedures, SIGMA analysed three draft laws that recently went through the decision making cycle: Prison Reform; Transfer of the Fisheries Policy Responsibility; and an amendment to Law 9901 on Entrepreneurs and Companies.

In all three cases, the explanatory note provided basic information on the background and need of the legislative proposal. However, essential information on issues such as the costs of policy implementation, impacts on staffing levels and budgetary consequences were not analysed. Issues related to implementation, such as staff training, enforcement and planning for inspection, were either not discussed at all or discussed incompletely. Business-related costs as a result of changes in the legislation were not properly addressed either. The conclusion that follows from the examination of these three files is that the current level of analysis is very low and needs considerable improvement.

Apart from the explanatory notes, no other analytical tools are used in the policy development process, such as policy papers or (light) impact assessments.

Analysis for legislative and policy proposals is integrated into the system of explanatory notes. While the administration has the basic capacity to develop policies and legislation based on sound evidence, several important aspects are not analysed during policy development. There is no system for carrying out Regulatory Impact Assessments.

5: Policies are designed with the active participation of society and the people responsible for their implementation and ensuring compliance.

The obligation to consult with civil society is rooted in legislation, but precise procedures are not currently formally established. The rules of procedure indicate that consultations should be an integral part of the policy preparation process and guidance to the ministries for conducting consultations is given in the Law Drafting Manual.

To assess the practical implementation of consultation practices, three files were selected for closer analysis: the draft law on consultation; the draft law on prison reform; and the draft Business and Investment Development Strategy. From the three consultation examples a very diverse picture emerges. On the positive side, regular consultation is an integral part of the policy development process. The administration has shown that it is well aware of the different stakeholders interested in a specific proposal and that it uses the necessary resources to plan and execute consultations. Another positive aspect is the involvement of ministers and high-level civil servants in consultation events. This

⁹¹ Law Drafting Manual, A Guide to the Legislative Process in Albania (second revised version from 2009).

underlines the commitment of the Government to consultation and provides a positive basis from which the Government can further improve its consultation policy.

However, the analysis also indicates the need for a clear basis for consultation practices. The current approach to consultation is erratic and does not follow pre-defined quality benchmarks. The time allowed to stakeholders to provide their input during meetings was, in one case, clearly insufficient since this time was limited to 30 minutes. In addition, how the feedback from stakeholders was fed into the decision making process was unclear.

To address these problems, the Government, together with civil society organisations, has prepared a draft law on consultation which aims to provide a clear framework for consultation. For example, the draft law indicates how much time stakeholders should be allowed for replying to a consultation, how far in advance an invitation to a meeting should be sent out and other practical consultation features.

The Government held a public consultation on the draft law on consultation and received a large number of responses targeting a wide range of issues, including whether the consultation requirements should be implemented by law or through a decision of the CoM; whether the one-month deadline for responses should be extended to three months, which is international best practice; and how the Government should deal with non-adherence to the consultation standards once they are adopted. However, the draft law is still in interministerial consultation and is not submitted to the Parliament for adoption.

Successive governments have aimed to improve the dialogue with the business community. The previous government established the Business Advisory Council (BAC), which aimed to support development of economic policies and improve the legal framework for business. The BAC did not function as intended⁹² and the new Government replaced it with the National Economic Council (NEC), which started to informally function in 2014.⁹³ The NEC will advise the Government on matters related to economic development. Its members are representatives from the Government, the business community, international donors and individual companies. While the NEC is meant to respond to Government requests related to draft laws and economic plans, it also has the right to bring relevant issues to the Government's attention.

The new Government has also announced plans to involve civil society and local administrations more closely in its policy and legislative development activities by creating two additional consultative bodies, the Civil Society Council and the Local Government Council.

The success of the newly formulated involvement strategy will depend mainly on the practical implementation and functioning of the respective Councils, but also on the capacity of civil society stakeholders. The capacities of individual stakeholder organisations are diverse. While most stakeholders are professional, their small size and limited staff capacity hinders proactive participation in badly organised consultation processes. Stakeholders provided a uniformly positive albeit cautious assessment of the Government's consultation plans. Most of them indicated they were impressed with the plans the Government had developed so far and emphasised that the plans' success depends on the adoption on needed legislative framework and actual implementation practices thereafter⁹⁴.

General principles for consultation are embedded in the rules of procedure and manual for drafting laws. However, consultation procedures are not laid out in the legislation. Consultations differ widely and do not always provide sufficient opportunities for stakeholders to provide their input. To address consultation challenges, the Government created the NEC to establish a dialogue with the business community and is developing the draft law on consultation.

⁹² Interviews with business representatives, government officials and international donors.

⁹³ The CoM has approved draft Law on National Economic Council (no 162, 26.03.2013) and submitted it to the Parliament for approval.

⁹⁴ Focus group interviews and bilateral meetings with civil society organisations.

PUBLIC PROCUREMENT

ALBANIA
APRIL 2014

1. State of play and main developments since last assessment

1.1. State of play

The political and economic situation in 2013 in Albania impacted the public procurement system. As of July 2013⁹⁵ a standstill situation occurred, with limited procurement activities being undertaken. Procurement orders needed prior approval by the Council of Ministers (CoM) before any procedures could be launched.

The regulatory framework, including operational guidelines and standard documentation, is of a good quality. It is generally compatible - but not compliant - with the *acquis*. The policy and regulatory framework prioritises the “integrity dimension” of the procurement operations, which generates detailed regulations, control and sanctions. The further development of the e-procurement system has increased access and transparency, has simplified the tender proceedings and, importantly, has improved the monitoring and auditing functions within the public procurement system. There is, however, insufficient integration between the budget and public expenditure system and the public procurement system making it generally very difficult to award multi-year contracts.

The institutional set-up of the procurement and concession system is well defined, but operates largely vertically without considering the horizontal needs of co-ordination, almost in a competitive manner. There is insufficient co-operation and consultation, with few formal co-ordination mechanisms in place between the key institutional bodies.

1.2. Main developments since last assessment⁹⁶

In May 2013 a new Law on Concessions and Public Private Partnerships (CPPPL)⁹⁷ was approved by Parliament, replacing the Law on Concessions of 2006⁹⁸. A number of consequently adopted implementing regulations⁹⁹ helped to create a comprehensive set of rules on the preparation, award and monitoring of concessions and public private partnerships (PPPs).

As of April 2013,0 the roll-out of new functions within the e-procurement system was undertaken, including the processing of small-value purchases and the e-archiving system¹⁰⁰.

⁹⁵ COM Decision 591, 10 July 2013 “On regulating the use of budgetary expenditures for 2013”. - any publication of notices after 15 July needed approval by COM.

⁹⁶ April 2013.

⁹⁷ Law No. 125/2013 “On concessions and Public Private Partnership”.

⁹⁸ Law No. 9663/2006 “On concessions”.

⁹⁹ COM Decisions 575, 576 “On rules on evaluating and granting concessions.” PPP and PPA decision No. 2 “On standard documents for concessions and PPP”.

¹⁰⁰ COM Decision 32 (2013) amending COM decision 1/2007 on Public Procurement Rules. PPA decisions No. 1 “On the procedure of small-value procurement and amended by PPA instructions No. 2 and No. 5 with guidelines”. PPA Instructions Nos. 3 and 4 “On submission and conducting small-value procurement”.

2. Analysis

Policy, regulatory and institutional framework

1: There is a focal point at ministerial level with designated responsibility for public procurement policy making and co-ordination, internally and externally, with a clear mandate and the authority and resources necessary for the task.

There is no identified focal point at the ministerial level responsible for policy making, governance and co-ordination, or for the provision of the strategic direction of the procurement system, including concessions. Instead, the Public Procurement Agency (PPA) maintains the policy making and legislative functions, and is the centre for the regulatory and institutional development of the public procurement system¹⁰¹. The PPA reports to the Prime Minister and is responsible for drafting policy and the legislative framework on public procurement, including concessions and PPPs, and for submitting legislative proposals - at the primary and secondary levels - to the Council of Ministers for decision. There is a lack of formalised co-ordination mechanisms for policy development and consultation between the key institutional set-ups and other important stakeholders.

The Public Procurement Agency is the body with primary responsibility for the development of the public procurement system, but its role and responsibilities for policy making and co-ordination with other relevant bodies are not sufficiently defined in legislation.

2: The regulatory framework is aligned with the *acquis*, includes areas covered by the fundamental Treaty principles and EU case law, and also regulates areas of national interest, such as value for money in public procurement.

The primary public procurement legislation (PPL)¹⁰² covers national legislation aimed at substantially implementing the EU Public Procurement Directives 2004/17/EC and 2004/18/EC. It also includes rules and procedures that apply in areas outside the detailed provisions of the EU Directives. The legal framework also consists of a comprehensive set of secondary legislation, such as implementing regulations, operational guidelines, standard formats for contract notices, and standard tender documents for goods, services and works, as well as models for general conditions of contracts for goods, services, works and concessions.

The CPPPL, which includes implementing regulations, provides a comprehensive set of rules on the preparation, award and monitoring of concessions and PPPs.

The Defence and Security Directive 2009/81/EC is not implemented in the Albanian procurement system.

The PPL is compatible, but not compliant, with the *acquis* on public procurement. The legal framework reflects the fundamental EU Treaty principles in terms of transparency, equal treatment and non-discrimination. The procedural focus is designed to primarily ensure the fairness, transparency and integrity of the procurement processes. The main procedures and provisions of the EU Directives are implemented in the PPL. These apply not only above the EU thresholds, but also within the bands of specific national thresholds which generate formalistic practices. In addition, there are national procedures for low-value procurement, such as the request for proposals and small-value purchases. Competitive procedures regarding the publication of tender notices are generally required for the award of all contracts irrespective of their value. Negotiated procedures without prior publication should be used on an exceptional basis only, but still the numbers are significant¹⁰³. The open procedure is the preferred method, while all other procedures are conditional either with reference to the threshold values or to the nature of the tender. In practice the restricted procedure is not used.

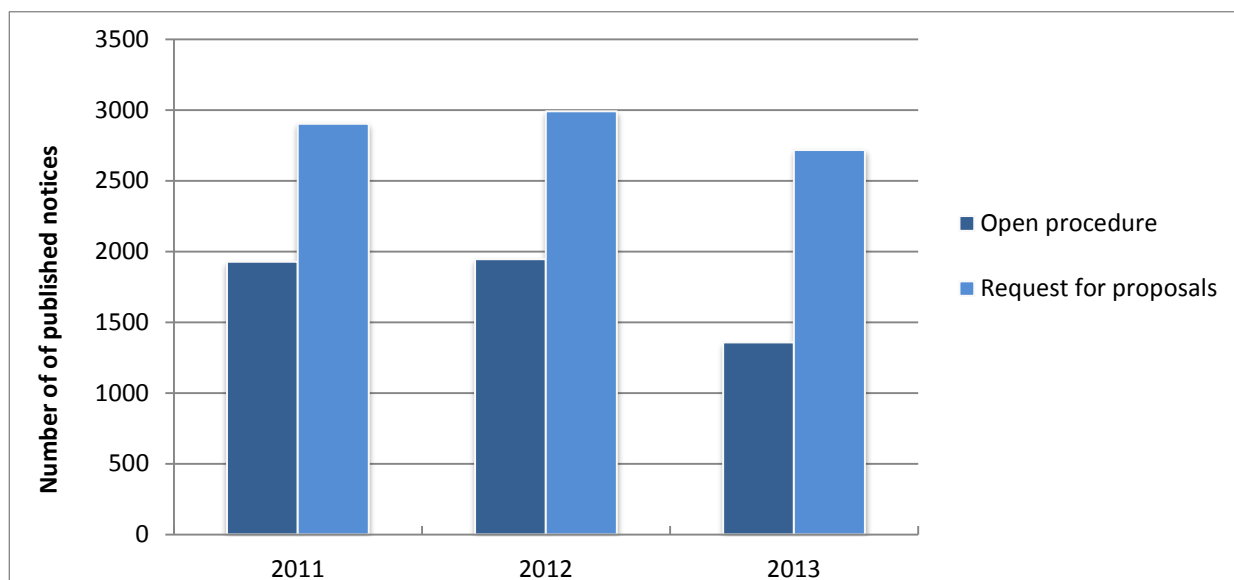
¹⁰¹ Article 13 of the Law No. 9643/2006.

¹⁰² Law No. 9643/2006 as amended.

¹⁰³ See figure no. 4 – procurement methods.

The PPL transposes the utilities directive, but without establishing full compliance and with less flexibility. The applicable thresholds for the purpose of the PPL are: high-value thresholds, low-value thresholds and thresholds for small-value purchases¹⁰⁴. The minimum standard time limit for submission of tenders is 23 days (national open procedure). Figure 1 provides information on the publication of contract notices over the past three years. It should be noted that the number of published notices for the open procedure dropped by 30% from 2012 to 2013 as a result of the standstill decision by the Government to stop or restrict procurement activities in the second half of 2013.

Figure 1. Number of contract notices per method



Source: PPA Annual Reports (2011/12/13)

Provisions for the award and use of framework agreements are laid down in the PPL, but are not practised, while the competitive dialogue procedure¹⁰⁵ is not transposed. Since 2013, the e-procurement system is used for all contracts irrespective of their value.

The number of contracts awarded above the EU thresholds in 2013 amount to 203¹⁰⁶.

The regulatory framework is compatible - but not compliant - with the acquis". Progress has been made on the legislative framework on concessions and Public Private Partnership (PPP). The Law and its implementing regulations comply with the EU acquis, and also to a large extent with the new EU 2014 Concession Directive.

3: Central institutional and administrative capacity is in place to support and co-ordinate the continuous development, implementation and monitoring of public procurement regulations and practices.

The institutional framework within the areas of public procurement and concessions/PPPs covers: the Public Procurement Agency (PPA), the Public Procurement Commission (PPC) which is responsible for complaint reviews and remedies, and for concessions and PPPs specifically, the Ministry of Finance and the Concessions/PPPs Treatment Unit under the Ministry of Economic Development, Trade and Entrepreneurship. Regarding central purchasing, both the Ministry of Interior and the Ministry of

¹⁰⁴ High-value thresholds: EUR 8.6 million for works contracts and EUR 1.4 million for supplies and services. Low-value thresholds: EUR 86 000 for works contracts and EUR 57 000 for supplies and services. Small-value thresholds: EUR 2 850 and above EUR 75.

¹⁰⁵ As in Directive 2004/18/EC.

¹⁰⁶ PPA Annual Report 2014.

Health assume responsibilities for the co-ordination of procurement of supplies of common interest for the public administrations within their respective domains.

The PPA, subordinate to the Prime Minister and a central body established by the PPL, is in charge of the key functions normally associated with a central public procurement office¹⁰⁷, such as: drafting policy and the legislative framework on public procurement, including concessions and PPPs; submitting legislative proposals to the Council of Ministers; monitoring and control; provision of advice and support to the procurement community; training and information; international co-ordination; and managing the Electronic Procurement System, including the Public Procurement Bulletin. In PPA there are currently 23 employees. The organisational set-up is formed around two main directorates: the Directorate of Legal Issues, Monitoring and Publication and the Directorate of Information Technology.

The PPA has important responsibilities¹⁰⁸ and powers in respect to the control of specific public procurement procedures. In case of misconduct, the PPA is authorised to penalise with fines or decide on disciplinary measures against the individuals committing an infringement. In 2013, 40 disciplinary measures¹⁰⁹ were taken upon its own initiative or through following proposals by the State Audit Institution, the Public Procurement Commission (PPC) or Internal audit.

The PPA is entitled to exclude an economic operator from participation in awarding procedures, without prejudice of criminal proceedings that may have started, for a period of one to three years in cases of serious misrepresentation, and the submission of documents containing false information for purposes of qualification. As a result of the administrative proceedings during 2013, the

PPA decided to exclude six economic operators from participation.

In line with the CPPPL, all of the above-mentioned tasks of the PPA are performed in respect to concessions and PPPs as well.

The PPA has exercised its responsibilities for many years and is a well-established institution within the public procurement system. Although the regulatory framework introduces a whole new set of expertise and skills needed for effective implementation in the areas of concessions and PPPs, no investments in that regard have been made.

Reviews and remedies

4: There is a system for dealing with complaints that is aligned with *acquis* standards of independence, probity and transparency, and provides for rapid and competent handling of complaints and sanctions.

The Public Procurement Commission (PPC) was established by the PPL¹¹⁰ and began its operations in 2010. The review mechanism follows largely the Remedies Directives however several provisions of the Remedies Directive 2007/66/EC have not been included in the PPL (e.g. ineffectiveness of contracts, alternative punishments, ex-ante voluntary transparency notice). The PPC is a public legal body subordinate to the Council of Ministers and financed by the State Budget.

The PPC has five members, one of whom acts as the Head, and one as the Deputy Head. The PPC has 13 professionals plus administrative staff. Tenders and awards under the Concessions/PPP Law are also subject to the same review and remedies system although with some differences, such as on maximum review time of an appeal.

The review measures available are:

1. Filing a complaint to the contracting entity which has to be done within seven days from the time of notification. The contracting entity must suspend the procedure until the objection is reviewed.

¹⁰⁷ Article 13 of the PPL.

¹⁰⁸ Article 13 of the PPL.

¹⁰⁹ PPA Annual Report pp. 13-14.

¹¹⁰ COM Decisions 86, 184, 261 and 469 (2010).

2. Appeal to the PPC which may start an administrative investigation procedure if the contracting entity failed to examine an objection within the set time limit or rejected the objection. The complaint needs to be lodged within ten days from the date of the decision of the contracting entity. The suspension period continues to apply.

3. Appeal of the decision of the PPC to the Administrative Court of Tirana (previously it was the Civil Court).

4. There is also a possibility to appeal a decision of the Administrative Court to the Supreme Court of Appeals.

In 2013 the number of appeals submitted to the PPC was 560 and out of these 544 were reviewed on substance. Statistics indicate¹¹¹ that 7-10 % of the tender procedures are challenged. A major share of all complaints relates to one specific area, namely security services. The complainant has to pay a fee of 0.5% of the contract value as a condition for examination. The statistics issued by PPC provide the following picture:

Figure 2. Distribution of complaints decisions by the PPC

| Decisions | 2011 | 2012 | 2013 |
|---------------------|------------|------------|------------|
| Accepted complaints | 261 | 237 | 281 |
| Complaints rejected | 224 | 343 | 280 |
| Total | 485 | 580 | 561 |

Source: PPC Annual Reports 2011/12/13

The PPC shall conclude its review within 7 seven days, which can be extended¹¹² to a maximum of 20 days (30 days for concessions). In 90% of cases the maximum deadline was met according to information provided by the PPC during the interview.

The PPC review covers only the cause of the complaint without any ex-officio investigation of the tender proceedings. As soon as the complaint is filed, a suspension decision has to be made by the contracting entity until the objection is fully examined¹¹³.

The PPC decisions range from corrective measures, including invalidation of the award decisions but not the entire process, to the annulment of all procedures with request for re-tendering. The majority of decisions made by PPC are corrective.

The institutional independence of the PPC, being subordinated to the Council of Ministers is not fully guaranteed. The number of complaints is high in special sectors, such as for security services.

Procurement Related Horizontal Issues

5: A horizontal legal and institutional environment supportive of public procurement is in place.

The horizontal areas of specific relevance to the procurement system are external audit, budget rules, financial control, competition law and commercial law.

The High State Control (HSC) is responsible for the external audit of public procurement operations. Following the audit performed, the HSC may initiate disciplinary measures against the contracting authorities to the PPA. The body also has the right to bring cases of misconduct to court. In conclusion, the external audit remains focussed on compliance of the tender procedures with the PPL, while less attention - due to lack of resources and knowledge - is paid to determining performance and the

¹¹¹ PPC Annual Reports.

¹¹² Art 64 PPL.

¹¹³ Article 63 of the PPL.

outcome of the procurement operations. The audit covers all public sectors - central as well as regional and local authorities.

The Budget Law and planning process affects the public procurement system as the reallocation of budget funds from one year to another is limited. The exceptions, infrastructure contracts, are further defined in the PPL. The effects of these strict rules are that the majority of tender proceedings are conducted in the first six months¹¹⁴ from mid-January, when the annual budget is approved, in order to ensure that contracts can be implemented and invoices actually paid before the end of the year. The absence of multi-year contracts and the obligation to indicate the limited funds allocated to the procurement contract¹¹⁵ are the principle reasons why framework agreements have not been practiced.

The legal and institutional framework in the competition area is compatible with EU requirements. The competition entity is subordinate to the Parliament. The Albanian market is small, but the numbers of economic operators are extensive, in particular in areas of trade and commerce, while less so in the manufacturing sector. There are few state enterprises. The procurement statistics indicate that the competition in public tenders is generally sufficient. The participation rates amount to four to six during the past 3 years.

The PPA has issued a full set of standard tender documentation for goods, services and works, including the general conditions of contract which the contracting authorities are obliged to apply.

The horizontal policy environment underlines the integrity focus of the public procurement system. There is a prioritisation of compliance rather than performance in the external audit system and the budget and expenditure rules are not supportive of optimal contracting arrangements.

A regulatory and institutional framework to ensure integrity in public procurement is in place and is working.

The policy and regulatory framework emphasis on integrity is the overarching goal for public procurement operations. This prioritisation has led to detailed regulation with an institutional focus on monitoring, control and sanctions. Transparency and open competition are the key principles guiding the regulation of public procurement, and they act as a general deterrent against potential irregularities in procurement operations. The open procedure is the preferred method while all other procedures require justifications. The PPL includes rules that are aimed at ensuring the integrity of the procurement practices, such as provisions on conflict of interest, the organisation of tender proceedings, exclusion of tenderers, investigatory powers and sanctions with individual responsibilities.

Despite all these constructive measures, the general view and perception¹¹⁶ is that corruption and fraud are commonly widespread and constitute major problems in the country, including in the area of public procurement.

Transparency requirements dominate strongly the public procurement system. The e-procurement system must also be used for small-value purchases from 2013, with the obligation to publish contract notices. This has led to "over-competition", unnecessary bureaucracy and increased transaction costs.

¹¹⁴ PPA Statistics 2012/13 62% and 75% of tender invitations in the first six months with a peak March-July.

¹¹⁵ COM Decision No. 1 (2007).

¹¹⁶ Transparency International Perception Index 2013. Albania is ranked 116 among 175 countries.

Operations and Practices

7: Procurement transactions are carried out using modern approaches and methods, including e-procurement, framework agreements and centralised purchasing.

The e-procurement system, managed by PPA, is a web-based IT platform in Albanian and English that enables electronic processing of public procurement and concession procedures, including: publication of contract notices, downloading and uploading of tender documentation, tender submission and e-archiving. All contracting authorities are mandated to use the system above the threshold of ALL 10 000 (EUR 75). The system is fully operational and has generated a number of positive changes for the public procurement system, most visibly in terms of increased transparency; access; simplification; lower transactions costs, and improved data collection and monitoring capacity.

The number of contracting authorities using the system exceeds 2 500 while the total number of users is 30 000. Statistics for 2013 show that approximately 35 000 tender invitations were published, of which 19 000 were related to small-value purchases (below EUR 2 850), which in turn created 81 000 tenders. There is an average of four to six tender submissions per invitation.

The General Directorate of Centralised Purchasing of the Ministry of Interior (CPB Mol) is responsible¹¹⁷ for conducting centralised purchasing in specifically defined categories on behalf of the Council of Ministers and central government authorities.

However, the CPB is not a central purchasing body within the meaning of the EU Directives. It does not award framework agreements and neither does it undertake purchasing on behalf of contracting authorities in the capacity of a contracting party. The contract is always signed between the contracting entity and the supplier. It operates more as a procurement agent or an intermediary in the process.

The award and use of framework agreements is regulated by the PPL and secondary legislation, in principle making this instrument available to the contracting entities; however in practice, it is not used at all.

The e-procurement system is fully operational. Centralised purchasing and, in particular, framework agreements still need to be implemented.

8: Contracting entities manage the procurement process professionally from the stage of defining the needs until the closing of the file and generate value for money.

The regulatory framework¹¹⁸ prescribes that contracting entities must establish special procurement units consisting of a minimum three persons of which one must be a lawyer. The staff should receive annual procurement training¹¹⁹. The PPA supports national training initiatives and closely co-operates with the Albanian School of Public Administration (ASPA).

The planning and managing of the procurement process is detailed in the PPL and supporting documentation. The emphasis is placed on process requirements and meeting procedural obligations rather than on the functionality and effective outcome of the procurement process. The regulation of the procurement process comprises the following main features¹²⁰:

- A contracting entity shall submit its annual procurement plan and tertiary reports to the PPA;
- The procurement plan shall contain budget estimations, procurement methods and timelines;
- The organisation of the procurement process requires the establishment of two separate tender committees, namely one for the preparation of tender documentation and issuance of tender invitations, and one tender evaluation committee for evaluation and recommendation of award

¹¹⁷ Article 11 of the PPL and COM Decision 53 (2009).

¹¹⁸ COM Decision No. 1 (2007).

¹¹⁹ COM Decision No. 1 (2007).

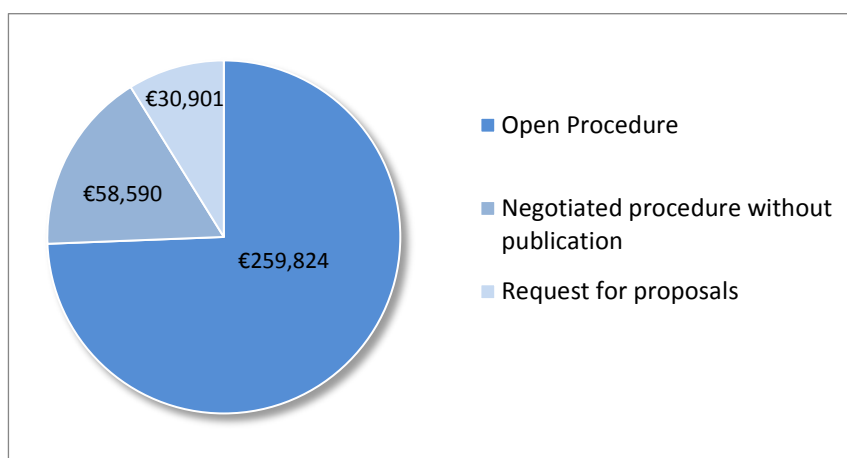
¹²⁰ COM Decision No. 1 (2007).

decisions. Notably, there is also a separate committee or function established for handling small-value purchases;

- If there is a complaint filed and the PPC requires a correction of the procedures, a separate committee will be established within the contracting entity;
- Procurement officials are personally responsible for the handling of the procurement processes and can be subject to investigations and penalties by the PPA;
- The tender evaluation committee makes an award recommendation which is confirmed officially by a decision of the authorised officer of the contracting entity;
- Available supporting documentation must be used, such as standard tender documentation and standard contracts for goods, services and works.

Figure 3 demonstrates the pre-dominant role of the competitive procedures value-wise in the procurement system.

Figure 3. Value per procurement method in EUR



Source: PPA Statistics 2013

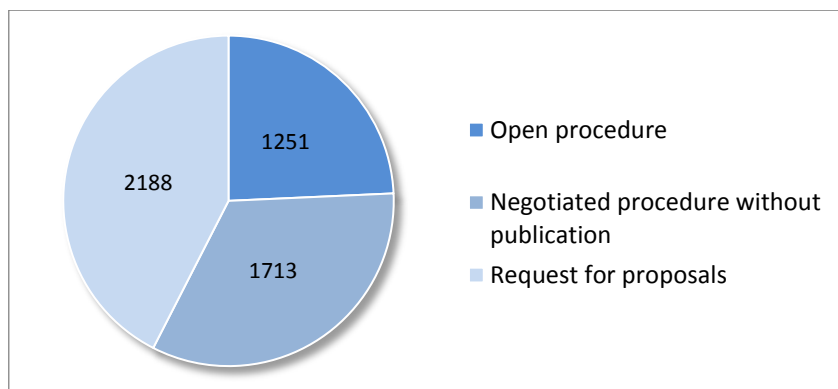
The procurement process is well regulated and prescribed by the PPL, including the supporting documentation, which the contracting authorities are bound to follow. The supporting documentation is well defined, but the process is not designed to foster professionalism and performance oriented attitudes and practices. The emphases on control, sanctions and the risk of complaints have led to the unwillingness to introduce quality factors and new instruments, such as framework agreements.

9: The public procurement market is open and competitive.

The market for public contracts in Albania is small (EUR 3.5 billion 2013)¹²¹, yet very important for the Albanian economic operators. As there is a small manufacturing base in the country, there is a high degree of import penetration, including for the public sector market.

The market is open and without any preferential provisions in the PPL. However, the thresholds for international invitations are higher than the EU thresholds.

¹²¹ PPA Annual Report 2013.

Figure 4. Distribution of procurement methods in numbers

Source: PPA Statistics 2013

The openness is evidenced by the fact that all contracts above EUR 75 are published on the central electronic platform with these invitations attracting a great deal of interest. Contract award notices are also published.

The quality and capacity of the tenderers and economic operators reflect the tendering requirements, and tenderers that compete on price primarily have an advantage, as quality factors are less considered in the tender evaluation. For small-value purchases, there is no need to submit a technical specification, just a simple description is sufficient. Subsequently, price becomes the only evaluation factor.

There is a mandatory use of tender and performance securities (2% and 10%) above the low-value threshold.

The procurement market is open with no regulatory restrictions on participation. The competition in reference to participation rates is satisfactory. Price, rather than quality and overall value for money, is the evaluation factor.