Slavica Penev
Ahmet Mançellari
Zhani Shapo

IMPROVING THE PROCESS OF ECONOMIC REFORM LEGISLATION IN ALBANIA

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INVESTMENT COMPACT FOR SOUTH EAST EUROPE
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Dear Reader,

The “Improvement of Economic Reform Legislation Process in Albania” Report is an important contribution that the Investment Compact for Southeast Europe and GTZ give to the assessment of regulatory reform in Albania and further enhancing it, in the context of achieving Albania’s objectives to become a European Union member.
In its journey towards reforming the economy, Albania has developed and implemented a series of reforms with the goal to improve business climate and promote economic development. New developments in Albania include one-day business registration, procedure streamlining for granting licenses, concessions and other permits, tax reduction and application a flat tax rate of 10%, tax and custom procedure reduction and streamlining, computerization and online payment of taxes and fees, and improved, streamlined, computerized and more transparent public fund procurement procedures, in addition to a number of other economic and financial developments.

Not only does this Report analyze the regulatory reform but it also gives important recommendations for executive bodies, businesses, civil society and lawmakers with regard to the process of developing, drafting, adopting, implementing and monitoring economic reform laws, in general, and regulatory reform laws, in particular.

I would like to thank all the persons who made efforts for enabling the preparation and publication of this valuable paper, which will help the organizations and individuals that are involved in the economic reform process in Albania.

Edmond Spaho
Head of the Parliamentary Committee for Economy and Finance

FOREWARD

Parliaments have a key role to play in the process of economic reform. Their task is to enact or amend legislation which provides the legal framework of economic activities. Their challenge is to establish rules which are coherent, effective and stable. Investors require quality legislation, which provides legal certainty and stability and is favorable to the development of a market economy. It is therefore necessary to improve the legislative process from the early stages of drafting to final enactment of the text. For this purpose, it is necessary to identify and analyze existing legislative processes in the SEE countries and their main weaknesses, and to propose solutions for improvement.

These challenges were recognized at the Regional Parliamentary Conference: "The Role of Parliaments in Economic Policy and Institutional and Legal Reforms in South East Europe" held in Dubrovnik (2004), organized by the Friedrich-Ebert Foundation, OECD and the Stability Pact/ Investment Compact for South East Europe. The idea to conduct a regional project focusing on the role of parliaments in the economic reform process was conceived during this Conference.

The main aim of this Project is to underscore the importance of the Parliaments for regulatory reform aimed at promoting a favorable investment environment.

Similar projects have been carried out for Serbia and Bosnia and Herzegovina. To get a full overview on the situation in the region, projects were carried out for Montenegro and Macedonia. This was realized within the Open Regional Fund for South East Europe - Legal Reform (ORF-Legal Reform), which is a project set up by the Deutsche Gesellschaft für technische Zusammenarbeit (GTZ) GmbH by appointment of the German Federal Ministry of Economic Cooperation and Development (BMZ).

The Investment Compact for SEE together with GTZ commenced the realization of the project entitled "Improvement of the legislative process in Albania" in February 2008. The first draft of the Project was presented at a workshop held in Tirana on 20th May 2008, which was hosted by the Albanian Parliament This workshop brought together MPs, members of Government, representatives of international organizations, business society representatives, experts and other stakeholders.

The conclusions and recommendations from this workshop have been incorporated in the final version of this Report. Another regional conference will be organized in October 2008, focusing on common elements for improving parliamentarian procedures in the field of economic reform legislation.

ACKNOWLEDGEMENTS

This study is a mutual project of Investment Compact for South East Europe, GTZ and Economics Institute, Belgrade.

The work has been structured by Rainer Geiger, Co-Chair of the OECD Investment Compact for South East Europe, Thomas Meyer, Fund manager, Open Regional Fund for South East Europe, Legal Reform, GTZ, and Slavica Penev, Senior Research Fellow, Economics Institute, Belgrade.

The research has been undertaken by Slavica Penev as a head of a team, and Ahmet Mancelari, professor at the Faculty of Economics, Tirana, Zhani Shapo, legal expert from Tirana and Sanja Filipovic, research fellow, Economics Institute, Belgrade, as team members.

The research has benefited from the input and comments received from all relevant stakeholders at the workshop held in Tirana. Special thanks are due to Mr. Edmond Spaho, Chairman of the Stranding Committee on Economy and Finance, Albanian Parliament, Mr. Hasan Metuku, Council of Ministers and Ms. Blerina Raca, Project Manager, GTZ, Tirana, for their contribution to this Project.

The study has been reviewed by Margo Thomas, Regional Program Coordinator, FIAS, IFC/World Bank, Sokol Berberi, member of the Constitutional court of Albania and Eris Hoxha, lawyer, and member of Albanian Parliament.

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SUMMARY

Intensive legislative activity in Albania over the last several years, professionally and financially supported by the donor community, resulted in the drafting of a significant number of high-quality laws. Albania's preliminary preparation for the EU, the arrangements that Albania concluded with the International Monetary Fund and the World Bank, and the creation of the CEFTA free trade agreement in the region in 2006 significantly influenced this intensive legislative activity.

As a result of these processes, notable improvement has been achieved in the quality of a number of laws. Serious deficiencies remain, however, including: excessive regulation in certain areas, lack of necessary regulation in others, lack of capacity within the ministries and other administrative bodies for drafting complex legislation, as well as low quality of some new laws due to fast drafting and enactment of laws without adequate support from experts. Legal implementation, however, is a much more serious problem due to the lack or poor functioning of institutions necessary for the implementation of laws.

Due to the ongoing process of Albania's economic integration, intensive activity in drafting new and improving existing laws in Albania is expected to continue over the next several years.

The Government has recognized that a more institutionalized approach to regulatory reforms, together with stronger capacities, is crucial for the sustainability of reform efforts. Therefore an extensive Regulatory reform, initiated by the Albanian Government in October 2005, is focusing on the improvement of the quality of regulations affecting businesses, as well as on strengthening the institutional infrastructure for their implementation.

To address these issues, the Government has established institutional infrastructure to support regulatory reform and developed a Regulatory Reform Action Plan (March 2006) to guide the implementation of reform actions over the following three years. This Action Plan established a comprehensive and dynamic program for regulatory reform in Albania, (i) addressing urgent needs regarding harmonization and simplification of the regulatory reform in important sectors, and (ii) initiating the framework for the establishment of institutions and procedures that will guarantee a friendly, transparent and efficient business environment. This Plan proposed new initiatives for the compilation and application of qualitative regulatory principles and good governance in Albania, and simultaneously aimed to guarantee the establishment of a mechanism that the new regulatory framework would have to respect in order to be in compliance with such principles.

The Action-Plan determined four areas of focus for regulatory reform in Albania: (i) development of the managerial system of the regulatory reform; (ii) improvement of existing legal framework through the removal of administrative barriers to business;

(iii) improvement of the quality of the new regulatory framework; and (iv) systematic monitoring and evaluation of the regulatory reform.

To support the Government's efforts to intensify regulatory reform, the World Bank proposed a Business Environment Reform and Institutional Strengthening (BERIS) project, which the Albanian Government signed in November 2006. This project aimed to assist the Albanian Government in realizing the four pillars from the Action Plan (March 2006), by focusing on strengthening the institutional framework and capacities necessary to improve in a systematic manner the quality of regulations affecting business activity.

The realization of the BERIS project components was included in the updated Action plan on regulatory reform, adopted by the Council of Ministers in June 2007. This Action plan was formed around three pillars: (i) Development of the management system for the Regulatory Reform, (ii) improvements of the existing legal framework by eliminating unnecessary obstacles to licensing, customs, taxation, land and construction, inspection and administrative complaint, and (iii) monitoring and evaluation of the impact of the Regulatory Reform. Visible progress in the realization of the second pillar of this Action Plan has been achieved in: (i) business registration reform, and (ii) licensing system reform. The Action plan included the procurement of technical assistance to support the development of the management system for Regulatory Reform and the establishment of an assessment system for the RIA reform. However, delays in the procurement process postponed the realization of these segments of the Action plan, which have been included in the Action plan for 2008.

Regulatory impact analysis for draft legislation

Regulatory Impact Analysis (RIA) has not yet been officially introduced into the Albanian legislative system. However, particular segments of this analysis are carried out as an integral part of the explanatory statement accompanying the draft law and they encompass: (i) financial impact assessment, and (ii) assessment of expected social and economic impacts.

The first serious attempt to introduce RIA as an integral part of the Albanian regulatory reform framework was made in the Government Regulatory Reform Action Plan (March 2006) and the World Bank BERIS project signed in November 2006 These two documents (an analysis of) the development of the government's capacity to improve the quality of new regulations through the Regulatory Impact Assessment (RIA) and concluded that the responsibility for the preparation of the RIA for new regulations and policies should lie with the relevant ministries. The quality control, monitoring and evaluation of the pace and quality of regulatory reform, including the implementation of the RIA system, should be carried out by the Trade Policy Department (TPD) within the Ministry of Economy.

Even though the June 2007 Action Plan on Regulatory Reform included a detailed program for the establishment of a system of assessment for the RIA reform based on the Action Plan 2006 and the BERIS project, delays in the procurement process have postponed the realization of this segment of the Plan.

Forward Planning of legislation and regulatory actions

The new legislation initiatives and regulatory actions in Albania are being taken within the frame of the Integrated Planning System (IPS), a three year plan (2006-2008) of the Albanian Government. This forward planning system is based on longer term sectoral and inter-sectoral development strategies and driven by the European Integration short and medium-term priorities, including the approximation of the legislation with the acquis. The system is also based on the medium-term (four-year) Government Program, with law initiatives included in the planned reforms.

Based on an Integrated Planning Calendar forwarded to the line ministries (and independent agencies) at the beginning of each year, each ministry produces an Integrated Plan that contains the major commitments for the core policy, the legislation initiatives and the financial processes. Regulatory actions are a part of the Integrated Plan of each ministry involved in the Regulatory Reform. In addition, a separate Action Plan of Regulatory Reform deals specifically with regulatory actions.

As a potentially appropriate frame for developing new legislation and regulatory schemes, the IPS needs additional consolidation steps between the core processes, as well as strengthened institutional capacities and institutional cooperation. Incorporating legislation initiatives into the planning system will also facilitate the work and contribute to the Parliament's effectiveness in the law adoption process.

Input by private sector and nongovernmental groups

Public consultation and transparency are formalized, in the Rules of Procedures of the Government as well as in the Rules of Procedures of the Assembly. A consultation with the structures of civil society whose activity is related to the draft-law object and effects is intended since the first steps of the law-drafting process. Draft laws of particular importance can be discussed in broad circles where representatives of state institutions, NGOs, experts of international organizations or institutions etc. can be included.

The consultation process takes place in the law-adopting procedures in the Assembly, but is not mandatory. The standing committee may also organize public hearings with experts, representatives of the civil society and representatives of groups of interest.

Publicity of law-adopting activity is another requirement of the Rules of Procedures of the Assembly, and is more complete in comparison to the public consultations

In practice, although there are cases where the public consultation goes even beyond the requirements of the Rules, business organizations and NGOs often complain about the limited time they receive for expressing their opinions or, in extreme cases, about not being asked at all. While transparency and information sharing should be a part of each step of the law drafting process as one way to improve the situation, public consultation should also commence at the initial stage and accompany all the law drafting and adoption steps by mobilizing expertise and absorbing interest groups' views.

The lobby groups in Albania are not legally institutionalized, but different groups of interests have been active in the legislation adoption process of the country through their representative organizations, including business associations, trade unions and NGOs. The contribution of the lobby groups in the law adoption process has increased in proportion with the quality of group-interests representation.

Quality control and coherence of draft legislation

Coherence is an important aspect in insuring quality control. Legislative acts should be consistent with each other and fit into the overall constitutional system and legal traditions of the country. Compliance with the acquis communautaire is necessary in order to avoid future challenges arising from the accession process.

The institutions involved in the control of coherence of legislation are: The Ministry of Justice and the department of legislation of the Council of Ministers at the Government level, and the Council of Legislation and the parliamentary standing committees, at the Assembly level.

Ministry of Justice is responsible for: (i) harmonizing laws and other regulations with the Constitution of Albania; (ii) securing the consistency of the Albanian legal system; (iii) providing an opinion on the realization of the legislation reform in general; and (iv) ratification of international agreements in accordance with the Constitution. In addition to these responsibilities, the Ministry of Justice is also directly in charge of (i) preparing legislation related to the field of justice; (ii) securing the methodological unity in the drafting of laws; (iii) preparing and monitoring the implementation of the unified Albanian methodology for the legislative process. (This Ministry also checks the secondary legislation, necessary for the implementation of laws). An important role in this entire process is played by the Legislation Reform Commission as an advisory board within the Ministry of Justice.

The opinion of the Ministry of Justice is not binding (although taking the opinion of the Ministry is binding), and the Minister of Justice has to defend the opinion of his ministry during the debate in the Council of Ministers.

Parliamentary standing committees check the compliance of the draft laws within their jurisdiction with the constitution and the overall legal system of the country. In this

process, the committees are advised by legal experts in charge of providing legal assistance to the committees. In some cases, the committees can also ask the experts from the Council of Ministers for advice.

Harmonization with the European Union legal system (Acquis commuaunitaire)

The process of harmonization of Albania's legislation with the acquis communautaire is being accomplished in compliance with the provisions of the Stabilization and Associating Agreement (SAA) between Albania and the European Community. It is also supported by the European Partnership for Albania, which identifies the short-term and medium-term priority areas. The government of Albania has developed action plans that include a timetable and specific measures related to legal initiatives and implementing activities, aimed at addressing the European Partnership priorities. In the first stage (first five years), the process of adoption and implementation of the acquis focuses on the main internal market legislation.

The legislation approximation process with the European acquis communautaire is considered by the Albanian government as a core process and an integral part of the Integrated Planning System (IPS) of the country.

The Ministry of European Integration plays an important role in coordinating and monitoring all European integration issues and the process of legislation approximation. For the purpose of coordination, three other specific structures have also been developed (a) Inter-ministerial Committee for the European and Euro-Atlantic Integration; (b) Inter-ministerial Working Committee for the implementation of the SAA Agreement; (c) European Integration Units at the line ministries.

An important role in the process of legislation approximation with the acquis is performed by the Assembly. A particular role is stated for the Committee of European Integration. The Committee is responsible for checking the compatibility of draft-laws with the acquis and for reviewing annual reports prepared by the Ministry of European Integration.

Although progress has been marked in the process of legislation approximation with the acquis communautaire in Albania, there are a number of issues and problems, such as an adequate database, drafted techniques and instruments of compatibility, institutional capacities etc. that need to be tackled.

The legislative process

The legislation drafting initiative and the legislation process in general are closely related to the policy making process.

According to the Constitution and the Rules of Procedure of the Assembly, the legislative initiative lies with the Council of Ministers, every Member of Parliament or at least 20.000 voters.
The process of drafting laws begins with a preliminary evaluation of the initiative for proposing the draft law, which serves as the base for the responsible minister in order to specify: (i) the issues that are to be regulated, (ii) the forms of participation and the principal steps for the realization and coordination of the legislative process, (iii) the respective time periods for their realization, (iv) the responsible structures, and (v) the human and material resources assigned to co-operate with the legal structure in preparing each draft law.

According to the Law on the organization and functioning of the Council of Ministers and the Rules of the Council of Ministers, once the Council of Ministers proposes the laws, the drafting can be executed under the direction of the Prime Minister, the vice-prime minister, or the minister or head of the appropriate central institution, with the observance of the Prime Minister, or the deputy prime minister.

A draft law must be accompanied by: (i) an explanatory statement; and (ii) a report of the evaluation of budgetary expenses required for its implementation. The explanatory statement should contain: (i) the purpose of the draft law and the intended objectives; (ii) a political evaluation, and a statement on whether or not the draft law is related to the political program of the Council of Ministers, the acts that have approved the principal directions of overall state policy or other documents relating to developmental strategies and policies; (iii) argumentation for proposing the draft law, including an analysis regarding the priorities and possible problems in implementing the draft law, the level of effectiveness, the ability for implementation, the respective effects, impact and efficiency, as well as the resulting economic cost in relation to the legislation in force; (iv) a preliminary evaluation of legality and conformity with the Constitution of the form and content of the draft law, as well as its harmonization with the legislation in force and the norms of international law binding on the Republic of Albania; (v) for draft legislation, an assessment of the level of approximation and the table of concordance with the acquis communautaire according to the annex attached to these rules; (vi) an explanatory summary of the content of the draft law; (vii) a list of the institutions and organs charged with implementing the act; and (viii) a list of the persons and institutions that contributed to the preparation of the draft law.

When the draft law is submitted to the Assembly, prior to its consideration at the Assembly's plenary session the text is examined by one or more parliamentary standing committees.

The consideration of the draft law in plenary session includes: (i) discussion of the draft law in principle, and (ii) discussion of draft law's articles. At the end of the examination and article by article voting, the entire draft law is decided by vote. After the draft law is passed, it is sent to the President of the Republic who must promulgate it within 20

days of its presentation. An approved law enters into force with the passage of no less than 15 days since its publication in the Official Gazette.

Implementation

The country has undergone an intensive process of legislative and institutional reform. The intensive legislative agenda was not always accompanied by equal efforts at the level of law implementation, resulting in a gap between the good quality of legislation framework and the expected outcomes of its implementation.

The role of the Assembly in influencing law implementation is continuously increasing. MP's questions, interpellations to the members of the Government, motions for Parliamentary debate, as well as the work of Standing Committees and Ad Hoc Investigation Committees are some of the instruments of parliamentary oversight of the government's law implementation activity.

The reporting to the parliament of independent institutions is also a strong instrument for influencing law implementation. These institutions are improving the quality of reporting as a response to an increasing demand from the Assembly, while the assembly has undertaken certain steps to strengthen the supporting staff's capacities. The Assembly approves resolutions consisting of an assessment of the work of these institutions and often includes recommendations regarding law implementation, but the follow-up on these recommendations in practice is still poor.

The implementation was regarded mainly as a duty of the Government institutions, but the Government is still missing the modern tools of monitoring law implementation and its impact, and consequently a quick and proper response to the implementation gaps is still missing. The law implementation gaps were mostly dealt with through amendments to the legislation, but the frequent changes have negatively influenced the predictability of the governance activity. The situation seems to be improving and the implementation gaps are increasingly being dealt with, in part by dedicating more financial and human resources and by strengthening individual capacities.

Research capacities for improving legislation

The Library of the Albanian Assembly was created in 1923. In 1993 it became a part of the first multi-party Assembly's administration, not only dealing with maintenance and inventory of the documentation, but also, at the request of the MPs and their staff, carrying out bibliographical or documentary research on all subjects relevant to parliamentary activities. A further step in strengthening research capacities of the Assembly was achieved through the establishment of the research department in 2000, which was attached to the Library. The newly established research department is composed of three lawyers, who provide research services for the MPs, committees and parlia-

mentary staff. Due to limited staff capacity, priority is given to inquiries relating to the Assembly's current work.

In addition to the research department, the Assembly is provided with experts working for the parliamentary standing committees. Each standing committee has two advisors and a secretary. They provide legal services focused on legal assistance to) the standing committees. These experts provide additional information on the draft laws on the committee's agenda, including the comparative analysis of the same law. They sometimes lead their own initiatives, researching important laws and submitting the research to the head of the standing committee in charge of that law. Ad hoc committees are also supported by these services.

CONCLUSIONS AND RECOMMENDATIONS

On the basis of this Report's findings, the following conclusions and recommendations are put forward for improving the legal environment for economic activities and the process of reform legislation:

a. Forward planning system of legislation and regulatory schemes

The integrated planning system recently set up in the country, based on the longer term sectoral and inter-sectoral development strategies and driven by the European integration short and medium-term priorities, is a potentially appropriate frame for developing the new legislation and regulatory schemes. However, the system needs additional consolidation steps between the core processes. It also needs an increase in institutional capacities and strengthening of institutional cooperation in the process. Incorporation of legislation initiatives into the planning system will also contribute to the effectiveness of the National Assembly law-adoption procedures. Regarding the legislation approximation with the acquis, a comprehensive database is important, as well as, among other things, an explicit reference to the European Partnership documents.

b. Public consultation and publicity

Public consultation and transparency are, in a sense, formalized in the Rules of procedures of the Assembly and the Government. In some steps of the drafting and approval process, however, these rules leave room for discretionary attitudes. In practice, the public consultation process seems uneven. In some cases, particularly when the law drafting process is supported by the donor community, the inclusion of experts from NGOs and business associations' representatives goes even beyond the requirements of the Rules. However, in some cases, business organizations complain about the limited time they receive for expressing their opinion or, in extreme cases, about not being asked at all. To improve the situation, transparency and information sharing should be a feature of all steps of law drafting process and public consultation should commence at the initial stage and accompany all law drafting and adoption steps by mobilizing expertise and absorbing the views of interest groups.

c. Harmonization with the European Union legal system

The process of legislation approximation with the acquis communautaire in Albania has shown a progress but there are a number of issues and problems that need to be tackled. A database indicating the compatibility of Albanian legislation with the acquis should be developed and regularly updated. The drafting techniques should

be improved and the instruments of compatibility (Assessment Report, and Table of Concordance) should improve their performance in the compatibility insurance and monitoring process. The effectiveness of institutions involved in the process should be increased and more attention should be given to their capacities, appropriate equipment and trained staff.

d. Articulating a comprehensive approach to regulatory reform

The Government, with the assistance of the BERIS project, has initiated elements of national regulatory reform strategy. It is, however, important to articulate a comprehensive approach to regulatory reform as an essential part of the EU accession process.

e. Introducing Regulatory Impact Analysis (RIA) for draft legislation

The Government should make Regulatory Impact Analysis mandatory for all important draft laws. This would provide decision makers with the opportunity to obtain reliable information and analyze in advance the anticipated impact on the economy, social and environmental aspects, functioning of markets and competition, and cost effectiveness in terms of pursued objectives and risks. For important legislation, a reality check should be performed by periodically reviewing the impact, efficiency and cost of implementation.

f. Enhancing capacities of the ministries for implementing RIA

Each Ministry and independent agency should be exposed to sufficient expertise that would allow them to effectively integrate RIA into their own regulatory activities. Adequate resources and training programs should be made available and good use of technical assistance should be made necessary.

Capacity development for reviewing draft legislation and monitoring implementation should be carried out by the appropriate body at the center of government. It is important that this body has the necessary authority and clear mandate to review and challenge the regulatory proposals and impact assessments of the line ministries. The network of legal and economic officials in selected line-ministries who are expected to be in charge of preparing RIA needs further capacity building support.

g. Strengthening Parliamentary control over executive authority

The improvement of the Assembly's control over executive authority should be achieved through more effective monitoring of the work of implementation agencies (regulatory agencies and other relevant state institutions). An obligation would need to be introduced for these agencies to submit their annual reports to the Assembly. Their reports should be discussed not only by competent com-

mittees but at Assembly sessions as well. An institutional structure within the parliamentary administration could be responsible for monitoring the implementation of the recommendations for regulatory agencies and other relevant state institutions.

h. Strengthening parliamentary capacity for quality control and coherence of legislation

Further strengthening of the Research Department of the Assembly and the capacities of the team of experts working for the parliamentary standing committees is needed in order to provide support for Members of Parliament and Parliamentary Committees. It is recommended that the research capacity of the parliamentary staff and committees be upgraded and resources be provided for access to external expertise. Twinning programs with parliaments from EU member States or the European Parliament should continue to be utilized as available.

Special efforts should be made toward further strengthening the capacities of the European Integrations Committee by equipping it with additional EU legislation experts. This committee's obligation should be to check the harmonization of every law with EU legislation.

i. Introduction of regular assessments of law implementation

The government should focus more on the monitoring of law implementation and regular assessments of the effectiveness and impact on the implementation of legislations, by formalizing and institutionalizing monitoring systems and procedures. The monitoring system must be based upon a sound preliminary ex ante RIA, where the later has to explicitly assess the implementation needs and determine the risks and indictors of implementation.

The implementation gaps must be dealt with mainly by strengthening the capacities, clarifying responsibilities and dedicating more human and financial resources to the implementing institutions.

j. Strengthening of the oversight capacities of the Assembly and the reporting capacities of independent institutions.

The oversight capacity of the Assembly should be strengthened along with the reporting capacities in independent institutions. The activity of the standing committees must focus in more depth on the follow-up of the implementation of recommendations approved by the assembly by way of resolutions and declarations.

The Monitoring Service in the Parliamentary administration must be strengthened by increasing the staff and providing thorough training. The number of permanent advisors, especially to the main standing committees, must also increase.

To assembly should significantly increase the financial resources for Standing Committees, dedicating annual funds to each standing committee to be used for hiring outside expertise when needed.

Chapter 1

ENACTMENT OF NEW LAWS AND REVISON OF EXISTING LAWS

The legislation drafting process is closely related to the policy making process. The source of any legislation initiative is related to the identified problems, the responsive policy to be taken and the necessary regulations to be developed. The legislation drafting process is carried out through a cocordination between policy related and technical institutions.

From a technical point of view, sources of legislation are related with the legislation hierarchy: Constitution – law – secondary legislation.

1.1. Who proposes new legislation and revision of the existing one?

In accordance with article 81 of the Constitution of the Republic of Albania and the Rules of Procedure, which regulate the organization and the work of the Assembly, the following have the right to propose laws:

- The Council of Ministers,
- Every Member of Parliament
- At least 20 000 voters

The Assembly as a Proposer of Laws. In practice, the Council of Ministers usually proposes laws. The situation in which the Assembly, i.e. Member of Parliament is the proposer of laws is an exception. The Law on the scope of Assembly in the process of Albania's integration into the European Union (July 2004), also known as Zela law, is an example of the MPs appearing as law proposers.

1.2. Who drafts laws?

According to the Rules of Procedure of the Assembly, a law that is to be submitted to the Assembly can be drafted by:

- The Council of Ministers
- Other authorized proposers (every Member of Parliament and at least 20 000 voters)

When the Council of Ministers proposes the law, the drafting can be executed by:

- The Prime Minister
- Any Minister

Along with the law proposal, the proposer is obliged to obtain the opinion on the law proposal from the following institutions:

1. The Ministry of Justice, pertaining to the compliance of the law proposal with the Constitution and with the overall legal system of the country. This Ministry also examines the legislative technique and the legal terminology of the draft law,
2. The Ministry of Integration, on the harmonization of the draft law with appropriate regulations of the European Union,

3. The Ministry of Finance, on the fiscal impact of law enforcement on the budget
4. Other relevant Ministry[1]

Box 1.1. **European Assistance Mission to the Albanian Justice System (EURALIUS)**

EURALIUS II as a follow up of EURALIUS I, is the European Assistance Mission to the Albanian Justice System. The objective of EURALIUS II is to facilitate, through the building of the required capacities within the Ministry of Justice and the Judiciary, the development of a more independent, impartial, efficient, professional, transparent and modern justice system in Albania, therefore contributing to the restoring of people's confidence in their institutions and to the consolidation of democracy and rule of law in the country. The project is composed of seven principal components: (i) justice reform (ii) legal drafting and approximation (iii) court's budget, penitentiary system (iv) enforcement of rulings, (v) criminal justice, (vi) case management and court administration, (vii) land registration.

During the course of EURALIUS I project and in the begging of EURALIUAS II, special attention was given to the legislative process in Albanian and to the role of the Ministry of Justice in this process. EURALIUS II has also RIA component in the work plan focusing on financial implication of the new legislation. EURALIUS I in collaboration with the Ministry of Justice and Council of Europe have revised and published a Manual on Law Drafting. The Manual contains among other things a full section on the approximation of legislation and on RIA. EURALUIS has written different recommendations for the legislative process in Albania. EURALIUIS has frequently recommended a better coordination of the legislative process by the Albanian institution and a strong role of the MoJ (Directorate of Codification) in this process.

Source: EURALIUS, http://www.euralius.org.al

According to the Rules of Procedure of the Parliament, a draft law has to be accompanied by a report that contains: (i) the objectives that its approval aims to fulfil, (ii) the argument that these objectives cannot be fulfilled with the existing legal instruments, (iii) proof of its conformity with the Constitution and harmonization with the legislation in power, (iv) its social and economic effects, and (v) its conformity with the EU legislation. For draft laws of financial character, the report must contain the consequent financial effects of its implementation.

[1] The draft law has to be sent to (i) The Ministry of the Economy, if it contains issues related to the disposition and administration of public and state property, foreign financing and foreign (international) economic agreements, or if it has impacts on the development of economy; (ii) The Ministry of Labor and Social Affairs, and the Department of Public Administration (within the Ministry of Interior,) if it contains social content that affects human resources.

Box 1.2. **Key Recommendations from EURALIUS study: Needs and gaps analysis of the Albanian legislative process, with recommendations:**

- Changes in the Rules of operation of the Council of Ministers should be made, clarifying the roles of the legal department in the Council of Ministers (which serves as the "last filter" before draft acts go to the Council of Ministers to be voted on), the Ministry of Justice and the other ministries
- The Manual EURALIUS prepared in close cooperation with the Ministry of Justice would be an appropriate resource to use as a basis for detailed and structured training of the current and future law drafters.
- In order to achieve better coordination in the drafting process, E-Government should be introduced, which would make it easier to share draft laws between interested parties in different ministries and in the Council of Ministers.
- Insuring that policy formulation is improved and properly fed into the legislative process, it would be recommendable all major laws to be preceded by a concept paper, addressing all the issues that have to be analysed and explaining the policy rationale for handling them.
- Explanatory statements accompanying draft laws should be more clearly defined. There should be better reference to the integration process, including identification of the acquis to which legislation is approximated, and cross-references in all drafts to the corresponding requirements of the NPI-SAA.

Source: Needs and gaps analysis of the Albanian legislative process, with recommendations, EURALIUS, 27 September 2007, Tirana

1.3. Procedure for adopting laws

1.3.1. Procedure for preparing draft legislation within the Government

The process of drafting laws begins with a preliminary evaluation of the initiative for proposing the draft law, generally prepared by technical structures in co-ordination with the legal structures of the Council of Ministers. The rules of the Council of Ministers prescribe that this preliminary evaluation includes elaborations on: (i) the purpose of the draft law and the intended objectives, (ii) the compatibility with the Constitution and the legislation in force, (iii) the conformity with the political program and the analytical program of the draft laws of the Council of Ministers, as well as with the strategies and programs approved in regard to the principal directions of overall state policy, (iv) the projections and measures relating to the ability of the draft law to be implemented, and (v) the budgetary expenses and expected financial effects.

This preliminary evaluation of the draft law serves as foundation for the responsible minister in order to specify: (i) the issues that are to be regulated, (ii) the forms of

participation and the principal steps for the realization and coordination of the legislative process, (iii) the respective time periods for their realization, (iv) the responsible structures, and (v) the human and material resources assigned to co-operate with the legal structure in preparing each draft law.

According to the Law on the organization and functioning of the Council of Ministers and the Rules of the Council of Ministers, once the Council of Ministers proposes the laws, the drafting can be executed under the direction of the Prime Minister, the vice-prime minister, or the minister or head of the appropriate central institution, with the observance of the Prime Minister, the deputy prime minister.

Once finalized, a draft law accompanied by: (i) an explanatory statement, and (ii) a report of the evaluation of budgetary expenses required for its implementation, has to be sent for an opinion to the Ministry of Justice, the Ministry of integration, the Ministry of Finance and other relevant ministries.

The explanatory statement should contain:

- The purpose of the draft law and the intended objectives.
- A political evaluation, and a statement on whether or not the draft law is related to the political program of the Council of Ministers, the acts that have approved the principal directions of overall state policy or other documents relating to developmental strategies and policies.
- Argumentation for proposing the draft law, performing an analysis regarding the priorities and possible problems in implementing the draft law, the level of effectiveness, the ability for implementation, the respective effects, impact and efficiency, as well as the resulting economic cost in relation to the legislation in force.
- A preliminary evaluation of legality and conformity with the Constitution of the form and content of the draft law, as well as its harmonisation with the legislation in force and the norms of international law binding on the Republic of Albania.
- For draft legislation, an assessment of the level of approximation and the table of concordance with the acquis communautaire according to the annex attached to these rules.
- An explanatory summary of the content of the draft law.
- A list of the institutions and organs charged with implementing the act.
- A list of the persons and institutions that contributed to the preparation of the draft law.

The report of the assessment of income and budgetary expenses should contain: (i) the total amount of annual expenses for the implementation of the act; (ii) detailed projections for each budget line necessary for implementing the act; (iii) the time when the financial effects will appear; (iv) detailed expenses for the structures assigned to implement the law; (v) assured and anticipated sources of financing; (vi) an analysis of

the increase or decrease of budgetary expenses for the first three years of its implementation at least; (vii) the amount of anticipated or excluded fiscal obligations that the draft law contemplates; and (viii) when the draft law has the object of approving the use or distribution of public funds, it is accompanied by the respective budget allocation.

When it is evident from the content of the opinions sent by the ministers and heads of interested institutions that they suggest alternative solutions or object in whole or in part to the basis of the content of the draft law, the proposing minister may decide:

- to withdraw the proposal of the draft law in whole or in part;
- to review its content through consultations with the respective ministers;
- to send to the Prime Minister a request for coordination and resolution of the disagreements, when the objections and disagreements are not solved through the process of consultations with the respective ministers.

If the draft law and documentation that accompanies it do not meet the first two of the above-mentioned criteria, the Secretary General of the Council of Ministers (advised by the legislative and coordination department in the apparatus of the Council of Ministers) returns the draft to the proposing minister, requesting the proposer to comply with the Rules of the Council of Ministers. When the draft law and the documentation that accompanies it are complete, the Secretary general of the Council of Ministers sends it to the Prime Minister, who can decide (according to the circumstances):

- To call the interested ministers and other persons he considers appropriate for consultation, before making the decision;
- To delegate the resolution of the question to the Deputy Prime Minister or the Minister of State charged with governmental coordination or, when the basis of the objections is related only to questions of legality, to the Secretary General;
- To send the draft law for wider consultation and examination in the inter-ministerial committees.

If it is necessary, according to the Prime Minister's orders, for the Secretary General to take charge of the technical reflection of the reached solutions with the participation, according to his judgment, of the legal department and the coordination department in the apparatus of the Council of Ministers, and the legal and technical structures of the ministries and interested institutions or other experts.

As an exception to the general rule, with sufficient cause, especially for questions and draft laws of a particular importance, the Prime Minister may decide through the Secretary general of the Council of Ministers to include them in the agenda of a meeting of an Inter-Ministerial Committee and to distribute the materials without requiring that one or more elements of the procedures of preliminary coordination be met or completed.

In this case, the proposing minister, through the Secretary General of the Council of Ministers, should distribute a copy of the draft, the explanatory statement and the accompanying materials to the members of the committee once the date and agenda of the meeting of the inter-ministerial committee are announced.

Box 1.3. **Inter-ministerial committees**

Inter-ministerial committees are advisory organs of the Council of Ministers, which discuss preliminary policies, important issues of executive activity and draft laws of special importance. Inter-ministerial committees are chaired by the Prime Minister. In special cases and with the approval of the Prime Minister, they may be chaired by the deputy Prime Minister or the minister of the respective area. The establishment, composition, field of activity and guests in their meetings are determined by order of the Prime Minister.

If the draft law is approved in the inter-ministerial committee, it is submitted for approval to the next meeting of the Council of Ministers. When comments are made on the draft by the Inter-Ministerial Committee, the proposing minister revises them and submits the reworked draft, together with the accompanying materials, to the Council of Ministers for approval.

At the end of the process of drafting and coordinating with the opinions of the ministers and directors of interested institutions, the proposing minister submits the draft law for examination to a meeting of the Council of Ministers. (They are sent to the attention of the Secretary General of the Council of Ministers at least 10 days before the date set for the meeting of the Council of Ministers).

When Secretary General finds that the documentation accompanying the draft law is complete, he accepts it for preliminary examination.

The Secretary general decides to return the draft law to the proposing ministry only when: (i) the specified documentation is incomplete; (ii) the form and content provided in these rules for the preparation and drafting of acts, the explanatory statement and the documents have not been met as required; (iii) the draft law is not compatible with the Constitution, conflicts with or is not in harmony with ratified international agreements or domestic legislation; (iv) the deficiencies of the draft law, especially those with a voluminous content from the viewpoint of legislative technique, are very obvious and are present throughout its content.

The Secretary General (advised by the legislative and coordination department in the apparatus of the Council of Ministers) may correct the draft law regarding legislative technique and the terminology used, but in no case should he infringe on its essence. To clarify technical aspects of the content of the draft law, the Secretary General calls the legal and technical structures of the proposing ministry for consultation.

For draft laws of particular importance, the Prime Minister examines the proposal on the basis of several criteria related to the urgency of the proposal, the public demand, the meeting of the objectives of national development policies, the possibility of rapid

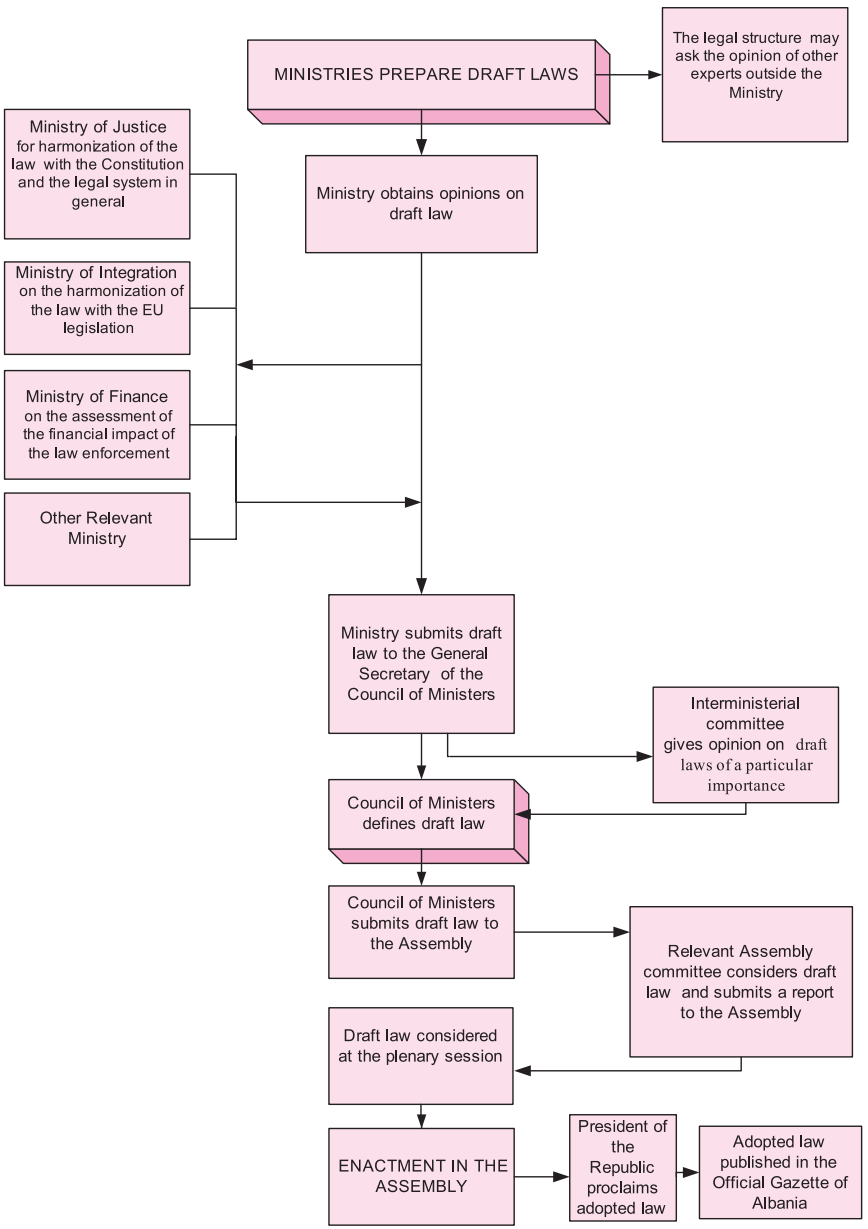
implementation and so forth. These draft laws may be discussed, where representatives of state institutions, NGOs, experts of international organizations or institutions and so forth can be included. In the case where ministers or directors of interested institutions give a negative opinion on a draft law, the Secretary General sends the draft for coordination according to the procedures contemplated in the fifth chapter of the rules of the Council of Ministers.

At the end of the process of drafting and coordinating with the opinions of the ministers and directors of interested institutions, the proposing minister submits the draft law for examination to a meeting of the Council of Ministers. The draft law with accompanying documents is sent to the Secretary General at least 10 days before the date set for the meeting of the Council of Ministers.

Box 1.4. **Expert working groups – temporary bodies of the Council of Ministers**

Inter-ministerial committees are advisory organs of the Council of Ministers, which discuss preliminary policies, important issues of executive activity and draft laws of special importance. Inter-ministerial committees are chaired by the Prime Minister. In special cases and with the approval of the Prime Minister, they may be chaired by the deputy Prime Minister or the minister of the respective area. The establishment, composition, field of activity and guests in their meetings are determined by order of the Prime Minister.

Figure 1: Procedure of enactment of laws proposed by the Council of Ministers



1.3.2. Procedure of enactment laws in the Assembly

When the draft law is submitted to the Assembly, the Speaker of Parliament immediately orders its distribution to the Members of Parliament (MPs) and to one or more responsible committees. Copies of the draft law are also made available to the media and other interested stakeholders.

Prior to the consideration of the proposal at the plenary session of the Assembly, the text is examined by one or more standing parliamentary committees.

a) Examination of the draft law in competent committee

The standing committee responsible for the examination of the issue appoints the reporter or reporters of the issue. The written opinion of the reporter(s) must be given at least three days before the date established for the examination of the issue in the committee. For the drafting of the report, the reporter(s) may ask for the help of the specialist of the Council of Ministers, the judicial service in Assembly and other experts.

The responsible committee first discusses the draft law in principle. The reporter presents the general evaluation of the law on the issue discussed and, if he/she sees fit, proposes that the committee ask the opinion of the Council on Legislation. The committee chairman, after listening to the reporter, invites the committee members to pose questions to the reporter and to those who introduced the draft law and then declares discussion on the draft law open. The discussion in principle always takes place in the presence of the representative of the Council of Ministers. At the conclusion of the discussion in principle, the committee decides on the approval or disapproval in principle of the draft law. Every MP has the right to be heard in the meeting of the responsible standing committee in order to have his or her opinion on the draft law examined by the standing committee.

If the responsible committee approves the draft law in principle, it begins the examination stage, votes article by article and decides by vote whether or not the issues brought up should be presented for opinion to the Council on Legislation or other committees. The examination of these points is carried out after first receiving the opinion of the Council on Legislation or of the standing committee.

When the responsible committee decides not to approve the draft law, or when the opinion of the Council on Legislation is against approval in principle, the issue is sent for discussion in the plenary. When, in the plenary, the Assembly decides to approve the draft law in principle, the responsible committee begins its examination article by article in its next sitting.

The decisions in committee are determined by majority votes in the presence of more than half of all committee members. Minutes are kept during the committee meetings. At the end of the discussion, the committee drafts a report that is voted on by the committee members.

The report of the committee that has considered the draft law and the other committees that have given their opinion on it is given to the deputies and the Council of Ministers at least 2 days before the date of the consideration of the draft law in a plenary sitting.

b) Examination in the plenary session

The consideration of the draft law in plenary includes:

- discussion of the draft law in principle, and
- its discussion article by article (discussion of draft law's articles)

Discussion of the draft law in principle is carried out regardless of whether the responsible committee or the Council on Legislation (i) expressed its approval in principle, or (ii) expressed disapproval.

The discussion in principle of the draft law begins with (i) the initiator's introduction of the reasons that lead to the proposal of this draft law, and (ii) the presentation of the report of the responsible committee. The chairperson of the committee reads the report and the reporter of the draft law can be given the floor for no more than 10 minutes, at his request.

Once the draft law has been presented, the Speaker of the plenary invites the MPs to address questions to those who introduced the draft law or to members of the Council of Ministers included in the examination of the draft law. Every MP has the right to participate in the discussion in principle of the draft law. During the discussion in principle, the chairperson of the session gives the floor to the MPs who have requested to discuss, harmonizing the participation for every parliamentary group. Before the end of the discussions, the chairpersons of the parliamentary groups have the right to speak, beginning with the group with the smallest number of deputies.

No amendments can be forwarded during the discussion in principle.

At the end of the discussion in principle, the Speaker of the plenary declares when the Assembly is to decide through voting.

The discussion of the draft law article by article. After the approval in principle, the draft law is passed with an article by article examination. During the article by article debate, written amendments can be presented. The amendments must refer to the content of only one article. As a rule, the amendments must first be presented and discussed in the responsible committee. In case of disapproval of the committee, their author has the right to present them in the plenary sitting.

The voting of amendments begins with those seeking (i) to delete the complete article, (ii) to delete part of it, (iii) to substitute it completely, or (iv) to insert or change its words. Before the voting of every amendment, the chairperson of the session reminds the deputies of the responsible committee's opinion on them. The assembly decides with separate voting on every amendment except in cases when the approval of one excludes the others.

Voting in the entirety. At the end of the examination and voting article by article, the entire draft law is decided by vote. If the text of the draft law has undergone important changes during the consideration in the plenary sitting, the chairperson of the sitting can postpone voting in entirety for the next session, submitting the full revised text to the Assembly.

The draft law not approved in principle in the plenary session cannot be presented again before 6 months have passed since the date of its rejection.

No non-governmental draft law, which causes the increase of the expenses of the State Budget or decreases income, can be approved without first having the approval of the Council of Ministers, which must be expressed within 30 days from the date the draft law is received. In case the Council of Ministers isn't able to respond within the above-mentioned time limit, the draft law passes for examination according to the ordinary procedure.

Presidential decree. After the draft law is passed, it is sent to the President of the Republic who must promulgate it within 20 days from its presentation. The President has the right to return the draft law for reexamination only once. The decree for the reexamination of a draft law loses power when the majority of all Members of Parliament vote against it. If the President doesn't promulgate or doesn't return the draft law for reexamination within 20 days from its submission, then the law is considered promulgated. When the law is returned for reexamination, the Speaker of Parliament immediately passes it for examination to the responsible committee that had initially examined it. The responsible committee examines the decree only on the issues submitted by the President.

Coming into force. The law comes into force with the passing of no less than 15 days since its publication in the Official Gazette, except in extraordinary cases and emergencies, when Assembly decides by majority of all members and the President of Republic gives the approval, in which case the law comes into force immediately after being announced publicly. The law must be published in the following issue of the Official Gazette (Journal)[2].

The expedited procedure of the draft law examination. At the request of the Council of Ministers or one fifth of all lawmakers, the Assembly may examine a draft law by expedited procedure. This procedure is not allowed to be used in the case of laws which are approved by a majority of three fifths[3], with the exception of the law on the state of emergency.

A written request for the draft law's examination by expedited procedure is presented by the Speaker of Parliament in the next plenary. The Speaker of Parliament submits the draft decision to Parliament for voting, where the date of the draft law's examination in the responsible committee is set as along with the deadline by which amendments and the date of examination in plenary may be proposed. The time limit, by which the issue must be examined in the committee and in the plenary, can not be less than a week from the date of the submission of the request by the Speaker of Parliament in the plenary session.

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[2] The Official Gazette is managed by the State Publication Center, which is under the authority of the Ministry of Justice. (Law on Ministry of Justice, art. 18)

[3] According to the Constitution (Art. 81), the laws that have to be approved by three-fifths of all members of the Assembly are: (i) the laws for the organization and operation of the institutions contemplated by the Constitution; (ii) the law on citizenship; (iii) the law on general and local elections; (iv) the law on referenda; (v) the codes; (vi) the law on the state of emergency; (vii) the law on the status of public functionaries; (viii) the law on amnesty; and (ix) the law on administrative divisions of the Republic.

Since the Assembly cannot apply the accelerated procedure for more than three draft laws over a 12-week work program and more than one draft law over its 3-week work program, it is more an exception than a regular practice in the parliamentary procedure of enactment laws.

Box 1.5. **Constitutional Court**

The Constitution of Republic of Albania establishes the Constitutional Court as an organ of the country which guarantees compliance with the Constitution and makes final interpretations of it. The Constitutional Court is subject only to the Constitution.

The Constitutional Court composed of nine judges decides on:

a) compatibility of the law with the Constitution or with international agreements as provided in article 122;

b) compatibility of international agreements with the Constitution, prior to their ratification;

c) compatibility of normative acts of the central and local organs with the Constitution and international agreements; d) conflicts of competencies between powers, as well as between central government and local government; e) constitutionality of the parties and other political organizations, as well as their activity, according to article 9 of this Constitution; f) dismissal from duty of the President of the Republic and verification of the impossibility for him to exercise his functions (refer to the relevant articles of the Constitution); g) issues related to the election and incompatibility in exercising the functions of the President of the Republic and of the deputies, as well as the verification of their election; h) constitutionality of the referendum and verification of its results; i) final adjudication of the individual complaints for the violation of their constitutional rights to due process of law, after all legal means for the protection of those rights have been exhausted.

The decisions of the Constitutional Court have general binding force and are final. The Constitutional Court only has the right to invalidate the acts it reviews. The decisions of the Constitutional Court enter in force the day of their publication in the Official Gazette. Constitutional Court can decide that the law or normative act is to be invalidated on another date.

Within the structure of matters submitted to the Constitutional Court of Albania, the majority of initiatives originate from individual citizens, ordinary courts, associations, and less from public authorities and political parties.

Box 1.6. **Reform in the Judiciary**

The current legislation that regulates Albanian Judiciary has been adopted for the most part during the second half of the 1990's. Overall this legislation presents deficiencies and shortcomings and does not guarantee anindependent, professional and transparent Judiciary.

There is consensus that changes and reforms in the system are vital for the functioning of the Judiciary within the democratic system of the country.

For thisd purposethe Albanian Assembly has taken the initiative of starting the process of reforming the legislation regulating the Judiciary.

The first product of such a process has been the adoption of the new law on the powers and functioning of the first and second degree courts in Albania. This new law provides for better rules with regard to access to the judiciary, a clear set of rules for judges' evaluation and promotion, as well as better definitions of the roles of the High Council of Justice and the Ministry of Justice.

Further changes in the Judiciary have been achieved by limiting the service time of the General Prosecutor. This was a constitutional change that required a wider majority than other laws that deal with the Judiciary. As result of the change, the GP stays in office now for a 5 year term, with unlimited reappointment right.

The general debate and consensus demand deeper and wider changes in the Judiciary, and in the Assembly there exists a constitutional majority to proceed with the required changes. As it was the case with the office term of the GP, if needed, the Albanian Constitution will change as well.

The next change to come is the limitation of immunity for MP and other high level officials, judges and prosecutors included, with regard to charges on corruption and abuse of power.

1.4. Harmonization with the European Union legal system

The appropriate adoption and implementation of the acquis communautaire in the national legislation system of the country is one of the main pillars of the overall integration process of Albania into the European Union, along with the establishment of democracy and rule of law, and a functioning market economy, as specified in the "Copenhagen Criteria"[4] of the European Union membership.

[4] These membership criteria were established at the June 1993 European Council in Copenhagen, Denmark.

The process of Albania's legislation harmonization with the acquis communautaire is being accomplished in compliance with the provisions of the Stabilization and Associating Agreement (SAA) between Albania and the European Community[5]. The approximation of national legislation, as stipulated in the Agreement, shall be implemented progressively and fully completed over a transitional period of a maximum 10 years, starting from the date of signature. It is important to note that according to the SAA, Albania shall insure not only that existing laws and future legislation are gradually made compatible with the Community acquis, but also that existing and future legislation is properly implemented and enforced.

The process of legislation approximation is divided into two successive stages.

- In the first stage, which is estimated to last five years, the adoption and implementation of the acquis will focus on the main internal market elements.[6]
- In the second stage, the legislation approximation process will be extended to the remaining elements of the acquis.

The legislation approximation process is strongly supported by the European Partnership for Albania, which is an instrument of the Stabilization and Association Process aimed at identifying priority areas where further efforts and reforms are required, as well as providing a reference framework for financial assistance from Community funds. In response, the government of Albania has developed action plans that include a timetable and specific measures intended to address the European Partnership priorities.

For each field or sub-field of the National Plan for the Implementation of the Stabilization and Association Agreement 2007-2012'[7], there are summarized legal initiatives and implementing activities, which are to be addressed in the short-term (2007-2008), mid-term (2009-2010), and longer-term (2011-2012) by the implementing institutions. All legal initiatives intended by the line ministries are listed in the Annex 1 of the National Plan.

The legislation approximation process with the European acquis communautaire is considered by the Albanian government as a core process and an integral part of the Integrated Planning System (IPS) of the country.

Albania's commitment to the approximation of national legislation to the EU acquis has

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5 Negotiations for an SAA between the EU and Albania were officially launched on January 31, 2003. The SAA was signed on June 12, 2006 and the process of its ratification by the EU member states is going on. Meanwhile, an Interim Agreement regarding trade and trade-related issues, as an integral part of the SAA, has been in force since December 01, 2006.

6 Including competition; intellectual, industrial and commercial property rights; public procurement; standardization and certification; financial services; land and maritime transportation; company law; accounting; consumer protection; data protection; health and safety at work; justice and internal affairs; agriculture and fisheries and environment.

7 This Action Plan in response to the revised document of the European Partnership for Albania of January 2006, was approved by the Decision of the Council of Ministers no. 463 dated 5.07.2006. The Plan was revised in 5.09.2007 by Decision of the Council of Ministers no. 557.

been incorporated in a number of normative acts, including the Rules of Procedures of the Albanian Government as well as the Rules of Procedures of the Albanian Assembly.

According to the Rules of Procedure of the Albanian Government,[8] the explanatory statement that should accompany the normative draft acts should contain (i) the Assessment Report for the level of approximation, and (ii) the Table of Concordance with the acquis comunautaire, both completed by the Line Ministries and sent for opinion to the Ministry of European Integration.

The Assessment Report should describe:

- the objective of the proposal;
- main steps for the preparation of the draft legislation;
- intended degree of compatibility with the acquis communautaire;
- the draft legislation's concordance with the acquis;
- reasons why the draft legislation complies only in part or does not comply at all with the acquis, and, in these last two cases,
- the envisaged steps toward complete approximation with the acquis communautaire.

The Table of Concordance is filled in only when the draft legislation harmonizes specific provisions of acquis. It must be completed based on two approaches:

- Firstly, by having the provisions and parts of the EU legislation as a starting point, followed by the draft legislation to be approximated; and
- Secondly, by having the provisions of the draft legislations as a starting point, followed by the respective EU legislation.
- In both approaches, the degree of compatibility between the two legislations and the reasons for partial or lack of compliance should be stated, as well as the foreseen date for full compliance.

The Explanatory Statement that accompanies every draft law should contain, among other things, a description of the implementation actions, including the secondary legislation to be adopted and non-legislation actions related to implementations structures, etc.

For the coordination of European integration issues and the process of legislation approximation, besides the Council of Ministers, the Ministry of Integration and the Ministry of Finance, three other structures have been developed:

- Inter-ministerial Committee for the European and Euro-Atlantic Integration;
- Inter-ministerial Working Committee for the implementation of the SAA Agree-

[8] The Rules of Procedure of the Albanian Government were approved by Decision no. 584 of the Council of Ministers, dated 28.8.2003, amended by Decision no. 201, dated 29.03.2006.

ment (the Committee is in charge of establishing inter-ministerial Working Groups according to every chapter of the acquis);

- European Integration Units at the line ministries[9].

Box 1.7. **The European Integration Units' Tasks**

European Integration Units should coordinate and support the work of the involved institutions, in the fields focusing on the main elements of the acquis communautaire as regards the implementation of the SAA. Their main tasks are:

- External institutional coordination, particularly the coordination of work between the Ministry of European Integration and the respective line Ministries in the process of the approximation of national legislation with the acquis communautaire and also in recording the approximated normative acts, in the framework of TAIEX program.
- Internal institutional coordination for the arrangement of the reports on the European integration process.
- Monitoring and recording within the Ministry in matters regarding European integration issues.
- Distributing data on the European integration process between the Ministry of European Integration and line Ministries.
- Evaluation of the Ministry's activity in proportion with the progress in the European integration process, proposing the functional mechanisms for the facilitation of the implementation of sector reforms;
- Suggesting priorities, distribution of human resources and planning activities for the institutional support of the European integration process.

Taking into consideration the actual situation, the capacity of all these structures has to be strengthened in order to become active in the management of the EU integration process of Albania.

An important role in the process of the approximation of legislation with the acquis is performed by the Assembly of the Republic of Albania, as described in the Rules of Procedures of the Assembly, reinforcing that a bill must be drafted as a normative act and accompanied by a report that contains evidence of 'its conformity with the EU legislation' (Article 68, paragraph 2). A particular role is stated for the Committee of European Integration (Article 19). The Committee is responsible for checking the compatibility of the draft-laws with the acquis, and for reviewing annual reports prepared by the Ministry of European Integration.

[9] These three integration institutional structures are established based, respectively, on the Council of Ministers Decision no. 763 dated 1.12.1998; Order of Prime Minister no 33 dated 02.02.2007; and Council of Ministers Decision no. 179 dated 22.02.2006.

Chapter 2

REGULATORY REFORM AND IMPLEMENTATION OF REGULATORY IMPACT ANALYSIS (RIA)

2.1. Needs for deregulation and regulatory reform

A favorable legal and regulatory environment is one of the preconditions for the creation of a business-friendly environment and successful conducting of the transition process in the former socialist countries.

A legal and regulatory environment that is conducive to investment implies the existence of: (i) high-quality, modern, market-oriented laws, and (ii) an adequate institutional infrastructure necessary for their implementation.

Box 2.1. **What is regulation and regulatory reform?**

There is no generally accepted definition of regulation applicable to the very different regulatory systems in OECD countries. In the OECD work, regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to which governments have delegated regulatory powers.

Regulations fall into three categories: economic, social and administrative regulations.

Economic regulations intervene directly in market decisions such as pricing, competition, market entry or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.

Social regulations protect public interests such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed and to design regulatory and other instruments, such as market incentives and goal-based approaches that are more flexible, simpler and more effective at lower cost.

Administrative regulations are paperwork and administrative formalities - so-called “red tape” - through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

Regulatory reform is used in the OECD work to refer to changes that improve regulatory quality, i.e. enhance the performance, cost-effectiveness or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance.

Source: OECD (1997), Report on Regulatory Reform.

During the last several years, intensive legislative activity in Albania, professionally and financially supported by the donor community, resulted in the drafting of a significant number of high-quality laws. Albania's preliminary preparation for the EU integration, the arrangements that Albania concluded with the International Monetary Fund and the World Bank and the creation of the CEFTA free trade agreement in the region in 2006 significantly influenced this intensive legislative activity.

As the result of these processes, notable improvement in the quality of a number of laws has been achieved, but serious deficiencies remain, including excessive regulation in certain areas, lack of necessary regulation in other areas, lack of capacity within the ministries and other administrative bodies for drafting complex legislation as well as the quality of some new laws due to fast drafting and enactment of laws without adequate support from experts. However, legal implementation in itself is a much more serious problem, due to the lack of or poor functioning of the institutions necessary for implementation of laws.

Due to the ongoing processes of Albania's economic integration, the continuation of intensive activity in drafting new and improving existing laws in Albania is expected over the next several years.

Box 2.2. **OECD Guiding Principles for regulatory quality and performance**

OECD Guiding Principles for regulatory quality and performance, adopted by the OECD Council in April 2005 are:

- Adopt, at the political level, broad programs of regulatory reform that establish clear objectives and frameworks for implementation.
- Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
- Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
- Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
- Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
- Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
- Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

2.2. Overview of regulatory reform in Albania

A number of elements of regulatory reform have been identified in the Government Program (2005-2009) and presented in the Albanian Parliament in September 2005. Special importance in this Program has been given to: (i) the reduction of administrative barriers, and (ii) the improvement of the implementation of laws.

The first attempts to deal with the Regulatory Reform started in early 2003[10] with the FIAS study "Removing Administrative Barriers to Investment: A critical component of the national development strategy" that focused on removal of stock of barriers. The Government actions in this regard were very fragmented, short term oriented and not sustainable, leading to the creation of new obstacles impeding business development.

Aware of the importance of ownership in reforming the regulatory framework affecting business development, the Government of Albania led the process of self-assessment in early 2005 with the support of FIAS and prepared a comprehensive report that served as the basis for the regulatory reform for the improvement of the business environment, initiated by the Albanian Government in October 2005.

The Government has recognized the need to remove administrative barriers and improve the quality of regulations affecting businesses. Furthermore, it has recognized that a more institutionalized approach to regulatory reforms, together with stronger capacities, is crucial for the sustainability of any reform efforts. This reform is focused on ensuring a more transparent, sustainable and predictable regulatory framework based on a systematic monitoring approach.

In this regard, following the recommendations from the administrative barriers studies, the Government has taken a range of steps towards establishing a better institutional infrastructure to support regulatory reform. In accordance with this action, Regulatory Reform Task Force, headed by the Prime Minister[11], was established by the Order of the Prime Minister (number 170, 31 October 2005) as the principal structure responsible for the formulation and monitoring of the implementation of regulatory reform plans. The mission and the functions of the Task Force, defined by this Order, are (i) to define the priorities of the Government, under the frame of the regulatory reform, in order to improve the business environment; (ii) to approve the primary action plans to eliminate administrative barriers; (iii) to monitor the technical groups, in order to finalize the respective action plans; and (iv) to supervise the implementation of the regulatory reform and assess the impact of implemented policies.

According to the same Order, the role and responsibilities of Task Force members are: (i) to compile the action plan, according to the area of expertise; (ii) to coordinate all

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[10] The study was completed by FIAS, on March 2003 in cooperation with the Albanian government. In order to implement the study's recommendations in coordination with the government's program, the Government established an inter-ministerial working group chaired by the Minister of Economy, which defined the priority actions for 2003-2005 (Action plan).

[11] The Task Force, headed by the Prime Minister, consists of the Minister of Economy, Trade and Energy, Minister of Finance, Minister of Public Affairs, Transport and Telecommunication, Minister of Justice and Minister of Agriculture, Food and Consumer Protection.

activities within the frame of the regulatory reform with the Ministry of Economy, Trade and Energy; (iii) to report periodically to the Ministry of Economy, Trade and Energy for the execution of the actions taken under the framework of the regulatory reform.

The Task Force has established seven technical working groups (business registration, licensing, customs, taxes, property and construction, inspection, and administrative appealing).

With contributions from each of the Working Groups and the Trade Policy Department from the Ministry of Economy, Trade and Energy, the Task Force developed a Regulatory Reform Action Plan, endorsed by the Council of Ministers in March 2006, to guide implementation of reform actions in the following three years.

This Action-Plan established a comprehensive and dynamic program for regulatory reform in Albania. It not only addressed urgent needs regarding harmonization and simplification of the regulatory reform in important sectors, but also initiated the framework for the establishment of institutions and procedures that will guarantee a friendly, transparent and efficient business environment. This Plan encompassed new initiatives for the compilation and application of qualitative regulatory principles and good governance in Albania, and simultaneously aimed to guarantee the establishment of a mechanism that the new regulatory framework would have to respect in order to be in compliance with such principles.

The Action-Plan determined four main directions which the regulatory reform in Albania should focus on:

1. Development of the system for regulatory reform management, with the objective of establishing the necessary system to ensure sustainability in developing and implementing regulatory reform through the implementation of a comprehensive strategy to improve the regulatory environment affecting business in Albania.
2. Improvement of existing legal framework through the removal of administrative barriers to business and overall simplification of the regulatory framework affecting business.
3. Improvement of the quality of the new regulatory framework trough introducing and implementing new tools such as: (i) regulatory impact analysis (RIA); (ii) development of the system for forward planning of legislation and regulatory actions; (iii) improvement of the public consultation mechanism.
4. Systematic monitoring and evaluation of regulatory reform, aimed at the establishment of a system with a systematic approach to monitoring and evaluation of the impact of regulatory reform, including: (i) continuous monitoring of regulatory reform implementation (ii) preparation of the monitoring mechanism of regulator reform, including RIA implementation; (iii) conducting the Government Self-Assessment in order to assess the status of administrative barriers and to evaluate the results; and (iv) systematic adjustments of the Action Plan according to the results of self-assessments and annual evaluations.

In this Action Plan, the Task Force for Regulatory Reforms has been recognized as a key structure in leading the design and implementation of a comprehensive regulatory policy for attract-

ing investment through the removal of barriers to entry and operations. It was given a mandate to implement a strategic approach to regulatory reforms affecting the business sector and to improve Albania's attractiveness as a location for investment. In addition, the Task Force was to provide a forum for resolving cross-ministerial issues affecting the business environment.

The established Technical Working Groups were comprised of high level officials of relevant line ministries and have been charged with carrying out regulatory reviews in selected sectors and areas included in the Government's Action Plan (2006).

In order to support the Task Force, the Trade Policy Department within the Ministry of Economy, Trade and Energy has been further strengthened in order to implement and monitor the Government's Regulatory Reform Action Plan. Specifically, the Trade Policy Department is to: (i) develop clear and transparent standards for regulatory quality and principles of regulatory governance; (ii) coordinate reviews of existing regulations in specifically targeted regimes - starting with pilots in selected sectors and areas; (iii) develop better consultation practices and a sound regulatory impact assessment (RIA) system; (iv) after the establishment of a RIA system, review new regulations affecting the business environment for conformity to RIA quality standards.

Business Advisory Council was established to provide a more effective public-private sector dialog on reforms. Private Sector Representatives are increasingly consulted in the preparation of new laws and regulations, as well in the ongoing efforts under the Government's Regulatory Reform Action Plan. Interactions with businesses are systematized and formalized in the form of a Business Advisory Council that provides a link in the stakeholder consultation process by representing the business community. However, inputs for the Task Force's reform agenda are still weak. The Business Advisory Council includes representatives from the Foreign Investors Association, Chamber of Commerce, think-tanks, etc. To the possible extent, all of the Task Force's meetings should be conducted jointly with the Advisory Council.

Further strengthening of the existing institutional framework has been achieved, based upon the recommendations from the Action Plan (2006).

As support to the Government's efforts to intensify the regulatory reform, in addition to the realization of the four pillars from the Action Plan (March 2006), the World Bank proposed a Business Environment Reform and Institutional Strengthening (BERIS) project, which was signed by the Albanian Government in November 2006. Through one of its components, the BERIS project addressed the Government's insufficient capacity to establish and implement business-friendly and pro-competitive regulatory regimes. The overall objective of that component, the removal of administrative and regulatory barriers to entry and operations in the formal economy, was to be achieved through the improvement of the quality of regulations affecting business entry and operations. This sub-component aimed to assist the Government of Albania in the realization of the four pillars from the Action Plan (March 2006) by focusing on strengthening the institutional framework and capacities necessary to improve in a systematic manner the quality of regulations affecting business activity.

This project became operational in March 2007 and the planed support to the intensification of the regulatory reform was included in the updated Action plan on regulatory reform, adopted by the Task Force in June 2007.

The establishment of institutional setups to implement and monitor regulatory reform regimes has been successfully accomplished and therefore the Action plan from June 2007 was formed around three main pillars:

- Development of the management system for Regulatory Reform,
- Improvements of the existing legal framework eliminating the unnecessary obstacles in the field of licensing, customs, taxation, land and construction, inspection, and administrative complaint.
- Monitoring and evaluation of the impact of Regulatory Reform.

Visible progress in the realization of the second pillar of this Action Plan - improving the existing legal framework - has been achieved in:

- Business registration reform, and
- Licensing system reform.

Box 2.3. **Licensing system reform: An important step in reducing administrative barriers in Albania**

The licensing reform has been identified as one of the most problematic fields due to the complex documentation required from the businesses and especially long processing times. The reviewing of the licensing system became one of the priorities of the Action plan on regulatory reform endorsed by the GoA. During 2006, the screening of the licensing regime resulted in recommendations for the: (i) elimination of 24 kinds of licenses as unnecessary; (ii) reduction of requirements to get a license for the remaining licences by an average of 30-40%. The screening included 144 licenses, permits and authorisations in the following sectors: mines, hydrocarbons, public works, sea and road transport, agriculture and food, fishing, environment, water administration, forests and pastures, health, customs, fire protection, labour and social affaires, tourism and culture.

The reform in the licensing system applies for the first time the introduction of the principles of:

- Transfer from prior-verification to post-control;
- Application of the silent is consent principle and self-declaration of the responsibilities to ensure compliance by the applicant;
- Application of the Guillotine approach implying the removal of all the superfluous requirements for licensing in a specific field, as well as the elimination of a license where it is not connected to life, health and environment or if it is deemed that its added value is inconsiderable.

The OECD better regulation principles[12] are at the core of all recommendations and processing of the licensing streamlining.

[12] Accountability, consistency, transparency and permanent consultation are already being implemented, although there is need to ensure sustainable implementation.

The quality control mechanism is in place. The Trade Policy Department within METE, in accordance with the Order of the Prime minister no 274, date 23.12.2006., is entitled to screen the compliance of all new legal acts with the Regulatory Reform principles in all areas covered by this reform.

In addition, a monitoring group for the evaluation and implementation of the recommendations and improvement of the system of licensing, headed by the Ministry of Economy, Trade and energy, was set up by the Order of the Prime Minister (no 97, June 2007). By the beginning of 2008, the review of the licensing was conducted and the recommendations were implemented in the following sectors: mining, hydrocarbon, public works, road and sea transport, education, administration of waters, fishing, forests and pasture grounds, while a number of other sectors is still under review.

Box 2.4. **Business Registration Reform: A Major Benefit for Business in Albania**

According to an OECD study on business registration in the SEE Region[13], the business registration process in Albania was highly bureaucratic and time consuming. Based on the Doing Business 2005 findings, Albania was ranked in 121st place for business start-ups (only 54 countries performed worse). The registration of a typical limited liability company was assessed to go through 11 procedures, which could be completed in 41 days for an overall cost of 647.4 USD.

In 2006, the Albanian Government, supported by the Millennium Challenge Albania Threshold Agreement project and USAID, undertook a major initiative implemented by USAID to reform the business registration system. A new Law was enacted by the Assembly on May 3, 2007 and the National Registration Center (NRC) became operative in September 2007.

This reform was a significant step in the overall Government program of improving the business climate in Albania. It provided several important benefits for Albanian businesses as well as foreign investors through:

- a simpler, faster and much less costly process of business registration
- simultaneous registration for business, tax, social and health insurance as well as for labor purposes
- accessible services at the local level through service windows located throughout Albania
- free public access to Commercial Registry information via internet.

The business registration reform completely transformed the business registration process from a multiple-step process requiring action by courts, central tax administration, local tax administration and labor administration, to a simultaneous one-stop administrative process. The registration procedures were greatly simplified, the registration cost was significantly reduced and the registration is performed in just one working day.

[13] The Business Registration Process in South East Europe, A Peer Review - April 2005.

All services provided by NRC cost 100 leke, in compliance with the philosophy of the 1 Euro initiative. The whole process has been intensively discussed with the business community.

In a later stage, the NRC is intended to be involved in the issuance of various licenses and authorizations for business activities.

The Action plan included the procurement of technical assistance to support the development of the management system for Regulatory Reform and the establishment of a system of assessment for the RIA reform. However, delays in the procurement process postponed the realization of this segment of the Action plan. These segments have been included in the new Action plan for 2008.

2.3. Regulatory Impact Analysis – RIA

Regulatory Impact Analysis (RIA) is becoming widely used as a method of improving the quality of regulatory environment not only in OECD countries, but in a number of other countries as well, It is a tool by which the policy makers can assess in advance the impact of the proposed laws in terms of the potential costs, benefits and risks.

Regulatory Impact Analysis (RIA) helps to: (i) properly define the problems which would be overcome by adopting the regulation; (ii) perceive the effect of the proposed regulation; (iii) identify alternative options for achieving the desired aim; (iv) assess potential regulatory and deregulatory options; (v) improve transparency through consultation and a debate of all interested parties; (vi) determine whether the benefits justify the costs; (vii) determine whether particular sectors are disproportionately affected; and (viii) ensure that implementation issues are taken into consideration early in the process.

The OECD Reference Checklist for Regulatory Decision-Making contains the principles on regulatory decisions that can be applied at all levels of decision- and policy-making for improving effectiveness and efficiency of government regulation. It indicates that the creation and implementation of better regulation can be achieved by: (i) upgrading the legal and factual basis for regulations, (ii) clarifying options and assisting officials in reaching better decisions, (iii) establishing more orderly and predictable decision processes, (iv) identifying existing regulations that are outdated or unnecessary, and (v) making government actions more transparent. The Checklist, however, cannot stand alone, but must be applied within a broader regulatory system, including adequate analysis, consultation processes and systematic evaluation of existing regulations.[14]

[14] OECD 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulations.

Box 2.5. **Good practices in the design and implementation of RIA systems**

The following key elements are based on good practices identified in OECD countries:

- Maximize political commitment to RIA;
- Carefully allocate responsibilities for RIA program elements;
- Train the regulators;
- Use a consistent but flexible analytical method;
- Develop and implement data collection strategies;
- Target RIA efforts;
- Integrate RIA with the policymaking process, starting as early as possible;
- Communicate the results;
- Involve the public extensively;
- Apply RIA to existing as well as new regulation.

Source: OECD (1997), Regulatory Impact Analysis: Best Practice in OECD Countries, Paris.

2.4. Options for implementing RIA in the legislative process

In the effort to improve the quality of the regulatory environment, policy makers in OECD countries are increasingly using the Regulatory Impact Analysis (RIA). This methodology for assessing the impact of the proposed laws on potential costs, benefits and risks of the proposed legislation is now being deployed in a number of non-OECD countries, including the transition countries.

Regulatory Impact Analysis (RIA) has not yet been officially introduced into the legislative system. However, particular segments of this analysis are carried out as an integral part of the explanatory statement accompanying the draft law. These elements of the analysis are prescribed by the Rules of Council of Ministers, the Rules of procedure of the Assembly of Albania, the Law on organization and functioning of the Council of Ministers and the Order of the Prime Minister for licensing principles, No. 274, and they encompass: (i) fiscal impact assessment, and (ii) assessment of expected social and economic impacts.

Even though these segments contain some elements of the Regulatory impact analysis, the first serious attempt to introduce RIA as an integral part of the Albanian regulatory reform framework was made in the Government Regulatory Reform Action Plan from March 2006 and in the World Bank BERIS project signed in November 2006, mentioned in section 2.2. These two documents included the development of the government's capacity to improve the quality of new regulations through the Regulatory Impact Assessment (RIA), including: (i) the design of a customized, simple and operational RIA system; (ii) the preparation of simple and operational RIA guidelines and handbooks; (iii) piloting RIA on selected regulations; (iv) the development of a forward planning system for new laws, regulations and amendments to ensure horizontal

coordination within the government and communication of legislative intentions to the general public; and (v) the introduction of mechanisms to monitor regulatory quality.

According to the Action Plan from 2006 and the BERIS project, the responsibility for the preparation of the RIA for new regulations and policies should lie with the relevant ministries and BERIS project plans to support a network of legal and economic officials in selected line-ministries. Moreover, the quality control, monitoring and evaluation of the pace and quality of regulatory reform, including the implementation of the RIA system, should be carried out by the Trade Policy Department (TPD) within the Ministry of Economy.

Although the Action Plan on regulatory reform from June 2007 included a detailed program of the establishment of the system of assessment for the RIA reform, based on the Action Plan 2006 and the BERIS project, delays in the procurement process postponed the realization of this segment of the Action plan.

2.5. Public consultation and transparency

According to the Rules of the Council of Ministers, the legal structure responsible for preparing the draft acts in cooperation with other related structures also organizes consultations with the structure of civil society whose activity is related to the object, purpose, and implementation of the act.

Draft laws judged by the Prime Minister to be of particular importance may be discussed in broad circles where representatives of state institutions, NGOs, experts of international organizations or institutions etc. can be included.

Box 2.6. **The consultation process of drafting the law on "Tax Procedures and Tax Administration"**

The draft law on "Tax Procedures and Tax Administration" was drafted by a Working Group composed of representatives from the Ministry of Finance and the General Taxation Department, and supported by the USAID Project "Millennium Challenge Albania Threshold Agreement". The law is drafted under the direct assistance of international tax experts, including IMF and GTZ (German Agency for Technical Cooperation) reviewers.

In addition to the consultations with experts of the General Taxation Department, the draft-law was discussed with business community representatives, namely the Chamber of Commerce and Industry, the American Chamber of Commerce, the Italian Investors' Association, the Accounting Association, the Lawyers' Association etc. Four public roundtables, with the participation of about 170 representatives (46 women) of the consulted business organizations and led by the Minister of Finance, were organized. The draft was published on the Ministry of Finance and the General Taxation Department websites and was opened for suggestions and remarks to all interested parties. Finally, the draft reflected many opinions and remarks.

As a result of discussions with business community representatives and others, many articles of the draft were improved by taking into consideration the comments and suggestions in important areas such as: tax liability, communication between tax administration and taxpayers, taxpayer rights, the importance of reasonable audits, registration, extension of returns deadline, amendment of tax returns, tax assessments, tax audit activities, directors' responsibility, tax appeals, and administrative and criminal penalties.

GTZ contributions to the draft law were very important in regard to compliance with EU Directives; approximately 13 additional articles in the draft law were directly influenced by their suggestions. The IMF experts also improved the draft-law in many respects.

A similar consulting experience was noted in the process of the 'Entrepreneurs and Company law' drafting, supported by GTZ. During the period of May-September 2007, five roundtables were organized by the Ministry of Economy, Trade and Energy, headed by the deputy Minister and with the participation of experts (external and domestic), business organizations, civil society, etc. Also a questionnaire was produced after the first roundtable and discussed in the second one. The drafting process was preceded by a discussion paper and followed by a policy paper prepared by external experts hired by GTZ.

Public consultation is another dimension of the draft law discussion in the Assembly relating to the standing committees' work, as stipulated in the Rules of Procedures of the Assembly. In order to fulfill their duties, a committee may engage part-time specialists.

Draft laws of an economic profile are also discussed in the Business Advisory Council[15], which prepares recommendations for the Council of Ministers and the Assembly based on the private organizations-government dialog on issues related to development strategies and programs, budget preparation and fiscal packets, investment, trade, business environment, internal market issues, etc. The majority of Business Advisory Council members are representatives of chambers of commerce, business associations (domestic and foreign) and civil society, operating in the business field.

Public consultation is also a dimension of the draft law discussion in the Assembly. According to the Rules of Procedures of the Assembly, a standing committee may engage part-time specialists. A committee may also organize public hearings not only with the members of the Council of Ministers and high representatives of the state or public institutions, but also with experts, representatives of the civil society, representatives of the groups of interest based on a justified written request of at least 1/3 of the members of the committee.

[15] Created by Law no. 9607 dated 11.09.2006.

In practice, the public consultation process seems uneven. In some cases, the inclusion of experts from NGOs and business associations' representatives in the process of law-drafting goes even beyond the requirements of the Rules. This happens particularly often when the law drafting process is supported by the donor community. In such cases, not only did outside (domestic or foreign) expertise prove very important and effective, but also wider public consultations such as roundtables, electronic consultations, etc. have been quite fruitful. On the other hand, the rate and effectiveness of the business associations' participation in the law-drafting public consultation is positively related to their ability to properly represent the interests of the group they represent. Business organizations are increasingly employing experts or using outside expertise in order to improve the 'quality of their voice.'

Business organizations, however, often complain about the limited time they receive for expressing their opinion or, in extreme cases, about not being asked at all. The electronic possibilities are also not properly used by the act-drafting body. The opportunity for participation in parliamentary discussion for some of them seems even less likely.

Box 2.7. **Monitoring the parliamentary process of draft law debating**

A Report on monitoring (during a four-month period, Sept.-Dec. 2007) the legislative performance of the parliamentary committees was introduced and discussed on March 29, 2007 in a debate organized by the Parliamentary Studies Centre in collaboration with the Institute for Contemporary Studies, both a part of the NOSA network of NGOs supported by Open Society Foundation, Albania. Main Report observations were related to issues such as large disproportions in the practice of draft law discussions, low participation rate of parliamentary members occasional lack of expertise of different Ministries, etc. Based on these observations and also the comments and views exchanged in the debate, the meeting recommended a better pursuance of discussion procedures in parliamentary committees, a higher involvement of the deputies in the committee discussion, a more frequent usage of public hearing sessions, and more parliamentary control and responsibility regarding law implementation.

Publicity for the law-adopting activity is another requirement of the Rules of Procedures of the Assembly, a more complete one in comparison with the public consultations requirement. The publicity of the Assembly's activity is realized through (a) participation of the public in the law-making process; (b) publicity of the activity of the Assembly and of its bodies in the press and visual media; (c) publications of parliamentary documentation; (d) the interior audio-visual network..

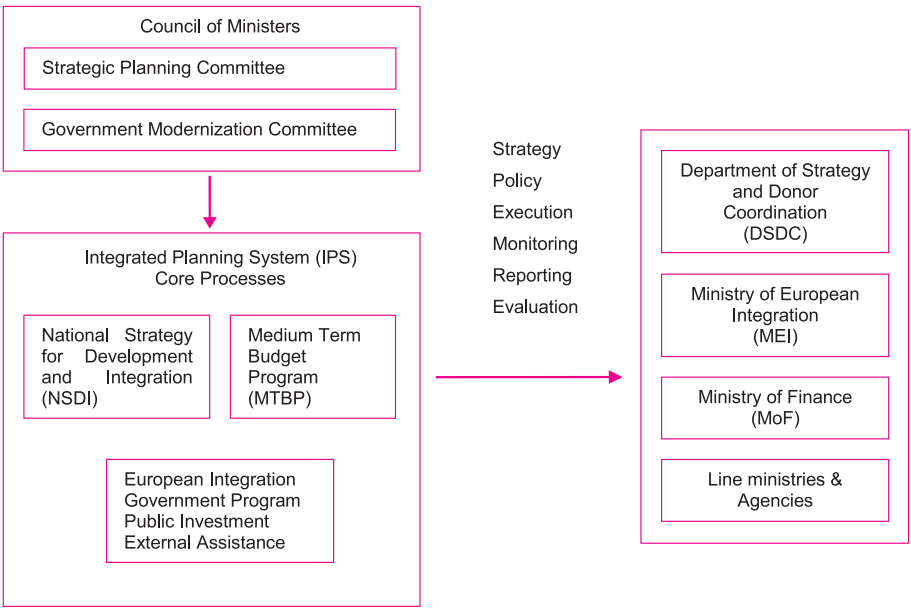
As a rule, committee meetings are open, and the minutes of the committee meetings are made public. The plenary sittings of the Assembly shall also be public, except in cases where the Assembly decides otherwise. The minutes of the plenary sittings are published on the Assembly web site, which is improved and updated on a regular basis and provides a wide range of information related to Assembly activities, approved laws, publications, etc.

Albanian Public Television broadcasts in full the main parliamentary events, as stipulated in the Rules of Procedure, as well as other sittings as required by the Conference of the Chairpersons.

2.6. Forward planning system of regulatory actions

Regulatory actions are taken within the frame of a programmed regulatory reform which is part of a forward planning system known as the Integrated Planning System (IPS)[16] of the Government of Albania (GoA). IPS is in the process of construction and implementation with the intention of further streamlining policy making, budgeting, monitoring, evaluation and aid coordination. The primary purpose of the IPS, a three year plan (2006-2008), is to avoid fragmentation and duplication between the government's core policy and financial planning processes.

The two main core processes in the IPS that cover all governmental organizations and activities are: (i) National Strategy for Development and Integration (NSDI); (ii) Medium-Term Budget Program (MTBP).



[16] IPS was approved by the Decision of the Council of Ministers (DCM) No. 692, dated 10.11.2005.

The strategic planning, as shown in the graph above, also includes four other core processes that must be fully reflected in the NSDI and MTBP: (a) measures related to the integration process of Albania into the EU; (b) the four-year Government program; (c) public investment; (d) coordinated external assistance. IPS also takes into consideration the NATO membership program and the Millennium Development Goals (MDGs).

The National Strategy for Development and Integration (NSDI), which is already approved by the Council of Ministers, has a seven-year planning scope (2007-2013) and comprises a national strategic vision, sector strategies and inter-sectoral strategies. The strategy of Business and Investment Development is important among the sectoral strategies, and also covers strategic planning of regulatory actions. Regulatory actions are also an integral part of each related sectoral and inter-sectoral strategy.

European Integration (EI) is a core process and a driving force of the national strategic vision and the policy goals that support the inter-sectoral and sectoral strategies. The planning process of the European Integration of Albania started with the European Partnership Action Plan (EAPP) in September 2004, in response to the short and medium-term priorities identified in the mid-2004 European Partnership document. In May 2005, the GoA completed a 10-year National Plan for the Approximation of Legislation and SAA Implementation (NPAL/SAAI), which was revised in July 2006 and again in September 2007, into the National Plan for the Implementation of the Stabilization and Association Agreement 2007-2012.

The European Partnership's short and medium-term priorities concern both legislation and its implementation. The approximation process in the first stage (first 5 years) is focused on internal market legislation, which is very closely related to regulatory actions[17]. The GoA reports on quarterly and yearly bases to the European Commission on the progress in the implementation of the EAPP.

The Government Program, as another core process integrated in the NSP, covers the entire mandate of the elected government and is an extensive document identifying policy commitments for most sectors. Regulatory reform is an integral part of the government program.

The IPS is overseen by three institutional structures:

- Strategic Planning Committee (SPC), an inter-ministerial committee chaired by the Prime Minister, to determine the government's policy and fiscal priorities, and review ministry plans to deliver these priorities;
- Government Modernization Committee (GMC), an inter-ministerial committee chaired by the Deputy Prime Minister, to approve IPS methodologies and monitor IPS implementation;

[17] The short term priorities set in the revised European Partnership document by the EC in February 2008 include a legislation approximation related to consumer protection, taxation – notably excise duties, anti-trust legislation, food safety, environment – notably water supply and sanitation, road safety conditions, electronic communication, money laundering, personnel data protection, etc.

- Department of Strategy and Donor Coordination (DCSD), a new department within the Council of Ministers.

Also, an IPS coordination group is established, with representatives of the MoF and MoEI and chaired by the DSDC.

IPS implementation is a responsibility of each Minister and independent Agency Head. Within each ministry, a standing committee for Strategy, Budgeting and Integration is established to monitor and ensure the quality of the implementation. The committee may create additional working groups at the sector or program level.

An Integrated Planning Calendar is forwarded to the line ministries and independent agencies at the beginning of each year, covering the major requirements and deadlines for all core policy and financial processes.

Each year, a Ministry Integrated Plan is produced by the line ministries, containing the major commitments for the core policy, legislation initiatives and financial processes. Regulatory actions are an integral part of the Integrated Plan of each ministry involved in the regulatory reform. A separate plan, Action Plan of Regulatory Reform[18], deals specifically with regulatory actions[19].

A unified Ministry Monitoring Plan is negotiated annually with each ministry, and it encompasses all key outputs and indicators to be monitored. Each line ministry should report quarterly to the Task Force on Regulatory Reform and produce a Ministry Annual Report which presents the results achieved against the targets set for all processes, including regulatory targets.

2.7. The role of lobby groups

The lobby groups in Albania are not legally institutionalized per se. However, different groups of interest, through their representative organizations, have been increasingly active in the country's legislation adoption process. Setting aside the political parties, especially those represented in the Assembly, which by all the means have possibilities to attempt to influence the law enactment process, several large social organizations have been active or are interested in expressing their position in the legislation adoption process, such as:

(i) business associations

(ii) trade unions

(iii) NGOs, etc.

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[18] Approved by the Council of Ministers Decision no. 517, dated 15.3.2006.

[19] The institutions responsible for the regulatory reform are the Task Force on Regulatory Reform leaded by the Prime Minster, the Regulatory Reform Coordination Group, and the Technical Groups based on Line Ministries. The institution responsible for the operative (short-run) management, coordination and monitoring of the regulatory actions, is the General Directorate of Policies (the sector of trade facilitation in the Trade Policies Directorate), based at the Ministry of Economy, Trade and Energy.

The business interests in the country are represented[20] by a number of business associations that attempt to voice their opinions in the law adoption process, including the Tirana Chamber of Commerce and Industry, the Foreign Investors Association (FIAA), the American Chamber of Commerce, the Italian Entrepreneur Association, the Hydrocarbon Association, the Manufactures Confederation, the Builders Associations, a number of district based Chambers of Commerce and Industry, etc. By law, all chambers of commerce in Albania are obliged to be members of the Union of Chambers of Commerce, which coordinates their work at the national level. The Union of Chamber of Commerce consists of 35 members (chambers), including 12 district based chambers of commerce and industry.

The employees in Albania, according to the Code of Labor[21], have the right to form trade unions. Trade unions are constructed on professional bases. Two or more trade unions can form a federate and two or more federates can join in a confederate. The architecture of trade unions in Albania consists mainly of two confederates, the Confederate of Labor, and the Union of Independent Syndicates of Labor. Quite active in the protection of group interest have been the Syndicate of Mining Workers, the Association of Former Military Servants, the Syndicate of Teachers, etc. Labor organizations, along with the business organizations, are represented in the National Council of Labor, a tripartite institution established and functioning based on the Code of Labor. Out of 27 members of the Council, 10 are representatives of labor organizations, 10 represent the business organizations and 7 are representatives of the government.

An increasing contribution to the process of identifying and qualified advocating of social group interests, as well as to the law adoption process and law enforcement debates, is given by the NGOs. The NGOs' specific expertise is being used by the government in the law drafting and consulting process, and also by the Assembly (parliamentary committees) in the draft-law discussion process. The international donor community has been supporting the NGOs' activity and contribution, and in some cases the networks[22] of NGOs.

The contribution of the lobby groups in the law adoption process has been increasing proportionally with the quality of group-interests representation by the business and social organizations.

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[20] According to Article 4 of the Law on Chamber of Commerce No. 9640 dated 9.11.2006, the object of a chamber is to…'present and protect legal economic interests of the members'.

[21] Law on 'Code on Labor' no. 7961 dated 12.07.1996, amended by Law no. 912 dated 29.07.2003.

[22] Such as the Network of Open Society for Albania (NOSA), consisting of eight NGOs (AIIS, Co-Plan, Soros Foundation, IPLS, ICS, Mjaft, Partners Albania, and European Centre).

Box 2.8. **Examples of activities of lobby groups in law adoption**

The case of the so called "Penalty Law" is an example of the lobby activities by business organizations . It is an amendment on the Law on Tax Procedures and is related to a penalty prepayment for businesses without giving them the right to go to the court before.

One of the business organizations engaged in this lobbing was the American Chamber of Commerce (AmCham), which represents over 250 U.S. and Albanian businesses and is a member of the Union of Chambers of Commerce of Albania and part of the global network of the American Chamber of Commerce.

Having discussed the draft law in the Tax and legal Committee of the AmCham on March 12th, 2007, a letter was sent to the Standing Committee of Economy and Finance with arguments against the draft, which, according to the letter, was problematic for businesses and also against the country's Constitution. Later (March 27th), a letter with the same arguments was sent to the Speaker of the Parliament, including a request to allow the American Chamber of Commerce representative to be heard in the Committee of Economy and Finance.

On April 10th, the head of Tax and Legal Committee of the AmCham, together with other business organization representatives, participated in a session of the Economic Committee of the parliament that discussed the 'Penalty Law.' The AmCham presented its comments and asked for the abrogation of the article of prepayment of penalties.

On April 11th, 2008, after the approval of the draft law "On Tax Procedures" in principle, the American Chamber of Commerce publicly communicated the arguments against the draft law in a press conference, requiring from the Committee on Economy and Finance to make the necessary changes when the draft law was discussed article by article. On April 13th, a letter was sent to each member of the Parliament with the arguments against the draft. The letter was referred to in the debate and discussions in the plenary session of the Parliament.

After the approval of the law in the Parliament, the opinion of the American Chamber Board (and also some other business organizations in separate meetings) on the Tax Procedures Law was required by the President of the Republic, on May 28th, 2008. After the meetings, the President decided not to promulgate the Law and sent it back to the Parliament.

On Jun the 7th, the Prime Minister met business organizations representatives to discuss the "Penalty Law," proclaiming a decrease of the prepayment down to 15% of the penalty. On June 8th, the "Penalty Law" was discussed and than approved in the Parliament.

On July the 5th, a number of business organization representatives, such as the Foreign Investors Association (FIAA), the Builders Associations, the Italian Entrepreneur Association, the Hydrocarbon Association, and the Manufactures Association, met at AmCham premises to discuss the arguments against the “Penalty Law”. The meeting concluded that the “Penalty Law” should be sent to the Constitutional Court, which was done on November the 30th, 2007. The case was considered by the Constitutional Court on February 26th, 2008, but the decision has not been delivered yet.

Remarks on such amendments also came from the European Commission: “The new law on tax fines requiring payment of the full tax assessed and 15% of the fines imposed before appealing to the court is not in line with EU practice and has caused controversy among business actors”

Source: Commission of the European Communities, Albania 2007 Progress Report, p. 29

Chapter 3

IMPLEMENTATION OF LAWS

Law implementation in Albania represents one of the biggest problems in the country's development. The change of political regime in the early 90' and the transition towards a market economy, as well as the intensive agenda of approximation of legislation with the EU, have led to very intensive legislative activity.

Unfortunately, the approval of laws was often not the result of a sound policy development process. It was not associated with the preliminary assessment of the impact of proposed legislation or with a proper consultation process. The Albanian administration and decision makers were not prepared to face such intensive legislative activity, as there were no sound processes in place and the capacities were weak.

Despite the fact that many good laws were approved, in a number of cases they have not been adequately implemented due to the lack of necessary institutional infrastructure.

In accordance with the Albanian legal framework, law implementation is mainly the duty of the Government. Each ministry is responsible for monitoring whether the law is implemented or not, assessing the impact of the approved legislation and the degree to which the implementation achieves policy objectives. But the lack of proper monitoring systems, the lack of a proper system of assessment of the performance of existing regulations (for instance, a mandatory process of an ex post- RIA) and other reasons for poor implementation have delayed a proper response to the implementation deficiencies.

3.1. Parliamentary involvement in the implementation of laws

3.1.1 Secondary regulations

After a law is approved, the Albanian Assembly is not involved with the development of regulations (secondary legislation) issued on the basis of and for the implementation of the law. Such regulations are adopted mainly by the Council of Ministers, ministers and certain other constitutional bodies, as assigned and authorized by the law. To become operational, the law needs to explicitly authorize the issuance of regulations and designate the competent body, the issues that are subject to secondary regulations, as well as the principles on the basis of which these regulations are issued.

The Albanian Constitution allows for a certain degree of the Assembly's involvement in monitoring the implementation of legislations, mainly through three well articulated processes: i) direct Parliamentary oversight of Government activity, ii) Parliamentary monitoring of law implementation through independent specialized institutions, and iii) oversight of and reporting on independent regulatory institutions.

3.1.2 Direct Parliamentary oversight of Government activity

The parliamentary oversight of Government activity in the implementation of laws is mainly realized through MP's questions, interpellations to the members of the Government, motions for Parliamentary debate, as well as through Standing Committees and Ad Hoc Investigation Committees established at the Assembly for specific issues (which may relate to law implementation and its impacts).

The MP's questions and interpellations to the members of the Government are among the most common forms of exercise of Parliamentary oversight over Government activity. Every MP has the right to ask questions and submit interpellations to the Prime Minister or any other member of the Government. Questions and interpellations often aim to obtain information on the implementation of laws in relation to the activity of members of the government.

The motion for debate is another form of parliamentary oversight. The request for debate is usually accompanied by a proposal to accept a resolution or a declaration, voted by the plenary. The resolutions and declarations related to law implementation consist mainly of an assessment of law implementation situations, as well as a recommendation for the government to take certain measures, including the initiation of legal amendments or adoption of secondary legislation.

The standing committees also have the right to convene at any time with the ministers or the heads of other agencies to give the necessary explanations on various issues in the areas for which they are individually responsible and on the implementation of laws, decisions or previous resolutions or declarations approved by the Assembly. The standing committees, within their respective area of responsibility, can also review submitted documentation or require the documentation they consider necessary for certain matters. Finally, the committees draw a report, which is given to the Speaker of Assembly and is announced publicly.

The Assembly also has the authority to designate committees of inquiry to review a particular issue, including matters of implementation of laws by executive or other independent institutions. At the final inquiry, the committee prepares a report which is later voted on in the plenary. The report can consist of an assessment of the law implementation situation and the recommendation for the government to take certain readdressing measures, including the initiation of legal amendments or adoption of secondary legislation.

3.1.3 Parliamentary monitoring of law implementation through Independent Specialized institutions

A more specialized monitoring of law implementation by Assembly is done through the specialized independent institutions, which report directly to the parliament. The activity of these institutions may be considered as a specialized extension of Parliamentary oversight activity in the some crucial areas of law implementation. For instance, the Supreme Audit Institution oversees the observance of law implementation by state institutions relating to the use of public funds; the Ombudsman oversees law implementation in public administration activity concerning human rights, freedoms and lawful interests of citizens; the Procurement's Ombudsman oversees law implementation in the area of public procurements, and so forth.

These institutions submit their annual reports to the assembly. The relevant standing committee organizes a hearing and, following the discussions, drafts a resolution. The resolution consists of an assessment of the work of the institution and can include recommendations for the government to take certain measures, including the initiation of legal amendments and the adoption of secondary legislation. After the report is delivered in the plenary (by the person chairing the institution), the resolution is voted and adopted by the Assembly.

Box 3.1. **The State Supreme Audit: A tradition of cooperation with the Assembly**

The State Supreme Audit is one of the independent institutions reporting directly to the Assembly. The institution has a long tradition of relations with the Assembly, starting from 1928. The current organization and functioning of SSA were established in 1997, with the approval of law no. 8270, dated 23.12.1997 "On the State Supreme Audit". Its role and full independence was later mandated by the 1998 Constitution. The law was amended toward better alignment with the Constitution shortly after the Constitution's approval.

SSA is the highest institution of economic and financial control in Albania. It audits the use of public funds by institutions of central and local government and other entities, in which the state owns more than half of the quotas or shares. SA's mission is to provide substantial support to the Parliament through reliable audit results and recommendations, in order to contribute to parliamentary oversight of the administration of public finances by the Government and other institutions.

In realizing its mission, SSA presents to the Assembly an annual report on the implementation of the state budget, gives its opinion on the Council of Ministers report on state expenditures of the previous financial year before it is approved by the Assembly, and submits any information about the results of the audits it performs whenever requested.

SSA also submits its annual activity report to the assembly. The Standing Committee on Economy and Finances organizes a hearing, followed by the standing committee's drafting of a resolution on the evaluation of the work of SSA. This evaluation can include recommendations for SAA to improve the work in certain areas, as well as recommendation for the government to take certain necessary measures, including the initiation of legal amendments or adoption of secondary legislation, and is voted and adopted by the Assembly.

The discussions in the standing committee and the plenary session are intensive and fruitful. SSA is continuously improving not only the quality of its audit results, but also the quality of reporting, in order to comply with the needs of the Assembly for informative input in a better law-making process and oversight of government activities.

The Assembly is strengthening the capacities in parliamentary administration. It only recently established a new Service of Monitoring of Institutions, aimed at assisting the standing committees in improving oversight of the work of independent institutions and the government, as well as guaranteeing a continuous follow–up on the recommendations included in resolutions approved by the Assembly.

Box 3.2. **The Ombudsman: A new experience**

The institution of Ombudsman was established for the first time by the Albania Constitution of 1998. The institution was established in February 1999 and functions in accordance with the law "On People's Advocate." On February 2000, the Albanian Parliament elected the first Ombudsman with three-fifths of the vote of all Assembly members.

The Ombudsman safeguards the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act on the side of public administration bodies and private entities acting on the public administration's behalf. Upon finding or suspecting that a right, freedom or lawful interest has been violated, the ombudsman initiates an investigation upon request or, in certain cases, ex officio.

Once the investigation is completed, the Ombudsman makes direct recommendations to the relevant authority to restore the violated right or interest. The submission of the recommendation suspends the act until its review and response to the Ombudsman. If the Ombudsman does not consider the reply or the measures taken by administration to restore the right or the interest to be sufficient, he may refer the case to the superior administrative body.

The Ombudsman presents the annual activity report before the Assembly. He may request the Assembly to hear him and to present special reports on matters he deems to be important, including recommendations for specific measures from the government or other institutions.

Despite being a new institution in the Albanian tradition, the work and the actions of the Ombudsman are increasingly assessed as having crucial impact on the protection of human rights and freedoms and contributing to an increase in the accountability of state institutions.

The Ombudsman reports are published and made available to the public by the Assembly. They are distributed to the MPs and discussed in standing committees or at plenary sessions.

3.1.4 Reporting of Regulatory institutions

Independent Regulatory Bodies, such as the Financial Supervision Authority, Central Bank, Regulatory body of Energy, and Regulatory Body of Telecommunication report annually to the assembly on the state of law implementation in the market area they cover.

The relevant standing committee organizes a hearing on the submitted report, inviting the head of the relevant institution. If any problem relating to law implementation or the need for an amendment to a certain law is detected during the hearing, the committee includes its suggestions for change or implementation improvement in the draft resolution. The draft resolution is voted in the plenary. During the year, the standing committee has the right to convene with the head of the institution to provide explanations on the implementation of the approved resolution.

Box 3.3. **The Energy Regulatory Authority (ERE)**

The power market sector in Albania is currently regulated by the Energy Regulatory Authority (ERE). In 2003, ERE was, as an independent institution, designed to promote transparency and efficiency of the power market. ERT is organized around the law no. 9072, dated 22.05.2000. "On power sector," and functions in accordance with that law. ERE is formed by the Board of Commissioners which is appointed by the Parliament and Technical staff

ERE is accountable to the Albanian legislature and oversees the observance of the regulatory framework in the power market in accordance with the law.

At the end of the year, ERE presents the annual report on its activity and the work program for the coming year. The Standing Committee on Productive Activities, Trade and Environment organizes a hearing, followed by the standing committee's drafting of a resolution on the evaluation of the work of ERE. The resolution can include recommendations for ERE to improve the work in certain areas, as well as recommendation for the government to take certain necessary measures, such as the initiation of legislation in the area of telecommunications. The Resolution is voted and adopted by the Assembly.

The Standing Committee on Productive Activities, Trade and Environment has the right to convene with the head of the ERE Board at any time in order to give the necessary explanations on the implementation of the regulatory framework or of the recommendations from the resolutions approved by the Assembly.

Box 3.4. **The Telecommunications Regulatory Authority (ERT): The same type of regulatory institution with different competencies**

The telecommunications sector in Albania is currently regulated by the Telecommunications Regulatory Authority (ERT), formed in 1998 as a self-financing entity. Currently, ERT is organized around and functions in accordance with the law no. 8618, dated 14.6.2000 "On Telecommunications in the Republic of Albania" and is independent in its decision-making in the areas precisely defined by the law.

ERT is headed by a Council of Directors, consisting of 5 members appointed and dismissed by the Parliament upon the proposal of the Council of Ministers. The head of the council is assigned by the Parliament from among it members.

ERT oversees the observance of the regulatory framework in the telecommunication market in accordance with the law and policies set by the Government in order to promote a transparent regulatory environment in the telecommunication sector and protect the public interest.

The competencies of ERT in the regulation of the telecommunication market and its independence in decision-making are slightly different in comparison with other institutions of the same type, such as the Energy Regulatory Authority (previous box).

ERE single-handedly defines the rules and requirements regarding the issuance, suspension and revocation of licenses for the operators in the power market. ERE's decision to withdraw a license is subject to judicial review In the case of ERT, the requirements for the issuance, suspension and revocation of the licenses of a certain category are determined by the Government. The methodology for the regulation of fees is approved by the Government and the decisions of ERT in withdrawing a license or in modifying its conditions can be challenged with the Minister of Public Works, Transport and Telecommunications.

Another difference is that at the end of every year, ERT presents the annual report of its activity and the work program for the coming year to both the Assembly and the Council of Ministers. These differences influence the independence of ERT to a certain level.

3.2. Examples of legislative changes to deal with implementation gaps

Law implementation in Albania is assessed to be one of the biggest problems in the country's development. The regime change in the early 90's and the transition towards a market economy and into a democratic regime, as well as the intensive agenda of approximating legislation with the EU, lead to intensive legislative activity.

Unfortunately, the approval of laws and the ratification of international agreements in different areas were not accompanied accordingly and in time by the establishment of proper "infrastructure" for the immediate implementation of approved legislation. Despite the approval of many good laws, in most cases with the assistance and expertise of international partners, law implementation is still suffering from serious deficiencies.

The deficiencies in law implementation are mainly related to the lack or weakness of institutions in charge of law implementation in certain areas, lack of detailed secondary legislation (rulebooks, decisions), limited financial resources dedicated to law implementation (because of budgetary constrains), weakness of human resource capacities in administration, etc. In some cases, the gaps in law implementation are related to bad policy choices, relating to regulation and/or poor quality of legislation.

The implementation of the law is mainly the duty of the Government and other state institutions. Each ministry is responsible for monitoring the law's implementation, assessing the impact of approved legislation and the degree to which the implementation is achieving the policy objectives. But the lack of proper monitoring systems, or of a proper system of evaluation of the performance of existing regulations (for instance, a mandatory process of an ex post- RIA), has delayed a proper response to implementation deficiencies.

As in most other countries in the region, law implementation gaps were mostly dealt with through amendments to only recently adopted legislation and less through institutional building, strengthening of capacities or allotting of more resources, etc.

Tax legislation is one of the areas that have suffered more amendments then any other area in Albania. The law no. 8560, dated 22.12.1999 "On Tax procedures in the Republic of Albania" was amended during 2006 and 2007 three times each year, and the Government is currently drafting a new law on tax procedures. The law No. 8438, dated 28.12.1998 "on revenue tax," was amended four times in 2007 alone. Some of the amendments have certainly improved the tax legislations and decreased tax burdens to businesses, contributing to the attraction of foreign investments. However, the frequent changes have also negatively influenced the predictability of governance, whereas some amendments, including the one in secondary legislation, aimed to fill the implementation gaps and balance out the weakness of the tax administration.

In some other cases, the lack of established institutions for law implementation was a major factor in the implementation gap. For instance, since 1999, Albania has adopted law No. 8517, "On the protection of personal data." However, an independent supervisory authority will be formed following the creation of the amendments of the law in March 2008.

Despite the abovementioned problems, the situation is improving significantly. The following examples show that implementation gaps are increasingly being dealt with, both through legal improvement of poor legislation and by allotting more financial and human resources, and strengthening capacities.

Box 3.5. A new law on competition

In 2003, Albania approved a new law on Competition, law no. 9121, dated 28.07.2003 "On protection of Competition." This law was to replace the existing law (law no. 8044, "On Competition") approved in 1995. The main problem with the 1995 law was its lack of implementation in day to day practice, mainly due to a wide scope of application, unclear language, contradictory requirements, and poor implementation capacity at the Authority of Competition.

The new law is based on EU competition rules and focuses strictly on antitrust issues, setting aside dishonest practices with no impact on the market. The new law (unlike the 1995 version) provides a clear and comprehensive definition of the subjects to which it applies, challenges the abuse of the dominant position rather then the dominant position itself (as the law of 1995 did), introduces the pre-merger notification procedure, etc.

In the institutional point of view, the law establishes an independent Competition Authority that reports directly to the Assembly, marking a significant change in comparison with the previous law where the Economic Competition department was under the Ministry of Economy. The Competition Authority consist of the Commission, which is the decision making body, and the secretariat, which is not in charge of market supervision.

In addition to the improvement of the law on competition, more financial and human resources were dedicated to the new established institution. In 2006, a new department on market analysis and investigation was created within the secretariat and the staffing was doubled to 35.

3.3. Experience with a high degree of administrative discretion as a consequence of unclear or incoherent laws

There are cases when the law leaves the administration with a more or less wide area of discretion without setting out in detail the conditions of administrative decision-making. The administrative discretion arising from incoherent legal provisions leads either to bad decision-making that affects the administration's efficiency in providing public services or to poor implementation of the law because of the administration's reluctance to apply the provision. The law on Concession is an example of incoherent provisions.

Box 3.6. **The new concession law: A necessity for Albania**

The previous law on concessions (law no. 7973, dated 26.7.1995) was poorly implemented and was considered by both the Government and the private sector as a law that had seriously hindered the participation of the private sector in the delivery of public services and implementation of infrastructure public works.

The government and the international partners (WB, EBRD, and IMF) assessed that the law lacks both clear and transparent rules for awarding concessions and procedures for the identification of projects, it hinders the competition by providing for unsolicited proposals as one of the procedures of awarding concession, and legal provisions on guaranteeing the implementation of the contracts are very poor. The results of the concessions awarded by that time were very discouraging: Only one concession was awarded by a competitive procedure and the implementation of other concession contracts (awarded by direct negotiation) was very poor.

In 2007, the Assembly approved a new law on concessions (Law No 9663, dated 18.12.2006). The new law not only succeeded in avoiding previous mistakes, but is also considered a good step toward introducing the world's best practices in concessions into Albanian legislation.

The new law establishes a very competitive procedure in awarding concessions, with limited exceptions explicitly related to national security, and allows for transparent procedures for the implementation of contracts.

One year after the approval, it is widely accepted that implementation of the new law has significantly increased competition and encouraged the participation of serious investors.

Chapter 4

PARLAMENTARY RESOURCES FOR DRAFTING AND MONITORING LAWS

4.1. Available resources for drafting laws

In accordance with the Constitution, the Assembly is empowered to propose laws, although this is rarely put into practice. As a rule, the enactment of laws is usually proposed by the Government and the drafting is financed from the Government Budget. The donors are also involved in financing the drafting of laws (EAR, USAID, GTZ, OSCE.) by engaging local or foreign experts.

The situation in which the Assembly is the proposer of laws is an exception. The Law on the scope of Assembly in the process of Albania's Integration in the European Union (July 2004), also known as the Zela law, is an example in which the European Integrations Committee, within the Assembly, appeared as a proposer.

Box 4.1. **Law on the scope of Assembly in the process of Albania's Integration in the European Union, so called Zela law**

The role and activity of the Assembly as the highest legislative body in the Stabilization and Association process, in addition to the Rules of Procedures of the Assembly, is regulated by the Law on the scope of Assembly in the process of Albania's Integration in the European Union (July 2004), the so-called Zela law. This law clearly shows that the Assembly has its own tasks and responsibilities in the accession process.

According to the Zela law, the Council of Ministers regularly sends information related to the EU integration process to the Assembly, and also consults the Assembly on a regular basis and on request. An obligation of the Assembly for establishing an archive with a full and detailed documentation on the Stabilization and Association process is set by this law.

The OSCE assisted in drafting the law, which was done by a number of local and foreign experts together with the staff of the Assembly.

The Assembly has a limited budget, and although it is possible to obtain sources for this purpose, this practice is more an exception than a rule.

4.2. Parliamentary research staff

Many Parliaments in the world have provided support to their legislative role through specialized research departments. These departments have been established with the purpose of providing reliable data and analyses for decision-makers in the Assembly. Based on the diverse and profound databases and information, these research departments would conduct research of specific subject matters and/or obtain relevant information that would facilitate the work of members of the parliament and parliamentary committees.

The Library of the Albanian Assembly was created in 1923. In 1993 it became a part of the administration of the first pluralist Assembly, not only dealing with maintenance and treasuring of the documentation, but also, at the requests of the MPs and their staff, carrying out bibliographical or documentary research on all subjects relevant to parliamentary activities.

Research services and Library. A further step in strengthening research capacities of the Assembly was the establishment of research department in 2000, which was attached to the Library. The newly established Research department is composed of three lawyers. They provide research services for the MPs, committees and parliamentary staff. Due to limited staff capacity, priority is given to inquiries relating to the current work of the Assembly.

Experts working for the parliamentary standing committees. In addition to the research department, the Assembly is provided with experts working for the parliamentary standing committees. Each standing committee has two advisors and a secretary. They provide legal services focused on legal assistance of the standing committees. These experts provide additional information on the draft laws on the committee's agenda, including the comparative analysis of the same law. They sometimes lead their own initiatives, researching important laws and submitting the research to the head of the standing committee in charge of that law.

Ad hoc committees are also supported by these services.

In cases where the explanatory notes accompanying the draft laws are not clear enough for the committee to make a decision, experts from the Assembly and from the government provide help in clarifying the explanation. Due to limited research capacities of the Assembly, external experts were hired for some significant laws, with support from OSCE, the Italian Parliament or other donors.

Box 4.2. OSCE Albanian Assembly Support Project

The Albanian Parliamentary Support Project[23] is based on the Assembly's own identified objectives for reform. The overall goal is that the Assembly will: (i) become a more effective institution that can fulfill its constitutional role as a forum for political debate and a mechanism for government oversight and control; (ii) become a more professional institution whose staff are qualified and well-trained; (iii) become a more transparent institution whose functioning is open for scrutiny, and one that ensures its ongoing work is readily available to the public; (iv) become a more responsive institution that has consideration for the public opinion and can react to the collectively expressed interests of the citizens it is meant to serve; and (v) strengthen the participation of women in Albanian politics; the Project will aim to implement specific activities to assist female MPs, work to promote gender equality and add a gender dimension to other activities.

[23] The Albanian Parliamentary Support Project is funded by the Nederlands, co-funded and implemented by the OSCE. The first phase of the project (2001-06) has been finalized, and the phase II (2007-10) builds on the work done and its achievements in the first phase.

The Project is composed of six principal components: (i) supporting modernized leading management and decision-making structures; (ii) supporting more effective and professional committees; (iii) supporting more active and professional MP (district) offices; (iv) supporting improved access to the Assembly and the availability of parliamentary information; (v) modernizing the Assembly library; and (iv) creating a student internship program.

Special importance has been given to the development of parliamentary committees, providing training, expertise and support to expand their functioning beyond their current limited roles. Additional support is provided specifically to the committees on Legal Issues, Public Administration and Human Rights, on National Security and on European Integration.

Source: Albanian Assembly Support Project, OSCE, http://www.osce.org/albania/

4.3. Control of quality and coherence of laws

Coherence is an important aspect in insuring quality control. Legislative acts should be consistent with each other and fit into the overall constitutional system and legal traditions of the country. Compliance with the acquis communautaire is necessary in order to avoid future challenges arising from the accession process.

Control of quality and coherence of laws must be considered from the aspect of the control of coherence of legislation in general and from the aspect of quality control of legislation and compliance with acquis communautaire.

The institutions involved in the control of coherence of legislation are:

- The Ministry of Justice at the Government level,
- Parliamentary standing committees at the Assembly level.

Ministry of Justice. In accordance with the Law on Council of Ministers, the Ministry of Justice (through its General Directorate of Codification) is responsible for:

- The harmonization of laws and other regulations with the Constitution of Albania,
- Securing the consistency of the Albanian legal system;
- Providing an opinion on the realization of reform of legislation in general;
- International agreements ratified in accordance with the Constitution;

The Ministry of Justice does not address the political need and policy requirement for draft laws emanating from other authorities, but often does consider whether consequential amendments to other laws, or the draft law itself, are required, or whether the formulation of a proposed amendment has been duly adapted to other legislative provisions[24].

[24] Law Drafting Manual in Albania – A Guide to the Legislative Process in Albania, May 2006.

In addition to these responsibilities, the Ministry of Justice is also directly in charge of (i) preparing legislation related to the field of justice, (ii) securing the methodological unity in the drafting of laws[25], (iii) the preparation and monitoring of the implementation of the unified Albanian methodology for the legislative process. (This Ministry also checks the secondary legislation, necessary for the implementation of laws)

The opinion of the Ministry of Justice is not binding, and the Minister of Justice must defend the opinion of his ministry during the debate in the Council of Ministers.

Parliamentary standing committees check the compliance of the draft laws within their jurisdiction with the constitution and with the overall legal system of the country. In this process, the committees are advised by legal experts in charge of providing legal assistance to the committees. In some cases, the committees can also ask the experts from the Council of Ministers for advice.

This practice is not obligatory for them, not being regulated by the Rules of procedure of the Assembly, and may be one of the reasons of more frequent abolitions of laws by the constitutional court of Albania.

Box 4.3. **Council on Legislation**

The Rules of Procedure of the Albanian Assembly prescribe the establishment of the Council on Legislation as a parliamentary body, appointed by the Speaker of Assembly. Although the formation of this body is conceptualized well, it is still not functional.

It is meant to be composed of ten MPs, who are jurists by profession or have distinguished legislative experience. The Council would express its opinion on draft laws at the request of the responsible committee or of the Speaker of Parliament.

According to the Rules of Procedure, the responsible committee or the Speaker of Assembly could ask the opinion of the Council on Legislation on: (i) the compliance of the draft law with the constitution or with the overall legal system of the country; (ii) the quality of the drafting of a law; (iii) the law's clarity and simplicity; or (iv) other issues deemed necessary by the committee or by the Speaker of Parliament.

The Council on Legislation's report would be sent to the committee responsible for the draft law's examination. Even when the responsible committee does not take the opinion of the Council into consideration, it must present the Council's opinion in the report for the plenary session.

The Council on legislation would examine the draft laws only at the request of the responsible committee or the Speaker of the Assembly.

[25] Examining the technical

Institutions involved in the quality control of legislation and compliance with acquis communautaire are:

- Ministry of Integration, at the level of the Government
- European Integration Committee, at the level of the Assembly
- Other parliamentary standing committees, at the Assembly level.

Ministry of Integration. The Rules of the Council of Ministers from 2003 introduced the competency of the Ministry of Integration to provide expert opinions regarding the approximation of the national legislation with that of the EU. According to these Rules, the draft legislation, including their report and Conformity table, is to be sent for comments to the Minister of Integration, in order to verify and confirm the degree of harmonization with the acquis communautaire. Draft legislation that does not include the Report and the Table of Concordance with the acquis communautaire is to be sent back to the initiating institution by the Ministry of Integration for the completion of the set before it is submitted to the Council of Ministers for discussion.

The opinion of the Minister of Integration about the degree of approximation of the draft legislation with the acquis communautaire should be reflected in the revision of the draft laws by the initiating minister.

The main harmonization work is done on the governmental side and the role of the Assembly is only used to verify the compliance of the draft law with the acquis communautaire. In this process, European Integration Committee and all other standing committees are involved.

Every parliamentary standing committee checks the compatibility of the draft laws within their jurisdiction with the acquis communautaire. Due to high expertise needed in this field, they are advised by the European Integration Committee the by experts from the Department for integrations.

European Integration Committee at the level of the Assembly was set up in May 2002 as a temporary body that received the status of standing committees of the Albanian Assembly in January 2004.

The main competences of this committee are: (i) checking the compatibility of draft laws with the acquis communautaire, and (ii) reviewing annual reports prepared by the Ministry of Integration.

The role of this committee in checking the compatibility of draft laws with the acquis communautaire is focused on advising the other standing committees on these issues. The reports prepared by this committee are submitted to the other parliamentary committees and the resulting recommendations are taken under account during the process of analyzing draft laws.

The recently established Department for Integration supports the work of the European Integration Committee and other standing committees. However, its capacities are still limited, as it is composed of only two experts.

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