

ANALYTICAL REPORT

COMMISSION OPINION ON ALBANIA'S APPLICATION FOR MEMBERSHIP OF THE EUROPEAN UNION

CHAPTER 5: Public procurement

The *acquis* on public procurement includes the general principles of transparency, equal treatment, and non-discrimination. In addition, specific EU rules apply to coordination of the award of public contracts for works, services and supplies, for the classical sectors, for utilities and for the fields of defence and security. The scope of application is defined according to contracting entities, contracts covered, application thresholds and specific exclusions. The *acquis* also lays down rules on review procedures and the availability of remedies.

The *Stabilisation and Association Agreement* (SAA) stipulates that EU companies, whether established in Albania or not, must have access to contract award procedures in Albania based on treatment no less favourable than that accorded to Albanian companies. The Albanian legislation is broadly aligned with the **general principles** applying to public procurement on the internal market. However, not all the provisions of the public procurement directives have yet been transposed.

Award of public contracts is regulated by the 2006 Public Procurement Law (PPL), which was last amended in 2009. Detailed rules for implementing the law are in place. The PPL is aligned with the basic principles of the *acquis*. However, further alignment will be required in areas such as certain award procedures, remedies and defence-related procurement. The 2006 Concessions Law (CL) provides the legislative framework for concessions. Detailed rules on the award procedures are in place. The CL is not aligned with the *acquis* and does not include provisions relating to works and service concessions. Albania has no specific legislation on public-private partnerships.

As regards administrative capacity, the Public Procurement Agency (PPA) is the government authority responsible for policymaking and implementation in the field of public contracts and concessions. It also gives procuring entities advice and support to ensure proper application of the legislation. The PPA is no longer responsible for review procedures, as a new body, the Public Procurement Commission (PPC), was established for this purpose by the latest amendments to the Public Procurement Law. As a consequence, the staff of the PPA has been reduced from 36 to 18 and attention will be required to ensure that the PPA retains adequate capacity. The establishment of the PPC will

ensure separation of policymaking and implementation from **remedies** functions, bringing the system more into line with the EU rules. The PPC is responsible for remedies, both for public contracts and for concessions. Its members are elected by the Council of Ministers. At present the PPC has a staff of 18. There is a need to ensure that it has adequate resources to carry out its functions effectively. Safeguarding the independence of the PPC will be essential. Particular attention should be paid to avoiding conflicts of interest and preventing corruption. The responsibilities of the PPC and the PPA and the arrangements for interaction between them need to be clearly defined.

The Public Procurement Advocate came into operation in 2008 to perform functions similar to an ombudsman, safeguarding the rights and interests of suppliers against acts or omissions by contracting authorities. The PP Advocate is appointed by parliament for a five-year term, on a proposal by the Council of Ministers. In the area of concessions, the Concession Treatment Unit in the Ministry of Economy has certain functions for promoting and assisting contracting authorities in evaluating and negotiating concessions.

Conclusion

So far Albania has fulfilled its SAA commitments in this area. The legislative and institutional framework provides a good basis for development of an effective public procurement system in line with EU rules. Adequate capacity needs to be ensured in all public procurement bodies and clear definitions of responsibilities and cooperation mechanisms need to be established. Safeguarding the independence and effectiveness of the review procedures will be essential. *Overall*, Albania will have to undertake additional efforts to align with the *acquis* and to effectively implement it in the medium term, particularly in the areas of concessions and remedies.