

**IMPROVEMENT OF PARLIAMENT'S ROLE IN DRAFTING AND
OVERSIGHT LEGISLATION ON PUBLIC PROCUREMENT IN ALBANIA**
(WORKING DOCUMENT)

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Acronyms

ACER	Albanian Center for Economic Research
APP	Public Procurement Agency
CSO	Civil Society Organization
EU	European Union
OECD	Organisation for Economic Cooperation and Development
PPC	Public Procurement Commission
WFD	Westminster Foundation for Democracy

Executive Summary

This working document aims to improve the lawmaking and oversight process of the Albanian Parliament, on public procurement in Albania by supporting the Assembly's role in this process. This working document is divided in two parts. Initially, general data on the role by the Albanian Parliament in its legislative and supervisory function are laid out. The working document then presents a case of examination of corrupt-prone areas, in the draft law "On identification of beneficial owners of partners in the public sector", as a proposal of a group of MPs, which aims to avoid the eventual conflict of interest for entities that benefit from public contracts. In this regard, the document proposes some steps that the Assembly should take to strengthen its lawmaking role and in monitoring public procurement for the specific issue of the draft law.

First, a detailed examination of the subsectional aspects of any draft law related to public procurement. This should be done by considering all the following indicators that are analyzed in the draft law cited, with specific recommendations.

A. DOUBLE-MEANINGS

1. The title of the draft law "On identifying beneficial owners of partners in the public sector" provides space for interpretation and risks the emergence of corruption. To be more specific, the expression "partner in the public sector" is too broad and does not fit the meaning given by the draft law. The draft law also provides for the "reporting subject", a particular category that is forced to declare without participation in competition and which probably never manages to become a "partner in the public sector". The use of the expression "partners in the public sector" is a broad expression, although article 3 of the draft law is intended to be defined to narrow the meaning, yet still leaves room for misunderstanding. It is recommended to reformulate the title of this draft law as follows "On identifying beneficial owners in public contracts".
2. The draft law states legal norms, which contain subjective expressions, leaving room for mis-implementation or subjective application in the future. More specifically, in Article 6, point 1, of the draft law it is provided that: "Domestic reporting entities who have an interest in becoming partners in the public sector, have the obligation to participate in the procedures provided for in the relevant legislation..." in this sentence the expression "who have an interest in becoming a partner in the public sector" is unnecessary. The reporting subject before participating in a competitive procedure to win a public contract must register the beneficial owners. That is enough to avoid subjective research and leave the way for unnecessary penalisation of subjects. It is recommended that you remove the phrase "...They are interested in becoming a partner in the public sector."
3. The draft law must contain legal rules, which are in line with each other, have fluidity and logical connections and do not cause contradictions within the draft law itself or with the legislation in force. The draft law contains provisions that are contrary to each other, such as Article 5 "Principle of Transparency", point 2, which contradicts

Article 6 "Obligations of reporting subjects for the preliminary identification of beneficiary owners", point 2, of the draft law itself. For this reason, it is suggested that Article 5 be reformulated by removing point 2.

4. The draft law creates contradictions with the legislation in force especially Article 9 "Administrative Offenses" of the draft law creates a contradiction with Article 10 of the Law No. 10,279, dated 20. 5. 2010 "For administrative offenses". The existing law provides that fines must be either fixed or with minimum and maximum limits, but not percentage. Meanwhile, point 2 of Article 9 of the draft law provides for fines of percentage on an indefinite contract subject. For this reason, it is suggested that Article 9 be reformulated, including fixed fines or with minimum and maximum limits, but not by percentage.
5. The draft law also lists several different terms, such as "partners in the public sector", then "reporting subjects" and article 1 of the draft law "economic operators". The draft law should therefore be reformulated from the title and following, as it applies to subjects who wish to participate in a competitive procedure to win a public contract, as well as to entities that have an existing contract with a public entity. The draft law also contains new terms, such as "qualified complaint" (article 4, point 11) - this is a term that has not been used before and presents an addition to the Code of Administrative Procedures, creating contradictions in the legislation.

B. SUBSTANTIAL RISKS

1. In the accompanying documentation of the draft law, there is no prior assessment of the factual situation of the existing subjects on whom this bill will have an impact, and the expected effects of this law are accepted as being preceded. Not having a prior assessment of the situation, the solution that is intended to be offered with this draft law is not adequate.
2. The draft law contains provisions that allow the exercise of powers at a certain level of discretion. There are no legal criteria to determine these acts of discretion, but the competence is left to the Council of Ministers to adopt guidelines regarding this procedure. In article 6, point 4, it is provided that: "The data of foreign reporting entities are not recorded in any particular register, but they are administered and made public by the responsible authorities. For these subjects, the legal provisions governing the register of beneficial owners are applied. For this, the case should be revised once again, as a foreign reporting entity intending to carry out economic activities in Albania, including participation in procurement procedures, auction or concession, will have to register with the National Business Center (e-Albania platform). Thus, this subject can identify the beneficial owners electronically, in the same way as local entities.
3. The procedures provided for verification or review of complaints are meaningless, as there is a general reference to the Code of Administrative Procedures, without specifying exactly which specific provisions of the Code of Administrative Procedures should apply in the cases referred.

Second, improving the interaction between the Parliament and other state bodies that have similar responsibilities with oversight of public procurement such as public procurement

agency (APP), Public Procurement Commission (PPC), High State Audit, Ombudsman, to share information and cooperate in the implementation of reforms.

Third, the Parliament should establish a regular mechanism of consultation and cooperation with civil society and independent media in monitoring public procurement. This mechanism may include the use of consultative advice, periodic meetings with civil society organizations and media, and the publication of relevant information on the official website of the Parliament. This mechanism would help to ensure a wider and more responsible approach to the public in the processes of public procurement monitoring by the Parliament and to highlight critical issues in this area. Civil society and independent media can be important sources of information and evaluation for public procurement, and can help highlight outstanding issues in this area.

In addition to the specific recommendations as above, this working document comes with some more general recommendations listed below:

1. To compile a full assessment of the factual situation of the contracts in force, in public sector, where private entities have not fully identified the beneficial owners, as well as the implementation of law no. 112/2020 "On the register of beneficial owners";
2. Legal initiatives should be consulted in principle, if legal intervention is to be done, as an amendment, in a special chapter in Law No. 10. 112/2020 "On the register of beneficial owners" or a separate law is required.
3. After drafting the draft law, to be published for public consultation, to allow the interested parties to give an opinion on it;
4. The final version of the draft law, once it is distributed to the parliamentary committees for opinion, is subject to an analysis of the areas for corruption risk, drafted by an independent expert in the field.

I. Introduction

In this document, the importance of improving the role of the Parliament in overseeing public procurement will be discussed and measures and recommendations will be proposed to achieve this goal. The Parliament is the main institution for representing the will of the people in Albania and is one of the main organs of democratic governance of the country. The supervisory role of the Parliament is dedicated to special importance, as a key mechanism for the implementation of the responsibilities of government, to protect the interests of the citizens.

However, due to various political and institutional challenges, the oversight function of the Parliament in Albania is not always at the highest level. By focusing on improving this role, we can influence the overall improvement of governance and justice in the country.

In this working document, the current role of the monitoring of the Parliament in Albania will be analyzed and several recommendations for improving this role will be proposed, with a main focus on public procurement in Albania. This document aims to be a valuable contribution to current discussions about legal changes on public procurement.

II. Theoretical approach to the role of lawmaker and oversight role of the Parliament

To analyze the role of the Parliament in the Republic of Albania, we must refer to the Constitution¹, in which it is provided, in Article 1, point 1, of it: *"Albania is a parliamentary republic"*. Article 2, point 2 of the Constitution that: *"The people exercise sovereignty through their representatives or directly"*, and article 7 of it expressly states that: *"The system of government in the Republic of Albania is based on the sharing and balancing between the legislative, executive and judicial powers."* These constitutional projections frame the type of parliamentary system we have and therefore the role of the Parliament as the exerciser of legislative power in the country.

The Parliament exercises **legislative power** and this substantial competence derives from article 81 of the Constitution and from Article 116 of the Constitution, which defines the hierarchy of sources of law and it turns out that the acts adopted by the Parliament, such as: (i) the Constitution, (ii) ratified international agreements, (iii) laws, are superior to other acts, even the Parliament's will, through the respective laws is determinatory even for that small rating "power" that is left to the organs of the executive power. Article 118 of the Constitution states that: *"1. Sub-legal acts are controlled on the basis and for the application of laws by the bodies provided for in the Constitution. 2. The law must authorize the issue of sub-legal acts, determine the competent body, the issues to be regulated, as well as the principles on the basis of which these acts are stipulated..."*

¹ Approved by Law No. 8417, dated 21. 10. 1998, as amended.

The Parliament elects the President of the Republic, approves the appointment of the Prime Minister, the political program of the Council of Ministers together with its composition, and appoints other officials expressly defined in the Constitution or in special laws.

Article 80 of the Constitution provides among other things that: "1. The Prime Minister and any other member of the Council of Ministers is obliged to answer interpellations and questions of MPs within three weeks". The heads of state institutions, at the request of parliamentary committees, give explanations and inform on various issues of their activity as far as the law allows." The role of the **Parliament's control over executive power** is therefore assessed:

The Assembly may exercise its supervisory role in several different forms, including:

1. Questions, interpellances and motions²

All MPs have the right to submit questions to the Prime Minister or any other member of the Council of Ministers. Questions are submitted by the deputies to the Speaker of the Assembly, who informs the member of the Council of Ministers, who address the questions. The questions are asked in order to obtain information about one or more specific issues. Questions must be written in a clear and concise manner and contain issues within the competence of the persons whose questions are directed, or in relation to the administrative activity to which they are seeking answers.

2. Control by the permanent committees of the Assembly³

Permanent Committees of the Assembly may submit reports or proposals on matters under their own competence or when requested by the Assembly. They also have the right to carry out checks and request documentation to analyse a particular issue within their areas of responsibility.

3. Reporting to the Parliament⁴

The President of the Assembly, through the Conference of Presidents, decides at the beginning of each year on the calendar for filing reports of constitutional bodies and those created by law in the Assembly. This calendar includes the constitutional and legislative bodies that will present the reports, as well as the committee responsible for their review and the legal deadline for filing in the Assembly. The Assembly formally requests the established institutions to submit reports within the legal

² Part three, control of the assembly head of, questions, interpellances and motions. Assembly regulation.

³ Article 102, Regulation of the Assembly of the Republic of Albania

⁴ Article 100, Regulation of the Assembly of the Republic of Albania

deadline to the Assembly. The calendar of reporting is made known at the first plenary session, published and distributed to the respective institutions.

III. Methodology

To prepare this report, the following methods of gathering information have been used.

3.1 Desk research

The conduct of this study was conducted by analyzing reports and studies published by state institutions and international organizations in the country. In particular, the Progress Report for Albania of the European Union for 2022 and the previous years, the monitoring reports of public administration reform by Support for Improvement in Governance and Management- Organisation for Economic Cooperation and Development (SIGMA-OECD) and the prepared guidelines for the field of public procurement, the World Bank report on the support of public procurement in Albania, annual reports and statistics published by the Assembly, are particularly attentive to the progress report for Albania. Public Procurement Agency, High State Audit, Public Procurement Commission, Ministry of Finance and Economy etc. Some of the findings of these reports are listed in section four of this report.

3.2 Analysis of primary and secondary legislation on the field of public procurement

The legislation on public procurement is in harmony with some constitutional provisions, as with Article 11 of the Constitution, which provides that: "The economic system of the Republic of Albania is based on private and public property, as well as on the market economy and freedom of economic activity", or on equality before the law, where in Article 18, point 1, The Constitution states that "all are equal before the law." In itself, public procurement has to do with the procedure of selection of operators who will realize investments or provide goods or services on beside public entities, all these investments and expenditures are carried out according to the most important law of implementation of government policy, i.e. as a fulfillment of the law "On the state budget", The law has a special place in the thirteenth part of the Constitution.

Law no. 162/2020 "On public procurement" is the main law governing legal relations in the field of public procurement. In a period of time spanning over 28 years various laws have been passed in this area, but the main goal has always been to leave as few opportunities for abuse and lack of transparency in these procedures. The law cited above is partially aligned with some EU directives⁵, as noted in the European Commission's recent progress report.

⁵This law is partially aligned with:

1. *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC as amended. CELEX 32014L0024, Official Gazette of the European Union, Series L, no.94, dated 28.3.2014, pp. 65-242.*
2. *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors repealing Directive 2004/17/EC as amended. CELEX 32014L0025, Official Gazette of the European Union, Series L, no.94, dated 28.3.2014, p. 243-374.*

3.3 In-depth interviews

To conduct an analysis of the situation related to the issues of the field of public procurement in Albania, Albanian Center for Economic Research (ACER) has conducted several in-depth interviews with the following actors:

1. Members in the NS.
2. High state control.
3. Ombudsman.
4. CSOs.
5. Representatives of media.
6. Representatives of business.

3.4 Good Practice Analysis

ACER, based on the opinion of the expert team, has identified a series of good practices that reflect the quality of the assembly's oversight role in the field of public procurement. These good practices have been incorporated throughout this report.

3.5 Roundtable

ACER organized a roundtable on the 11th of July, 2023, to present preliminary findings of the working document and to discuss other problematic aspects regarding the field of public procurement in the country, accompanied by relevant recommendations for their treatment. The roundtable was attended by 39 participants representing the Albanian Parliament, civil society organizations, media representatives, independent experts, and representatives from the British Embassy in Albania. During this roundtable, the ACER team presented the findings of the work and focused on discussing these findings. According to the discussions held, the participants identified as a significant problem the government's undue haste to change and pass substantial legal amendments regarding the field of public procurement, which are believed to have a significant impact on worsening transparency and increasing corruption. The participants agreed that the Parliament should have a more active and comprehensive oversight role in the public procurement process to ensure transparency, accountability, and corruption prevention. The discussions emphasized the need to improve existing regulations to strengthen the control and supervision of public procurement by the Parliament. Another topic discussed was how to enhance public participation in the public procurement process by promoting transparency and informing citizens about procurement processes and opportunities to influence them.

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3. *Council Directive 89/665/EC of 21 December 1989 on the coordination of laws, regulations and administrative provisions concerning the implementation of revision procedures for awarding public supply contracts and public works as amended. CELEX 31989L0665, Official Gazette of the European Union, Series L, No. 395, dated 30.12.1989, p. 33-35.*
 4. *Council Directive 92/13/EC of 25 February 1992 on the coordination of laws, regulations and administrative provisions relating to the application of Community rules on procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended. CELEX 31992L0013, Official Gazette of the European Union, Series L, No. 76, dated 23.3.1992, p. 14-20.*

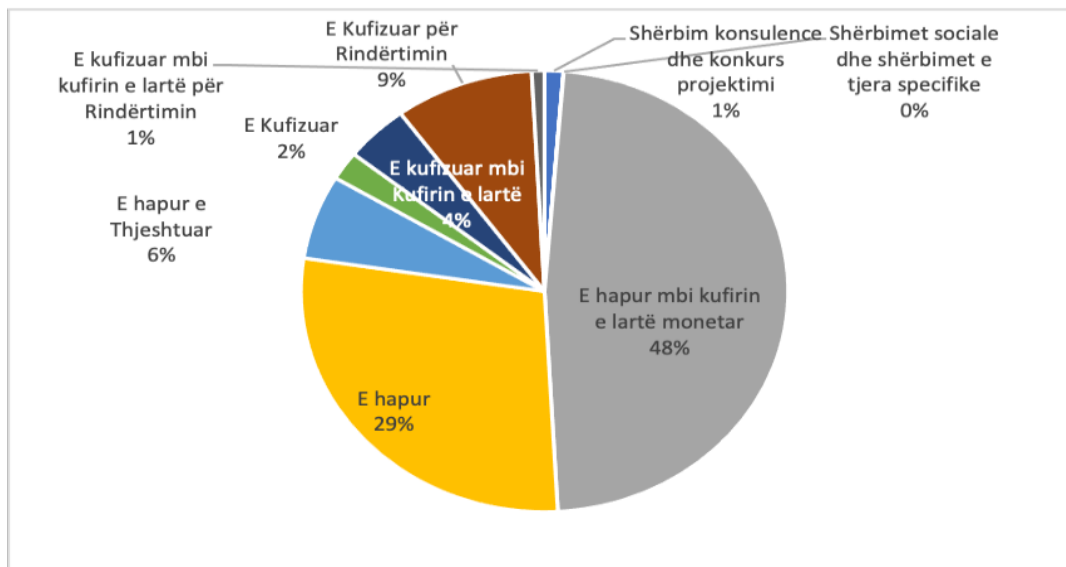
IV. Public Procurement in Albania

4.1 Public Procurement in Albania

During 2022 through nearly 6,500 public procurement procedures Albania has procured over 1.4 billion Euros from budgetary funds or about 9.4% of GDP⁶, higher than the average of the countries of the region but lower than the level of public procurement in the European Union countries, which amounts to 14% of GDP⁷. The total value procured and the number of procurement procedures per year has increased year-on-year, p.sh. Official data show that the total value procured during 2022 was about 2.9 times the total value procured 10 years ago, during 2012, while the number of procurement procedures has increased from 4,939 to about 6,500.

The total value earned in public procurement during 2022 constitutes 91.6% of the total fund limit procured during the same year⁸. The procurement registry data shows that during 2022, the vast majority of budgetary funds were procured according to open procedure above the upper monetary limit (48% of total funds), open procedure (29% of total funds) and limited procedure for reconstruction (10% of total funds).

Graph 1: Public procurement funds by procedures during 2022



Source: APP, Annual Report 2022.

The performance of procurement procedures during the year proves that public procurement is dependent and closely related to the performance of procurement procedures and availability of budget funds on the one hand, as well as the completion of the annual budget cycle on the other. Thus, during 2022, 58% of the fund limit was

⁶ The total annual limit fund 2022 was ALL 170,200,854,721 ALL. Source: APP, Annual Report 2022, page 13

⁷ https://single-market-economy.ec.europa.eu/single-market/public-procurement_en#:~:text=Why%20public%20procurement%20is%20important,of%20services%2C%20works%20and%20s upplies.

⁸ Source: APP, Annual Report 2022, page 17

procured during the second and fourth quarters of the year (30% and 28%, respectively⁹), compared to the lowest procurement values during the first and third quarters of the same year.

Studies on public procurement in Albania have identified many challenges and problems in this area. They confirm **high levels of corruption** in Albania's public procurement sector.¹⁰ Another issue cited in public procurement research is **lack of transparency**.¹¹ In many cases, tenders have been rigged in order to favour a particular party, while procurement processes are conducted vaguely and without real competition.¹² In the latest Progress Report of the European Commission, it is noted that Albania has advanced in the field of public procurement, especially by adopting legislation e mëtejshëm zbatues dhe duke futur një sistem elektronik të ankesave. **However, the report notes that we must work hard to prevent corruption in the procurement cycle.**^{13/14}

4.2 Findings from Qualitative Study

Some of the businesses and associations contacted during this process showed that although they have significant economic activity in Albania, contracting relationships are built mainly with other private market companies, not being inclined to participate in public procurements that are carried out by state institutions and agencies in the country. The lack of participation in public procurement has also been confirmed by representatives of civil society organizations.

From the interview conducted with members of the Competition Authority it turns out that the main concern related to public procurement, and for which the institution is working to propose amendments to the relevant legislation to further align with the legislation of the European Union, is related to consideration as an agreement between the parties and the punishment (and/or penalization in repeated cases), following the experiences of the Countries of the European Union) of companies participating in public procurements, which provide similar, complementary or rotational offers.

Representatives of the media showed that public procurement in many cases is a crime known to all and that remains uninvestigated anyway. Prosecutions repeatedly fail to investigate both the procedures¹⁵ and the destination and final beneficiaries of the

⁹Source: APP, Anniversary Report 2022, page 22

¹⁰U.S. Department of State. (2021). Investment Climate Statements - Albania. Retrieved from <https://www.state.gov/reports/2021-investment-climate-statements/albania/>

¹¹Albanian Institute of Science (AIS). (2021). Executive Summary - May 2021. Retrieved from https://ais.al/new/wp-content/uploads/Executive-Summary_Edited_CRM_May2021_final-with-tables.pdf

¹²South East Leadership of Development and Integrity (SELDI). (n.d.). Public Procurement Integrity in Southeast Europe. Retrieved from <https://seldi.net/public-procurement-integrity-in-southeast-europe/public-procurement/>

¹³European Commission. (2022). Albania Report 2022. Retrieved from <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

¹⁴SIGMA. (2021). Monitoring Report Executive Summary 2021 - Albania. Retrieved from <https://www.sigmaxweb.org/publications/Monitoring-Report-Executive-Summary-2021-Albania.pdf>

¹⁵Reporter.al. (2019, May 27). Government Contracts Millions of Euros in Secret Contracts. <https://www.reporter.al/2019/05/27/qeveria-kontraktot-miliona-euro-shpenzime-me-kontrata-sekrete/>

procured funds even in cases where there are clear indications,¹⁶ bringing as an example the case of incinerators and companies involved in them. Investigations are usually covered by investigative secrets, which gives very little opportunity for the public to see how much it was worked on, while for example in the case of the Tirana incinerator, there is an exception to this rule because the case in question was also investigated by a parliamentary investigative committee. Rotating tenders¹⁷ are a phenomenon that are repeated frequently in the road construction sector¹⁸ in Albania¹⁹ and have been reported repeatedly in the media. These reports, however, failed to impress prosecutors, who have continued to ignore them as cases with potential to be investigated. In another case, the prosecution investigated and successfully executed the conviction of the members of the procurement commission for abuse of office but did not take the difficulty to see the balance of the procurement company to investigate the final destination of the money that supposedly must have been obtained as a cause for abuse of office. While abuse of duty is proven, it is not revealed what cause officials have abused. Media representatives expressed concern about the role the media can play to fight corruption in public procurement at a time when prosecutors are unwilling to take indicies to launch ex-officio investigations.

4.3 Areas for corruption risk and improvement of the role of law-making and supervisor of the Parliament in public procurement

In²⁰ the calendar of the Parliament, for the period 10 April - 28 April 2023, as well as on the online page, in the draft laws²¹ announced, in the process of reviewing the draft law "On identifying beneficial owners of partners in the public sector", as a proposal of a group of MPs, which aims to avoid the eventual conflict of interest, for entities that benefit from public contracts. This draft law relates to the field of public procurement that aims to avoid conflict of interest in these procurement procedures in advance, thus preventing the development of procurement procedures, acquired and contracted in terms of conflict of interest. The analysis of this draft law can serve the Parliament as a model regarding the steps and criteria it needs to implement during the legislative process, to further improve its supervisory role in the field of public procurement.

Article 81 of the Constitution provides, among other things, that: "The right to propose laws is given by the Council of Ministers, every member of parliament, as well as 20 thousand electors." For the legal initiatives proposed by the Council of Ministers, legal procedures are

¹⁶ Reporter.al. (2020, June 3). Tender Without Announcement, Institutions Procured 8.9 Million Euros During the Epidemic. <https://www.reporter.al/2020/06/03/tendere-pa-shpallje-institucionet-prokuruan-8-9-milion-euro-gjate-epidemise/>

¹⁷ Reporter.al. (2015, December 16). Tenders with Rotation, Investigations Opened for Another Manipulation. <https://www.reporter.al/2015/12/16/tenderet-me-rotacion-hapen-hetimet-per-manipulim-tjeter/>

¹⁸ Reporter.al. (2018, November 24). The Segment of the New Ring Road Under Construction Five Times More Expensive than Other Segments. <https://www.reporter.al/2018/11/24/segmenti-i-unazes-se-re-ge-po-ndertohet-pese-here-me-i-kushtueshem-se-segmentet-e-tjere/>

¹⁹ Reporter.al. (2022, May 17). Major Beneficiaries of the Reconstruction Program. <https://www.reporter.al/2022/05/17/perfituesit-e-medhenj-te-programit-te-rindertimit/>

²⁰ Check the calendar announced at the following link

<http://www.parlament.al:5000/Files/202304181118191825Kalendari%20i%20punimeve%2010%20Prill%202023%20-%2028%20Prill%202023.docx%20i%20ndryshuar.pdf>

²¹ The text of the draft law can be found at the following link:

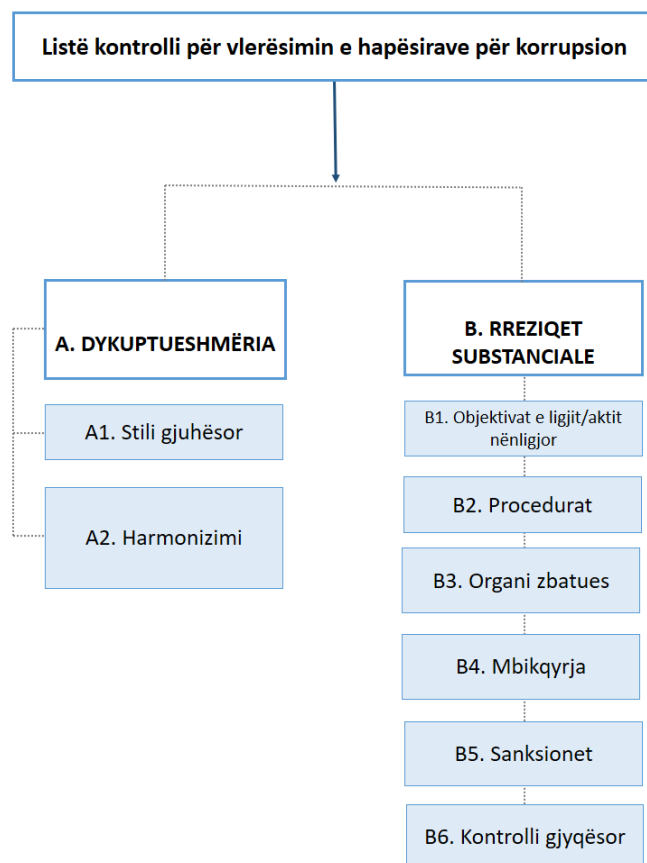
<http://staging.parlament.al/ProjektLigje/ProjektLigjeDetails/55768>

provided²², cut off in law no. 9000, dated 30. 1. 2003 "On the organization and functioning of the Council of Ministers" and in decision no. 584, dated 28. 08. 2003 "On the approval of the Regulation of the Council of Ministers", amended, procedures guaranteeing the legality of the form and content of the draft act, issues of unified implementation of legislative technique, approval opinions of the ministries and interested subjects, preliminary transparency with the online publication for public consultation, as well as a review of possible areas for corruption, Whereas for legal initiatives, coming from MPs or 20 thousand voters do not pass these preliminary administrative procedures.

Sugjerohet që Kuvendi të gjitha projektligjet e propozuara për shqyrtim t'ia nënshtrorë një kontrolli paraprak për hapësira eventuale për korrupsion, bazuar në rubrikat e renditura më poshtë, por edhe në të tjera, në varësi të veçantisë së projektligjit në shqyrtim.

To assess the corruptive areas in the legal initiative cited above, a set of criteria were used which are grouped as follows:

Figure 1: Criteria for evaluation of corrupt areas



²² See the methodology approved by Minister of Justice Instruction No. 6, dated April 29, 2022, "On determining the unified methodology for drafting normative acts" at the following link: Ministerial Instruction No. 6.

A. Understanding - The understanding as a criterion of evaluating the space for corruption is when a legal norm, sentence or expression has more than one meaning, thus creating confusion among the implementer of the law and leaving subjective spaces in the implementation of the law itself.

A.1 Language style – The language of the draft law should be simple, precise, with correctly constructed sentences from grammar and lexical point of view.

A. 1.1 Are the words correct?

In the draft law analyzed starting with the title "On identifying beneficial owners of partners in the public sector" the use of the expression "partner in the public sector", this new definition creates uncertainty, creating doubt about whether it extends only to private entities, which will conclude a contract with the public sector, with profit-making purposes or with another subject of private law or international law, A contract/support agreement, where the public sector is the only beneficiary?

The new word/expression	Title of the draft law "On identification of beneficial owners of partners in the public sector". So the expression "partner in the public sector" is very broad and does not correspond to the meaning of the draft law and on the other hand, the draft law also provides for the "reporting subject", which is another category, which is forced to declare without competing and perhaps never gains the status of "partner in the public sector".
Problems	The use of the expression "partners in the public sector" is a broad expression, which although in article 3 "Scope of Implementation", the draft law is intended to be defined, to be narrowed down, as such, still leaves room for misunderstanding.
The solution	Re-formulation of the title as follows: "On identification of beneficial owners in public contracts"

A.1.2 Are sentences and phrases correctly constructed leaving no room for ambiguity?

The draft law states legal norms, which contain subjective expressions, leaving room for mis-implementation or subjective application in the future.

The new word/expression	In Article 6, point 1 of the draft law it is provided that: "<u>Domestic reporting entities who have an interest in becoming a partner in the public sector</u>, are obliged to participate in the procedures provided for in the relevant legislation..." in this sentence the expression "who have an
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	<p>interest in becoming a partner in the public sector" is unnecessary and the question arises as expressed in the interest? The reporting subject before participating in a competitive procedure to win a public contract must register the beneficial owners. That is enough to avoid subjective research and leave the way for unnecessary penalisation of subjects.</p>
Problems	<p>The phrase "having an interest in becoming a partner in the public sector" is subjective. An entity intending to participate in a procurement or auction procedure, or to apply to rent a state object, has no legal obligation to express this idea, only he is legitimized as such, when he applies regularly in the declared procedure. The reporting subject before participating in a competitive procedure to win a public contract must register the beneficial owners. That is enough to avoid subjective research and leave the way for unnecessary penalisation of subjects.</p>
The solution	<p>The word "removed" "They are interested in becoming a partner in the public sector."</p>

A2. Harmonization - The draft law must contain legal norms, which have unity with each other, fluency, logical connections and that do not create contradictions within the draft law itself or that do not create contradictions, or further contradict the legislation in force.

A.2.1. Are there contradictory provisions within the law? Are there any contradictory rules?

In the draft law there are contradictory provisions, such as: Article 5 "Principle of Transparency", point 2, conflicts with Article 6 "Obligations of reporting subjects for the preliminary identification of beneficiary owners", point 2, of the draft law itself.

Articles of the bill	<p>In Article 5, point 2 it is provided that: "No entity or legal entity, other than the provisions provided for in point 2 of Article 3, may acquire the status of partner in the Public Sector or may lose it at any time, unless it has previously identified the beneficial owners or if it has not updated the data on beneficial owners according to the provisions of Article 7, of this law."</p> <p>Article 6, point 2 provides that: "After registration in the register of beneficial owners, the local reporting subject has the right to benefit a public contract. The registration of data of the local reporting subjects is done according to the provisions of the law on the register of beneficial owners."</p>
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Problems	In Article 5, point 2 it is provided that the status of partner in the public sector is lost if I did not identify the beneficial owners before the procedure, while in the following article that only after registration in the register of beneficial owners, the local reporting subject has the right to benefit a public contract. So the question arises, after the entry into force of this law, how is it allowed to compete and take a public contract a subject that has not registered the beneficial owners in advance? It seems like the bill itself above, because of the contradiction between legal norms allows it to happen.
The solution	Re-reformulation of Article 5, removing point 2.

The draft law also creates contradictions with the legislation in force, namely Article 9 "Administrative Offenses" of the draft law creates contradiction with Article 10, law no. 10 279, dated 20. 5. 2010 "For administrative offenses", where it is provided among other things, that the fines are either fixed or with minimum and maximum limits, but not percentage.

Articles of the bill	<p>In Article 9, Point 2 provides that: "The following violations... they constitute administrative infractions and are punished with a fine as follows: a) the failure to update data within the deadline set out in point 1 of Article 7 of this law, for commercial entities, is punishable by a fine, to the extent 10% of the value of the public contract; b) The non-updating of the data within the deadline set out in point 1, of Article 7 of this law, is punishable by a fine, to the extent of 10% of the value of the public contract;</p> <p>In Section 10, point 1, of law no. 10,279, dated 20. 5. 2010 "On administrative offenses" it is provided that: "The measure of penalty with a fine is determined by the law, which has provided for administrative offense. The penalty may be fixed or fixed with minimum and maximum limits."</p>
Problems	The provision of the draft law regarding the sanction and specifically the fine is in conflict with a legal norm of the general character in force.
The solution	Reshaping Article 9, point 2, by envisage either fixed or maximum limits, but not % on an indefinite contract subject.

A.2.2 Is the terminology used correct and consistent?

The draft law also finds a number of terms, ranging from "partners in the public sector", then "reporting subjects" and article 1 of the draft law "economic operators". The draft law

should be reformulated from the title to the following, as it extends its action to subjects who want to participate in a competitive procedure to win a public contract, as well as to those entities, who have a following contract with a public entity. The draft law contains neologisms, e.g.: "qualified complaint" (article 4, point 11)- this is a term that has not been used before and is as an addition to the Code of Administrative Procedures, creating contradictions in the legislation.

A.2.3 Are the references accurate and clear within the law? Are the references accurate and clear in other laws?

The draft law correctly refers to the preceding legal norms, setting precisely the article and the relevant point. There are no accurate references to the provisions of the Code of Administrative Procedure, as mentioned in Article 8, point 3, of the Draft Law.

A.2.4 Does the text of the law cover all matters? Is there a legal vacuum?

The text of the bill does not cover all issues. P.sh the verification procedure with its own initiative (propio motu) that can be performed by a responsible authority or control authority is not accurately provided for, there are no deadlines within which this verification or review of an administrative complaint is carried out.

Recommendation: To reform Article 8 of the Draft Law by accurately providing for both the verification procedure and the complaint review procedure, together with the respective deadlines and the provision of information on how much above, to interested parties.

B. SUBSTANTIAL RISKS

Objectives of the Law – The objectives of the draft law are provided for in its general provisions, titled, such as: "object", "purpose", while a more detailed description of the objectives is given in the accompanying report of the draft law, which should describe the problem, which aims to solve the new draft law, an assessment of the factual situation and to argue why a new draft law is the right solution for that created issue.

B. 1.1 Is the preliminary assessment accurate? Are the objectives of the law determined in accordance with the preliminary assessment?

In the accompanying relationship of the draft law, there is no prior assessment of the factual situation of the existing subjects on whom this bill can extend the action, the expected effects that for them the draft law has a retroactive effect. Not making a preliminary assessment of the situation and the solution that is intended to be given with this bill is not appropriate.

B. 1.2 Are the rules of law coherent with the objectives of the law?

The draft law aims to provide rules to meet its objectives, but as explained above, due to contradictory legal norms or subjective expressions, the fulfillment of the objectives is also affected.

B.2 Procedures

B. 2.1 Is discretion determined to the extent necessary, so that it is not broad? Are there criteria that define discretion? Is there any discretion to enforce the exemption from the rule?

The draft law has provisions that provide for the exercise of competences in a given discretion. There are no legal criteria that define this discretion, but the authority has been left to the Council of Ministers to adopt a guidance regarding this procedure.

Article of the bill	Article 6, point 4 provides that: "The data of foreign reporting entities are not recorded in any specific register, but they are administered and made public by the responsible authorities. For these subjects, as far as applicable, the legal provisions governing the register of beneficial owners shall apply.
Problems	So there is a disparity between the local reporting subjects that conduct the online procedure with e-Albania and foreign reporting entities, who must physically submit documents to the responsible authority.
The solution	Once again, a foreign reporting subject that will exercise economic activity in Albania, even if competing in a procurement procedure, auction or concession will be registered in the QKB (e-Albania platform), then in this way this entity can also perform the identification of beneficiary owners online, same with local entities.

B.2.2 Is there regulatory discretion?

The draft law does not appear to have regulatory discretion for the responsible authorities.

B. 2.3 Are all steps of the procedure determined by decision making?

The procedure is defined by blanket, simply by a general reference to the Code of Administrative Procedures, without specifying the relevant provisions. Thus, Article 8 "Data Verification" of the draft law should be reformulated by detailing the procedure, along with the respective deadlines.

B. 2.4 Is the procedure clear?

The procedure provided for in the draft law in the case of verification or review of a complaint is unclear.

B. 2.5 Is the procedure simple without any overly contingency?

The procedure for identifying beneficial owners is simple, while other verification procedures that the responsible authorities or control authorities may carry out, as well as the procedure for reviewing the complaint by them is not clearly defined.

B.2.6 Is the appropriate access to information provided during the procedure?

Not being the correct procedure for both cases, such as in the case of verification or review of a complaint, even the right to adequate and reasonable information for the subject concerned is not provided for in this draft law.

B.2.7 Are the steps set? Are the deadlines accurate and appropriate?

In the draft law, in Article 11, point 3, its time limit is provided for 30 days, as binding on the subjects that have a public contract with a 2-month implementation period from the entry into force of the law. The 30-day deadline for an entity may be short, considering that, in most long-term concessionary contracts, have as contracting parties foreign entities and the receipt of official information full may take longer than that. If the bill is put to public consultation, it may be possible to collect valuable proposals from the subjects affected by this retroactive effect.

B.2.8 Does the procedure guarantee free competition if it sets selective rules?

The bill has been affected by competition several times. Let's illustrate it with the relevant provisions.

<p>Articles of the bill</p>	<p>Article 3, point 3 provides that: "This law does not apply to public contracts with a value of less than 5,000,000 (five thousand) ALL.</p> <p>In Article 9, point 4 it is provided that: "The partner in the public sector to whom a fine has been imposed, according to the provisions of this Article, cannot benefit any other public contract, until the fine has been executed under the applicable legislation, except when by decision of the final court the decision on the penalty with a fine has been abolished or found absolutely invalid."</p>
<p>Problems</p>	<p>In the first case, the possibility of deviating from the objectives of the draft law is created, that a subject competes only in procedures with a lower value of 5,000. All 000 and in total within one calendar year benefits a considerable amount, while another entity that competes for a procedure on that minimum value must be subject to all obligations provided for by this draft law.</p> <p>In the second case a subject, who may have been imposed an illegal fine for the duration of the case (the current duration ranges from 5-10 years for final court decision) is prohibited from participating in other proceedings, although he may have regularly declared the owners beneficiaries.</p>
<p>The solution</p>	<p>The abolition of Article 3, point 3 and Article 9, point 4, as discriminatory provisions and affecting free competition, undermining in the last analysis the objectives of the Draft Law.</p>

B. 2.9 Is the decision-making process clear? Are the criteria clear for decision making?

The procedures provided for in cases of verification or review of complaints are unclear, there is a general reference in the Code of Administrative Procedures, without anticipating which provisions of the Code of Administrative Procedures apply the referred cases.

B.3 The executing body

B.3.1 Is a competent body assigned to the implementation of the law or sub-legal act?

The draft law provides for which responsible authorities are. Thus, article 4, point 9, of the Draft Law provides that: "Responsible authorities" are all bodies, institutions, agencies, state entities, which are in a legal relationship with a Partner of the private sector."

B.3.2 Are the powers of the body clearly assigned? Is there overlap of competence?

The competencies of the responsible authority stem from Article 6 of the draft law at the stage of identification of beneficial owners by the reporting entities and then in the verification phase mainly or based on a complaint the same competence is provided for the control authorities, which may create unusual situations, since both the responsible and the control authority are considering the same appeal against an entity.

Articles of the bill	In Article 8, point 1 it is provided that: "The responsible authorities or those of control may verify the data recorded in the register of beneficial owners or communicated by foreign entities, on their own initiative or on the basis of a qualified complaint, regarding whether the data communicated is true and complete."
Problems	The procedure of reviewing a complaint can be carried out simultaneously by two or more authorities, as the control authorities in the draft law are listed 10 (ten) institutions.
The solution	The reformulation of Article 8, point 1 providing that the verification and review of complaints is carried out by one of the control authorities, the first to which the complaint has arrived and notifies the other control authorities to provide possible information on the matter.

B.3.3 If the executing body has been delegated to be regulated by a by-laws act, is a deadline set for the issuing of the sub-legal organ? Is there a risk of delayed erection?

It is not foreseen that the executing body will be regulated by sub-legal act. The responsible authority and control authorities as state institutions charged with the implementation of the law derive directly from it.

In the last and specific provisions in Article 11, points 1 and 2 of the draft law are defined two sub-legal acts, which must be adopted by the Council of Ministers, but without specifying deadlines within which these acts will be adopted and enter into force. In the present case, at least 6 months reasonable deadline should be added, within which the Council of Ministers approves the sub-legal acts in application of this law. This way, the

situation created from time to time is avoided, when laws do not take substantial legal force, as sub-legal acts have not been adopted in their application.

B.3.4 Is more than one law enforcement body provided for? Are their competences consistent? Is it clear which is main responsible body?

In the draft law are defined two types of implementing bodies: (i) the responding authority, i.e. the one that organizes the competitive procedure and concludes the contract with the private entity; (ii) the control authorities, which are listed in Article 4, point 10, of the Draft Law.

B.3.5 Do the rules for preventing and avoiding conflict of interests respect the rules laid down?

In the draft law there is no foresight for conflict of interest of the responsible authority or control authority with the subjects obliged to declare, but the special law no. 9367, dated 7.4.2005 "On the prevention of conflict of interests in the exercise of public functions" applies, as amended;

B.4 Surveillance

B.4.1 Does the law provide for a supervisory mechanism?

The draft law does not provide for a special supervisory mechanism, but there is a legal opportunity for each subject to exercise an administrative appeal when it finds that the law has been violated or not properly implemented.

B.4.2 Does the law guarantee transparency of its implementation?

The draft law provides for a specific provision, Article 5 "Principle of Transparency", a provision which is more declarative. The draft law should be supplemented with a detailed procedure in cases of verification or review of the complaint, so that interested parties can receive information and thus the whole process is made transparent to the public.

B.5 Sanctions

B.5.1 Does the law defines sanctions in case of breach of obligations?

Yes, the draft law is provided for sanctions in Article 9 of it, dealt with in point 1.2.1 of this analysis.

B.5.2 Are sanctions proportionate?

See again point 1.2.1 of this analysis, which lists the legal problems for how these sanctions were written.

6 Judicial review

B.6.1 Does the law provide for judicial control of administrative activity?

The draft law provides for the possibility that the subjects will be referred to the Administrative Court, in cases where they claim that their rights have been unfairly violated. See Article 9, point 3, of the bill.

B.6.2 Are the rules for judicial control clearly formulated?

In the draft law, a reference was made simply to the special law "On administrative courts and adjudication of administrative disputes", amended, as the rules on when (cases), within which deadlines, with what kind of lawsuits the subjects can bring into motion the Court are provided in that law.

4.4 Role of non-parliamentary system actors in effective oversight of public procurement

Public Procurement Agency (APP) is a central organ, public legal entity, depending on the Prime Minister, financed from the State Budget. Its activity is based on law no. 162/2020 "On Public Procurement", amended, Law No. 125/2013 "On concessions and public-private partnership" and Law No. 9874/2008 "On public auction", as amended. The duties and competencies of the Public Procurement Agency focus on:

1. Preparation of draft proposals for public procurement rules, public auctions and those in the field of public-private concessions/partnerships, drafting standard Tender Documents and issuing necessary guidelines to assist the authorities undertaking these procedures;
2. Verification of the implementation of public procurement procedures, concession procedures and public auction after the contract signing phase and in case of violations of legal and sublegal provisions, the imposition of fines or the proposal of taking administrative measures;
3. Monitoring the well-being of the public procurement system, as well as the implementation of measures and activities in order to achieve and maintain a fully transparent and efficient public-private concessions/partnership system;
4. Drafting and issuing of the Public Notices Bulletin;
5. Exempting economic operators from participating in public procurement, concessionary or public auction for a period of one to three years;
6. Promoting and organising the qualification of central and local government employees involved in public procurement activities.

The Public Procurement Commission (PPC) is the highest administrative body in the field of procurement that reviews complaints about public procurement procedures, public-private partnership concessions, public auctions and competitive mining permit grant procedures. The PPCP was established by law 10170, dated 22.10.2009 "On some amendments and additions to law no.9643, dated 20.11.2006 "On public procurement", amended" and functions as a collegial body composed of 5 members. The President and members of the Public Procurement Commission are appointed by the Assembly on a proposal of the Council of Ministers for a five-year term with the right to re-election only once. The Commission has the status of an independent institution, which is financed from the State budget, a status which was sanctioned by amendments made by Law No. 47/2017, dated 13.04.2017 "On some amendments and additions to law no. 9643, dated 20.11.2006 "On public procurement" (amended), in fulfillment of agreements with international partners, in particular the European Union and the World Bank. The PPCP has the legal obligation to report to the Assembly through an annual report, which is carried out at the end of the following quarter, as well as in any case that may be requested by the

Assembly of Albania. The performance of the work of the PPC has shown that over the last years, the percentage of decisions taken by the PPC that have been appealed to the Administrative Court has averaged below 10%. Increased speed in decision making; reduce the number of complaints reviewed outside the deadline; The quality of decision making and the effectiveness of the complaint handling system, assisted by the online handling of issues, have received the most positive assessments in the OECD-SIGMA assessment of public administration reform for the Western Balkan countries and Turkey.

The justice system, and especially the Administrative Appeals Court as the next institutional step in the appeal procedure for decisions of the CPC, based on law no. 9643/2006 "On Public Procurement", is another important actor in the field of public procurement in Albania, with the function of handling all second-tier complaints of economic operators participating in public procurement.

The High State Audit as the highest institution of economic and financial control in the country, through its work aims to inform the public and the Albanian Parliament about the use of resources with economics, effectiveness and efficiency by central and local governments and other public entities, as well as promoting accountability throughout the public sector, in line with EU best practices and international standards, contributing to good governance, through the fight against corruption. Auditing public procurement procedures is a continuous function of the work of the State Supreme Audit.

The Ministry of Finance and Economy is the institution responsible for managing public finances, drafting and implementing the state budget including coordinating all steps in planning, budgeting and implementing public procurement financing in the country.

The Ministry of Justice , in the capacity of National Coordinator against Corruption, pursues institutional cooperation for the prevention and punishment of abusive actions and corruption in public procurement procedures and enhance the integrity of the employees who carry out these procedures.

The Competition Authority has an important role to play in protecting free and effective competition in public procurement, with a focus on preventing secret agreements in them. A series of **inspection institutions** such as the National Food Authority, the State Inspectorate of Labor and Social Services etc., as well as the General Directorate of Taxes, through the exchange of respective information on the economic operators winning procurement procedures and verification of whether these economic operators exercise the activity by implementing the requirements of the legislation in force, according to the respective fields that cover each of these institutions, assist in the conduct of public procurement procedures and the handling of cases where various subjects have been fined for violation of the labour legislation or result in not exercising activity in accordance with the legal requirements in force.

Media, international organizations (SIGMA-OECD, European Union, World Bank etc.), **business representative organizations, including businesses participating in public**

procurement procedures, and civil society, are important actors that monitor public procurement procedures and help improve transparency, efficiency of the system and its credibility by economic operators, the Albanian public and international organizations. It is worth mentioning the positive example of OpenProcurement, established by a civil society organization as a functional online mechanism for improving transparency of public procurement in the country.

V. Recommendations

From the analysis of the draft law as above, specific findings have been identified, accompanied by specific recommendations for legal changes. In addition to the recommended changes, this working document comes with several recommendations related to the procedural side of drafting and implementing draft laws related to the public procurement sector in Albania.

1. To conduct a thorough assessment of the factual situation of the contracts in force, including private entities that have not fully identified the beneficial owners, and to review the law so far. 112/2020 "On the register of beneficial owners". This assessment should include identifying the gaps and challenges in the implementation of the current law and provide concrete recommendations for improving the identification and registration process of beneficiary owners.
2. To consult in principle legal initiatives to decide that if legal intervention is necessary, it should be carried out through the inclusion of a special chapter in Law No. 10. Regulation (EC) No. 112/2020 "On the register of beneficial owners" or drafting a special law that specifically addresses the issue of identification of beneficial owners. Consultations should include relevant stakeholders, such as state institutions, non-governmental organizations and the private sector, to ensure a clear definition of the most appropriate solution.
3. After drafting the draft law, it is important that it be published for public consultation, giving the interested subjects, including civil society, business and the public at large, to give their opinion. This active involvement of interested stakeholders helps to increase transparency, legitimacy and admissibility of the draft law.
4. The final version of the draft law, when sent for review to parliamentary committees, should be subject to an analysis of the areas for the risk of corruption. This analysis should be carried out by an independent expert specializing in the field of prevention and combating corruption. Analysis of the areas for corruption risk helps identify the potential of corruption impact and recommend measures to reduce risk and strengthen the integrity of the process of identifying beneficial owners.
5. In order to avoid the practices of similar procurements, rotating or complementary to each other, identified in many cases as such by the media, it is necessary to revise legislation on public procurement to reinforce penalties against such schemes at cost to the state budget, in accordance with the best standards applicable today in the European Union countries.

In the framework of improving the role of the Parliament as a lawmaker and supervisor for the procurement sector in Albania, this document comes with recommendations at a general level, the following:

1. The Parliament to further monitor the activity of the Public Procurement Commission and other implementing institutions of public procurement legislation, with the aim of

increasing transparency of procurement procedures, getting the public acquainted with winners, and monitoring the implementation of contracts concluded;

2. Standardize information about procurement procedures not only through the online site of the Apprais, but also on the online pages of institutions, as contracting authorities, whereby real-time information about winners, complaining or court proceedings are provided, as well as the contract entered into if there is no complaint and its implementation;
3. The Parliament in a longer term plan to consider the possibilities for substantial changes in the legislation on public procurement in order to appoint a special institution for drafting the criteria of procurement procedures and institutions, as needed, to organize only the procurement procedure, but without having the right to determine the criteria.

These recommendations aim to ensure a responsible and transparent process during the drafting and implementation of the draft law, trying to address issues of identifying beneficiaries and to combat the risk of corruption effectively.

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Annex 1: List of questions addressed to key stakeholders on public procurement sector issues in Albania

A/ MEMBERS OF THE PARLIAMENT

1. In the course of your duties, what have you identified as the most disturbing in the field of public procurement? (Have you ever suggested the above?)
2. Have you exercised your right to interpellance, questions, information, participation in commissions of inquiry in issues related to public procurement, concessions, auctions, etc.
3. In the general plan, what would you suggest to improve in order to improve the oversight role of the Assembly in the public procurement process?

B/ ALSAI/ OMBUDSPERSON / PUBLIC PROCUREMENT COMMISSION / COMPETITION AUTHORITY

1. In the course of your work, did you have any public procurement related?
2. What are the basic problems you've been highlighting? How did you report these problems?
3. What should be improved in order to strengthen your role for better oversight of aspects of public procurement?

C/ BUSINESS REPRESENTATIVE/ CSOS

1. Is your company involved in public procurement procedures?
2. Have you been declared a winner in any of the proceedings? If yes, what did you say during the contract?
3. What are the issues that concern you about public procurement procedures?
4. What needs to be improved?

D. REPRESENTATIVES FROM THE MEDIA

1. Have you written or done any research on the public procurement? (If yes, what did you find?)
2. Do citizens follow up on concerns about procurement procedures? What kind of things are they and where do they consist?
3. What would you recommend to improve on these procedures? How can the role of the media as "watchdog" of various aspects of public procurement in Albania be improved?

Annex 2: List of consultations under way on specific aspects of public procurement in Albania

1. Institution: Albanian Assembly. EtjenXhafaj, MP, Parliamentary Group PSz. Helidon Bushati, MP, Parliamentary Group DP
2. The State Supreme Audit Authority: *They have not returned a response.*
3. Institution: Ombudsperson: *They have not been contacted have returned a response*
4. Institution: Competition Authority
Person: Mr. DurimKraja, Commissioner
5. Institution: Reporter.al, BIRN publication
Person: Mr. GjergjErebara
6. Institution: Exporters Association of Albania
Person: Mr. Alban Zusi
7. Institution: Association of Manufacturers of Albania
Person: Mr. Arben Shkodra
8. Institution: Union of Traders of Albania
Person: Ms. Mira Pogachi
9. Institution: Institute for Cooperation and Development
Person: Mr. ArdianHaçkaj