

**IMPROVING THE PROCESS OF ECONOMIC REFORM
LEGISLATION IN ALBANIA**

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.

a) 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) fiscal 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.

b) 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 Programme, 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.

c) 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.

d) 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.

e) Harmonization with the European Union legal system (*Acquis communaautaire*)

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.

f) 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.

g) 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.

h) 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 parliamentary 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 committees 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 indicators 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.

