

**TO THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
represented by the Presidency and the Vice-Presidency of the Energy Community**

REASONED REQUEST

in Case ECS-10/13

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community ("the Treaty") and Articles 14 and 28 of Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty,¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF ALBANIA

is seeking a Decision from the Ministerial Council that

by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 5(1), 9(2), 12(1), 14(2) and 18(2) as well as Annex VI of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council, the Republic of Albania has failed to fulfil its obligations under the Energy Community Treaty, and in particular Decision 2009/05/MC-EnC of the Ministerial Council and Directive 2006/32/EC.

The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) In May 2006, Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC² ("Directive 2006/32/EC") entered into force in the European Union. The purpose of the Directive is to make the end use of energy more economic and efficient by establishing indicative targets, incentives and the institutional, financial and legal framework needed to eliminate market barriers, which prevent the efficient end use of energy.³ Furthermore,

¹ Procedural Act No. 2015/04/MC-EnC of 16 October 2015 amended the Dispute Settlement Procedures. However, as the present case was initiated prior to the adoption of the amended Dispute Settlement Procedures, the rules stipulated in Procedural Act No. 2008/01/MC-EnC are to be applied.

² OJ L 114, 27.4.2006, p. 64.

³ Article 1 of Directive 2006/32/EC.

Directive 2006/32/EC aims to create appropriate conditions for the development and promotion of a market for energy services and for the delivery of energy-saving programmes and other measures aimed at improving end-use energy efficiency.⁴

- (2) On 18 December 2009, the Ministerial Council of the Energy Community decided that Contracting Parties have to transpose the Directive's provisions into their national laws by 31 December 2011, with the exception of Articles 14(1), 14(2) and 14(4) for which a transposition deadline of 31 December 2009 was set.⁵
- (3) On 16 October 2015, Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU⁶ (hereinafter: "Directive 2012/27/EU") was incorporated in the Energy Community *acquis communautaire* by Decision 2015/08/MC-EnC of the Ministerial Council. Directive 2012/27/EU repealed Directive 2006/32/EC in the European Union.

2. Legal framework in the Republic of Albania

- (4) Republic of Albania adopted its first Law on Energy Efficiency in 2005.⁷ By the time of adoption of this Law, Directive 2006/32/EC was not yet adopted in the European Union.
- (5) In November 2015, the Republic of Albania adopted a new Law on Energy Efficiency⁸ which transposes the provisions of Directive 2006/32/EC into national legislation. To implement the Law on Energy Efficiency, however, the designation of competent authorities responsible for the implementation of energy efficiency measures, the establishment of an energy efficiency fund as well the adoption of the second Energy Efficiency Action Plan and secondary legislation (on energy audits, public procurement rules for energy efficiency, monitoring and verification of energy savings, rules and model contracts for energy services) is necessary.
- (6) Pursuant to Article 25 of the Law on Energy Efficiency, the Council of Ministers of the Republic of Albania adopted Decision No. 852 on the establishment and the way of organization of the Energy Efficiency Agency ("Decision No. 852") on 7 December 2016. As its director has not officially been appointed and the process of hiring staff is still ongoing, the Energy Efficiency Agency is not functional yet. The Decision entered into force on the day of its publication in the Official Journal of the Republic of Albania, *i.e.* on 15 December 2016. It was not reflected in the Reasoned Opinion as it was not communicated to the Secretariat by the Albanian authorities. Besides Decision No. 852, no secondary legislation necessary for the implementation of the Law on Energy Efficiency has been adopted to date.

a. The Energy Efficiency Fund

- (7) The establishment of the planned energy efficiency fund was to be carried out based on Articles 4(6) and 19 of the Law on Energy Efficiency. However, based on information submitted by the representatives of the Republic of Albania participating to the 13th meeting of the Energy Efficiency Coordination Group held on 9 March 2017, this has not happened to date.

⁴ Recitals 1 and 11 of Directive 2006/32/EC.

⁵ Article 1(3) of Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency.

⁶ OJ L 315, 14.11.2012, p. 1.

⁷ Law No. 9379 of 28 April 2005.

⁸ Law No. 124 of 12 November 2015.

b. The Energy Efficiency Action Plan

- (8) The first Energy Efficiency Action Plan was adopted in 2011 in Albania. The Secretariat found that one of the main reasons for the low implementation of the first Energy Efficiency Action Plan was the missing supportive legal framework as well as the lack of dedicated funding, and urged the Albanian authorities to improve and submit the second Energy Efficiency Action Plan.⁹
- (9) The first draft of the second Energy Efficiency Action Plan for which the deadline for adoption was 30 June 2013,¹⁰ was submitted by the Ministry of Energy and Industry of the Republic of Albania to the Secretariat on 24 November 2013. In its Assessment Report¹¹, the Secretariat concluded that the draft does not provide a satisfactory description of energy efficiency improvement measures planned to reach the targets, nor does it include a thorough analysis and evaluation of the first Energy Efficiency Action Plan as requested by Directive 2006/32/EC.
- (10) The latest version of the second Energy Efficiency Action Plan of 23 February 2016 addresses the shortcomings in the first Action Plan identified by the Secretariat.¹² This draft of the second Energy Efficiency Action Plan has been positively assessed by the Secretariat in February 2016.¹³ However, the second Energy Efficiency Action Plan has not yet been adopted.

II. Relevant Energy Community Law

- (11) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “a *Treaty obligation or [...] a Decision addressed to [a Party]*”.
- (12) A violation of Energy Community Law occurs if “[a] *Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law*” (Article 2(1) Dispute Settlement Procedures).
- (13) Article 6 of the Treaty reads:

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

⁹ Annual Implementation Report of the Energy Community Secretariat, 2012, p. 180; 2013, p. 177-178; Conclusions 10-11 of the 1st Energy Efficiency Coordination Group meeting, 21 February 2013 – ANNEX 1.

¹⁰ Second indent of Article 14(2) of Directive 2006/32/EC, as amended by point b) of Article 1(3) of Decision 2009/05/MC-EnC of the Ministerial Council.

¹¹ https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3500148/0926ED3AD1C5409CE053C92FA8C0E6A4.PDF (accessed: 18.05.2017).

¹² Energy Community Secretariat working document – Synthesis of the assessment of Contracting Parties’ Energy Efficiency Action Plans, January 2011.

¹³ Comments submitted via email on 26 February 2016 – ANNEX 2.

(14) Point (l) of Article 3 of Directive 2006/32/EC reads¹⁴:

'energy audit': a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, of an industrial operation and/or installation or of a private or public service, identify and quantify cost-effective energy savings opportunities, and report the findings;

(15) Article 4(2) of Directive 2006/32/EC reads:

For the purpose of the first Energy Efficiency Action Plan (EEAP) to be submitted in accordance with Article 14, each Contracting Party shall establish an intermediate national indicative energy savings target for the third year of application of this Directive, and provide an overview of its strategy for the achievement of the intermediate and overall targets. This intermediate target shall be realistic and consistent with the overall national indicative energy savings target referred to in paragraph 1.

The Secretariat shall give an opinion on whether the intermediate national indicative target appears realistic and consistent with the overall target.

(16) Article 5(1) of Directive 2006/32/EC reads:

1. Contracting Parties shall ensure that the public sector fulfils an exemplary role in the context of this Directive. To this end, they shall communicate effectively the exemplary role and actions of the public sector to citizens and/or companies, as appropriate.

Contracting Parties shall ensure that energy efficiency improvement measures are taken by the public sector, focussing on cost-effective measures which generate the largest energy savings in the shortest span of time. Such measures shall be taken at the appropriate national, regional and/or local level, and may consist of legislative initiatives and/or voluntary agreements, as referred to in Article 6(2)(b), or other schemes with an equivalent effect. Without prejudice to national and Community public procurement legislation:

— at least two measures shall be used from the list set out in Annex VI;

— Contracting Parties shall facilitate this process by publishing guidelines on energy efficiency and energy savings as a possible assessment criterion in competitive tendering for public contracts.

Contracting Parties shall facilitate and enable the exchange of best practices between public sector bodies, for example on energy efficient public procurement practices, both at the national and international level; to this end, the organisation referred to in paragraph 2 shall cooperate with the Secretariat with regard to the exchange of best practice as referred to in Article 7(3).

(17) Article 9(2) of Directive 2006/32/EC reads:

Contracting Parties shall make model contracts for those financial instruments available to existing and potential purchasers of energy services and other energy efficiency improvement measures in the public and private sectors. These may be issued by the authority or agency referred to in Article 4(4).

(18) Article 11(3) of Directive 2006/32/EC reads:

The funds shall be open to all providers of energy efficiency improvement measures, such as ESCOs, independent energy advisors, energy distributors, distribution system operators, retail energy sales companies and installers. Contracting Parties may decide to open the funds to all final customers. Tendering or equivalent methods which ensure complete transparency shall be carried out in full compliance with applicable public procurement regulations. Contracting Parties shall ensure that such funds complement, and do not compete with, commercially-financed energy efficiency improvement measures.

¹⁴ The text of all provisions of Directive 2006/32/EC are displayed as adapted by Decision 2009/05/MC-EnC.

(19) Article 12 of Directive 2006/32/EC reads:

1. Contracting Parties shall ensure the availability of efficient, high-quality energy audit schemes which are designed to identify potential energy efficiency improvement measures and which are carried out in an independent manner, to all final consumers, including smaller domestic, commercial and small and medium-sized industrial customers.

2. Market segments that have higher transaction costs and non-complex facilities may be reached by other measures such as questionnaires and computer programmes made available on the Internet and/or sent to customers by mail. Contracting Parties shall ensure the availability of energy audits for market segments where they are not sold commercially, taking into account Article 11(1).

3. Certification in accordance with Article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings shall be regarded as equivalent to an energy audit meeting the requirements set out in paragraphs 1 and 2 of this Article and as equivalent to an energy audit as referred to in Annex VI(e) to this Directive. Furthermore, audits resulting from schemes based on voluntary agreements between organisations of stakeholders and an appointed body, supervised and followed up by the Contracting Party concerned in accordance with Article 6(2)(b) of this Directive, shall likewise be considered as having fulfilled the requirements set out in paragraphs 1 and 2 of this Article.

(20) Article 14(2) of Directive 2006/32/EC, as adapted by Article 1 of Ministerial Council Decision 2009/05/MC-EnC reads:

Contracting Parties shall submit to the Secretariat the following EEAPs:

- a first EEAP not later than 30 June 2010;
- a second EEAP not later than 30 June 2013;
- a third EEAP not later than 30 June 2016.

(21) Article 18 of Directive 2006/32/EC reads:

1. Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2011, with the exception of the provisions of Article 14(1), (2) and (4), for which the date of transposition shall be, at the latest 31 December 2009. They shall forthwith inform the Secretariat thereof.

When Contracting Parties adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Contracting Parties.

2. Contracting Parties shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

(22) The second subparagraph of point 3 of Annex I of Directive 2006/32/EC reads:

In all cases, the resulting energy savings must still be verifiable and measurable or estimable, in accordance with the general framework in Annex IV.

(23) Article 1(3) of Decision 2009/05/MC-EnC of the Ministerial Council reads:

For the purpose of implementing Directive 2006/32/EC by the Contracting Parties to the Treaty the deadlines set in Article 18(1) subparagraph 1 of Directive 2006/32/EC shall be "31 December 2011" instead of "17 May 2008" and "31 December 2009" instead of "17 May 2006". The other deadlines set by Directive 2006/32/EC shall be adapted as follows:

a. in Article 14(1): "30 June 2010";

b. in Article 14(2) subparagraph 1: "30 June 2010" (first indent), "30 June 2013" (second indent), "30 June 2016" (third indent);

c. in Article 14(4): "1 January 2011" (first indent), "1 January 2014" (second indent), "1 January 2017" (third indent);

d. in Article 14(5) subparagraph 1: "1 January 2011" (first indent), "1 January 2014" (second indent), "1 January 2017"(third indent).

III. Preliminary Procedure

- (24) According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with the Energy Community Law to the attention of the Ministerial Council. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat shall carry out a preliminary procedure before submitting a Reasoned Request to the Ministerial Council with the purpose to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard.
- (25) The Secretariat, in the framework of the Energy Efficiency Task force and in its reports,¹⁵ has repeatedly pointed to the country's non-compliance with Energy Community Law related to the transposition of the requirements of Directive 2006/32/EC into national law of the Republic of Albania.
- (26) In the absence of any progress, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to Albania on 25 November 2013.¹⁶ In the Opening Letter, the Secretariat preliminarily concluded that Albania has failed to comply with Article 6 of the Treaty in conjunction with Articles 14(2)¹⁷ and 18¹⁸ of Directive 2006/32/EC as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council.
- (27) In the Reply to the Opening Letter of 24 January 2014,¹⁹ the Ministry of Energy and Industry of the Republic of Albania acknowledged that the draft Law on Energy Efficiency, which could have addressed these shortcomings, has not been adopted. In the same letter, the Ministry of Energy and Industry committed itself to prioritize the adoption of the draft Law as well as the second Energy Efficiency Action Plan.
- (28) In its implementation reports for the years 2014,²⁰ 2015²¹ and 2016,²² the Secretariat repeatedly underlined that the Republic of Albania needs to take substantial steps in order to transpose and implement Directive 2006/32/EC. Following the adoption of the Law on Energy Efficiency in 2015, the Secretariat emphasized the need of adopting secondary legislation as well as the second Energy Efficiency Action Plan.
- (29) The Secretariat issued a Reasoned Opinion against the Republic of Albania on 15 March 2017.²³ The Secretariat concluded that while the general breach of not having legislation transposing Directive 2006/32/EC into national legislation and not having notified the Secretariat thereof was addressed with the adoption of the Law on Energy Efficiency, the Republic of Albania still failed to comply with Article 6 of the Treaty read in conjunction with

¹⁵ Annual Implementation Report of the Energy Community Secretariat, 1 September 2011, pp. 61-62 and 1 September 2012, pp. 179-180.

¹⁶ ANNEX 3.

¹⁷ Lack of adoption of the second Energy Efficiency Action Plan.

¹⁸ Lack of transposition of the provisions of Directive 2006/32/EC into national legislation and consequent implementation.

¹⁹ ANNEX 4.

²⁰ Annual Implementation Report of the Energy Community Secretariat, 2014, p. 41.

²¹ Annual Implementation Report of the Energy Community Secretariat, 2015, p. 48.

²² Annual Implementation Report of the Energy Community Secretariat, 2016, pp. 36-37.

²³ ANNEX 5.

Articles 4(4), 5, 9(2), 11(3), 12, 14(2), and 18 as well as Annex I and Annex VI of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council.

- (30) On 10 April 2017, the Secretariat sent a letter to the Ministry of Energy and Industry of Albania, referring to the major delay in adopting the second Energy Efficiency Action Plan in the context of the present case.²⁴
- (31) The Albanian authorities have not provided a reply to the Reasoned Opinion, and not taken the measures necessary to rectify all the breaches identified therein. For this reason, the Secretariat decided to refer this case to the Ministerial Council for Decision.
- (32) As to the implementation of Article 11(3) of Directive 2006/32/EC (establishment of an Energy Efficiency Fund), which still featured in the Reasoned Opinion²⁵, the Secretariat decided to discontinue the case following an additional review of the applicable Albanian legislation.
- (33) As to the implementation of Articles 4(4) and 5(2) of Directive 2006/32/EC requiring Contracting Parties to designate the tasks to one or more new or existing authorities for the overall control and responsibility for overseeing the framework set up in relation to the national energy efficiency savings target as well as for the administrative, management and implementing responsibility for the integration of energy efficiency improvement requirements in the public sector, the Secretariat notes that with the adoption and entry into force of Decision No. 852, the Energy Efficiency Agency has been designated for the purpose of carrying out the tasks required by Articles 4(4) and 5(2) of Directive 2006/32/EC. The Agency is a new public entity, subordinated to the minister responsible for energy and responsible for implementing policies and promoting energy efficiency measures, including the preparation and monitoring of the Energy Efficiency Action Plan.
- (34) At the same time, the Secretariat notes that given the fact that the procedure for establishing the Energy Efficiency Agency is still ongoing, it cannot actually perform yet the tasks conferred upon it by Decision No. 852. The Secretariat will follow up on this issue separately.

IV. Legal Assessment

- (35) The present Reasoned Request addresses the failure of the Republic of Albania to comply with its obligations related to the introduction of measures in compliance with certain provisions of Directive 2006/32/EC, as required by Ministerial Council Decision 2009/05/MC-EnC.

1. Applicable law

- (36) As a point of departure, the Secretariat notes that the Dispute Settlement Procedures adopted by the Ministerial Council in 2008 have been amended in October 2015. Pursuant to Article 46(2) of the Procedural Act of 2015 amending the Dispute Settlement Procedures, however, „[c]ases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date.“²⁶
- (37) The Secretariat thus submits that the present Reasoned Request is being decided by the Ministerial Council under the Dispute Settlement Procedures of 2008.

²⁴ Ref. no. DIV/O/jko/114/10-04-2017, ANNEX 6.

²⁵ ANNEX 5, p. 9.

²⁶ PA/2015/04/MC-EnC of 16 October 2015 amended Procedural Act No 2008/01/MC-EnC of 27 June 2008.

- (38) Furthermore, the Secretariat notes that the case leading to the present Reasoned Request was initiated in 2013, *i.e.* at a time when the Energy Community *acquis communautaire* still referred to Directive 2006/32/EC. In the meantime, Directive 2012/27/EU was incorporated in the Energy Community *acquis communautaire*.²⁷ In the European Union, Directive 2012/27/EU entered into force on 4 December 2012 and repealed Directive 2006/32/EC as of the same date.
- (39) Directive 2012/27/EU was incorporated in the Energy Community *acquis communautaire* by Decision 2015/08/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the implementation of Directive 2012/27/EU (hereinafter: “Decision 2015/08/MC-EnC”). By its Article 3(36), Decision 2015/08/MC-EnC repealed Directive 2006/32/EC with effect from 15 October 2017, with the exception of Article 4(1), 4(4) and Annexes I, III and IV of Directive 2006/32/EC, for which a repeal deadline of 1 January 2020 was set by the same paragraph of Decision 2015/08/MC-EnC.
- (40) Even though Directive 2012/27/EU was incorporated in the Energy Community *acquis communautaire* by a Decision of the Ministerial Council in 2015, the provisions from Directive 2006/32/EC remain applicable until 15 October 2017 and, with respect to Article 4(1), 4(4) and Annexes I, III and IV, until 1 January 2020.
- (41) With respect to the situation after 15 October 2017, it follows from the case-law of the Court of Justice, relevant to the case at hand under Article 94 of the Treaty, that in the context of infringement procedures, “*the existence of a failure to fulfill obligations must be assessed in the light of the European Union legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion.*”²⁸ In the present case, that period closed on 15 May 2017. The Secretariat submits that by consequence, the Ministerial Council should base its Decision on Directive 2006/32/EC.
- (42) For the sake of completeness, the Secretariat notes that Articles 5(1), 9(2) and 12 of Directive 2006/32/EC are identical, in substance, with Articles 5, 6, point d) of 18(1) and 8(1) of Directive 2012/27/EU, respectively, with Directive 2012/27/EU even broadening the scope of the provisions of Directive 2006/32/EC.

2. Lack of transposition of certain provisions of Directive 2006/32/EC

a. Lack of adoption of secondary legislation for energy audits

i. The obligations stemming from Energy Community law

- (43) “Energy audit” is defined by Directive 2006/32/EC as a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, of an industrial operation and/or installation or of a private or public service, identify and quantify cost-effective energy savings opportunities, and report the findings.²⁹
- (44) According to Article 12(1) of Directive 2006/32/EC, Contracting Parties are obliged to ensure that efficient, high-quality and independent energy audit schemes are available to all final

²⁷ Decision 2015/08/MC-EnC.

²⁸ See, *inter alia*, Case C-54/08 *Commission v Germany*, paragraph 126; Case C-365/97 *Commission v Italy*, paragraph 32; Case C-275/04 *Commission v Belgium*, paragraph 34 and Case C-270/07 *Commission v Germany*, paragraph 49.

²⁹ Point (l) of Article 3 of Directive 2006/32/EC.

consumers, including smaller domestic, commercial and small and medium-sized industrial customers. For market segments that have higher transaction costs and non-complex facilities, Article 12(2) allows the possibility to introduce other measures, such as questionnaires and computer programmes. Furthermore, Article 12(3) provides that the certification of energy performance of buildings and audits resulting from schemes based on voluntary agreements between organisations of stakeholders and an appointed body shall be considered as energy audits.

- (45) In order to be in the position to make available energy audit schemes or any other measures mentioned by Article 12(1) of the Directive to all final consumers, the adoption of such schemes by secondary legislation is one of the options, which Albania actually has chosen when transposing Directive 2006/32/EC into domestic legislation. In case such a commitment is not complied with subsequently, Article 12(1) of the Directive cannot be considered transposed.

ii. Legal framework in the Republic of Albania

- (46) According to Article 16(8) of the Law on Energy Efficiency, “[t]he specific format of carrying out an energy audit and the payment shall be defined by a regulation created by Agency responsible for energy efficiency and approved by the Minister and Minister responsible for construction.” Furthermore, Article 17(1) of the Law on Energy Efficiency establishes a certification scheme for energy auditors and according to Article 17(2), the “Council of Ministers, upon the proposal of the Minister, shall approve the categories, conditions as well as the qualification and professional experience requirements for issuing a license according to paragraph 1 of this Article”. In both cases, according to Article 27(3) of the Law, the deadline for adoption was within twelve months from the entry in force, *i.e.* 9 December 2016.³⁰ This, however, has not happened to date. Given the fact that the Law on Energy Efficiency does not contain the provisions on the specific format of carrying out energy audits as well as the categories, conditions and requirements for energy auditors, proper implementation of the obligation to ensure carrying out efficient, high-quality and independent audits thus cannot be ensured. Moreover, no energy audit is being carried out in practice in Albania.

iii. Conclusion

- (47) Based on the above, the Secretariat submits that the Republic of Albania has failed to transpose Article 12(1) of Directive 2006/32/EC.

b. Lack of adoption of legislation to ensure the exemplary role of the public sector

i. The obligations stemming from Energy Community law

- (48) Article 5(1) of Directive 2006/32/EC obliges Contracting Parties to ensure that the public sector fulfils an exemplary role in the context of the Directive. In order to comply with this obligation, Contracting Parties shall ensure that energy efficiency improvement measures are taken by the public sector, either via legislative initiatives and/or voluntary agreements.

³⁰ The Law on Energy Efficiency was published on 24 November 2015 in the Official Journal of the Republic of Albania and according to its Article 30, it entered into force 15 days after its publication, *i.e.* on 9 December 2015.

Furthermore, Contracting Parties shall use at least two measures from the list of energy-efficient public procurement measures as set out in Annex VI of Directive 2006/32/EC.³¹

ii. Legal framework in the Republic of Albania

- (49) According to Article 9 of the Law on Energy Efficiency, “[t]he Council of Ministers, upon proposal of the Minister, shall include in the public procurement rules, forecasts, that oblige Contracting Authorities to determine on the documents of procurement procedures for every appliance or product that has a direct or indirect influence on energy consumption, technical specifications that comply with the minimal energy efficiency requirements, as specified by the legislation in force for the energy consumption and other resources of products with influence on energy”. However, no deadline was set for the adoption of this secondary legislation by the Law on Energy Efficiency. To date, such legislation has not been adopted. Apart from the obligation to adopt secondary legislation, the Law on Energy Efficiency does not contain provisions related to energy efficiency in public procurement that could ensure that any energy efficiency improvement measures set out in Annex VI of Directive 2006/32/EC are considered in public procurement procedures. The Law on Public Procurement³² also does not establish such obligations.

iii. Conclusion

- (50) Consequently, the Secretariat submits that the Republic of Albania has failed to transpose Article 5(1) and Annex VI of Directive 2006/32/EC.

c. Lack of adoption of legislation on model contracts for financial instruments

i. The obligations stemming from Energy Community law

- (51) Article 9(1) of Directive 2006/32/EC obliges Contracting Parties to repeal or amend national legislation and regulations, other than those of a clearly fiscal nature, that unnecessarily or disproportionately impede or restrict the use of financial instruments for energy savings in the market for energy services or other energy efficiency improvement measures. Article 9(2) of Directive 2006/32/EC obliges Contracting Parties to make model contracts for those financial instruments as well as for other energy efficiency improvement measures available in the public and private sectors to existing and potential purchasers of energy services. According to Article 9(2) of Directive 2006/32/EC, these may be issued by the authority or agency referred to in Article 4(4) of the Directive.
- (52) In order to be in the position to make available the model contracts for financial instruments as well as for other energy efficiency improvement measures to existing and potential purchasers of energy services, the adoption of such model contracts by secondary legislation

³¹ Requirements concerning the use of financial instruments for energy savings; requirements to purchase equipment and vehicles based on lists of energy-efficient product specifications; requirements to purchase equipment that has efficient energy consumption; requirements to replace or retrofit existing equipment and vehicles with energy-efficient ones; requirements to use energy audits and implement the resulting cost-effective recommendations; requirements to purchase or rent energy-efficient buildings or parts thereof, or requirements to replace or retrofit purchased or rented buildings or parts thereof in order to render them more energy-efficient.

³² Law No. 9643 of 20 November 2006 on public procurement, as amended by Laws No. 9800 (10. 09. 2007), No.9855, (26.12.2007), No. 10170 (22.10.2009), No.10309 (22.07.2010), No. 22/2012, No. 131/2012 and No. 182/2014 – ANNEXES 7 and 8.

is one of the options, which Albania actually has chosen when transposing Directive 2006/32/EC into domestic legislation. In case such a commitment is not complied with subsequently, Article 9(2) of the Directive cannot be considered transposed.

ii. Legal framework in the Republic of Albania

- (53) Article 18(5) of the Law requires model contracts to be adopted by the Minister responsible for energy upon proposal of the Energy Efficiency Agency for the purpose of transposing and implementing Article 9(2) of Directive 2006/32/EC. Article 18(5) of the Law stipulates that “[f]or the energy services provided under a programme financed by the Energy Efficiency Fund, the Minister responsible for energy, upon proposal of the Agency responsible for energy efficiency shall approve standard contracts for such energy services”. According to Article 27(1) of the Law on Energy Efficiency, the deadline for adoption was within 12 months from the entry into force, *i.e.* 9 December 2016. This, however, has not happened to date. Moreover, the Energy Efficiency Agency has not yet been made operational and no model contracts exist in practice in the Republic of Albania. Given the fact that the Law on Energy Efficiency does not contain the rules and model contracts for energy services (this should be further developed by the Energy Efficiency Agency based on Article 18), proper implementation of Article 9(2) of Directive 2006/32/EC can thus not be ensured.

iii. Conclusion

- (54) Based on the above, the Secretariat submits that the Republic of Albania has failed to transpose Article 9(2) of Directive 2006/32/EC.

d. Lack of submission of Energy Efficiency Action Plan

i. The obligation stemming from Energy Community law

- (55) Pursuant to Article 14(2) of Directive 2006/32/EC as adapted by Decision 2009/05/MC-EnC of the Ministerial Council, the deadline for submission of the second Energy Efficiency Action Plan was 30 June 2013. Pursuant to Article 18(2) of Directive 2006/32/EC, Contracting Parties shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

ii. Legal framework in the Republic of Albania

- (56) The second Energy Efficiency Action Plan has not been adopted nor submitted to the Secretariat to date, despite the fact that the Albanian authorities have received ample support both from the Secretariat and from other international institutions. According to the case-law of the Court of Justice, a draft Energy Efficiency Action Plan is not capable of providing the necessary legal effects required from the measures transposing directives into national law.³³

³³ See, to that effect, Case C-430/98 *Commission v Luxembourg*, paragraphs 8-13 and Case C-648/13 *Commission v Poland*, paragraphs 129-132.

iii. Conclusion

- (57) Based on the above, the Secretariat submits that the Republic of Albania has failed to comply with its obligations arising from Articles 14(2) and 18(2) of Directive 2006/32/EC.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 5(1), 9(2), 12(1), 14(2) and 18(2) as well as Annex VI of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council, the Republic of Albania has failed to fulfil its obligations under the Energy Community Treaty, and in particular Decision 2009/05/MC-EnC of the Ministerial Council and Directive 2006/32/EC.

On behalf of the Secretariat of the Energy Community,

Vienna, 19 May 2017

A handwritten signature in blue ink, appearing to read "Janez Kopač".

Janez Kopač
Director

A handwritten signature in black ink, appearing to read "Dirk Buschle".

Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

- ANNEX 1 Conclusions of the 1st Energy Efficiency Coordination Group meeting, 21 February 2013
- ANNEX 2 Email of 26 February 2016 from the Secretariat to the Albanian authorities
- ANNEX 3 Opening Letter in Case ECS-10/13, dated 25 November 2013
- ANNEX 4 Response to the Opening Letter in Case ECS-10/13 of the Ministry of Energy and Industry, dated 24 January 2014
- ANNEX 5 Reasoned Opinion in Case ECS-10/13, dated 15 March 2017
- ANNEX 6 Letter to the Ministry of Energy and Industry, dated 10 April 2017
- ANNEX 7 Law No. 9643 on Public Procurement, 20 November 2006 (as amended)
- ANNEX 8 Law 182/2014 on some Additions and Amendments to Law No. 9643 on Public Procurement
- ANNEX 8 Law No. 124 of 12 November 2015 on Energy Efficiency
- ANNEX 9 Decision No. 852 of the Council of Ministers of 7 December 2016 on the establishment and the way of organization of the Energy Efficiency Agency*
- ANNEX 10 Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency

*in Albanian (the Secretariat can provide translation upon request)

ENERGY EFFICIENCY

COORDINATION GROUP MEETING

21 February 2013, Vienna

CONCLUSIONS

The 1st Energy Efficiency Coordination Group (EECG) meeting was held on 21 February 2013, on the premises of the Energy Community Secretariat in Vienna.

The meeting was attended by representatives of Contracting Parties (except from Albania, Bosnia and Herzegovina and former Yugoslav Republic of Macedonia), representatives of Observers (Armenia and Georgia), the European Commission DG Energy, Regional Cooperation Council, Donors' community (GIZ Open Regional Fund – Energy Efficiency, the World Bank, EBRD), IFI Coordination Office, and representatives of the Energy Community Secretariat (ECS). The List of Participants is available online on the Energy Community web site ("Events" section).

- 1) The meeting was chaired by ECS.
- 2) EECG adopted the meeting Agenda, as follows:

Coordination Group for energy efficiency: a new format to support energy efficiency in the Energy Community

- 3) ECS presented the EECG work programme based on the example of EU Concerted Action on ESD/EED and respectively the EPBD, and also introduced a new concept for a broader network for the promotion of energy efficiency in the Energy Community.
- 4) To effectively implement the Work programme, EECG members proposed that all CPs and Observers are involved, and the following Core topic (CT) leaders were designated (note that Albania, Bosnia and Herzegovina and former Yugoslav Republic of Macedonia who were not present at the meeting are invited to confirm their availability):

Activity 1: Implementation of the Energy Services Directive	Activity 2: Implementation of the Energy Performance of Buildings Directive	Activity 3: Implementation of the Labelling Directive and Delegated regulations
CT 1.1. 2nd NEEAP as a policy tool >> former Yugoslav Republic of Macedonia	CT 2.1. Energy performance requirements/ cost-optimal level >> Montenegro & Moldova	CT 3.1. Development of regulation and analysis of new EU regulation on energy labelling of energy-related products >> Albania & Kosovo*
CT 1.2. Public Sector Procurement of Energy Efficiency: initiatives at national, regional and local level >> Montenegro	CT 2.2. Support schemes for renovation of buildings/ use of EPC/ESCOs >> Ukraine	CT 3.2. Implementation practices >> Albania & Kosovo*
CT 1.3 Energy companies and energy services >> Serbia	CT 3.3. Nearly zero energy building concept/Action Plan >>BIH & Croatia	CT 3.3. Public procurement codes – appliance and equipment purchase guidelines >> Serbia
CT 1.4. Funds and financing for energy efficiency >> Moldova & Armenia	CT 3.4. Certification of buildings and inspections of systems >> BIH & Croatia	
CT 1.5. Supporting NEEAP implementation >> former Yugoslav Republic of Macedonia		

- 5) ECS invited the core topic leaders to send any comments they may have on their Core topics and to ECS **by 08 March**. Donors (INOGATE, WB, UNIDO, others) are invited to check the Work Programme and send their proposal for (additional) support to the EECG related to the WP, by the same date.
- 6) EECG agreed upon its new Chair in the person of Ms. Dragica Sekulic, Deputy Minister for Energy Efficiency in the Ministry of Economy of Montenegro.
- 7) EECG welcomed the proposal by ECS to constitute a broader implementation network of experts/officials from other line ministries, relevant agencies, large municipalities, etc. ECS will prepare a short concept and submit it to EECG before the end of March. EECG will identify the appropriate persons and upon that ECS will constitute the network.

Development of the 2nd NEEAPs and integrating the new EU requirements

- 8) EECG congratulated Moldova and Ukraine for the progress with the 1st NEEAP, i.e. adoption of the NEEAP in Moldova and submission of the final draft by Ukraine.
- 9) Discussions on the state of preparation of the 2nd NEEAP in Western Balkans – highlights/The recommendation of Croatia and CA-ESD for development of 2nd NEEAPs:

- Countries need to timely start (6 months before due date);
 - NEEAP template is very useful and recommended to be used;
 - NEEAP needs to be recognised as a policy tool and to achieve synergy with existing strategies and action plans, and should be adopted by the government;
 - It requires a broader working group and cooperation between all stakeholders and their participation in NEEAP preparation,
 - Timely data collection and use of recommended calculation methods and default values to overcome the lack of data problem.
- 10) ECS noted that the large majority of CPs from Western Balkans has started with the mobilisation of donor assistance and/or preparation of the 2nd NEEAP, with the exception of Albania. Croatia, Kosovo* and Montenegro seem to have structured well the process of NEEAP preparation; Armenia (as Observer) presented its approach in promotion of energy efficiency and the preparation of a 2nd NEEAP using also the experience of CPs. The Former Yugoslav Republic of Macedonia and Serbia are advised to start preparing NEAPs even before the TA (that is now being contracted) is available. Bosnia and Herzegovina still did not adopt the 1st NEEAP. ECS will very soon initiate measures for Albania and BIH (due to the stagnation with adoption of legislation and/or NEEAP) on energy efficiency.
- 11) ECS reminded the members that the deadline for the 2nd NEEAP is 30th June. ECS recommended CPs to send their NEEAPs in advance, in order to enable ECS to provide pre-assessment and useful comments to draft NEEAPs, similarly to what was done for the 1st NEEAPs.
- 12) Technical assistance is still needed, and EECG discussed what is available: GIZ ORF - EE will enhance the cooperation on communication and monitoring mechanisms and may offer assistance based on request; ECS will have a meeting with USAID on March 4 and will inform EECG members about results.
- 13) DG Energy presented updates in relation to 3rd NEEAP preparation in EU (by June 2014). Template and guidance are likely to be published this spring, and will be shared with ECS and EECG. As regards the new EE Directive, DG Energy is working, in close co-operation with the EU Member States on interpretative notes on seven main subjects from the Directive. These notes should help the Member States with the proper transposition and implementation of the Directive. The current drafts will be shared with ECS in view of the preparation of the EED adaptation for EnC.
- 14) EECG thanked GIZ ORF-EE for the tailored support and the presentation of M&V project's results and the follow up Integrated Monitoring and Verification Platform (MVP), including the planned support in development of 2nd NEEAPs; this includes especially: data collection, mapping of stakeholders, focus on BU methodology, finalization of design of web application for MVP by end 2013, and further organization of training for different stakeholders. CPs showed the initial interest, which will be formalised in the coming month, by signing statement of cooperation between GIZ ORF EE and their respective leading ministries.

Progress report on the implementation of EPBD, by Contracting Parties

- 15) All CPs have sent report on the implementation of EPBD and/or made an oral presentation; despite the fact that some key requirements of the EPBD were included in the national laws in all countries, the main responsible bodies defined and key standards approved, the situation in the Energy Community is characterised by still an incomplete legal/institutional framework. The transposition is ongoing through secondary legislation (new or update of regulation that was in some cases based on the old EPBD). The certification of buildings is one of the most advanced areas for the implementation of EPBD; in this respect, progress was made by FBIH, Croatia, Moldova, Montenegro, Serbia and Ukraine. All CPs (with exception of Albania and Kosovo*) have elaborated an approach for the full implementation of Directive; in some countries (Moldova, Montenegro) the TA support for implementation has been obtained.

- 16) ECS recommended to CPs to continue with the adoption of existing draft laws and to complete the implementation of primary and secondary legislation related to EPBD, as well as strengthen national implementation structures. Recognised common issues that require joint approach is development of a proper scheme for cost optimal calculation, and also the software for energy performance certification, national building stock inventories, climatic data base, as well as strengthening the expertise for EPBD implementation through training and education, and information campaigns.
- 17) EBRD REEP may in principle provide support and ECS will coordinate submission of interest letters by CPs for regional sub projects.
- 18) In accordance with the MC Decision, ECS will report to the PHLG in the first quarter of 2013 on the level of implementation of EPBD in CPs. All CPs that have not submitted reports (or need to update the current reports) are invited to do so **by 31 March 2013**.

Regional Energy Efficiency Programme for the Western Balkans – progress in design and implementation:

- 19) EEGC thanked EBRD/WBIF and agreed to cooperate extensively during the inception phase and further work with the consultants. EEGC thanked also EBRD for its presentation on the WeBSEFF.
- 20) It is proposed that EEGC has the role of a steering group on regional level; at national level, the countries will express their interest for participation in certain themes and establish Working Groups. EBRD will coordinate activities with ECS and will send a request to EEGC/WBs members to express their theme areas' interests, with the deadline for initial preferences, **22 March 2013**; these preferences will be finalised in cooperation with the Consultant and the formal letter of request from the respective ministries expected in May.
- 21) EEGC thanked EBRD for its presentation on the REEP EUR 20 mil. EUR Technical Assistance combined with the WeBSEFF 75 mil. EUR lending to investments, which will now include also public sector.

Developing the Energy Community *acquis* on energy efficiency

- 22) EEGC thanked EC and ECS for their interventions and would consider recommending to the PHLG the adoption of new Energy Efficiency Directive and contributing to the adaptation of the text. ECS will keep the EEGC informed on the process of preparation of the draft MC Decision.
- 23) DG Energy presented current EU activities as regards the support to the transposition and implementation of the new EE Directive in the MS, including the preparation of interpretative notes on certain articles of this Directive, and a template and a guidance document for the 3rd NEEAP. The draft interpretative notes will be circulated to ECS and further to EEGC.

Promoting and financing energy efficiency

- 24) EEGC thanked the IFI coordination office for the work on update of the "Food for thought" paper on financing options for NEEAPs, and also for the organisation of the in - country and regional workshops. The series of in-country workshops on financing options for implementing NEEAPs continues with workshops in Pristina, Zagreb (tbc) and Sarajevo in March 2013. The remaining dates (with other WB CPs) will be finalised soon. The regional workshop with Ministries of Finance and IFIs will be held on 25 and 26 April in Vienna. The "Food for thought" paper that accompanies the workshops will be finalised after the regional workshop and will be disseminated widely. IFI coordination office will also shortly finalise an update mapping of the various EC/IFI funded financial mechanisms for EE/RES in the WB region and will circulate to all.
- 25) IFI coordination office is happy to share documents and results of projects with other donors, to be replicated in Moldova, Ukraine, Georgia and Armenia.
- 26) Meetings of EEGC in 2013 are planned for 11 June and 29 October (tbc).

Borko Raicevic

From: Borko Raicevic
Sent: Freitag, 26. Februar 2016 13:53
To: Gjergji Simaku
Cc: Nick Haralambopoulos; Besim Islami; Jollands, Nigel; Kevin O'Rourke; David Williams; Ardian Islami; Julia Cela; Entela Cipa
Subject: RE: Draft NEEAP English Version

Dear Gjergji,

Good afternoon! I would like to inform you that Energy Community Secretariat checked draft NEEAP developed by Ministry with assistance of a REEP Consultant and ECS, and can confirm that it followed structure and requirements of the NEEAP template prepared by ECS and discussed at the last Energy Efficiency Coordination Group meeting, as well as general guidance provided by ECS. Draft NEEAP also introduced some acceptable improvements, having in mind situation in Albania (need to include reporting for both 2nd and 3rd NEEAP, analysis of socio-economic benefits etc.).

What I would suggest is to check possibility to include reporting on energy savings achieved in 2015 (if possible - currently 2014 is last year), having in mind that EnC follows usually reporting periods 2012-2015-2018-2020. Meeting on next Monday in Tirana is excellent opportunity to hear and discuss remaining issues at the Inter-Ministerial Working Group and finalize NEEAP. I will most probably be able to join the meeting and ECS will latter also send support letter for adoption of the NEEAP.

Let me congratulate again for the hard work and good outcomes. We are looking forward to see NEEAP adopted and implemented in the coming period.

Best regards,
Borko Raicevic
Energy Efficiency Expert



Energy Community Secretariat

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Austria



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From: Gjergji Simaku [mailto:Gjergji.Simaku@energija.gov.al]
Sent: Dienstag, 23. Februar 2016 13:36
To: David Williams; Ardian Islami; Julia Cela; Entela Cipa

Cc: Nick Haralambopoulos; Besim Islami; Jollands, Nigel; Borko Raicevic; Kevin O'Rourke
Subject: RE: Draft NEEAP English Version

Dear Borko,

Hope you are doing well!

As you already know we have under preparation of next NEEAP for Albania. First of all, on behalf of Ministry part, I would like to thank EnC, EBRD and ECA efforts to prepare this very important document initiated by Minister Himself and Energy Secretariat.

During last 6 months Ardian, as the ministry focal point, and all our department were involved in a deep analyses on the data processed to the document. Many times we had "hard" discussion with consultancy group ECA, other IWG of experts assigned by other ministries and of course, our department including me and Ardian which were most focused to the draft.

Believe me, all this effort was to produce an implementable document to really fulfil the Government's commitment on energy efficiency target for 2020.

Dear Borko, I would kindly suggest you to confirm by righting that the final draft of Albanian NEEAP prepared by ECA is in full compliance with "Template and Guidance for the preparation of the third National Energy Efficiency Action Plans" adopted by EnC HLG at Ministerial Meeting in Tirana. That's because we are close for the adoption to the Government and, also we have partially adopted the 2012/27/EC Directive through EE law (124/2015) on 12th of last November.

During preparation of the NEEAP, many times, we suggested to ECA to be in line with Government's decisions and Laws which affect the EE Action plan under preparation. So, we suggested to be in line with Albanian strategy for integration (NSDI), Government's economic development strategy for next five years and also in line with Strategic Environmental Assessment, law no. 91/2013 and its relevant documentations and Government decisions. The law 91/2013, affects the NEEAP directly and we have obligation to reflect it in, otherwise MoE will comment it as non-included and we will waste the time to adopt NEEAP. It was a similar situation with NREAP and we passed it with many excuses, being aware that SEA was not part of the renewables AP. On the other hand we have handed over to the consultancy team all helpful and relevant documents which could affected the NEEAP

Looking forward to hear from you!

gj

Gjergji SIMAKU

Drejtor/Director

Drejtoria e Burimeve të Energjetike të Rinovueshme dhe Efiçencës së Energjisë

Renewable and Energy Efficiency Directory

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From: David Williams [<mailto:david.williams@eca-uk.com>]

Sent: Thursday, February 18, 2016 1:44 PM

To: Gjergji Simaku; Ardian Islami

Cc: Nick Haralambopoulos; Besim Islami; Jollands, Nigel; 'Borko Raicevic'; Kevin O'Rourke

Subject: Draft NEEAP English Version

Dear Mr. Islami and Mr. Simaku

Please find attached the English version of our draft report for the new NEEAP for Albania. My apologies this is a few days after we had targeted. I have sent the report to our translator to produce an Albanian version but as already discussed we will present on the 29th in the understanding that even if ready beforehand, no time will have been available to review the document in advance by the Ministry and IWG.

We have kept to the draft template provided by the ECS as requested with the only major change being moving the sub-sections of the "Introduction" that summarise the main report into the "Executive Summary" to avoid unnecessary repetition. This is in line with the similar suggestion made in a comment provided by Mr. Simaku on the model outputs report.

We actually believe there is further scope for rationalising the structure and enhancing the readability by reducing repetition between Sections 3 and 4 via aggregating them into a single section. However, I was conscious that we had been requested to follow the template and therefore wanted to discuss this with you after delivery of the draft before going ahead and making such changes.

We have left in a few comments in the margin of the word document where clarifications on status of certain pieces of legislation will be useful. More broadly we hope that the document gives a solid basis upon which the IWG can help identify any outstanding missing information which could contribute to the descriptions and suggestions made within it before advancing to a final version.

If you have any questions, please do not hesitate to contact me. As requested I shall send across our presentation in advance of the meeting. I will also send a suggested Agenda (I agree with Mr. Simaku's suggestion of providing a separate tabulated addendum with our responses to how we have dealt with the comments received so as not to waste time on the 29th). Otherwise we look forward to seeing you in Tirana!

Best Regards

David

David Williams
Senior Consultant



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From: Gjergji Simaku [<mailto:Gjergji.Simaku@energija.gov.al>]

Sent: 16 February 2016 13:28

To: David Williams <david.williams@eca-uk.com>; Ardian Islami <Ardian.Islami@energija.gov.al>
Cc: Nick Haralambopoulos <nick@eca-uk.com>; Besim Islami <besimgosa@gmail.com>; Jollands, Nigel <JollandN@ebrd.com>; 'Borko Raicevic' <Borko.Raicevic@energy-community.org>
Subject: RE: Visit to Tirana 29 February

Dear David,

You're welcome to present the 2nd NEEAP,

Please notice that personally, I do not agree to have a separate meeting for the comments of mine and Ardian's. I would suggest to have an tabulated annex for the QA of yours, since both parties might keep their positions and might waste time. The annex will be approved accordingly.

This is an advice of (Drejtoria e Planifikimit Strategjik , Njësia e Planifikimit Strategjik & Zhvillimit, Departamenti i Zhvillimit, Financimit dhe Ndihmës së Huaj) the Strategic Planning Directory UNIT at PM office, which evaluate the action plans for the Government before having a decision.

I would like also, to remind you, that the final NEEAP should be in full line with latest Secretariat template since we already adopted the EE law in line with 2012 directive

See you in Tirana!
gj

Gjergji SIMAKU

Drejtor/Director

Drejtoria e Burimeve të Energjetike të Rinovueshme dhe Efiçencës së Energjisë
Renewable and Energy Efficiency Directory

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From: David Williams [<mailto:david.williams@eca-uk.com>]

Sent: Tuesday, February 16, 2016 1:25 PM

To: Ardian Islami

Cc: Gjergji Simaku; Nick Haralambopoulos; Besim Islami; Jollands, Nigel

Subject: RE: Visit to Tirana 29 February

Dear Ardian

This approach sounds sensible. We will book our flights for a full day meeting on the 29th February and prepare the presentation accordingly. I will send through a suggested agenda once we have issued the draft report.

Best

David

From: Ardian Islami [<mailto:Ardian.Islami@energija.gov.al>]

Sent: 16 February 2016 08:57

To: David Williams <david.williams@eca-uk.com>

Cc: Gjergji Simaku <Gjergji.Simaku@energija.gov.al>; Nick Haralambopoulos <nick@eca-uk.com>; Besim Islami

<besimgosa@gmail.com>; Jollands, Nigel <JollandN@ebrd.com>

Subject: RE: Visit to Tirana 29 February

Dear David,

Thank you for your response. I would like to keep 29th February and to concentrate on the presentations that makes an overview in each chapter of the draft for 2nd and 3rd NEEAPs. After having an overview on the meeting in 29th February, in consultation with all the participants in the meeting we will decide for the time needed for comments and suggestion by IWG and inline Institutions and we will decide for dead line for sending the final Draft.

I look forward to hearing for your opinion.

Best regards

Ardian ISLAMI

Specialist

Drejtoria e Burimeve të Energjive të Rinovueshme dhe Eficiencës së Energjisë

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From: David Williams [<mailto:david.williams@eca-uk.com>]

Sent: Monday, February 15, 2016 9:54 PM

To: Ardian Islami

Cc: Gjergji Simaku; Nick Haralambopoulos; Besim Islami; Jollands, Nigel

Subject: RE: Visit to Tirana 29 February

Dear Ardian

The draft NEEAP is now very close to being ready for issue. Due to a couple of late inputs from the updated modelling outputs I still have some final QA work outstanding, but will certainly finalise and issue asap within this week. This does, however, mean that the Albanian translation will only be ready very close to the actual meeting date of the 29th. Provided this is acceptable to you we can indeed prepare some presentations to provide for the IWG members and send these to you prior to the meeting as you request. Alternatively the next date which seems to work for both your, and our, schedules would be 8th March. So our options are:

- Keep to 29th February and concentrate on the presentations are means by which to walk the IWG through the draft NEEAP
- Switch to 8th March which may allow you more time for review prior to the meeting

Please let me know which you would prefer. We will continue working in the assumption of keeping to the 29th for now. My apologies for this small delay – I can assure you the whole team is working around the clock to expedite this report.

One thought regarding the comments from the MEI (yourself and Mr. Simaku); given the large number of comments I suggest we hold a bilateral meeting between the consultant team and MEI prior to the IWG presentation to allow us to walk you through our responses. This also provides us space to discuss project management of the NEEAP to completion of the assignment.

Best regards

David

From: Ardian Islami [<mailto:Ardian.Islami@energjia.gov.al>]

Sent: 08 February 2016 10:10

To: David Williams <david.williams@eca-uk.com>

Cc: Gjergji Simaku <Gjergji.Simaku@energjia.gov.al>; Nick Haralambopoulos <nick@eca-uk.com>; Besim Islami <besimgosa@gmail.com>; Jollands, Nigel <JollandN@ebrd.com>

Subject: Visit to Tirana 29 February

Dear David,

For me, February 29th it is OK but you should provide that between 15-29 February is not enough time in disposal for comments on the Draft.

This means that in February 29th the consultants team can make only a presentation for the draft of 2nd and 3rd NEEAPs. The presentations that the consultants intend to present in the meeting should be delivered 1 or 2 days before the meeting to the IWG members, in order to understand the important issue for discussion in the meeting.

Please, consider that in February 29th the consultants should explain all the reasons why and why not have taken into consideration each comments done by IWG and MEI.

Anyway, in the day that we receive the draft of 2nd and 3rd NEEAPs and if we will have the confirmation that the draft is in fully accordance with ECS requirements, in fully coordination with Legal Directory in MEI, we will deliver the draft to the in line Ministries for official comments and suggestions in order to include in final Draft.

In this way, we can save time and we will have ready for approval the final draft of 2nd and 3rd NEEAPs, maybe in the end of March.

Please, we should do the max. for following the main tasks and deliverables which are elaborated in the Annex of the TOR as below:

Task	Description	Deliverable	Delivery date (weeks after contract signing)
1.	Inception meeting with Ministry	Agenda and minutes from the meeting	2 weeks
2.	Review of current NEEAP with recommended changes to incorporate into the Next NEEAP (covering requirements of 2 nd and 3 rd NEEAPs) and any decisions required of the Ministry.	Review report delivered to the Ministry	6 weeks
3.	2 nd meeting with the Ministry to discuss Review report and to decide on structure and content of the Next NEEAP (covering requirements of 2 nd and 3 rd NEEAPs)	Agenda and minutes from the meeting	8 weeks

Task	Description	Deliverable	Delivery date (weeks after contract signing)
4.	Energy efficiency measure derivation, savings calculation, cost-benefit analysis and determination of potential	List of suggested measures and estimated savings for inclusion in 2 nd NEEAP	20 weeks
5.	First full draft of the Next NEEAP incorporating decisions reached in task 3 above.	Draft version of NEEAP submitted to the Ministry	26 weeks
6.	3 rd meeting with the Ministry to discuss comments on the first full draft of the NEEAP that covers requirements of 2 nd and 3 rd NEEAPs.	Agenda and minutes from the meeting	28 weeks
7.	Submit final version of the full NEEAP to the Ministry (the 'Final Draft NEEAP')	Final Draft NEEAP submitted to the Ministry	32 weeks
8.	If necessary, assist with the preparation of analysis and a report on the economic impact of the Final Draft NEEAP (Task 7 above). For the avoidance of doubt, primary responsibility for this report will rest with the Beneficiary authorities as this is a document that is driven by national requirements. The Consultant's role will be limited to ensuring that EED compliance is not jeopardised and that the potential benefits of implementation are suitably identified. In addition, any quantitative impacts would be reliant on existing beneficiary data and analysis; this task does not envisage primary data collection and analysis by the Consultants.	Review and amendment of report on economic impact of the Final Draft NEEAP	Subject to Albanian Ministry timeline
9.	Assist the Ministry during the approval process of the Final Draft NEEAP. This assistance will focus on supporting the Ministry of Energy and Industry answer technical questions relating to the Final Draft NEEAP. The Consultants will revise, if necessary, the relevant section of the Final Draft NEEAP in line with comments received and submitted to the Ministry for final review and approval. The Consultants will undertake a maximum of two such reviews during the approval process.	Revised Final Draft NEEAP if needed	Subject to Albanian approval timeline, but no later than 38 weeks after contract signing.

And meeting agreements dates:

Top-down review of 1st NEEAP	14 Sep 2015
2nd meeting	W/C 21 Sep 2015
Draft full review report	16 Oct 2015
Response from MIE to draft	30 Oct 2015
List of proposed measures	7 Dec 2015
Response from MIE to measures	8 Jan 2016

First full draft	1 Feb 2016
Final meeting	15 Feb 2015
Final report	29 Feb 2016

For any other information, at your disposal!

Best regards

Ardian ISLAMI

Specialist

Drejtoria e Burimeve të Energjive të Rinovueshme dhe Eficiencës së Energjisë

MINISTRIA E ENERGJISË DHE INDUSTRIË



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Informacioni i trasmetuar në përmbajtje të këtij mesazhi është i destinuar vetëm për individin ose për institucionin të cilit i është nisur, mund të përmbajë materiale konfidenciale dhe / ose të privileguara vetëm për marrësin. Çdo rishikim, trasmetim, shpërndarje apo kryerje e ndonjë veprimi tjetër të ngjashëm me këto, nga personat apo nga subjekte të tjera të ndryshme nga marrësi i synuar, është i ndaluar. Nëse merrni gabimisht këtë mesazh, ju lutem kontaktoni urgjentisht dërguesin e tij dhe fshini çdo material të trasmetuar në kompjuterin tuaj. Ne nuk pranojmë asnjë detyrim lidhur me dëmtimin apo humbjen e shkaktuar nga programe të dëmshme apo nga viruse, përveç rastit të neglizhencës së plotë, apo sjelljes së gabuar dhe të qëllimshme.

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Opening Letter

in Case ECS-10/13

By the present Opening Letter, the Energy Community Secretariat (“the Secretariat”) initiates dispute settlement proceedings against the Republic of Albania for non-compliance with the Treaty establishing the Energy Community (“the Treaty”), and in particular with Article 6 of the Treaty as well as Articles 14(2) and 18 of Council Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC¹, as incorporated and adapted by Ministerial Council Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency.

Under the Dispute Settlement Procedures, the Secretariat may initiate a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 12 of these Rules, such a procedure is initiated by way of an Opening Letter.

According to Article 10(2) of the Dispute Settlement Procedures, the purpose of the procedure hereby initiated is to establish the factual and legal background of the case, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable Albania either to comply of its own accord with the requirements of the Treaty or, if appropriate, justify its position. In the latter case, Albania is invited to provide the Secretariat with all factual and legal information relevant to the case at hand within the deadline set at the end of this letter.

I. Background and Facts

1. Background of the case

In May 2006, Directive 2006/32/EC entered into force in the European Union. The purpose of the Directive is to make the end use of energy more economic and efficient by establishing indicative targets, incentives and the institutional, financial and legal frameworks needed to eliminate market barriers and imperfections which prevent efficient end use of energy. Furthermore, Directive 2006/32/EC aims to create appropriate conditions for the development and promotion of a market for energy services and for the delivery of energy-saving programmes and other measures aimed at improving end-use energy efficiency.

On 18 December 2009, the Ministerial Council of the Energy Community decided that Contracting Parties have to transpose the Directive’s provisions into their national laws by 31 December 2011, with the exception of Article 14(1), (2) and (4) for which a transposition date of 31 December 2009 was set.²

¹ OJ L 114, 27.04.2006, p. 64

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2. Legislative framework in Albania

a. Existing legal framework

In 2005, Albania adopted the Law on Energy Efficiency³ that is still in force. By the time of adoption of this Law, Directive 2006/32/EC was not yet adopted in the European Union.

By its Articles 4 and 5, the Law sets out objectives for energy efficiency policy, it lists the actions through which policy objectives may be attained as well as introducing an obligation for the Minister responsible for energy policy to present, every two years, a National Energy Efficiency Programme to the Council of Ministers for approval. The Programme should include a detailed economic evaluation of the potential and the associated financial savings and should be prepared by the National Agency for Energy (later renamed as National Agency for Natural Resources).

By its Article 6, the Law requires that local energy offices are set in each Prefecture, and report to the National Agency for Energy. The offices are mandated to create a database on energy consumption and to monitor the National Energy Efficiency Programme. According to this Article, large energy consumers (as defined by Article 3(4) based on a threshold of minimum consumption⁴) are obliged to submit consumption data to the local offices every year, while other consumers are obliged to do so upon a request of the local energy office.

Article 7 of the Law contains provisions for the manufacturers or importers of electrical devices on the labelling of such products. The labels shall present information on the specific energy consumption of the electrical equipment, on its energy efficiency category as well as the negative impact that may be caused by the introduction of the equipment on the environment and human health.

Article 8 of the Law contains general provisions on mandatory energy audits for applicants to the Energy Efficiency Fund, for state institutions with consumption above a threshold or partially financed through the public budget, or for other large consumers as defined in Article 3(4). Furthermore, in Article 8(3), the Law provides certain general rules on the content of the audit report while Article 8(8) sets out that the detailed rules on the content of the energy audit reports are to be established by way of a regulation approved by the Minister. Despite several request, no information has been provided to date to the Secretariat on the adoption of such a regulation. According to Article 8(4), the auditor shall submit the audit report to the National Agency for Energy or its local office. In its Article 9, the Law sets out provisions on the licensing of energy auditors that are to be licensed by the Ministry, provided that all qualification, certification and other requirements set out in Article 9 are met.

³ Law No 9379 of 28 April 2005.

⁴ A customer with an annual energy consumption greater than 1 GWh of electricity and/or 36 tonnes of coal and/or 150 tonnes of oil and/or 100.000 m³ of gas.

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An Energy Efficiency Fund is set up by Articles 10, 11 and 12 of the Law, funded with earmarked state budget allocations, grants from international sources, funds from the Energy Regulatory Office, private sources and others. The Fund shall be used to finance energy efficiency investments in private and public enterprises and in the transport sector; in extraction, production, transportation and distribution of energy; research and development activities; development of demonstration projects, energy audits (related to the categories regulated by Article 8 of the Law). The Fund shall be managed by the National Agency for Energy.

By its Article 13, the Law stipulates sanctions in case of a breach of its provisions. Large consumers that fail to provide or falsify a report according to Article 6(3) can receive a fine up to 100,000 ALL (714 EUR). Other consumers that fail to provide or falsify a report according to Article 6(4) can receive a fine up to 50,000 ALL (357 EUR). For a violation of the provisions of Article 7, the maximum fine is 100,000 ALL (714 EUR).

In September 2011, the Government of Albania adopted the first National Energy Efficiency Action Plan as requested by the first indent of Article 14(2) of Directive 2006/32/EC. However, the implementation of the energy efficiency measures planned by the National Energy Efficiency Action Plan was slow due to a number of barriers caused by the missing supportive legal and institutional framework as well as the lack of dedicated funding, especially in the public sector.

Albania has failed to adopt or, in any event failed to submit to the Secretariat, the second National Energy Efficiency Action Plan as requested by the second indent of Article 14(2) of Directive 2006/32/EC by the deadline, namely 30 June 2013.

b. The draft law on Energy Efficiency

A new draft Law on Energy Efficiency was prepared in 2011. The Energy Community Secretariat was involved closely in the development of this draft law through the activities of the Energy Efficiency Task Force. Detailed comments on the draft Law were provided to the National Agency for Natural Resources in two rounds in the course of 2011. The draft, incorporating the Secretariat's comments, would significantly improve the state of transposition of Directive 2006/32/EC.

However, the draft law has not been adopted so far. In this situation, the existing Law on Energy Efficiency predating the adoption of Directive 2006/32/EC remains still in force which fails to transpose the requirements of said Directive.

In its implementation reports for the years 2012 (p. 180) and 2013 (p. 177), the Secretariat repeatedly underlined that Albania needs to take substantial steps in order to transpose and implement Directive 2006/32/EC. Adopting the new law would be of essential importance for the further development of the legislative framework and for the implementation of certain energy efficiency measures foreseen for the achievement of energy efficiency targets. This issue represents a high priority for Albania as a Contracting Party of Energy Community. For the proper

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implementation of the National Energy Efficiency Action Plan, the legal framework needs to be completed and the institutional framework should be developed and strengthened, with clearly defined roles and responsibilities.

The Albanian report on the implementation of the energy efficiency *acquis*, submitted for the 13th Energy Efficiency Task Force meeting on 30 November 2011 explained that the adoption of the law is in its final phase and that it is expected to be adopted by the end of 2011. The next report submitted for the 15th Energy Efficiency Task Force meeting on 13 June 2012 reported a stagnation in the adoption procedure of the draft law, postponing the expected date of adoption to the end of 2012. The first Energy Efficiency Coordination Group meeting, held in February 2013, addressed these shortcomings. As reflected in conclusion No 10 of the meeting, the Secretariat expressed its readiness and announced to take enforcement action against Contracting Parties who failed to fulfil their obligations under the energy efficiency *acquis*.

II. Relevant Energy Community Law

Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty ("Dispute Settlement Procedures")⁵ as "a *Treaty obligation* or [...] a *Decision addressed to [a Party]*".

A violation of Energy Community Law occurs if "[a] *Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law*" (Article 2(1) Dispute Settlement Procedures).

Article 6 of the Treaty reads:

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

Article 14(2) of Directive 2006/32/EC reads:

2. *Member States shall submit to the Commission the following EEAPs:*

- *a first EEAP not later than 30 June 2007;*
- *a second EEAP not later than 30 June 2011;*
- *a third EEAP not later than 30 June 2014.*

⁵ Procedural Act No 2008/01/MC-EnC of 27 June 2008

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Article 18 of Directive 2006/32/EC reads:

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 17 May 2008, with the exception of the provisions of Article 14(1), (2) and (4), for which the date of transposition shall be, at the latest 17 May 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member State shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 1 of Decision 2009/05/MC-EnC reads:

1. Each Contracting Party shall implement Directive 2006/32/EC of the European Parliament and of the Council on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC.

2. For the purpose of implementing Directive 2006/32/EC within the institutional framework of the Treaty,

a. the term "Member States" shall read "Contracting Parties" throughout Directive 2006/32/EC;

b. the term "Commission" in .. Article 18(1) subparagraph 1 and (2) shall read "Secretariat";

(...)

3. For the purpose of implementing Directive 2006/32/EC by the Contracting Parties to the Treaty the deadlines set in Article 18(1) subparagraph 1 of Directive 2006/32/EC shall be "31 December 2011" instead of "17 May 2008" and "31 December 2009" instead of "17 May 2006". The other deadlines set by Directive 2006/32/EC shall be adapted as follows:

(...)

b. in Article 14(2) subparagraph 1: "30 June 2010" (first indent), "30 June 2013" (second indent), "30 June 2016" (third indent);

(...)

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III. Preliminary Legal Assessment

1. Under Article 18(1) of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC, Contracting Parties were to bring into force the laws, regulations and administrative provisions necessary to comply therewith by the end of 2009 for some provisions, or the end of 2011 for the remainder of the Directive.

Article 6 of the Treaty imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Hence Contracting Parties, to which a directive is addressed, must bring their legislation into conformity therewith within the period prescribed.

To date Albania has not yet adopted legislation amending or replacing the existing Law on Energy Efficiency, which in itself is not in compliance with the Directive. In particular, the draft Law on Energy Efficiency, by which transposition of the Directive could be achieved to a large extent, has not yet been enacted.

The Secretariat thus concludes that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/32/EC, Albania has failed to fulfil its obligations under Article 18(1) thereof.

2. Moreover, Article 18(1) of Directive 2006/32/EC obliges Contracting Parties to inform the Secretariat about measures adopted in order to transpose the Directive. According to Article 18(2), Contracting Parties shall also communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

To date, the Secretariat has not received such information. It concludes that by not informing the Secretariat about the adoption of any laws, regulations and administrative provisions necessary to comply with Directive 2006/32/EC, nor communicating the texts thereof to the Secretariat, Albania has failed to fulfil its obligations under Article 18(1) and (2) thereof.

3. By not adopting or, in any event, not submitting to the Secretariat a second National Energy Efficiency Action Plan, Albania also failed to comply with the second indent of Article 14(2) of Directive 2006/32/EC. As a consequence, the Secretariat cannot fulfil its obligation to assess the Plan in line with the (adapted) Article 14(4) nor publish the report required under Article 14(5) of Directive 2006/32/EC.

IV. Conclusion

At this point in time, the Secretariat preliminarily concludes that Albania fails to comply with with Article 6 of the Treaty in conjunction with Articles 14(2) and 18 of Directive 2006/32/EC as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council.

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In accordance with Article 12 of the Dispute Settlement Procedures, the Government of Republic of Albania is requested to submit its observations on the points of fact and of law raised in this letter within two months, i.e. by **25 January 2014** to the Secretariat.

Should Albania wish to comply with the Treaty, the Secretariat, acting under Article 67 of the Treaty, is prepared to help in rectifying the identified cases of non-compliance and providing concrete assistance.

Vienna, 25 November 2013



Janez Kopač
Director



Dirk Buschle
Deputy Director and Legal Counsel



To: **Janez Kopač**
Director
Energy Community Secretariat

Subject: Opening Letter in reference to Case ECS-10/13

Place/Date: Tirana, 24 January 2014

Dear Director,

First, I wish to reiterate my most sincere thanks and appreciation for the continuous assistance and support given to Albania within the framework of the Treaty. I would like to extend my appreciation for your visit last November in the premises of the Ministry of Energy and Industry.

Referring to your Opening Letter I would like to stress the fact that it was adequately and immediately taken into consideration and we fully understand the concerns raised by the Energy Community Secretariat for non-complying with the Treaty on energy end-use efficiency and energy services in accordance with certain directives transposed for Energy Efficiency.

In this respect, we acknowledge and under no circumstance will we neglect the progress achieved so far in the area of Energy Efficiency which have been also the focus of trainings in the Energy Community Secretariat as well. We, as a ministry dedicated to the solution of energy problems which arise not only in the Energy Efficiency sector but generally in all of energy sector, believe that there must have been objective circumstances which have prompted the Secretariat to initiate such procedure against the Albanian government.

We fully understand the findings which have prompted the Secretariat to initiate the primary Dispute Settlement procedures against Albania on the related energy end-use efficiency. We are aware of the failed implementation of the 2005 Law prolonged procedure in drafting the Law "On energy efficiency" from 2005 up until now. We understand completely that it has slowed the process of achieving the 9% energy saving target to be realized in 2018 according to the 1-st National Energy Efficiency Action Plan (NEEAP). Also, the lack of national statistics on energy consumption to end-user has made the EE target unreachable with regard to the planned progress. So, in line with existing legal framework of EE, little progress has been made in Albania on energy end-use efficiency and energy services in accordance with Directive 2006/32/EC.

Since September 2013, the new Government has established in the Ministry of Energy and Industry, a new Directorate on Renewable Energy Sources and Energy Efficiency (RES&EE), aiming at focusing and strengthening the mechanisms, drafting energy policy in accordance with

Government Program. In this context, we understand and under no circumstance, will we neglect the progress made so far on energy efficiency issues by previous stakeholders, Energy Community Task Force and Donors.

The lack of an Energy Efficiency Fund to be financed from the State Aid, grants or international sources, energy utilities and/or private business, has led to the situation where many audits and energy efficiency projects, in many cases cannot be easily financed by banks and IFIs.

Finally, I would like to add that we did not adopt the draft-law on Energy Efficiency, strongly assisted by the Energy Efficiency Task Force at the Secretariat and has slowed the process of the transposition of Directive 2006/32/EC. On the other hand, during 2014, the RES&EE Department in the Ministry will revise the new draft-law in line with Energy Efficiency Directive 2012/27/EC.

The Ministry of Energy and Industry (MEI) through RES&EE Department, NANR and in close cooperation with the Secretariat agrees to:

1. Continuously and closely work with the Task Force on Energy Efficiency at the Secretariat, in order to find different ways to coordinate their efforts to a common timetable with regard to the implementation of the *acquis* on Energy Efficiency under the National Development Plan of Stabilization and Association Agreement 2012-2015. MEI in coordination with RES & EE Department has compiled a schedule of drafts laws and by-laws to be approved within 2014 and in accordance with the regulation of the Council of Ministers, which will accelerate their approval within a 6-months period. Apart from the draft law on energy efficiency, the secondary legislation and the second Action Plan on Energy Efficiency among these by-laws there will be included:
 - a. *The Establishment of Energy Efficiency Fund.* The draft itself and the directives provide the establishment of the fund as the only opportunity to mobilize energy auditors to establish a comparative database for Energy Efficiency progress. In addition to the establishment of the fund it will coordinate the same efforts through donors such as UNDP, IFC, WB, Norwegian Fund, etc. Other options for fund raising are also the Regulatory Body, ERE, NANR and Power Utilities. Funding efficiency would be a good opportunity to finance studies, collecting statistics on local governments, licensing the energy auditors, accreditation of educational institutions of energy professionals and establishing a useful database for efficiency progress.
 - b. The professional trainings based on 2010/30/EC for energy labeling, energy services, inspection of energy consumption appliances is one of the main and easy steps of energy efficiency use. A law on Labeling and Energy Services was adopted in April 2009, except the transposition of Directive 2010/30/EC, an additional legal framework for its implementation in practice.
 - c. A draft of Energy Performance in Buildings according to the Directive 2010/31/EC.
2. Our most important priorities are as follows:
 - a. Review of the First NEEAP for the period of 2011-2018 and the adoption of a plan for the period 2014-2020 under IPA-II instrument.
 - b. A national target on reducing energy consumption will reflect realistically the situation of energy efficiency.

- c. Clearly define rules and procedures on issuing the professional licenses to energy auditors.

We believe that the energy policy of the Energy Management demand is the most likely scenario to become active as far as the reduction of energy consumption in line with the National Energy Strategy in the coming years.

Finally, I would like to reaffirm our commitment and dedication that the above-mentioned will be completed in an effort to build up a more prosperous and sustainable future.

Respectfully,

Damian GJIKNURI

MINISTER



**H.E. MR. DAMIAN GJIKNURI
MINISTER OF ENERGY AND INDUSTRY
REPUBLIC OF ALBANIA**

Vienna, 15 March 2017
UA/MIN/dbu/08/15-03-2017

REF. Reasoned Opinion in Case ECS-10/13

EXCELLENCY,

Please find attached a Reasoned Opinion in relation to the Case ECS-10/13 addressed to your attention.

Sincerely,

A handwritten signature in blue ink, appearing to be "DB", written over a faint circular stamp.

Dirk Buschle

Deputy Director and Legal Counsel of the Energy Community Secretariat

Reasoned Opinion

in Case ECS-10/13

I. Introduction

- (1) According to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter: "Dispute Settlement Procedures"),¹ the Secretariat carries out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
- (2) On 25 November 2013, the Energy Community Secretariat (hereinafter: "the Secretariat") initiated dispute settlement proceedings against the Republic of Albania for non-compliance with Article 6 of the Treaty read in conjunction with Articles 14(2) and 18 of Council Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (hereinafter: "Directive 2006/32/EC"),² as incorporated and adapted by Ministerial Council Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency.
- (3) By a letter dated 24 January 2014, the Ministry of Energy and Industry of the Republic of Albania replied to the Opening Letter.
- (4) Having assessed the Reply as well as information obtained from the Albanian authorities,³ the Secretariat considers that the breaches identified in the Opening Letter have not been rectified in their entirety and that the preliminary legal assessment of the Opening Letter is still valid to the extent indicated below.
- (5) Under these circumstances, the Secretariat decided to submit the present Reasoned Opinion.

II. Factual background

1. The *acquis communautaire* on energy efficiency

- (6) In May 2006, Directive 2006/32/EC entered into force in the European Union. The purpose of the Directive is to make the end use of energy more economic and efficient by establishing indicative targets, incentives and the institutional, financial and legal framework needed to eliminate market barriers, which prevent efficient end use of energy. Furthermore, Directive 2006/32/EC aims to create appropriate conditions for the development and promotion of a market for energy services and for the delivery of energy-saving programmes and other measures aimed at improving end-use energy efficiency.

¹ Procedural Act No. 2015/04/MC-EnC of 16 October 2015 amended the Dispute Settlement Procedures. However, as the present case was initiated prior to the adoption of the amended Dispute Settlement Procedures, the rules stipulated in Procedural Act No. 2008/01/MC-EnC are to be applied.

² OJ L 114, 27.04.2006, p. 64.

³ The latest update of the Albanian authorities was provided at the 13th Energy Efficiency Coordination Group meeting held on 9 March 2017, where it was confirmed that the second Energy Efficiency Action Plan has not been adopted yet. This issue was also raised at a meeting between the Secretariat and the Minister of Energy and Industry on 19 December 2016.

- (7) On 18 December 2009, the Ministerial Council of the Energy Community decided that Contracting Parties have to transpose the Directive's provisions into their national laws by 31 December 2011, with the exception of Articles 14(1), 14(2) and 14(4) for which a transposition deadline of 31 December 2009 was set.⁴
- (8) On 16 October 2015, Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC⁵ (hereinafter: "Directive 2012/27/EU") was incorporated in the Energy Community *acquis communautaire* by Decision 2015/08/MC-EnC of the Ministerial Council.

2. Existing legal framework in the Republic of Albania

- (9) The Republic of Albania adopted its first Law on Energy Efficiency in 2005.⁶ By the time of adoption of this Law, Directive 2006/32/EC was not yet adopted in the European Union.
- (10) As established by the Secretariat in the Opening Letter, this Law failed to transpose several provisions of Directive 2006/32/EC into national legislation. A new draft Law on Energy Efficiency was prepared in the course of 2011. The Energy Community Secretariat was involved closely in the development of this draft Law through the activities of the Energy Efficiency Task Force. Detailed comments on the draft Law were provided to the National Agency for Natural Resources in the course of 2011. However, this draft Law had not been adopted by the time the Secretariat initiated Case ECS-10/13 by way of an Opening Letter sent to the Republic of Albania on 25 November 2013.
- (11) Furthermore, as established by the Secretariat in the Opening Letter, the Republic of Albania has failed to adopt the second Energy Efficiency Action Plan by 30 June 2013, as required under the adaptation of point b) of Article 1(3) of Decision 2009/05/MC-EnC and thereby failed to comply with the second indent of Article 14(2) of Directive 2006/32/EC.
- (12) In the Reply to the Opening Letter of 24 January 2014, the Ministry of Energy and Industry of the Republic of Albania acknowledged the Secretariat's findings and admitted that the draft Law on Energy Efficiency, which could have addressed these shortcomings, has not been adopted. In the same letter, the Ministry of Energy and Industry committed itself to prioritize the adoption of the draft Law as well as the second Energy Efficiency Action Plan.
- (13) In November 2015, the Republic of Albania adopted the Law on Energy Efficiency⁷ which transposes the provisions of Directive 2006/32/EC into national legislation. To implement the Law on Energy Efficiency, the designation of competent authorities responsible for the implementation of energy efficiency measures, the establishment of an energy efficiency fund as well the adoption of the second Energy Efficiency Action Plan and secondary legislation (on energy audits, public procurement rules for energy efficiency, monitoring and verification of energy savings, rules and model contracts for energy services) is necessary.

⁴ Article 1(3) of Decision 2009/05/MC-EnC.

⁵ OJ L 315, 14.11.2012, p. 1.

⁶ Law No. 9379 of 28 April 2005.

⁷ Law No. 124 of 12 November 2015.

- (14) The establishment of the planned energy efficiency agency and an energy efficiency fund was to be carried out based on Articles 4(6) and 19 (energy efficiency fund) and 25 (energy efficiency agency) of the Law on Energy Efficiency. However, based on information submitted by the representatives of the Republic of Albania participating at the 13th meeting of the Energy Efficiency Coordination Group held on 9 March 2017, this has not happened to date.
- (15) Based on the 2005 Law on Energy Efficiency, the first Energy Efficiency Action Plan was adopted in 2011. The Secretariat found that one of the main reasons for low implementation of the first Energy Efficiency Action Plan was the missing supportive legal framework as well as the lack of dedicated funding and urged the Albanian authorities to improve and submit the second Energy Efficiency Action Plan.⁸
- (16) The first draft of the second Energy Efficiency Action Plan for which the deadline for adoption was 30 June 2013,⁹ was submitted by the Ministry of Energy and Industry of the Republic of Albania to the Secretariat on 24 November 2013. In its Assessment Report,¹⁰ the Secretariat concluded that the draft does not provide a satisfactory description of energy efficiency improvement measures planned to reach the targets, nor does it include a thorough analysis and evaluation of the first Energy Efficiency Action Plan as requested by Directive 2006/32/EC.
- (17) The latest version of the second Energy Efficiency Action Plan was improved with technical assistance from the Regional Energy Efficiency Program of EBRD. It addresses the shortcomings in the first Action Plan identified by the Secretariat. This draft second Energy Efficiency Action Plan has been positively assessed by the Secretariat in 2016. Despite that, the second Energy Efficiency Action Plan has not yet been adopted.
- (18) No secondary legislation necessary for the implementation of the Law on Energy Efficiency has been adopted either.
- (19) In its implementation reports for the years 2014,¹¹ 2015¹² and 2016¹³, the Secretariat repeatedly underlined that the Republic of Albania needs to take substantial steps in order to transpose and implement Directive 2006/32/EC. Following the adoption of the Law on Energy Efficiency, the Secretariat emphasized the need of adopting secondary legislation as well as the second Energy Efficiency Action Plan. In the absence of sufficient progress, however, the Secretariat decided to submit the present Reasoned Opinion.

III. Relevant Energy Community Law

- (20) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “*a Treaty obligation or [...] a Decision addressed to [a Party]*”.
- (21) A violation of Energy Community Law occurs if “[*a Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are*”

⁸ Annual Implementation Report of the Energy Community Secretariat, 2012, p. 180; 2013, p. 177-178; Conclusions 10-11 of the 1st Energy Efficiency Coordination Group meeting, 21 February 2013.

⁹ Second indent of Article 14(2) of Directive 2006/32/EC, as amended by point b) of Article 1(3) of Decision 2009/05/MC-EnC of the Ministerial Council.

¹⁰ https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3500148/0926ED3AD1C5409CE053C92FA8C0E6A4.PDF

¹¹ Annual Implementation Report of the Energy Community Secretariat, 2014, p. 41.

¹² Annual Implementation Report of the Energy Community Secretariat, 2015, p. 48.

¹³ Annual Implementation Report of the Energy Community Secretariat, 2015, p. 37.

incompatible with a provision or a principle of Energy Community Law” (Article 2(1) Dispute Settlement Procedures).

(22) Article 6 of the Treaty reads:

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

(23) Article 4(2) of Directive 2006/32/EC reads¹⁴:

For the purpose of the first Energy Efficiency Action Plan (EEAP) to be submitted in accordance with Article 14, each Contracting Party shall establish an intermediate national indicative energy savings target for the third year of application of this Directive, and provide an overview of its strategy for the achievement of the intermediate and overall targets. This intermediate target shall be realistic and consistent with the overall national indicative energy savings target referred to in paragraph 1.

The Secretariat shall give an opinion on whether the intermediate national indicative target appears realistic and consistent with the overall target.

(24) Article 4(4) of Directive 2006/32/EC reads:

Contracting Parties shall assign to one or more new or existing authorities or agencies the overall control and responsibility for overseeing the framework set up in relation to the target mentioned in paragraph 1. These bodies shall thereafter verify the energy savings as a result of energy services and other energy efficiency improvement measures, including existing national energy efficiency improvement measures, and report the results.

(25) Article 5 of Directive 2006/32/EC reads:

1. Contracting Parties shall ensure that the public sector fulfils an exemplary role in the context of this Directive. To this end, they shall communicate effectively the exemplary role and actions of the public sector to citizens and/or companies, as appropriate.

Contracting Parties shall ensure that energy efficiency improvement measures are taken by the public sector, focussing on cost-effective measures which generate the largest energy savings in the shortest span of time. Such measures shall be taken at the appropriate national, regional and/or local level, and may consist of legislative initiatives and/or voluntary agreements, as referred to in Article 6(2)(b), or other schemes with an equivalent effect. Without prejudice to national and Community public procurement legislation:

— at least two measures shall be used from the list set out in Annex VI;

— Contracting Parties shall facilitate this process by publishing guidelines on energy efficiency and energy savings as a possible assessment criterion in competitive tendering for public contracts.

Contracting Parties shall facilitate and enable the exchange of best practices between public sector bodies, for example on energy efficient public procurement practices, both at the national and international level; to this end, the organisation referred to in paragraph 2 shall cooperate with the Secretariat with regard to the exchange of best practice as referred to in Article 7(3).

¹⁴ The text of all provisions of Directive 2006/32/EC are displayed as adapted by Decision 2009/05/MC-EnC.

2. Contracting Parties shall assign to a new or existing organisation or organisations the administrative, management and implementing responsibility for the integration of energy efficiency improvement requirements as set out in paragraph 1.

These may be the same authorities or agencies as those referred to in Article 4(4).

(26) Article 9(2) of Directive 2006/32/EC reads:

Contracting Parties shall make model contracts for those financial instruments available to existing and potential purchasers of energy services and other energy efficiency improvement measures in the public and private sectors. These may be issued by the authority or agency referred to in Article 4(4).

(27) Article 11(3) of Directive 2006/32/EC reads:

The funds shall be open to all providers of energy efficiency improvement measures, such as ESCOs, independent energy advisors, energy distributors, distribution system operators, retail energy sales companies and installers. Contracting Parties may decide to open the funds to all final customers. Tendering or equivalent methods which ensure complete transparency shall be carried out in full compliance with applicable public procurement regulations. Contracting Parties shall ensure that such funds complement, and do not compete with, commercially-financed energy efficiency improvement measures.

(28) Article 12 of Directive 2006/32/EC reads:

1. *Contracting Parties shall ensure the availability of efficient, high-quality energy audit schemes which are designed to identify potential energy efficiency improvement measures and which are carried out in an independent manner, to all final consumers, including smaller domestic, commercial and small and medium-sized industrial customers.*

2. *Market segments that have higher transaction costs and non-complex facilities may be reached by other measures such as questionnaires and computer programmes made available on the Internet and/or sent to customers by mail. Contracting Parties shall ensure the availability of energy audits for market segments where they are not sold commercially, taking into account Article 11(1).*

3. *Certification in accordance with Article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings shall be regarded as equivalent to an energy audit meeting the requirements set out in paragraphs 1 and 2 of this Article and as equivalent to an energy audit as referred to in Annex VI(e) to this Directive. Furthermore, audits resulting from schemes based on voluntary agreements between organisations of stakeholders and an appointed body, supervised and followed up by the Contracting Party concerned in accordance with Article 6(2)(b) of this Directive, shall likewise be considered as having fulfilled the requirements set out in paragraphs 1 and 2 of this Article.*

(29) Article 14(2) of Directive 2006/32/EC reads:

Contracting Parties shall submit to the Commission the following EEAPs:

— *a first EEAP not later than 30 June 2010;*

— *a second EEAP not later than 30 June 2013;*

— *a third EEAP not later than 30 June 2016.*

(30) Article 18 of Directive 2006/32/EC reads:

1. Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2011, with the exception of the provisions of Article 14(1), (2) and (4), for which the date of transposition shall be, at the latest 31 December 2009. They shall forthwith inform the Secretariat thereof.

When Contracting Parties adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Contracting Parties.

2. Contracting Parties shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

(31) The second subparagraph of point 3 of Annex I of Directive 2006/32/EC reads:

In all cases, the resulting energy savings must still be verifiable and measurable or estimable, in accordance with the general framework in Annex IV.

(32) Article 1(3) of Decision 2009/05/MC-EnC of the Ministerial Council reads:

For the purpose of implementing Directive 2006/32/EC by the Contracting Parties to the Treaty the deadlines set in Article 18(1) subparagraph 1 of Directive 2006/32/EC shall be "31 December 2011" instead of "17 May 2008" and "31 December 2009" instead of "17 May 2006". The other deadlines set by Directive 2006/32/EC shall be adapted as follows:

a. in Article 14(1): "30 June 2010";

b. in Article 14(2) subparagraph 1: "30 June 2010" (first indent), "30 June 2013" (second indent), "30 June 2016" (third indent);

c. in Article 14(4): "1 January 2011" (first indent), "1 January 2014" (second indent), "1 January 2017" (third indent);

d. in Article 14(5) subparagraph 1: "1 January 2011" (first indent), "1 January 2014" (second indent), "1 January 2017" (third indent).

IV. Legal Assessment

1. Introduction

(33) Under Article 18(1) of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC, Contracting Parties were to bring into force the laws, regulations and administrative provisions necessary to comply therewith by 31 December 2009 for some provisions,¹⁵ or by 31 December 2011 for the remainder of the Directive.

(34) Article 6 of the Treaty imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from the Treaty. Hence Contracting Parties, to whom a directive is addressed, must bring their legislation into conformity therewith within the prescribed period.

¹⁵ Articles 14(1), 14(2) and 14(4) of Directive 2006/32/EC.

- (35) As a point of departure, the Secretariat notes that the case leading to the present Reasoned Opinion was initiated in 2013, *i.e.* at a time when the Energy Community *acquis communautaire* still referred to Directive 2006/32/EC. In the meantime, Directive 2012/27/EU was incorporated in the Energy Community *acquis communautaire*.¹⁶ In the European Union, Directive 2012/27/EU entered into force on 4 December 2012 and repealed Directive 2006/32/EC as of the same date.
- (36) Directive 2012/27/EU was incorporated in the Energy Community *acquis communautaire* by Decision 2015/08/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the implementation of Directive 2012/27/EU (hereinafter: “Decision 2015/08/MC-EnC”). By its Article 3(36), Decision 2015/08/MC-EnC repealed Directive 2006/32/EC from 15 October 2017, with the exception of Article 4(1), 4(4) and Annexes I, III and IV of Directive 2006/32/EC, for which a repeal deadline of 1 January 2020 was set.
- (37) It is appropriate to specify at the outset that the provisions from Directive 2006/32/EC were applicable at the time when the facts of the case took place. According to settled case-law of the Court of Justice of the European Union, substantive rules are usually interpreted as not applying to situations existing before their entry into force.¹⁷ It is thus clear that even though Directive 2012/27/EU was incorporated in the Energy Community *acquis* by a Decision of the Ministerial Council in 2015, the provisions from Directive 2006/32/EC remain applicable until 15 October 2017 and, with respect to Article 4(1), 4(4) and Annexes I, III and IV, until 1 January 2020.

2. Lack of implementation of certain provisions of Directive 2006/32/EC

a) Lack of designation of competent authorities – breach of Articles 4(4) and 5(2) of Directive 2006/32/EC

aa) The obligation from Energy Community law

- (38) Articles 4(4) and 5(2) of Directive 2006/32/EC require Contracting Parties to designate the task of overseeing the framework set up in relation to the energy efficiency savings target as well as the exemplary role of the public sector to one or more new or existing authorities.

ab) Legal framework in the Republic of Albania

- (39) Under points III.1 and III.2 of the Opening Letter, the Secretariat preliminarily concluded that the Republic of Albania failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/32/EC or, in any event, failed to communicate those to the Secretariat and thereby the Republic of Albania has failed to fulfil its obligations under Article 18(1) of Directive 2006/32/EC.
- (40) The Secretariat notes that this general shortcoming was addressed by the adoption of the Law on Energy Efficiency on 12 November 2015. However, the designation of competent authorities as required by Articles 4(4) and 5(2) of Directive 2006/32/EC and transposed by Article 25(1) of the Law on Energy Efficiency, has not happened in the

¹⁶ Decision D/2015/08/MC-EnC.

¹⁷ Case C-61/98, *De Haan Beheer BV and Inspecteur der Invoerrechten en Accijnzen te Rotterdam*, paragraph 13. See also: Joined Cases 212/80 to 217/80 *Salumi and Others*, paragraph 9; Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and J CT Benelux v Commission*, paragraph 22.

Republic of Albania yet, as confirmed by the Albanian authorities at the 13th Energy Efficiency Coordination Group meeting held on 9 March 2017.

ac) Conclusion

- (41) Therefore, the Secretariat considers that the Republic of Albania failed to correctly implement Articles 4(4) and 5(2) of Directive 2006/32/EC.

b) Lack of adoption of secondary legislation for the implementation of the Law on Energy Efficiency – breach of Articles 5(1), 9(2), 11(3), 12 and Annexes I and VI of Directive 2006/32/EC

ba) The obligation from Energy Community law

- (42) According to Directive 2006/32/EC, Contracting Parties are obliged to ensure that efficient, high-quality and independent energy audits are carried out;¹⁸ the public sector fulfils an exemplary role in the context of the Directive, including considering energy efficiency in public procurement;¹⁹ it is possible to monitor and verify energy savings²⁰ and rules and model contracts for energy services are available for the public²¹.
- (43) The Law on Energy Efficiency of 2015 provides a legal basis for all these measures in the Republic of Albania, as will be assessed in detail below.

bb) Legal framework in the Republic of Albania

- (44) As regards energy audits, according to Article 18(6) of the Law on Energy Efficiency, “[t]he specific format of carrying out an energy audit and the payment shall be defined by a regulation created by Agency responsible for energy efficiency and approved by the Minister and Minister responsible for construction.” According to Article 27(3) of the Law, the deadline for adoption was within 12 months from the entry in force, *i.e.* 9 December 2016.²² This, however, has not happened to date and given the fact that the Law on Energy Efficiency does not contain the provisions on energy audits, proper implementation of the Law on Energy Efficiency is thus cannot ensured in this domain. Therefore, the Secretariat concludes that the Republic of Albania has failed to implement Article 12 of Directive 2006/32/EC.
- (45) As regards energy efficiency in public procurement, according to Article 9 of the Law on Energy Efficiency, “[t]he Council of Ministers, upon proposal of the Minister, shall include in the public procurement rules, forecasts, that oblige Contracting Authorities to determine on the documents of procurement procedures for every appliance or product that has a direct or indirect influence on energy consumption, technical specifications that comply with the minimal energy efficiency requirements, as specified by the legislation in force for the energy consumption and other resources of products with influence on energy.” No deadline is established however for the adoption of this secondary legislation by the Law on Energy Efficiency and to date, such legislation has not been adopted. Given the fact that the Law on Energy Efficiency does not contain provisions on energy efficiency in public procurement, proper implementation of the Law

¹⁸ Article 12 of Directive 2006/32/EC.

¹⁹ Articles 5(1) and Annex VI of Directive 2006/32/EC.

²⁰ Annex IV of Directive 2006/32/EC.

²¹ Article 9(2) of Directive 2006/32/EC.

²² The Law on Energy Efficiency was published on 24 November 2015 in the Official Journal of the Republic of Albania and according to its Article 30, it entered into force 15 days after its publication, *i.e.* on 9 December 2015.

on Energy Efficiency is thus cannot ensured in this domain. Consequently, the Secretariat concludes that the Republic of Albania has failed to implement Article 5(1) and Annex VI of Directive 2006/32/EC.

- (46) As regards the monitoring and verification of energy savings, according to Article 8(1) of the Law on Energy Efficiency, “[t]he Agency for Energy Efficiency shall monitor the implementation of the National Energy Efficiency Action Plan and be responsible for the supervision of the application of energy efficiency measures. The supervision of the application of energy savings is performed according to the energy savings methodology based on a set of energy efficiency indicators in the households, services, transport, industrial and agricultural sectors, which is approved by the Minister’s order.” Furthermore, according to Article 8(3) of the Law on Energy Efficiency, “[t]he form and frequency of reporting on the implementation of the National Energy Efficiency Action Plan, as by this law, are defined by the Minister’s order.”
- (47) According to Article 27(2) of the Law, the deadline for adoption was within 12 months from the entry in force, *i.e.* 9 December 2016. This, however, has not happened to date and given the fact that the Law on Energy Efficiency only contains provisions to set rules for the monitoring and verification of energy savings but does not itself establish those rules, its proper implementation of Directive 2006/32/EC is thus cannot be ensured. Furthermore, as the implementation of these provisions of the Law on Energy Efficiency is linked to the adoption of the second Energy Efficiency Action Plan by the transposing Albanian legislation, which has not happened to date, proper implementation of Article 4(4) and point 3 of Annex I of Directive 2006/32/EC cannot be safeguarded.
- (48) As regards rules and model contracts for energy services, Article 18(2) of the Law on Energy Efficiency establish the energy service company model for the implementation of Article 9(2) of Directive 2006/32/EC. According to Article 18(3) of the Law, “[t]he Council of Ministers, upon proposal of the Minister approves the categories, conditions, qualification requirements and professional expertise for the companies that will receive a license as defined by the paragraph 2 of this article.”
- (49) According to Article 27(1) of the Law on Energy Efficiency, the deadline for adoption was within 12 months from the entry in force, *i.e.* 9 December 2016. This, however, has not happened to date and given the fact that the Law on Energy Efficiency does not contain the rules and model contracts for energy services, proper implementation of Article 9(2) of Directive 2006/32/EC is thus not ensured.

bc) Conclusion

- (50) Based on the above and in the absence of adoption of secondary legislation necessary for the implementation of Directive 2006/32/EC, the Secretariat concludes that the Republic of Albania has failed to comply with its obligations arising from Article 18 of Directive 2006/32/EC. Furthermore, the Secretariat concludes that the Republic of Albania has failed to implement Articles 5(1), 9(2), 11(3), 12 as well as Annexes I and VI of Directive 2006/32/EC.

c) Lack of adoption of Energy Efficiency Action Plan – failure to comply with Article 14(2) of Directive 2006/32/EC

ca) The obligation from Energy Community law

- (51) Pursuant to Article 14(2) of Directive 2006/32/EC as amended by Decision 2009/05/MC-EnC of the Ministerial Council, the deadline for submission of the second Energy

Efficiency Action Plan was 30 June 2013. In the Opening Letter, the Secretariat preliminarily concluded that the Albanian authorities have not adopted the second Energy Efficiency Action Plan, or, in any event, failed to communicate it to the Secretariat and thereby failed to comply with Articles 14(2) and 18 of Directive 2006/32/EC.

cb) Legal framework in the Republic of Albania

- (52) In their reply to the Opening Letter, the Ministry of Energy and Industry of the Republic of Albania confirmed that the second Energy Efficiency Action Plan has indeed not been adopted yet. Furthermore, the Ministry of Energy and Industry of the Republic of Albania informed the Secretariat that the drafting of the second Energy Efficiency Action Plan is in an advanced phase and described its adoption as the highest priority in point 2.a of the reply.
- (53) Following up on the reply to the Opening Letter, the draft second Energy Efficiency Action Plan was subject to further negotiations within the Republic of Albania as well as to technical assistance from international donors and the Secretariat. The resulting draft second Energy Efficiency Action Plan was positively assessed by the Secretariat in 2016.
- (54) However, the second Energy Efficiency Action Plan has not been adopted to date, despite the fact that the Albanian authorities have received a wide range of support both from the Secretariat and from other international institutions with the aim to improve and adopt the Plan. In that respect, the Secretariat notes that according to the Court of Justice, drafts are not capable of providing the necessary legal effects required from the measures transposing directives into national law.²³

cc) Conclusion

- (55) Based on the above, the Secretariat concludes that the Republic of Albania has failed to transpose into national legislation and implement its obligations arising from Articles 14(2) and 18 of Directive 2006/32/EC.

V. Conclusions

- (56) In the framework of the Treaty, the Republic of Albania is under a legal obligation to transpose and implement the provisions of Directive 2006/32/EC into national legislation. In the Opening Letter, the Secretariat preliminarily concluded that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/32/EC, or, in any event, by failing to communicate those measures to the Secretariat, the Republic of Albania failed to comply with its obligations.
- (57) This breach has been partially addressed in November 2015 by the adoption of the Law on Energy Efficiency.
- (58) At the same time, as described above, the Republic of Albania has not adopted all provisions necessary for the implementation of Directive 2006/32/EC, despite the long time that has passed since the deadline stipulated in its Article 18, as adapted by Decision 2009/05/MC-EnC. In particular, the Republic of Albania has not adopted secondary legislation that is indispensable for the correct implementation of the

²³ See, to that effect, Case C-430/98 *Commission v Luxembourg*, paragraphs 8-13 and Case C-648/13 *Commission v Poland*, paragraphs 129-132.

provisions of the Law on Energy Efficiency. Furthermore, the Republic of Albania failed to adopt the second Energy Efficiency Action Plan.

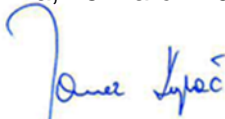
- (59) Based on the above, the Secretariat concludes that the Republic of Albania fails to comply with Article 6 of the Treaty read in conjunction with Articles 4(4), 5, 9(2), 11(3), 12, 14(2) and 18 as well as Annexes I and VI of Directive 2006/32/EC, as adapted by Article 1 of Decision 2009/05/MC-EnC of the Ministerial Council.
- (60) In accordance with Article 12 of the Dispute Settlement Procedures, the Government of the Republic of Albania is requested to submit its observations on the points of fact and of law raised in this letter within two months, *i.e.*

by 15 May 2017

to the Secretariat.

- (61) Should the Republic of Albania wish to comply with the Treaty, the Secretariat, acting under Article 67 of the Treaty, is prepared to help in rectifying the identified cases of non-compliance and providing concrete assistance.
- (62) Furthermore, in accordance with Article 15 of the Dispute Resolution and Negotiation Centre Rules, the Republic of Albania may also request that the present dispute is mediated by a neutral third-party mediator. Should the Republic of Albania wish to benefit from this option, it shall notify the Legal Counsel of such a request in line with Article 15(1) of the Dispute Resolution and Negotiation Centre Rules **by 15 April 2017.**

Vienna, 15 March 2017



Janez Kopač
Director



Dirk Buschle
Deputy Director/Legal Counsel

Vienna, 10 April 2017

DIV/O/jko/114/10-04-2017

Subject: Significant delay in adoption of the 3rd Energy Efficiency Action Plan

Excellency,

I am writing to you regarding the significant delay in adoption of the 3rd Energy Efficiency Action Plan (3rd EEAP) of the Republic of Albania.

The adoption of an EEAP every 3 years, and its submission to the Secretariat represents a requirement under the Directive 2006/32/EC, and by not doing this, Albania is in breach of the Energy Community Treaty. Moreover, the Albania Energy Efficiency Law adopted in 2015 requires the adoption of EEAPs, in line with the Energy Community Treaty.

In accordance with Article 14(2) of the Energy Service Directive (2006/32/EC), the Contracting Parties were required to prepare 3rd EEAPs and to notify these to the Secretariat no later than **30 June 2016**. A significant technical assistance was given to the Ministry of Energy and Industry by EBRD and the Energy Community Secretariat, that has resulted in a draft 3rd EEAP delivered in April 2016 to the Ministry. The 3rd EEAP was prepared in cooperation with the National Technical Working Group set for this scope, and led by the Ministry. Nevertheless, the 3rd EEAP is still not adopted by the Government.

Please let me recall that Albania has not adopted and submitted to the Secretariat, the 2nd EEAP as well, which had a deadline of 30 June 2013. This situation was not rectified, although the Secretariat opened the case Case ECS-10/13 against the Republic of Albania, on non-compliance with the Directive 2006/32/EC.

Having this in mind, I sincerely hope that Ministry will promptly rectify this breach and the Government will approve the 3rd EEAP. Let me underline once again our readiness to support the adoption and implementation of the EEAP, as well as overall energy efficiency policy in the Republic of Albania.

Yours sincerely,



Janez Kopač
Director

**H.E. MR. DAMIAN GJIKNURI
MINISTER OF ENERGY AND INDUSTRY
REPUBLIC OF ALBANIA**

Republic of Albania

Law “On Public Procurement”

No. 9643 dated 20.11.2006,

consolidated with Amendment no. 9800, date 10. Sept. 2007, no.9855, date 26.Dec.2007, no. 10170 date 22.10.2009, no.10 309, date 22.07.2010, no. 22/2012, and no. 131/2012.

The People’s Assembly of the Republic of Albania

In accordance with Art. 78 and 83, point 1 of the Constitution with a proposal of the Council of Ministers,

Decided:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of the law

1. This law sets out the rules applying to the procurement of goods, works and services by contracting authorities (CA).
2. The objectives of the law are:
 - (a) to promote efficiency and efficacy in public procurement procedures carried on by CA;
 - (b) to ensure a better use of public funds and reduce procedural costs;
 - (c) to encourage economic operators to participate in public procurement procedures;
 - (ç) to promote competition among economic operators;
 - (d) to guarantee an equal and non-discriminatory treatment for all economic operators participating in public procurement procedures;
 - (dh) to guarantee integrity, public trust and transparency in public procurement procedures.

Article 2

Awarding Principles

The award of public contracts is governed by the following general principles:

- (a) non discrimination and equality of treatment of actual and potential tenderers;
- (b) transparency of procurement procedures;
- (c) proportionality of requirements and obligations imposed to actual and potential tenderers;

Article 3

Definitions

For the purpose of this law, the following definitions shall apply:

1. **‘Awarding procedures’** are the procedures carried out by **CA** in order to award a public contract for works, supplies or services.

2. **‘Public contracts’** are contracts for pecuniary interest concluded by exchange of written communication between one or more economic operators and one or more **CA** and having as their object the execution of works, the supply of goods or the provision of services within the meaning of this law.

2.1 **‘Sectoral contracts’** are public contracts awarded by contracting authorities that operate in the water, energy, transport and postal sectors to one or more economic operators, for the purposes of performing any of the activities referred to in Article 58/1. ¹

3. **‘Consultancy contracts’** are contracts for *public*² consulting services of intellectual and advisory nature, to the exclusion of other types of services, where the physical aspects of the activity predominate.

4. **“Public Funds”** means:

- a) any monetary value of the State Budget determined to be used for public contracts;
- b) any monetary value of the local budget determined to be used for public contracts;
- c) aid or credit funds provided by foreign donors, based on international agreements, which do not require implementation of other procedures different from this law;
- ç) incomes from State, local enterprises, marketing associations and any other entity, where the State has the majority of the capital shares.

5. **‘Public service contracts’** are public contracts having as their object the provision of services. A public contract having as its **object both goods and services** shall be considered to be a ‘public service contract’ if the value of the services in question exceeds that of the goods covered by the contract. A public contract having as its object **services and including works** that are only incidental to the principal object of the contract shall be considered to be a **“public service contract”**.

6. **‘Public supply contracts’** are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of goods. A public contract having as its object the supply of products, which covers also, as an incidental matter, sitting and installation operations shall be considered to be a ‘public supply contract’ where the value of ‘goods’ exceeds the value of sitting and installation.

7. A **‘good’** is any material thing which can be economically evaluated.

8. **‘Public works contracts’** are public contracts having as their object either the execution, or both the design and execution of works or a work, or the realization, by whatever means, of a work corresponding to the requirements specified by the **CA**.

8.1 **‘Framework agreement’** means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be

¹ Added by law no. 10170, dated 22.10.2009

² Added with the law no. 9800, dated 10.09.2007

*awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.*³

9. A ‘work’ means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function.

10. ‘Dynamic purchasing system’ is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the **CA**, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

11. ‘Electronic purchase’ is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions.

12. ‘Contractor’, ‘supplier’ and ‘service provider’ means any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.

13. ‘Economic operator’ shall cover equally the concepts of contractor, supplier and service provider, without any kind of distinction.

a) An economic operator who has submitted a tender shall be designated a ‘tenderer’.

b) One which has sought an invitation to take part in a restricted or negotiated procedure shall be designated as a ‘candidate’.

14. ‘Contracting authorities’ (CA) mean all those entities subject to the **PPL** for the execution of their public contracts. Namely, the following:

a. constitutional and other central institutions, independent central institutions, local governing entities,

b. any bodies:

(i) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(ii) having legal personality; and

(iii) financed, for the most part, by the State, regional or local authorities, or other public bodies; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other public bodies;

c. associations formed by one or several of such authorities or one or several of such public bodies.

ç.⁴

14.1 ‘Contracting authorities’ shall also mean:

a. any contracting authority within the meaning of paragraph 14, when it performs one of the activities referred to in Article 58/1 of this law;

³ Amended by law no.10170, dated 22.10.2009

⁴ Abrogated by law no. 1070, dated 22.10.2009

b. public undertakings if the contract is awarded for the purposes of exercising any of the activities referred to in Article 58/1 of this law. For the purpose of this provision “public undertaking” is any undertaking over which contracting authorities listed in paragraph 14 may exercise, directly or indirectly through another entity, a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence is presumed when contracting authorities listed in paragraph 14, directly or indirectly, in relation to an undertaking:

- i. hold the majority of the entity’s subscribed capital, or
- ii. control the majority of the votes attached to shares issued by that entity, or
- iii. can appoint more than half of the entity’s administrative, management or supervisory body.”

c. Any other entity not mentioned in items a) or b), when they pursue any or a combination of the activities referred to in Article 58/1 of this law on the basis of special or exclusive rights granted by a competent authority.⁵

15. ‘Special or exclusive rights’ are rights granted by a competent authority of Albania by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercising of activities referred to in Article 58/1 to one or more entities, and which substantially affects the ability of other entities to carry out such an activity.⁶

16. A ‘central purchasing body’ is a CA, which:

- (a)** acquires supplies and/or services intended for CA, or
- (b)** awards public contracts for works, supplies or services intended for contracting authorities.

17. ‘Open procedures’ are those procedures whereby any interested economic operator may submit a tender.

18. ‘Restricted procedures’ are those procedures in which any economic operator may request to participate and whereby only those economic operators selected by the CA may submit a tender.

19. ‘Negotiated procedures’ are those procedures whereby the CA consult the economic operators of their choice and negotiate the contract terms with one or more of these.

20. ‘Request for proposal’ is a procedure whereby the contracting authority shall seek bids from a limited number of economic operators of its choice, but also accept bids submitted by other interested economic operators.⁷

21. ‘Design contests’ are those procedures enabling the CA to acquire a study or design of a merely aesthetic nature, selected by a jury after being put out to competition.

22. ‘Written communications’ mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

23. ‘Electronic means’ means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, radio, by optical means or other electromagnetic means.

⁵ Added by law no. 10170, dated 22.10.2009

⁶ Added by law no. 10170, dated 22.10.2009

⁷ Amended by law no. 131/2012, dated 27.12.2012

24. ‘Procurement regulations’ (PP-rules) mean any implementing regulation issued by the **Council of Ministers**, within the scope of the **PPL**.

25. ‘Public Procurement Bulletin’ means the publication of public procurements issued by the Public Procurement Agency and of other public notices.

26. ‘Tender documents’ are the documents provided by **CA** to candidates and prospective tenderers as a basis for the preparation of their tenders.

27. ‘Relevant information’ means documents and information relevant to the procedures which have to be disclosed - upon request - to the tenderer wishing to challenge one or more decisions taken by **CA** in the course of the awarding procedures. The disclosure of such information is only limited to the extent necessary to comply with confidentiality obligations or security requirements.

28. “Threshold” means the monetary value used to determine the procurement procedure to be followed by the **CA**, in compliance with the **PPL** and the public procurement rules.

29. “Postal services” means services consisting of the clearance, sorting, routing and delivery of postal items.⁸

30. “Postal item” means an item addressed in the final form in which it is to be carried, irrespective of weight; in addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight.⁹

Article 4 Scope of application

The **PPL** applies to all awarding procedures. The only applicable exceptions are set out in Art. 5, 6, 7, 8 and 9 of this Law.¹⁰

Article 5 Defense procurement

1. The **PPL** shall apply to all public contracts awarded in the field of defense, subject to para 2 of this Article.

2. The provisions of the **PPL** shall not apply in the following cases:

(a) when **CA** shall be obliged to supply information whose disclosure is contrary to the essential interests of national security;

(b) for the purchase of arms, munitions and war material, or related services. This exception shall not adversely affect the conditions of competition regarding products not specifically intended for military purposes;

(c) in specific circumstances caused by natural disasters, armed conflicts, war operations, military training and participation in military missions outside the country.

⁸ Added by law no. 10170, dated 22.10.2009

⁹ Added by law no. 10170, dated 22.10.2009

¹⁰ Amended by law no. 131/2012, dated 27.12.2012

Article 6 Secret contracts, contracts requiring special security measures and the contracts, which are imposed by substantial interests of the state¹¹

The PPL shall not apply to public contracts when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force, or when the protection of the State's essential interests so requires.

Article 7 Specific exclusions

The PPL shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to the PPL;
- (b) the acquisition, development, production or co-production of program material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time;
- (c) arbitration and conciliation services;
- (ç) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital, and central bank services;
- (d) research and development services, which outcome is used by all in a non-discriminatory basis, other than those, where the benefits accrue exclusively to the CA for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by contracting authorities.
- (dh) all services referred to in Articles 58/3, 58/4, 58/5, 58/6, 58/7, of "Chapter V/1, "Procedures for awarding sectoral contracts".¹²

The excluded cases, as per letters from "a" to "dh"¹³ in this Article, shall be regulated with other legal provisions or implementing regulations.

Article 8 International obligations

To the extent that the PPL conflicts with an obligation of the State under, or arising out of, an agreement with one or more other states or with an international organization, the provisions of that agreement shall prevail. In all other respects, public procurement activities shall be governed by the PPL.

Article 9 Service contracts awarded on the basis of an exclusive right

The PPL shall not apply to public service contracts awarded by a CA to¹⁴ another CA, or to an association of CA, on the basis of an exclusive right which they enjoy pursuant to the published legislation.

¹¹ Amended by law no. 131/2012, dated 27.12.2012

¹² Amended by law no. 10170, dated 22.10.2009

¹³ Amended by law no. 9855, dated 26.12.2007

Article 10 Consultancy services

Consultancy services are awarded according to the procedures provided in the **PPL**, as better specified in the **PP-rules**.

Article 11 Centralized purchasing

1. When more than one **CA** needs the same kind of goods, works or services, if they so decide they may:

(a) assign to one of them the task of procuring such items on behalf of the others;

(b) instruct the **Central Purchasing Body** established pursuant to the **PP-rules** to carry out the relevant awarding procedures.

2. **CA** may ask the **Central purchasing body** to carry out a specific awarding procedure or a series of awarding procedures on their behalf, when centralized purchasing would benefit from substantial economies of scale, for instance regarding supplies of homogeneous goods, which are offered on the market under similar conditions;

In carrying out the awarding procedures assigned to it, the **Central Purchasing Body** is subject to the provisions of the **PPL**.

3. In any case, with a request of a **CA**, or on its own initiative, the **Council of Ministers** may assign a **CA** as the **Central purchasing body** for certain procurement procedures.

Article 11/1 Scope of Public Agreement¹⁵

CHAPTER II

PUBLIC PROCUREMENT ORGANISATION

Article 12 Responsibility of the CA

1. Each **CA** is responsible for procurement with public funds¹⁶ subject to the provisions of the **PPL**, to any further conditions set forth in the **PP-rules**.

2. The contracting authority should keep complete records and documentation for procedures performed when determining the winner of the contract, so as to allow the control of law enforcement.

For each procurement procedure, the records should contain at least the following information:

a) A brief description of the supplies, services or works to be procured, or the need for procurement, for which the contracting authority has made a decision to start the procedure;

b) The reasons for choosing a particular procedure;

¹⁴ Amended by law no. 9800, dated 10.09.2007

¹⁵ Abrogated by law no 10170, dated 22.10.2009

¹⁶ Amended by law no. 131/2012, dated 27.12.2012

- c) A summary of all requests for clarification about the tender documents, responses to these requests, as well as, a summary of all adjustments made to these documents.
- ç) The names and addresses of the bidders that have submitted bids, the name and address of the bidder, if there is one, whose bid is determined as the winner, as well as the value of the contract;
- d) The qualification manner of the bidders or candidates or their absence;
- dh) The amount or method for calculation of the amount and a summary of other essential conditions for each bid and procurement contract;
- e) A summary of the bids evaluation and comparison;
- ë) In case of rejection of all bids, under Article 24 of this Law, the declaration and the reasons for such refusal;
- f) For the case when a bid has been rejected for the reasons set out in Article 47 of this Law;
- g) A summary of the complaints and their resolution.¹⁷

3. Each **CA** shall administer¹⁸ the records kept, tender documents and any other documents relating to awarding procedures.

3.1. In the case of electronic procurement, the report generated by the system itself, as defined in the rules of procurement by electronic means, shall become part of the procurement file.¹⁹

4. Each **CA** must submit every 4 (four) months a report on its procurement activities to the **PPA**. Procurement regulations shall specify the format and contents of such reports.

5. Each **CA** establishes a procurement unit within its structure, whose duties and responsibilities are defined in the public procurement rules. **CA** may request support in the form of advice or instruction²⁰ from the **PPA** when setting up their individual or joint procurement units.

Article 13 The Public Procurement Agency (PPA)

1. The **PPA** is a central body, with a legal and public personality **reporting to the Prime Minister**, and financed by the State Budget.

2. In the performance of its tasks, the **PPA**:

- (a) submits proposals for procurement regulations to the **Council of Ministers**;
- (b) promotes and organizes training of central and local government officials engaged in public procurement activities;
- (c) edits and issues a Public Procurement Bulletin (**PP Bulletin**), as described in the procurement regulations. The **PPA** shall publish in the **PP Bulletin** the list of economic operators excluded pursuant to Article 45 **PPL**;
- (ç) prepares standard tender documents to be used in awarding procedures, in accordance with the public procurement rules;

¹⁷ Amended by law no. 131/2012, dated 27.12.2012

¹⁸ Amended by law no. 131/2012, dated 27.12.2012

¹⁹ Amended by law no. 131/2012, dated 27.12.2012

²⁰ Added by law no. 9800, dated 10.09.2007

(ç/1)²¹

(d) on request, gives advice and provides technical assistance to **CA**, when launching and conducting awarding procedures;

(dh) presents an annual report to the **Council of Ministers** regarding the overall functioning of the public procurement system;

(e) co-operates with international institutions and with other foreign entities on issues related to the **PP**-system;

(ë) plans and coordinates foreign technical assistance to Albania in the field of **PP**;

(f) encourages and supports the use of international technical standards for the preparation of national technical specifications²², as well as maintains an ongoing relationship with the **National Directorate of Standardizations**;

(g) Verify the implementation of public procurement procedures following the phase of the signing of the contract under the requirements as laid down in this law and bylaws, and it shall monitor the progress of the public procurement system through information received from the periodical reports of the contracting authorities;²³

²⁴**(gj)**;

²⁵**(h)** ;

(i) in case of misconduct, in compliance with Article 72 **PPL**, penalizes with fines or proposes to the head of **CA** or higher bodies disciplinary measures against the individual in the **CA**, who committed the infringement.

(j)²⁶

(k) prepares and adapts its internal regulations.

(l) carries out any other task, as specified by law.²⁷

3. The **PPA** can exclude an economic operator from participation in awarding procedures – without prejudice of criminal proceedings, which may have started – for a period of 1 to 3 years in the cases of:

(a) serious misrepresentation and submission of documents containing false information for purposes of qualification, according to Article 45 and 46 **PPL**; or

(b) corruption within the meaning of item a), para 1, Article 26;²⁸ or

(c) conviction for any of the crimes listed in Article 45, para 1 **PPL**.

²¹ Abrogated by law no. 10170, dated 22.10.2009

²² Added by law no. 10170, dated 22.10.2009

²³ Amended by law no. 131/2012, dated 27.12.2012

²⁴ Abrogated by law no. 10309, dated 22.07.2010

²⁵ Abrogated by law no. 10309, dated 22.07.2010

²⁶ Abrogated by law no. 10170, dated 22.10.2009

²⁷ Added by law no. 9800, dated 10.09.2007

²⁸ Amended by law no. 10170, dated 22.10.2009

(c) failure to comply with contractual obligations of public contracts, within the time specified in the procurement rules.²⁹

(d) when there is a final decision of the Competition Authority Commission on bids collusions.³⁰

4.³¹

5. The PPA expert staff are recruited and promoted in accordance with law “On the status of the civil servant”. The Director of the PPA appoints the support staff and their status is regulated by the Labour Code.³²

Article 14 Public Procurement Advocate (PPAd)³³

Article 15 Appointment of the PP Advocate³⁴

Article 16 Incompatibility³⁵

Article 17 Termination³⁶

Article 18 Reports³⁷

Article 19 PP Advocate’s Office Staff and Budget³⁸

Article 19/1 The Public Procurement Commission³⁹

1. The Public Procurement Commission is the highest body in the field of procurement, which examines complaints on public procurement procedures in compliance with the requirements established by this law.

²⁹ Amended by law no. 131/2012, dated 27.12.2012

³⁰ Added by law no. 131/2012, dated 27.12.2012

³¹ Abrogated by law no. 10170, dated 22.10.2009

³² Amended by law no. 131/2012, dated 27.12.2012

³³ Abrogated by law no. 131/2012, dated 27.12.2012

³⁴ Abrogated by law no. 131/2012, dated 27.12.2012

³⁵ Abrogated by law no. 131/2012, dated 27.12.2012

³⁶ Abrogated by law no. 131/2012, dated 27.12.2012

³⁷ Abrogated by law no. 131/2012, dated 27.12.2012

³⁸ Abrogated by law no. 131/2012, dated 27.12.2012

³⁹ Added by law no. 10170, dated 22.10.2009

2. Upon completion of the complaints examination, the Public Procurement Commission takes decisions which are administratively final.
3. The Public Procurement Commission is a public legal body subordinate to the *Prime Minister*⁴⁰ and financed by the State Budget.
4. The Public Procurement Commission submits an annual report to the Council of Ministers. The contents of the report are set forth in the public procurement rules.

Article 19/2 The composition, election and the mandate of the Public Procurement Commission⁴¹

1. The Public Procurement Commission is composed of 5 members, of which at least 3 are lawyers by profession.
2. The members of the Public Procurement Commission are elected by the Council of Ministers, upon a proposal of the Prime Minister, with the right of only one re-election. The Council of Ministers appoints a chair and a deputy chair from the members of the Public Procurement Commission.
3. The chair moderates the sessions and represents the institution in relation to the third parties. In his/her absence he/she is replaced by the deputy chair.
4. The chair and the deputy chair shall be lawyers by profession.
5. The members of the Public Procurement Commission have a five year mandate.

Article 19/3 Criteria to be selected a member of the Public Procurement Commission⁴²

A member of the Public Procurement Commission can be any Albanian citizen that meets the following criteria:

- a) he/she has full capability to act;
- b) he/she holds a tertiary education;
- c) he/she has at least 3 years of experience in the field of public procurement, and at least 5 years of work experience;
- ç) he/she has never been/is convicted by a final court decision for carrying out a criminal offence;
- d) he/she has not been dismissed from previous employment or a civil service function, for disciplinary reasons.

Article 19/4 Incompatibility of the function of the Public Procurement Commission member⁴³

The Public Procurement Commission member is not allowed:

⁴⁰ Amended by law 22/2012

⁴¹ Added by law no. 10170, dated 22.10.2009

⁴² Added by law no. 10170, dated 22.10.2009

⁴³ Added by law no. 10170, dated 22.10.2009

- a. to be a member in any political parties or participate in their activities;
- b. to manage or administer economic or commercial organizations, neither personally nor through a representative;
- c. to carry out any other profitable activity, excluding his/her right of lecturing.

Article 19/5 Termination of the function of the Public Procurement Commission member⁴⁴

1. The function of the Public Procurement Commission member terminates when:
 - a) he/she resigns;
 - b) he/she is convicted by a final court decision for carrying out a criminal offence;
 - c) he/she is unable to perform his/her functions for a period of 6 months.
 - ç) his/her mandate terminates
2. The member of the Public Procurement Commission shall be dismissed by the Prime Minister, when a final court decision states that:
 - a) he/she has infringed the clauses of this law or other legal provisions;
 - b) he/she is involved in activities that cause a conflict of interests;
 - c) cases of his/her function incapability are discovered.
3. From the identification to the reaching of a final court decision, according to paragraph 2 of this Article, the member of the Commission is dismissed with a decision by the Council of Ministers.
4. If the position of the Public Procurement Commission member remains vacant, the Council of Ministers appoints, within 30 days of his/her absence, the new candidate.

Article 19/6 The structure and the organization chart of the Public Procurement Commission⁴⁵

1. The structure and the organizational chart of the Public Procurement Commission shall be decided upon an order by the Prime Minister.
2. The personnel of the Public Procurement Commission is included in the civil service, whereas the supporting personnel is appointed by the chair and their work relationships are regulated by the Labor Code of the Republic of Albania.
3. The decisions of the Public Procurement Commission are examined in sessions attended by at least 3 (three) members, one of which is the chair or his/her deputy. Upon completion of the examination, the decision taken by the Commission is published on its website.
4. Detailed rules of the organization and functioning of the Public Procurement Commission are approved by the Council of Ministers.

⁴⁴ Added by law no. 10170, dated 22.10.2009

⁴⁵ Added by law no. 10170, dated 22.10.2009

Article 19/7⁴⁶

Nobody should influence the decision-making of the Commission's members. Every effort, either direct or indirect to influence shall be penalized with a fine in accordance with this law, irrespectively of the civil or penal proceedings that might have already started.

CHAPTER III

COMMON PROCUREMENT RULES

Article 20 Non-discrimination

CA shall establish no criterion, requirement or procedure with respect to the qualification of economic operators that discriminates against or among suppliers or contractors or against categories.

Article 21 Access to relevant information

1. Under Article 12 of this Law, the administered information shall be made available to any interested party, to a party in the process at its request, after the classification of bids has been completed. The contracting authority shall be obliged to make the information available within 5 days of receipt of the request.⁴⁷

2. CA shall inform not later than 5 days from the taken decision:⁴⁸

(a) any unsuccessful candidate of the reasons for the rejection of his application,

(b) any unsuccessful tenderer of the reasons for the rejection of his tender;

(c) any unsuccessful tenderer⁴⁹ who has made a valid tender, on the bid classification of the selected tender.⁵⁰

3. Without prejudice of the provisions of this Art., CA may decide not to disclose some of the relevant information provided for in para 1 and 2 of this Art., if its disclosure would be contrary to law - in particular, privacy law -, would impede law enforcement, would not be in the public interest, would prejudice legitimate economic interests of the parties or would inhibit fair competition.

Article 22 Forms of communication

1. All documents, notifications, decisions, relevant information and other communications referred to in the PPL shall be written communications or in electronic form.⁵¹

⁴⁶ Added by law no. 10170, dated 22.10.2009

⁴⁷ Amended by law no. 131/2012, dated 27.12.2012

⁴⁸ Amended by law no. 131/2012, dated 27.12.2012

⁴⁹ Amended by law no. 9800, dated 10.09.2007

⁵⁰ Amended by law no. 131/2012, dated 27.12.2012

⁵¹ Added by law no. 131/2012, dated 27.12.2012

2. In cases where the contracting authority communicates in electronic form, the electronic communication means and their technical characteristics shall be non-discriminatory, available and interoperable with the products of information and communication technology, which are widely used. Rules and procedures for this form of communication shall be defined in the public procurement rules.⁵²

3. When the communication between economic operators and contracting authorities is carried out in some other form, other than those provided for in this Article, its content should be documented in writing immediately.⁵³

4. Communication, exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data is preserved and the confidentiality of tenders and requests to participate is secured. The chosen methods of communication, exchange and storage of information shall also ensure that **CA** examine the content of tenders and requests to participate only after the time-limit set by the **PPL** for their submission has expired.

Article 23 Technical specifications

1. Technical specifications setting forth the characteristics of the goods, works or services to be procured shall be prepared for the purpose of giving a correct and complete description of the object of procurement and for the purpose of creating conditions of fair and open competition between all candidates and tenderers. Whenever possible these technical specifications should be defined to take into account accessibility criteria for people with disabilities or design for all users.

2. Technical specifications shall afford equal access to candidates and tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Technical specifications shall clearly describe the **CA's** requirements by reference to:

(a) national standards transposing international accepted standards, international accepted technical approvals, common technical specifications, international standards, other technical reference systems established by international standardization bodies or — when these do not exist — to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products;

(b) requirements in terms of performance, even when this requires making a reference to national or international standards as means of presuming conformity with such performance or functional requirements;

(c) both methods under (a) and (b) of para 3 of this article, for different products, services or works included in the same contract. Each reference should be accompanied by the words “or its equivalent”.⁵⁴

4. If needed, the description of works, goods or services should contain the technical specifications to be achieved, including plans, drawings, models, etc. In cases of functional description of works or goods, the technical specifications should clearly and neutrally describe the scope of the works, in order to indicate all the conditions and circumstances which are important to the preparation of the bid. The description shall indicate not only the scope of work, but also the requirements related to the named work from the technical, economic, aesthetic and functional aspect. In order to guarantee the comparison of bids in

⁵² Amended by law no. 131/2012, dated 27.12.2012

⁵³ Amended by law no. 131/2012, dated 27.12.2012

⁵⁴ Added by law no. 131/2012, dated 27.12.2012

relation to the contract object's requirements for these goods or for their functions, the competitors and bidders shall be provided with precise requirements for the functions or performance, thus helping them during the bid preparation. Specifications for the supply of appropriate goods or services for the environment shall also be indicated in the description of works.

5. There shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific origin, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the specifications.

Article 24 Termination of an awarding procedure

1. The Contracting Authority shall cancel the procurement procedure only in the following cases:

- a) For reasons, which go beyond the control of the contracting authority and, which are unpredictable at the time of the commencement of the procurement procedure, while respecting the principles of equality and transparency, as defined in the rules of public procurement;
- b) When no bids have been submitted within the deadline;
- c) When less than 2 candidates qualify in the first phase of the restricted procedure and negotiated procedure with prior publication.
- ç) None of the bids submitted complies with the criteria set out in the tender documents;
- d) If all accepted bids contain prices exceeding the Contracting Authority's budget, provided for a given contract;
- d) If all accepted bids contain prices exceeding the Contracting Authority's budget, provided for a given contract;
- e) When the Public Procurement Commission makes a cancelling decision under the provisions of the Subparagraph "b" and "ç" of Paragraph 3 of Article 64 of this Law.⁵⁵

2. CA shall incur no liability towards tenderers, who submitted tenders solely by virtue of their invoking para 1 of this Art.

3. Pursuant to Article 21 PPL, CA shall communicate to all candidates or tenderers the decision and the reasons to discontinue the awarding procedure within 5 (five) days from this decision.

4. CA shall publish a notice about the discontinuation of the awarding procedure in the same way as the contract notice was previously advertised no later than 5 days⁵⁶ following the decision.

Article 25 Confidentiality

Without prejudice to the provisions of the PPL concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out respectively in Art. 21 and 57 PPL CA shall not disclose information forwarded to them by economic operators labeled as confidential. Such information includes, in particular, technical aspects, trade secrets and confidential information of tenders.

⁵⁵ Amended by law no. 131/2012, dated 27.12.2012

⁵⁶ Amended by law no. 131/2012, dated 27.12.2012

Article 26 Corruption and Conflict of Interests

1. CA shall reject a tender, or a request to participate, if:\

a) the tenderer or candidate gives, or promises to give, directly or indirectly, to any current officer a gratuity in any form, an employment or any other good or service of value, as an inducement with respect to an act, or decision of, or procedure followed by, the CA in connection with the awarding procedure.

b) the tenderer or candidate is in circumstances of conflict of interest.

Such rejection and the reasons therefore shall be recorded in the record of the procurement proceedings provided for in Article 12 PPL and promptly communicated officially to the candidate or tenderer concerned. The decision may be subject to judicial review.

2. Decisions taken by CA, pursuant to para 1 of this Article, are without prejudice of any obligation to file a complaint with the prosecuting authorities, when the action concerned is considered a criminal offence under criminal law.

3. In the event that, at the time of bid opening, it is observed that one or more of the economic operators are in a conflict of interest with one or more of the officers who are assigned to evaluate the bids, and this conflict situation could not have been observed before this moment, then officer/officers in question should be replaced and then the procurement process should continue.⁵⁷

Article 27 Thresholds

1. The applicable thresholds for the purposes of the PPL are:

(a) high value thresholds;

(b) low value thresholds.

2. The value of the thresholds is set forth in the procurement rules.

3. The value of the thresholds shall be reviewed by the Council of Ministers every two years.

Article 28 Methods for calculating the estimated value of public contracts

1. The calculation of the estimated value of a public contract shall be based on the total amount payable, excluding VAT, as estimated by the CA at the moment when the contract notice is sent for publication, as provided for in Article 38 PPL, or, in cases where such notice is not required, at the moment when the CA starts the awarding procedure. This calculation shall take account of the estimated total amount to be paid, including any form of option and any renewals of the contract.

2. No public contract may be divided to prevent its coming within the scope of the provisions of the PPL.

3. The methods for calculating the value of each type of public contract shall be set forth in the PP rules.

⁵⁷ Added by law no. 131/2012, dated 27.12.2012

Article 29 Choice of standard procedure

1. In awarding their public contracts, contracting authorities shall apply the procedures set forth in the **PPL**. The types of procedures to be used for the award of public procurement contracts shall be:

- (a) open procedures;
- (b) restricted procedures;
- (c) negotiated procedures, with or without prior publication of a contract notice;
- (c) request for proposals;
- (d) design contests;
- dh)** “consultancy service” procedure⁵⁸

2. For all contracts, open procedures can always be used. Restricted procedures can be used, when it is necessary to distinguish between the selection phase – dealing only with the candidates’ qualifications – and the award phase – dealing with the offer. Distinction in the use between open and restricted procedures shall be provided in the **PP rules**.

3. For contracts above the low value thresholds, contracting authorities shall use open procedures, restricted procedures, design contests. Negotiated procedures may be used only in the specific circumstances set forth in Art. 32 and 33 of the **PPL**.

4. For contracts of a value lower than the low value thresholds, contracting authorities may use negotiated procedures with or without prior publication and requests for proposals in accordance with the conditions provided in this law.⁵⁹

5. For small value procurement of goods⁶⁰, services or works, below the low threshold, **CA** may use simplified procedures, as provided in the **PP rules**.

Article 30 Open Procedure

1. The open procedure shall be the preferred procurement procedure.

2. In open procedures contracting authorities publish a notice - as provided for in Article 38 **PPL** - containing the description of the contract to be awarded and the procedural rules specific to that procedure.

3. All tenderers shall submit their tenders, namely the economic offer, the technical offer and evidence of the satisfaction of selection criteria as per Articles 45 and 46 **PPL**.

4. After the time-limit to submit tenders - as set in the contract notice according to Art. 43 **PPL** - expired, **CA** open tenders, verify the qualifications of tenderers and the absence of disqualifying circumstances - according to the criteria set out in Art. 45 and 46 of the **PPL** - and award the contract after comparing the offers on the basis of the criteria set out in Art. 55 **PPL**.

⁵⁸ Added by law no. 131/2012, dated 27.12.2012

⁵⁹ Added by law no. 9800, dated 10.09.2007

⁶⁰ Amended by law no. 9800, dated 10.09.2007

Article 31 Restricted Procedure

1. **CA** may use the restricted procedure to carry out a procurement activity which leads to the award of a public contract, when:

a) the respective good, service or work – having a rather complicated and special character – may be supplied, obtained or executed by economic operators, who possess the proper technical, professional and financial capacities;

b) it would be economically more effective for the **CA** to examine the capacities and the qualifications of the interested economic operators first and then, to invite those operators who possess specific minimal qualifications to submit their tenders.

2. In restricted procedures **CA** shall publish a notice, as provided in Article 38 **PPL**, which must contain the following:

a) a description of the object of the contract to be awarded;

b) an indication of the selection criteria, as per Articles 45 and 46 **PPL**;

c) an invitation to express interest in participating to the awarding procedure.

ç) The criteria of determining the winning bid as defined in Article 55.⁶¹

3. After the published time-limit to submit requests to participate - as set in the contract notice according to Art. 43 **PPL** – expired, **CA** proceed to the selection of candidates - according to the criteria set out in Articles 45 and 46 **PPL**.

4. **CA** issue an invitation to tender - according to Article 40 **PPL** – to the selected candidates requesting an offer to be submitted.

5. After the time-limit to submit tenders has expired, **CA** open the tenders and award the contract after comparing them on the basis of the criteria set out in Article 55 **PPL**.

Article 32 Negotiated procedure with prior publication of a contract notice

1. When the value of the contract to be awarded is above the low value thresholds, **CA** may use the negotiated procedure with prior publication of the contract notice, in the following cases:

a) in the event of irregular tenders or the submission of tenders which are unacceptable under national legal provisions, in response to two consecutive open or restricted procedures,⁶² insofar as no substantial alteration is included in the contract, as provided in the **PP-rules**;

b) in exceptional cases, when the nature of works, supplies or services or the risks attaching thereto do not permit prior overall pricing, namely:

(i) in case of service contracts, particularly intellectual services such as services involving the design of works, insofar as the nature of the services cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

⁶¹ Added by law no. 131/2012, dated 27.12.2012

⁶² Amended by law no. 10170, dated 22.10.2009

(ii) in case of works contracts, for works which are performed solely for the purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

2. When the value of the contract is lower than the low value thresholds, **CA** may use negotiated procedures with prior publication of a contract notice in any case, which they deem appropriate, provided that the procedure complies with the principles of equal treatment, proportionality and transparency.

3. **CA** shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements, which they have set out in the contract notice, the specifications and additional documents, if any, to seek out the best tender in accordance with Article 55 **PPL**.

4. During the negotiations, while dialogue is carried on with each candidate individually, **CA** shall ensure equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner, which may give some tenderers an advantage over others.

5. **CA** may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been made to this option.

Article 33 Negotiated procedure without prior publication of a contract notice

1. For all contracts of a value above or below⁶³ the low value thresholds, **CA** may use negotiated procedure without prior publication of a contract notice only on the specific circumstances expressly provided for in this Article and in the public procurement rules. Such circumstances shall be strictly construed. This procedure shall not be used in order to avoid competition or in a manner that would discriminate among candidates.

2. Negotiated procedures without prior publication of a contract notice may be used for all types of public contracts:

a) when minimal conditions for competition have not been met in response to two consecutive open or restricted procedures, provided there is no substantial alteration to the initial conditions of the contract;⁶⁴

b) when for technical or artistic reasons, or for reasons connected with exclusive rights or intellectual property rights, the contract may be executed only by a particular economic operator;

c) when for reasons of extreme need, brought about by causes unforeseeable and uncontrollable by the **CA**, and when the time limit, as foreseen in Art. 43 provided for in open, restricted or negotiated procedures, with prior publication of notice, cannot be complied with. The circumstances invoke to justify urgency must not, in any event, be attributed to the action or lack of action of the **CA**. The conditions and circumstances for the use of this procedure are determined in the PP-rules.⁶⁵

⁶³ Amended by law no. 9800, dated 10.09.2007

⁶⁴ Amended by law no. 10170, dated 22.10.2009

⁶⁵ Amended by law no. 9800, dated 10.09.2007

(c) for goods quoted and purchased on a commodity market in compliance with the **PP-rules**;⁶⁶

(d) for purchases that allow the procurement of goods within a very short time, or in particular advantageous cases that are observed within a short period of time and with a considerable lower price than normal prices in the market and in compliance with the criteria set in the **PP-rules**.⁶⁷

(dh) for contracts that will be awarded based upon framework contracts as long as the requirements of in Article 35/1 of this law are met.⁶⁸

3. Negotiated procedures without prior publication of a contract notice may be used for supply contracts:

a) when the goods involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

b) for additional deliveries by the original supplier, intended either as partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the **CA** to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. In this case, the additional contract shall be signed within a time limit of 3 months from the end of the original contract.

4. Negotiated procedures without prior publication of a contract notice may be used for service contracts with the successful candidate, following the design contest, in accordance with Article 34 of the **PPL**.

5. Negotiated procedures without prior publication of a contract notice may be used for works and service contracts:

a) for additional works or services which were not included in the initial contract, but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services; as long as the aggregate value of contracts awarded for additional works and services does not exceed 20 % of the value of the initial contract:

i) when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the **CA**;

ii) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator, to whom the same **CA** awarded the original contract, provided that such works or services are in conformity with a basic project for which the initial contract was awarded on the basis of open or restricted procedure. As soon as the first project is up for tender, the possible use of this procedure shall be disclosed in the contract notice for the initial contract, and the total estimated cost of subsequent works or services shall be taken into consideration by the **CA**. The procedure set up by this sub-paragraph may be used only during 3 years following the conclusion of the original contract. In no case the additional contract shall exceed the value of 20% of the total value of the original contract.

⁶⁶ Added by law no. 9855, dated 26.12.2007

⁶⁷ Added by law no. 9855, dated 26.12.2007

⁶⁸ Amended by law no. 10170, dated 22.10.2009

6. The selection of the economic operators, who shall be invited, should never be discriminatory. The CA should, as frequently as possible, change the invited entrepreneurs.

Article 34 Request for proposals

1. CA may use the request for proposals procedure for contracts of a value below the low thresholds. Pursuant to this procedure, CA may seek offers from a limited number of economic operators of their choice, or may use the electronic communication, as provided in Art. 36 PPL.⁶⁹ The comparison must be made among at least 5 contractors,⁷⁰ unless this proves impossible for technical reasons or for lack of sufficient competition. This procedure shall not be used in order to circumvent competitive awarding procedures.

The CA should, in any case, accept tenders from tenderers other than the ones invited by him.

2. When CA use electronic communications, they shall publish an electronic notice, in accordance with Art. 38, para 4 PPL, as determined in the PP rules.

Article 34/1 Consultancy Service⁷¹

1. Contracting Authority, which undertakes a consultancy service procedure, shall announce the purpose of the procurement through the publication of a contract notice, in accordance with Article 38 of this Law. The notice should contain the information provided for in Article 39 of this Law.

2. Detailed procedures of conducting this procurement procedure shall be provided for in the procurement rules."

Article 35 Design contest

1. Design contest may be organized by CA for contracts of a value above the low value thresholds for services.

2. Design contest may be organized:

(a) as a part of a procedure leading to the award of a public service contract;

(b) for the purposes of obtaining the design only, which is rewarded with a prize or a payment.

3. CA wishing to launch a design contest shall make known their intention by means of a contest notice, which shall be published according to the provisions of Art. 38 PPL and contain at least the information set forth in Art. 39 PPL.

4. Specific rules for the organization of design contests of both types under para 2 of this Art. shall be laid down in PP-rules.

5. The rules governing each individual contest shall be communicated to those interested in participating in the contest. Participation in a contest may be limited to a number of selected candidates, provided that the selection is made on the basis of clear and non discriminatory criteria made known to all interested persons and that the number of candidates invited to participate is sufficient to ensure genuine competition.

⁶⁹ Amended by law no. 131/2012, dated 27.12.2012

⁷⁰ Amended by law no. 9800, dated 10.09.2007

⁷¹ Added by law no. 131/2012, dated 27.12.2012

6. The admission of participants to a contest shall not be limited:

- (a) by reference to the nationality, territory or residence;
- (b) on the grounds that they would be required to be either natural or legal persons.

7. The commission shall be constituted according to the rules laid down in procurement regulations. The commission shall be composed exclusively by persons, independent of participants in the contest and conduct the contest autonomously. The commission's decisions shall be based on the criteria set out in the contest notice and respect the principle of anonymity of participants.

Article 35/1 Framework Agreements⁷²

1. For public contracts, the contracting authorities may conclude a framework agreement after conducting the open, restricted or negotiated procedure with prior publication of a contract notice. Whereas for sectoral contracts, contracting authorities can also conclude a framework agreement after a negotiated procedure without prior publication of a contract notice.

2. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 55 of this law.

3. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 5 and 6 of this Article. These procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement. When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 5 of this article.

4. The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

5. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of these contracts, contracting authorities communicate in writing with the economic operator, party to the framework agreement, requesting it to submit its tender in accordance with the requests.

6. Where a framework agreement is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria, in accordance with Article 55 of this law.

Contracts based on framework agreements concluded with several economic operators may be awarded either:

- a. by application of the terms laid down in the framework agreement without reopening competition, or
- b. where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

⁷² Amended by law no. 10170, dated 22.10.2009

- i. for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;
- ii. contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in the tenders;
- iii. tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
- iv. contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

7. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

8. In any case the framework agreement shall be implemented in accordance with the requirements set forth in public procurement by-laws.

CHAPTER IV

ELECTRONIC PROCUREMENT

Article 36 Rules applicable to electronic communications

1. Without prejudice to the general principle of non-discrimination and the provisions of Article 22 of this Law, the following rules shall be applicable to the receipt of tenders and participation requests through the electronic transmission means:

- a) Information relating to the specifications necessary for the electronic submission of binds and requests to participate, including encryption, shall be available to interested parties. Means for the electronic receipt of bids and requests to participate should comply with requirements, which are set out in the public procurement rules and in the relevant legislation;
- b) Electronic bids should in compliance with the relevant legislation in force on electronic signature, electronic document, and with the state database;
- c) In advance of the expiry of the deadline set for receipt of bids or requests to participate, bidders shall undertake to submit the documents, certificates and evidence as mentioned in Articles 45 and 46 of this Law, if the latter do not exist in the electronic format.⁷³

2. Without prejudice of the general principle of non-discrimination, and Article 22 **PPL**, the following rules are applicable to electronic signatures required for the transmission and receipt of tenders and all related documents:

- (a) Where the **PPL** requires a signature of a person, that requirement is met in relation to all tender documents, if an electronic signature is used that is as reliable as was appropriate for the purpose for which the electronic document was generated or communicated, in the light of all the circumstances, or in compliance with relevant laws or rules of general application to electronic commerce;

⁷³ Amended by law no. 131/2012, dated 27.12.2012

(b) An electronic signature shall be considered reliable and in compliance with the procurement law, if:

(i) The signature is on its face and within the context, in which it is presented, logically linked to the signatory and to no other person;

(ii) The original documents or data used to create the electronic signature were, at the time of signing, under the exclusive control of the signatory and are maintained for the duration of the procurement and for a reasonable time thereafter, or as provided by legislation or **PP-rules**;

(iii) Any alteration to the electronic signature, made after the time of signing, is detectable with reasonable diligence;

(iv) None of the provisions in this para are intended to limit the ability of any person or legal entity to establish in any other way allowed by law or regulation the reliability of an electronic signature or to produce evidence of the non-reliability of an electronic signature.

Article 37 Electronic auctions and dynamic purchasing systems

In order to set up electronic awarding procedures, **CA** shall follow the rules of electronic auctions and dynamic purchasing systems provided in the **PP-rules** and in the relevant legislation in force, pursuant to the principles set in article 2 and the international and European standards.

Article 37/1⁷⁴

CHAPTER V

CONDUCT OF THE PROCEDURES

Article 38 Notices

1. The contracting authority, which conducts bidding for public contracts through the open procedure, restricted procedure, negotiated procedure with prior publication of the notice, request for proposal or consultancy service, under Articles 30, 31, 32, 34 and 34/1 of this Law, or when it sets off the design contest procedure, it shall, under Article 35 of the Law, make a public announcement for the performance of the respective type of public procurement.⁷⁵

2. Contract notices for contracts of a value above the high value thresholds shall be published on the **PP Bulletin**, on at least one newspaper of European distribution.

3. Contract notices for contracts of a value lower than the high value thresholds, but above the low value thresholds, shall be published in the **PP Bulletin**.

4. All procurement notices are published on the web-site of the **PPA**.

⁷⁴ Abrogated by law no. 10170, dated 22.10.2009

⁷⁵ Amended by law no. 131/2012, dated 27.12.2012

Article 39 Content of the notices

1. The notices to be published under the provisions of Art. 38 **PPL** shall contain all relevant information as to allow economic operators to decide whether or not to participate in the awarding procedures.
2. In case of an open procedure, the notice shall also contain the time-limit for the receipt of tenders, the address to which tenders must be sent, the language, or languages, in which tenders must be drawn up. The notice must contain all indications to obtain the tender documents, as provided for in Art. 41 **PPL**.
3. The content of notices shall be determined in the **PP-rules**.

Article 40 Invitation to tender

1. In restricted procedures and negotiated procedures with publication of a contract notice within the meaning of Art. 31 and 32 **PPL**, **CA** shall simultaneously and by written or by electronic means⁷⁶ communication invite the selected candidates to submit their tenders or to negotiate.
2. The invitation to the candidates shall include either:
 - (a) a copy of the tender documents and any supporting documents;
 - (b) a reference to accessing the tender documents and the other documents indicated in the first indent, by electronic means.
3. The invitation to tender, to negotiate is drafted according to the models established in the **PP**. Such invitation shall, in any case, contain at least:
 - (a) a reference to the contract notice published;
 - (b) the time-limit for the receipt of tenders, the address to which tenders must be sent and the language, or languages, in which tenders must be drawn up;
 - (c) a reference to any possible additional documents to be submitted, either in support of verifiable declarations by the tenderer, in accordance with Art. 45 and 46 of the **PPL**, or to supplement the information referred to in those articles;
 - (c) the relative weighting of the criteria identified for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.
4. The contracting authority, when using restricted procedures and negotiated procedures, shall invite all candidates who qualify in the first stage of the procedure to submit bids. The contracting authority may continue the procurement procedure only when there are at least 2 candidates with the exception of the negotiated procedure without prior publication of notice. The contracting authority should define in the tender notice objective, non-discriminatory criteria, as well as, the rules to be applied.⁷⁷

Article 41 Tender Documents⁷⁸

1. The contracting authority, when drafting the tender documents, shall use standard documents, as defined in the procurement rules, and it shall make them electronically available for free.

⁷⁶ Added by law no. 10170, dated 22.10.2009

⁷⁷ Amended by law no. 131/2012, dated 27.12.2012

⁷⁸ Amended by law no. 131/2012, dated 27.12.2012

2. The contracting authority, when requested by the economic operators, shall make available to interested parties the tender documents against payment. In any case, the names and the number of economic operators who have expressed interest in purchasing the tender documentation or in its examination, should be kept secret.

Article 42 Clarifications and modification of tender documents

1. Potential tenderers may request clarifications of the tender documents from CA. CA shall respond to any request for clarification of the tender documents by economic operators, providing it is received within 5 days prior the deadline for the submission of tenders. CA shall respond within 3 days from the request so as to enable economic operators to make a timely submission of their tenders, and shall, without identifying the source of the request, communicate the clarification to all economic operators, to which CA have provided the tender documents^{79, 80}.

2. At any time prior to the deadline for submission of tenders, CA may, for any reason, whether on their own initiative or as a result of a request for clarification by an economic operator, modify the tender document by issuing an addendum. The addendum shall be communicated promptly to all economic operators to which CA have provided the tender documents and shall be binding on those economic operators. The addendum shall be made available also by electronic means.

2/1 In any case, when tender documents are modified, contracting authorities shall extend the time limit for the submission of tenders, by 5 days, whereas for procurements above the high monetary thresholds by 10 days.⁸¹

3. If CA convene a meeting of economic operators, they shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the tender documents and their responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all economic operators to which CA provided the tender documents, so as to enable them to take the minutes into account in preparing their tenders.

Article 43 Time-limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time-limits for the receipt of tenders and requests to participate, CA shall consider, in particular, the complexity of the contract and the time required for drawing up tenders, according to the proportionality principle, without prejudice to the minimum time-limits set by this Art. Unless otherwise specified, time-limits set in this law are in calendar days.

2. In case of open procedures above the high value thresholds, the minimum time-limit for the receipt of tenders shall be not less than 52 days from the date, when the contract notice was published on the Public Procurement Agency website.⁸²

2.1⁸³

⁷⁹ Amended by law no. 10170, dated 22.10.2009

⁸⁰ Amended by law no. 131/2012, dated 27.12.2012

⁸¹ Added by law no. 10170, dated 22.10.2009

⁸² Amended by law no. 10170, dated 22.10.2009

⁸³ Amended by law no. 10170, dated 22.10.2009

3. In case of restricted or negotiated procedure with publication of a contract notice with a value above the high monetary threshold:⁸⁴

(a) the minimum time-limit for receipt of requests to participate shall be 20 days from the date, when the contract notice was published on the Public Procurement Agency website;⁸⁵

(b) in case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 20 days from the date, when the invitation to tender was sent to the candidates.

4. If, for whatever reason, tender documents and supporting documents or additional information, although requested in good time, are not supplied within the time-limits specified in the contract notice, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time-limits for the receipt of tenders shall be extended by 10 days so that all economic operators concerned may be aware of all the information needed to produce tenders.

5. In case of open procedures between the high and the low value thresholds, the minimum time-limit for the receipt of tenders shall be 30 days from the date when the contract notice was published on the Public Procurement Agency website.⁸⁶

6. In case of restricted or negotiated procedure with publication of a contract notice between the high and the low value thresholds:

(a) the minimum time-limit for receipt of requests to participate shall be 15 days from the date, when the contract notice was published on the Public Procurement Agency website;⁸⁷

(b) in case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 15 days from the date, when the invitation to tender was sent.⁸⁸

7. In case of awarding procedures below the low value threshold, the minimum time-limit for the receipt of tenders shall be 10 days from the publication of the contract notice.⁸⁹

8. In case notices are prepared and published by electronic means, in compliance with the format and procedure for the transmission that are provided in the **PP-rules**, the time limits for the receipt of tenders, as set in para 2 and 5 of this Article, may be reduced by seven days for the open procedure, whereas the time limits for the receipt of requests for participation, as provided in para 3 (a), (b) and 6 (a), (b) of this article, may be reduced by 5 days, for the restricted and negotiated procedures.⁹⁰

Article 44 Economic operators

1. Candidates or tenderers, entitled to provide the relevant services, shall not be rejected solely on the ground that they would be required to be either natural or legal persons.

⁸⁴ Added by law no. 9800, dated 10.09.2007

⁸⁵ Amended by law no. 10170, dated 22.10.2009

⁸⁶ Amended by law no. 10170, dated 22.10.2009

⁸⁷ Amended by law no. 10170, dated 22.10.2009

⁸⁸ Amended by law no. 9800, dated 10.09.2007

⁸⁹ Amended by law no. 10170, dated 22.10.2009

⁹⁰ Added by law no. 9855, dated 26.12.2007

In case of public service and public works contracts as well as public supply contracts covering in addition services and/or sitting and installation operations, **CA** may require legal persons to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, they should be required by the **CA** to assume specific legal form, as provided in the **PP-rules**.

Article 45 Exclusion criteria of candidates or tenderers

1. Any candidate or tenderer, convicted by final judgment of which the **CA** is aware for any of the reasons listed below, must be excluded from participation in awarding procedures:

- (a) participation in a criminal organization;
- (b) corruption;
- (c) fraud;
- (c) money laundering
- (d) forgery⁹¹

CA may ask tenderers to supply the documents referred to in para 3 of this Art. and may, where they have doubts concerning the personal situation of such tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the tenderers concerned. Where the information concerns a tenderer established in a foreign country, contracting authorities may seek the cooperation of the competent authorities.

2. Any candidate or tenderer must be excluded from participating in awarding procedures where he:

- (a) is gone bankrupt and his own capital is being executed by the bailiffs;⁹²
- (b) is the subject of proceedings for declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with the creditors or of any other similar proceedings;
- (c) has been convicted by a definitive judgment of any offence concerning his professional conduct;
- (c)⁹³
- (d) has not fulfilled his obligations to pay social security contributions in accordance with Albanian law or the applicable provisions in the country of origin;
- (e) has not fulfilled its obligations relating to the payment of taxes in accordance with Albanian law or the applicable provisions in the country of origin;
- (f) is guilty of supplying false information when it was required under this section or has not supplied such information and documentation at all, or just partially.

⁹¹ Added by law no. 9800, dated 10.09.2007

⁹² Amended by law no. 10170, dated 22.10.2009

⁹³ Abrogated by law no. 10170, dated 22.10.2009

3. CA shall accept the following evidence as being sufficient to demonstrate that none of the cases specified in the para above applies to the candidate or tenderer:

(a) as regards of para 1, 2 (a), (b) and (c): the production of an extract from the judicial record or failing that, of an equivalent document issued by a competent judicial or administrative authority showing that these situations do not apply;

(b) as regards para 2 (e) and (f): a certificate issued by the competent authority.

Article 46 Qualification of tenderers

1. In order to participate in awarding procedures, economic operators must qualify by meeting all the following criteria as **CA** consider appropriate, insofar as they are proportionate to the nature and size of the contract to be awarded and are not discriminatory:

(a) professional qualification: any economic operator is requested to prove its enrolment, as prescribed in his/her State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as for his/her suitability to pursue the professional activity required by the contract to be awarded;

(b) technical ability: economic operators are requested to prove they have the necessary technical qualifications, professional and technical competence, organizational capacity, equipment and other physical facilities, managerial capability, reliability, experience and reputation and the personnel to perform the contract as indicated by the **CA** in the contract notice;

(c) economic and financial standing: economic operators are requested to prove they have the economic and financial capability to enter the contract. This may be proven by providing appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance; the presentation of balance-sheets or extracts from the balance-sheets; a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last 3 financial years available, as far as the information on these turnovers is available;

(c) legal capacity: economic operators are requested to prove they have the legal capacity to enter the contract, or – in the case of groups of undertakings - that they have such capacity, when they enter such contract.

2. Contracting authorities may also require the production of certificates drawn up by independent bodies stating the compliance of the candidate or tenderer with certain quality assurance standards, including, among others, environmental management standards.

3. The qualification requirements should be drawn in a manner that encourages the participation of small and medium business companies and in any case they should be under the provisions set out in the rules of public procurement.⁹⁴

Article 47 Disqualification of tenderers

CA shall disqualify candidates, or tenderers, who submit documents containing false information for purposes of qualification at any time, namely as soon as the discovery takes place until the contract has

⁹⁴ Amended by law no. 131/2012, dated 27.12.2012

been awarded. CA shall report the disqualification to the PPA for the purposes of Article 13, para 3 of the PPL.⁹⁵

Article 48 Submission and Receipt of Tenders

1. CA shall fix a specific place, date and time as the deadline for the submission of tenders.
2. If, pursuant to Article 42 of the PPL, CA issue clarifications or modifications of the tender documents, they shall, extend the deadline for not more than 10 days, if necessary to allow economic operators reasonable time to take the clarification or modification, into account in their tenders. When providing clarifications or making changes on the tender documentation, CA shall act in compliance with Art. 42 PPL.⁹⁶
3. Notice of any extension of the deadline shall be given promptly to each economic operator, to which CA provided the tender documents.
4. Submission of bids shall be carried out as follows:
 - a) Bids shall be submitted in writing, in person or by mail, signed and sealed in an envelope, with the exception of the cases as described in Subparagraph "b" of this Paragraph, when the contracting authority shall, upon request, provide the bidder with a certificate, stating the date and time of receipt of the bid;
 - b) Bids shall be submitted electronically, as specified in the bylaws.⁹⁷

Article 49 Tender security

1. CA must require tenderers to provide tender securities. When CA require tender securities from tenderers, the following conditions shall apply:
 - (a) the amount of the security shall be proportionate to the value accrued⁹⁸ of the contract to be awarded;
 - (b) CA shall specify in the tender documents any requirements with respect to the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to conduct of the tenderer shall not relate to conduct other than:
 - (i) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stated in the tender documents;
 - (ii) failure to sign the procurement contract, if required by the CA do to so;
 - (iii) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender document.

1/1 Contracting authorities may require tenderers to provide tender securities during the award procedures of sectoral contracts.⁹⁹

⁹⁵ Amended by law no. 131/2012, dated 27.12.2012

⁹⁶ Amended by law no. 9800, dated 10.09.2007

⁹⁷ Amended by law no. 131/2012, dated 27.12.2012

⁹⁸ Amended by law no. 131/2012, dated 27.12.2012

2. CA shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of the tender security document, after one of the following events:

- (a) expiry of the time-limit of the tender security;
- (b) entry into force of the contract object of the awarding procedure and the provision of a security for the performance of the contract, if such a security is required by the tender documents;
- (c) termination of the awarding procedure without awarding a successful candidate.

Article 50 Period of effectiveness of tenders, modification and withdrawal of tenders

1. Tenders shall be in effect during the time specified in the tender documents.
2. Prior to the expiry of the period of effectiveness of tenders, CA may request tenderers to extend the period for an additional specified period of time. In this case:
 - (a) tenderers may refuse, without forfeiting their tender security. The effectiveness of their tenders will terminate upon the expiry of the un-extended period of effectiveness; or
 - (b) tenderers may agree to the extension, in which case the period of effectiveness of tender securities provided by them shall be extended accordingly. Alternatively, new tender securities are provided to cover the extended period of effectiveness of their tenders. A tenderer whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of his/her tender.

Article 51 Prohibition to modify tenders

1. After the receipt of the tender, no negotiation shall take place between contracting authorities and tenderers with respect to a tender submitted, without prejudice to Article 53, para 1 PPL.
2. Tenderers shall not be required, as condition for award, to undertake responsibilities not stated in the tender documents, to change their price or otherwise to modify, in any manner, their tenders.
3. The provisions of this Article are without prejudice of the application of Articles 32 and 33 PPL.

Article 52 Opening of tenders

1. Tenders shall be opened by the CA at the date, time and address specified in the tender documents after the time-limit for the submission of tenders, or after the deadline specified in any extension of the time-limit, in accordance with the procedures specified in the tender documents.
2. All tenderers shall be invited by CA to be present at the opening of their tenders. Tenderers may attend through a representative.
3. The name and address of each tenderer, whose tender is opened, the legal documentation and any other document required by the CA, and the tender price shall be announced to those persons present at the opening of tenders, and recorded immediately in the report of the tendering proceedings required by Article 12 PPL.

⁹⁹ Amended by law no. 10170, dated 22.10.2009

4. The report shall be, upon request, immediately made available to any bidder and a notice shall be sent to the tenderer, who submitted the tender, but who is neither present, nor represented in the opening of tender session.

5. The report on the opening of tenders¹⁰⁰ shall be published on the website and made available together with the tender documentation.

6. In cases of procurement by electronic means, the opening of tenders shall be done as follows:

In cases of procurement by electronic means, the opening of tenders shall be carried out as follows:

a) Tenders shall be opened by the contracting authority at the date, time and place specified in the tender documents after the time-limit for the submission of tenders, or after the deadline specified in any extension of the time-limit, in accordance with the procedures specified in the tender documents, in compliance with the electronic public procurement rules.

b) The documentation submitted by tenderers in cases of award procedures by electronic means is automatically recorded in the system. Therefore, paragraphs 2,3,4 and 5 shall not be applicable.¹⁰¹

Article 53 Examination of tenders

1. When deemed as appropriate, **CA** may require tenderers to clarify their tenders in order to assist the examination, evaluation and comparison of tenders. Without prejudice of the procedures under Articles 32 and 33 **PPL**, no change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

2. Notwithstanding para 1 of this Article, **CA** shall correct purely material errors, discovered during the examination of tenders, provided there is no evidence of an attempt to fraud. **CA** shall give prompt notice of any such correction to the tenderer concerned.

3. Subject to para 4 of this Article, **CA** may consider a tender responsive only, if it conforms to all specifications and requirements set forth in the contract notice and in the tender documents, without prejudice of Art. 54 **PPL**.

4. **CA** may regard a tender as responsive, even if it contains minor deviations that do not materially alter or depart from the specifications, terms, conditions and other requirements set forth in the tender documents or, if it contains mistakes or oversights capable of being corrected without altering the substance of the tender.

5. **CA** shall not accept a tender in case that:

(a) the tenderer is not qualified;

(b) the tenderer does not accept a correction of a material error made pursuant to paragraph 2 of this Article;

(c) the tender is not responsive to the specifications set out in tender documents, without prejudice of Article 54 **PPL**;

(c) in cases, where Article 26 **PPL** is applicable.

¹⁰⁰ Amended by law no. 9800, dated 10.09.2007

¹⁰¹ Added by law no. 10170, dated 22.10.2009

Article 54 Alternatives

1. When the awarding criterion is of the most economically advantageous tender, **CA** may authorize tenderers to submit alternatives.
2. **CA** shall indicate in the contract notice whether or not they authorize alternatives: variants shall not be authorized without this indication.
3. **CA** authorizing alternatives shall state in the tender documents the minimum requirements to be met by the variants and any specific requirements for their presentation.
4. Only alternatives meeting the minimum requirements laid down by **CA** shall be taken into consideration.

Article 55 Contract award criteria

1. The winning bid should be:

a) the bid, which, under the requirements and criteria as set forth in the tender documents, meets the requirements of the procurement subject matter with the lowest price; or

b) the most economically advantageous tender based on various criteria related to the subject matter of the contract to be procured, such as: quality, price, technical characteristics, aesthetic, functional and environmental features, operating costs, the economic efficiency, after-sales maintenance, delivery or execution deadline, provided that the following criteria be objective and non-discriminatory.¹⁰²

2. **CA** shall evaluate and compare admitted tenders in order to select the successful tender, in accordance with the procedures and criteria set forth in the tender documents. No criterion shall be used that has not been set forth in the tender documents.

3. Offers shall be assessed on economic and technical grounds only.

4. A brief description of the evaluation phase is contained in the records to be kept by **CA** pursuant to Article 12 **PPL**. In cases of electronic awarding procedures, the system shall automatically manage the data, evaluations and respective comments by notifying the tenderers electronically.¹⁰³

5. After comparing and evaluating tenders, **CA** identify the successful tender.

Article 56 Abnormally low tenders

1. If, for a given contract, one or more tenders appear to be abnormally low in relation to the goods, works or services, **CA** shall, before qualifying them,¹⁰⁴ request in writing details of the constituent elements of the tender. Those details may relate in particular to:

- (a) the economics of the construction method, the manufacturing process or the services provided;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;
- (c) the originality of the work, supplies or services proposed by the tenderer;

¹⁰² Amended by law no. 131/2012, dated 27.12.2012

¹⁰³ Added by law no. 10170, dated 22.10.2009

¹⁰⁴ Amended by law no. 131/2012, dated 27.12.2012

(c) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

2. CA shall verify those constituent elements by consulting the tenderer concerned, taking account of the evidence supplied. If, after examining the elements provided by the tenderer, CA are not satisfied that the tender is regular in all relevant aspects, CA may reject it.

Article 57 Confidentiality of the process

1. Without prejudice of the obligations imposed upon CA by the provisions of Article 21 PPL, after the opening of tenders, information relating to the examination, clarification, and evaluation of tenders must not be disclosed to tenderers or other persons not officially concerned with this process until the contract is signed.

2. Following the opening of tenders, and until the award of the contract is announced, no tenderer shall make any unsolicited communication to the CA or try in any way to influence the examination and evaluation of tenders.

Article 58 Notification of award and signing of contract

1. Notice of the award of the contract shall be given promptly to the tenderer, who has submitted the tender identified as the successful tender pursuant to Article 55 of the PPL.

2. Within 5 days of notification of award, the Contracting Authority shall send a notice to the Public Procurement Agency for publication in the Public Procurement Bulletin.

In the case of procedures, which are conducted by electronic means, the notice of award shall be sent to the electronic procurement platform the next working day of the receipt of the decision.

The notification shall contain at least the following information:

- a) The names of participating bidders;
- b) The values of the bids;
- c) The names of disqualified bidders and reasons for disqualification;
- ç) The name of the successful bidder and value offered by him;
- d) Complaints, if there have been any or not.¹⁰⁵

3. The contracting authority and the winning bidder shall sign the contract according to the deadlines set out in the public procurement rules. In any case, this deadline should not exceed the period of bid validity as specified in the contract notice or in the tender documents.¹⁰⁶

4. The contract enters into force upon its signing by the successful tenderer and the CA.

5. When the winning bidder fails to sign the contract or fails to provide the contract security, when such a thing is requested, the contracting authority shall carry out the forfeiture of bid security and select the bidder that is ranked the second in the list of selected bids, which have remained. In the event that the criteria of the "lowest price" is applied when determining the winning bid, the authority will select the

¹⁰⁵ Amended by law no. 131/2012, dated 27.12.2012

¹⁰⁶ Amended by law no. 131/2012, dated 27.12.2012

second ranked bidder only if the difference between the bid, which is ranked in the first and second place, will not be higher than the value of the bid security. This shall not affect the right of the Contracting Authority, under Article 24 of this Law, to reject all remaining bids, and to cancel the procurement procedure. The notice, under Paragraph 1 of this Article, shall be sent to the bidder, whose bid is selected under this Paragraph.¹⁰⁷

6. Where the contract is signed before the end of the deadline for the classification notice or before termination of the administrative review, in accordance with Chapter VII of the **PPL**, the contract is considered null and void.

CHAPTER V/1

PROCEDURES FOR AWARDING SECTORAL CONTRACTS¹⁰⁸

Article 58/1 Sectoral Contracts

1. This Chapter contains special provisions applied by the contracting authorities operating in the water, energy, transport and postal services sectors when awarding sectoral contracts. For the purpose of this Chapter, sectoral contracts are public contracts awarded by the contracting authorities referred to in Article 3 paragraph 14/1, if the contract is awarded for the purposes of performing any of the following activities:

a. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, gas or heat or supply of electricity, gas or heat to such networks;

b. exploitation of geographical area for the purpose of exploring, prospecting for or extracting oil, gas, coal or other solid fuels, or the provision of airports and maritime or inland ports or other terminal facilities to air, sea or inland waterway carriers;

c. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or supply of drinking water to such networks or management of such networks;

ç) the provision or operation of fixed networks intended to provide a service to the public in the field of transport by railway, automatic systems, tramway, trolley bus, or cable;

d) the provision or operation of fixed networks intended to provide a service to the public in the field of transport by bus;

dh) the provision of postal services.

2. The contracting authorities awarding sectoral contracts shall apply the clauses of other headings of this law, unless otherwise stated in this Chapter.

3. Contracting authorities awarding the contracts referred to in item c) of paragraph 1 shall apply the provisions of this Chapter also to the award of contracts which:

¹⁰⁷ Amended by law no. 131/2012, dated 27.12.2012

¹⁰⁸ Added by law no. 10170, dated 22.10.2009

a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents no more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or

b) are connected with the disposal or treatment of sewage, related to sewage systems and waste water treatment, and to the activities related to obtaining drinking water.

4. As regards transport services referred to in items c) and d) of paragraph 1, a network is considered to exist where the service is provided under operating conditions laid down by a competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

5. The contracting authorities awarding the contracts referred to in item dh) of paragraph 1 shall apply the provisions of this Chapter also to contracts related to the provision of the following services: mail service management services both preceding and subsequent to dispatch, transmission of coded documents using electronic means of communication, management of address databases, transmission of registered electronic mail, financial, philatelic and logistical services, particularly the transportation of commodity shipments and their confectioning and storage.

Article 58/2 Procurement comprising several activities

1. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Chapter or, where applicable, other provisions of this Law.

2. If one of the activities for which the contract is intended is subject to this Heading and the other two Headings of this Law and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with Headings I and V.

3. If one of the activities for which the contract is intended is subject to this Chapter and the other is not subject to either this Chapter or Headings I and V, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Chapter.

Article 58/3 Contracts awarded for purposes of resale or lease to third parties

This Chapter shall not apply to sectoral contracts awarded by the contracting authorities for the purposes of resale or lease of the object of the contract to third parties, provided that the contracting authority does not have a special or exclusive right to sell or lease the object of contract, and that other entities may sell or lease it without restrictions and on the same conditions as the contracting authority.

Article 58/4 Contracts awarded to affiliated undertakings, to a joint venture or to a contracting entity forming part of a joint venture

1. This Chapter shall not apply to sectoral contracts awarded by the contracting authority to an affiliated undertaking or to a joint venture, formed exclusively by a number of contracting authorities for the purpose of carrying out activities within the meaning of Article 58/1, to an undertaking which is affiliated with one of these contracting entities, provided that conditions referred to in paragraph 3 of this Article are fulfilled.

2. For the purpose of this Article “affiliated undertaking” means any undertaking:

(a) the annual accounts of which are consolidated with those of the contracting authority in accordance with accounting regulations;

(b) over which the contracting authority may exercise, directly or indirectly, dominant influence within the meaning of item “b” paragraph 14/1 of Article 3 or which may exercise a dominant influence over the contracting authority or which, together with the contracting authority is subject the dominant influence of another undertaking, by virtue of ownership, financial participation, or the rules which govern it.

3. Paragraph 1 of this Article applies if at least 80% of the average turnover of the affiliated undertaking in the previous 3 years derives from providing such services, supplies or works to undertakings with which it is affiliated. Where, because of the date on which and affiliated undertaking was created or commenced its activities, the turnover is not available for the preceding 3 years, it is sufficient for that undertaking to show that the turnover referred to above is credible, particularly by means of business projections. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

4. This Chapter shall not apply also to contracts awarded:

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Article 58/1 of this law, to one of these contracting entities, or

(b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting authorities, which form it, will be part thereof for at least the same period.

Article 58/5 Exemptions specific for energy and water sector

1. This Chapter shall not apply to sectoral contracts awarded by contracting authorities referred to in item b) and c) item 14/1 of Article 3, for the purposes of performing an activity consisting in providing gas or heat to the networks referred to in paragraph 1, item 1, Article 58/1, if:

(a) the production of gas or heat is a necessary consequence of conducting an activity other than that described in Article 58/1 of this law; and

(b) the purpose of the provision of gas or heat is only to utilize the production for economic purposes, and it does not exceed 20% of the economic operator’s average turnover over the period of the previous three years, including the year in which the contract is awarded.

2. This law shall not apply to sectoral contracts awarded by contracting authorities referred to in items b) and c) paragraph 14/1 Article 3, for the purposes of performing an activity consisting in providing electricity to the networks referred to in item a), paragraph 1, Article 58/1, if:

(a) the production of electricity is necessary to conduct an activity other than that defined in Article 58/1 of this law; and

(b) the provision of electricity is dependent solely on own consumption, and it does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

3. This Chapter shall not apply to sectoral contracts awarded by the contracting authorities referred to in items b) and c), paragraph 14/1 of Article 3, for the purposes of performing an activity consisting in providing drinking water to the networks referred to in item c) paragraph 1, Article 58/1 of this law, if:

(a) production of drinking water is necessary to conduct an activity other than that defined in Article 58/1 of this law; and

(b) the provision of drinking water is solely dependent on own consumption, and does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

Article 58/6 Exemption of purchase of energy, fuels and water

1. Contracting authorities conducting the activity referred to in item a), paragraph 1, Article 58/1, shall not apply provisions of this Chapter to award sectoral contracts for supplies of electricity, heat or fuels used for the production of energy. This activity will be regulated by other laws or by-laws.

2. The contracting authorities conducting the activity referred to in item c), paragraph 1, Article 58/1 of this law shall not apply provisions of this Chapter to award contracts for supplies of water.

Article 58/7 Exemption of bus transport services

The contracting authority conducting the activity referred to in item dh), paragraph 1 of Article 58/1, on the basis of special rights shall not apply provisions of this Chapter if regular transportation services may be also provided by other carriers in the same area and on the same conditions.

Article 58/8 Procedures of awarding sectoral contracts

1. To award all sectoral contracts, contracting authorities may always use open, restricted or negotiated procedure with publication of notice.

2. Contracting authorities may award sectoral contracts through a negotiated procedure without publication of notice:

a) when no tender or no suitable tenders or no applications have been submitted in response to an open, restricted or negotiated procedure with publication, provided there is no substantial alteration to the initial conditions of the contract;

b) when for technical or artistic reasons, or for reasons connected with exclusive rights or intellectual property rights, the contract may be executed only by a particular economic operator;

c) insofar as it is strictly necessary when, for reasons of urgency brought about by causes unforeseeable by the contracting authority, the time limits referred to in Article 43 of this law, for the publication of contract in open, restricted or negotiated procedures with publication cannot be complied with. The circumstances invoked to justify urgency must not in any event be attributed to the contracting authority. The conditions and circumstances for the use of this procedure are determined in the procurement regulations;

ç) where a contract based on the framework agreement is awarded, provided that requirements of Article 58/9 are complied with.

3. Negotiated procedures without prior publication of a contract notice may be used for sectoral contracts, subject of which are as follows:

a) when the goods involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

b) for additional deliveries by the original supplier, intended either as partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. In this case, the additional contract shall be signed within a time limit of 3 months from the end of the original contract and shall not exceed 20% of the total value of the initial contract;

c) for supplies quoted and purchased on commodity market;

ç) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;

d) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;

4. Negotiated procedures without prior publication of a contract notice may be used for sectoral contracts, subject of which are as follows:

a) for additional works or services which were not included in the initial contract, but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services; as long as the aggregate value of contracts awarded for additional works and services does not exceed 20 % of the total value of the initial contract:

i) when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority;

ii) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

b) for new works consisting in the repetition of similar works entrusted to the economic operator to whom the same contracting authorities awarded the original contract, provided that such works or services are in conformity with a basic project for which the initial contract was awarded on the basis of a procurement procedure. As soon as the first project is up for tender, the possible use of this procedure shall be disclosed in the contract notice for the initial contract, and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority. The procedure set up by this sub-paragraph may be used only during 3 years following the conclusion of the original contract. In no case the additional contract shall exceed the value of 20 % of the total value of the original contract.

Article 58/9 Call for competition

The contracting authority is obliged to inform about its intention of awarding a sectoral contract by means of call for competition which may take a form of:

- a) a contract notice as referred to in Article 38 of the law, or
- b) a notice on the existence of a qualification system as referred to in Article 58/10 of this law.

Article 58/10 Qualification systems

1. Contracting authorities, which so wish, may establish and operate a qualification system for the qualification of economic operators. Contracting authorities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. Where contracting authorities choose to establish a qualification system, the system shall be subject to a publication of notice indicating the purpose for its establishment and the way in which the rules for participation in it are applied. If the validity of the system is more than three years, the notice shall be published each year. If the system has a shorter validity, an initial publication of notice is sufficient.

3. The qualification system may involve different qualification stages. The criteria and rules for qualification shall be established by the contracting authority on the basis of objective criteria. When required, the criteria and rules may be changed. The criteria and rules shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to all interested economic operators.

4. The qualification criteria and rules set out in paragraph 3 may include the exclusion criteria listed in Article 45 and 46 of the law, on the terms and conditions set out therein. Where the contracting authority is a contracting authority within the meaning of paragraph 14 of Article 3 of the law, these criteria and rules shall include the exclusion criteria listed in paragraph 1 of Article 45.

5. Where the criteria and rules for qualification referred to in paragraph 3 of this Article include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other operators, whatever the legal nature of the link between itself and those operators. In this case the economic operator must prove to the contracting authority that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking that will receive those means by other economic operators to that effect.

Under the same conditions, a group of economic operators as referred to in paragraph 2 of Article 44 may rely on the capacity of participants in the group or of other entities.

6. Where the criteria and rules for qualification referred to in paragraph 3 of this Article include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting authority that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator. Under the same conditions, a group of economic operators referred to in paragraph 2, Article 44 may rely on the abilities of participants in the group or of other entities.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

8. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

9. Contracting authorities, which establish and operate a qualification system shall inform the candidates on their decision regarding qualification within a period of six months. If the decision will take longer than four months from the moment when an application is submitted, the contracting authority shall inform the candidates, within the first two months from the submission of the application, on the reasons justifying the longer period for decision and on the date when the application shall be accepted or rejected.

10. Candidates which shall not qualify, shall be notified on this decision and the reasons for their rejection, as soon as possible and under no circumstance later than 15 days since the day when the decision is made. The reasons shall be provided on the basis of the qualification criteria set out in paragraph 3 of this Article.

11. The contracting authorities which establish and operate a qualification system may reject the qualification of an economic operator only on the basis of the qualification criteria referred to in paragraph 3 of this Article. Every notice for the rejection of an application shall be notified in written to the economic operator, at least 15 days prior to the estimated completion date of the qualification, including the reasons justifying the proposed action.

CHAPTER VI

PERFORMANCE OF CONTRACTS

Article 59 Conditions for performance of contracts

- 1.** CA may lay down special conditions relating to the performance of a contract, provided these are lawful and indicated in the invitation to tender or in the tender documents.
- 2.** The conditions governing the performance of a contract must have a non-discriminatory nature or effect and be proportionate to the scope of the contract.

Article 60 Rules applicable to contracts

- 1.** The terms of the contract awarded pursuant to the **PPL** shall not differ from the prescriptions established in the tender documents and in the successful tender.
- 2.** All terms of the contract awarded pursuant to the **PPL** shall be performed in good faith by both parties.
- 3.** Without prejudice of the provisions of the **PPL** and any other legislative provisions applicable to contracting authorities, contracts awarded pursuant to the **PPL** shall be subject to **Albanian Civil Law**.

Article 61 Sub-contracting

- 1.** CA shall, in the invitation to tender or in the tender documents, require tenderers to indicate in their tenders the percentage of the contract they may wish to subcontract to third parties and any proposed sub-contractors.
- 2.** CA may also indicate in the invitation to tender or in the tender documents that they will impose on the successful tenderer an obligation to sub-contract a certain percentage of the contract to third parties. In this

event, the percentage which is bound to be sub-contracted shall be proportionate to the value of the contract and shall not exceed 40 % of the contract value.

3. Without prejudice to the principles stated in para 4 of this Article, prospective subcontractors must be approved by CA before entering the sub-contract with the economic operator, who has been awarded the public contract following the provisions of the PPL.

4. The provisions of this Article are without prejudice to the question of the principal economic operator's liability, by which CA remain third parties vis-à-vis the contractual relationship between the economic operator and his/her sub-contractors and by which the principal economic operator is liable for the entire performance of the contract, regardless of any part of it being performed by sub-contractors.

Article 62 Obligations valid throughout the performance of the contract

1. CA state in the tender documents the body or bodies, from which a candidate or tenderer may obtain appropriate information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions in force in Albania, or in the region or locality, where the contract is to be performed.

2. Tenderers or candidates may be asked to indicate they have taken account, when drawing up their tender, the obligations attached to the performance of the contract as indicated by the competent bodies pursuant to para 1 of this Article.

3. The obligations referred to in para 1 of this Art. and in Article 46 PPL, are valid throughout the performance of the contract. Any failure to comply with such obligations and conditions shall lead to termination of the contract.

CHAPTER VII

ADMINISTRATIVE REVIEW PROCEDURES

Article 63 Rights of interested persons

1. Any person having or having had an interest in obtaining a public contract and who has been or risks being harmed by a decision taken by a c CA, which infringes the PPL, may challenge such decision.

1.1 In the case of complaints against the tender documents, the economic operators may file a complaint with the contracting authority within 7 days of publication of the contract notice on the website of the Public Procurement Agency.

Upon receipt of a written complaint, the contracting authority shall suspend the continuation of the procurement procedure until the complaint has been fully examined, including making of a decision within 3 days from the filing of the complaint. Under Paragraph 6 et sequens of this Article, the contracting authority's final decision may be appealed to the Public Procurement Commission.¹⁰⁹

¹⁰⁹ Amended by law no. 131/2012, dated 27.12.2012

2. Complaints against the decisions of the contracting authority¹¹⁰ shall be filed in the first instance with the concerned **CA** in writing within 7 days from the day the complainant became aware or should have become aware of the alleged breach of the **PPL**.¹¹¹
3. Upon receiving the complainant's written objection, the **CA** shall suspend the ongoing contract award procedure until the objection is fully examined and a decision is taken before the expiry of the time-limit as defined in Paragraph 5 and 6¹¹² of this Article.
4. The **CA** must, if needed, extend the time-limit of the contract award procedure for the period of suspension referred to in paragraph 3 of this Article. In case the time limits of the contract award procedure notified to the tenderers are changed due to consideration of objections, the **CA** shall dispatch to the tenderers a notice to the effect, indicating the reasons for the extension of the time-limits.
5. The **CA** must examine the objection and take a justified decision within 7¹¹³ days after the receipt of the objection and must inform the complainant of the taken decision and the justification thereof not later than on the next working day.
6. If the **CA** fails to examine the objection within the time-limit specified in para 5 of this Article, or rejects the objection, the complainant may file a written appeal with the **PPC**¹¹⁴ within 10 days¹¹⁵ from the first working day after the expiry of the time-limit specified in paragraph 5 of this Article, or, in case the objection in the first instance is rejected by the **CA**, from the day the complainant was informed thereof by the **CA**. It is obligatory¹¹⁶ that a written copy of the appeal is simultaneously notified to the **CA**.
7. The complaint to the **PPC**¹¹⁷ should be completed using the respective template, containing the name and address of the complainant, the reference to the concrete procedure, the legal ground and a description of the violation, the claimant's objection on the final decision, the appeal stages accompanied by the respective documentation and the decision of the contracting authority.¹¹⁸ The above elements are essential to the examination of complaints. The **PPC**¹¹⁹ examines the complaint, following this law, the Code of Administrative Procedures and the **PP-rules**. Failure in following all complaining stages makes the named complaint invalid.
8. Upon receiving the complainant's written appeal, the **CA** shall suspend the ongoing contract award procedure, unless the **PPC**¹²⁰ instructs otherwise in writing according to Article 64, par. 2 **PPL**. The contracting authority shall immediately notify the Public Procurement Commission when it receives information that the appeal has been submitted to the Commission.¹²¹

¹¹⁰ Amended by law no. 131/2012, dated 27.12.2012

¹¹¹ Amended by law no. 10170, dated 22.10.2009

¹¹² Amended by law no. 131/2012, dated 27.12.2012

¹¹³ Amended by law no. 10170, dated 22.10.2009

¹¹⁴ Amended by law no. 10170, dated 22.10.2009

¹¹⁵ Amended by law no. 131/2012, dated 27.12.2012

¹¹⁶ Added by law no. 10170, dated 22.10.2009

¹¹⁷ Amended by law no. 10170, dated 22.10.2009

¹¹⁸ Added by law no. 10170, dated 22.10.2009

¹¹⁹ Amended by law no. 10170, dated 22.10.2009

¹²⁰ Amended by law no. 10170, dated 22.10.2009

¹²¹ Added by law no. 10170, dated 22.10.2009

9. Upon receiving the complainant's written appeal, the **PPC**¹²² shall respond within 7 days.¹²³ When the **CA** requires information for the review of the complaint, the **PPC**¹²⁴ shall respond in writing, in accordance with the Council of Ministers Decision,¹²⁵ but not later than 20 days.

10. Each complaint lodged at the Public Procurement Commission incurs a fee. The respective methods of payment and amounts are established upon a decision by the Council of Ministers.¹²⁶

11. The procedures of administrative review shall not apply in the case of procurement procedures, for which no public notice has been published as provided for in Article 38 of this Law.¹²⁷

Article 64 Competencies of the PPA¹²⁸

1. Upon receiving the complainant's written appeal, the **PPC**¹²⁹ shall assure itself that the **CA** has suspended the ongoing contract award procedure. Upon a preliminary examination of the appeal, the **PPC**¹³⁰ shall take a decision whether or not to issue an interim order according to para 2 of this Article, and inform the **CA** thereof.

2. At any time following the receipt of the complaint and before the conclusion of the contract, the **PPC**¹³¹ may, when it does not decide for a suspension¹³² allow by interim order and pending its final decision on the case, the **CA** to continue the contract award procedure when:

a) on the basis of the information available to the **PPC**, it appears likely that the complainant will not succeed in the complaint, and/or

b) the suspension would cause disproportionate harm to the public interest, the **CA** or the tenderers.

3. Prior to the conclusion of a public procurement contract, if the **PPC**¹³³ is satisfied that a decision or action taken by the **CA** was in breach of the **PPL**, it has the power to:

a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint;

b) annul the whole or part of any act or decision of the **CA** inconsistent with the **PPL**. This includes the power to remove any technical or other type of specifications, which do not comply with the **PPL**;

c) instruct the **CA** to correct any breaches and to proceed with the contract award procedure, after such correction;

¹²² Amended by law no. 10170, dated 22.10.2009

¹²³ Amended by law no. 10170, dated 22.10.2009

¹²⁴ Amended by law no. 10170, dated 22.10.2009

¹²⁵ Amended by law no. 131/2012, dated 27.12.2012

¹²⁶ Added by law no. 10170, dated 22.10.2009

¹²⁷ Amended by law no. 131/2012, dated 27.12.2012

¹²⁸ Amended by law no. 10170, dated 22.10.2009

¹²⁹ Amended by law no. 10170, dated 22.10.2009

¹³⁰ Amended by law no. 10170, dated 22.10.2009

¹³¹ Amended by law no. 10170, dated 22.10.2009

¹³² Added by law no. 9800, dated 10.09.2007

¹³³ Amended by law no. 10170, dated 22.10.2009

ç) order the termination of the contract award procedure.

4. Following the conclusion of the public procurement contract, if the **PPC**¹³⁴ is satisfied that a decision or action taken by the **CA** was in breach of any of the obligations of this Law, it has the power to:

a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint;

b) issue a declaratory decision based on which the complainant, who suffered loss or damage, as a result of a breach of the **PPL** may claim damages before the Court.

c)¹³⁵

5. Where the **PPC**¹³⁶ is satisfied that an officer of the **CA** has committed a deliberate and intentional breach of the **PPL** with the effect of jeopardizing its purpose as set in Art. 1, it may, in addition to the remedial powers referred to in para 1 to 4 of this Art., report the offence to the competent authority.

Article 64/1 Administrative Investigation Procedure¹³⁷

1. The Public Procurement Commission may start an administrative investigation procedure, upon receipt of complaints by persons that have an interest in public procurement procedures.

2. In the course of an investigation, the Public Procurement Commission is entitled:

a) to request documentation or information from all parties in order to support their claims.

b) to request information and explanations from all central or local administrative bodies, and to take possession of all files and documents related to the administrative investigation case;

c) to interrogate any person, who it deems to be connected to the case, under investigation;

ç) to request relevant expertise from third party licensed experts

3. The Public Procurement Commission reserves the right to set a deadline for its requests regarding information and submission of relevant documents, in accordance with the legislation that regulates administrative procedures.

Article 64/2 Decisions of Public Procurement Commission¹³⁸

1. Upon completion of the administrative investigation, the Public Procurement Commission may take the following decisions:

a) to close the investigation, as the actions, or failure to act, of the contracting authority under investigation, did not infringe this law, nor any other administrative or criminal provision. In this case, the Public Procurement Commission explains to the complainant in writing the reasons for closing the investigation;

¹³⁴ Amended by law no. 10170, dated 22.10.2009

¹³⁵ Abrogated by law no. 131/2012, dated 27.12.2012

¹³⁶ Amended by law no. 10170, dated 22.10.2009

¹³⁷ Added by law no. 10170, dated 22.10.2009

¹³⁸ Added by law no. 10170, dated 22.10.2009

b) to issue to the concerned contracting authority a written decision instructing it to stop acting against the law, within a given deadline.

2. Contracting authorities shall implement the decision or request an appeal for the decision issued by the Public Procurement Commission within 10 days of its receipt.

In case these acts have already produced their effects, the Public Procurement Commission recommends the damaged persons to file a suit before the Courts or to seek penal prosecution.

3. Where the Public Procurement Commission is satisfied that an officer of the contracting authority has committed a deliberate and intentional breach of this law, shall inform the competent authority about this violation.

Article 64/3 Complaints before the Courts¹³⁹

1. The parties shall be entitled to the right to file a lawsuit with the relevant court against the decision of the Public Procurement Commission to review the administrative dispute.¹⁴⁰

2. The examination of complaints by the Court shall not make the grounds for suspension of procurement procedures, for the conclusion of public contracts for goods, services or works by contracting authorities, or execution of obligations, according to procurement contracts between the respective parties.

CHAPTER VIII

ADMINISTRATIVE INVESTIGATION

Article 65 Administrative investigation procedure¹⁴¹

1. Public Procurement Agency shall verify the implementation of public procurement procedures, following the procurement contract signing stage, when there is sufficient evidence that there has been a violation of this Law.

2. During the administrative investigation, the Public Procurement Agency shall have the following rights:

a) Carry out on site administrative investigations, including entering also into any office of public institutions and on site examination of the acts or documents relating to the issue under investigation;

b) Seek information and explanations from all the bodies of the central and local administration, as well as, access to any files or materials relating to administrative investigation;

c) Interrogate any person who, according to it, is related to the matter under investigation and summon all people without immunity;

ç) Require the relevant expertise from third-party experts.

3. To perform its functions, the Public Procurement Agency shall enjoy the right to have access to all offices of public administration institutions, which are recognized as contracting authorities, under this Law.

¹³⁹ Added by law no. 10170, dated 22.10.2009

¹⁴⁰ Amended by law no. 131/2012, dated 27.12.2012

¹⁴¹ Added by law no. 131/2012, dated 27.12.2012

4. The Public Procurement Agency shall be entitled to the right to set a deadline for a response to its requests for information and about submission of the relevant documents, under the legislation governing administrative procedures.

Article 66 Action upon the completion of administrative investigation¹⁴²

1. Upon completion of the administrative investigation, the Public Procurement Agency may make the following decisions:

a) Dismiss the investigation, if the acts or omissions of the contracting authority under investigation fail to constitute a violation of this law or of the administrative or criminal provisions.

b) Impose disciplinary measures or fines pursuant to Article 72 of this Law for the observed violations.

2. In any case, the parties will be notified in writing of the decision.

Article 67¹⁴³

Article 68¹⁴⁴

CHAPTER IX

THE ACTIVITY OF THE PUBLIC PROCUREMENT ADVOCATE (PPAD)

Article 69 Monitoring function and complaints¹⁴⁵

Article 70 Investigation Procedure¹⁴⁶

Article 71 Actions following the conclusion of investigation¹⁴⁷

Article 71/1 Legislative Recommendations¹⁴⁸

¹⁴² Added by law no. 131/2012, dated 27.12.2012

¹⁴³ Abrogated by law no. 10170, dated 22.10.2009

¹⁴⁴ Abrogated by law no. 10170, dated 22.10.2009

¹⁴⁵ Abrogated by law no. 131/2012, dated 27.12.2012

¹⁴⁶ Abrogated by law no. 131/2012, dated 27.12.2012

¹⁴⁷ Abrogated by law no. 131/2012, dated 27.12.2012

¹⁴⁸ Abrogated by law no. 131/2012, dated 27.12.2012

Article 72 Administrative violations¹⁴⁹

1. Under the provisions of this law, failure to comply with procurement rules, when constituting an administrative offense, shall be punishable by disciplinary measure or with a fine as follows:

- a) Failure to meet the obligation as set out in Article 4 of this Law shall be punished by a fine of 1, 000, 000 Albanian Lek
- b) Failure to meet the obligation as set out in Paragraph 2 of Article 12 of this law, shall be punished by a fine of 15, 000 to 30, 000 Albanian Lek;
- c) Breach of the obligation regarding the form of communication, exchange and storage of information, as defined in Article 21 of this Law, shall be punished by a fine of 50, 000 to 100, 000 Albanian Lek;
- ç) Failure to meet the obligation laid down in Article 23 of this Law shall be punished by a fine of 50, 000 to 200, 000 Albanian Lek;
- d) Failure to meet the obligation set out in Article 25 of this Law shall be punished by a fine of 50, 000 to 100, 000Albanian Lek;
- dh) Failure to meet the obligation set out in Article 28 of this Law shall be punished by a fine of 20, 000 to 1, 000, 000Albanian Lek.
- e) Failure to meet the obligation set out in Article 38 of this Law shall be punished by a fine of 500, 000 to 1, 000, 000Albanian Lek;
- ë) Failure to meet one of the obligations laid down in Articles 39, 40, 41 and 42 of this Law shall be punished by a fine of 50, 000 to 300, 000Albanian Lek;
- f) Failure to meet the obligations set out in Article 43 of this law, shall be punished by a fine of 50, 000 to 500, 000 Albanian Lek;
- g) Failure to meet the obligation set out in Article 53 of this Law shall be punished by a fine of 50, 000 to 1, 000, 000 Albanian Lek;
- gj) Failure to meet the obligation set out in Article 56 of this Law shall be punished by a fine of 50, 000 to 100, 000 Albanian Lek;
- h) Failure to meet the obligation set out in Article 63 shall be punished by a fine of 100, 000 to 1, 000, 000 Albanian Lek;
- i) Persons who try to influence the decision-making of Public Procurement Commission, in violation of Article 19/7 of this Law, shall be punished by a fine of 50, 000 to 100, 000 Albanian Lek;

2. In all the above cases, when the responsible persons are not punished with a fine, and in any other case of violation of the provisions of this law, imposing of disciplinary measures shall be required against them.

3. Under the Code of Civil Procedure interested persons may file an appeal with the court.

¹⁴⁹ Amended by law no. 131/2012, dated 27.12.2012

Article 73 Sanctions for lack of cooperation¹⁵⁰

Refusal of the civil servant, or contracting authorities' representatives, or public authority to cooperate with the Public Procurement Commission, the Agency of Public Procurement¹⁵¹ constitutes the grounds for these institutions to require from the competent authorities to take disciplinary measures.

Article 74¹⁵²

CHAPTER X

FINAL PROVISIONS

Article 75 Procurement rules

The **Council of Ministers** is authorized to promulgate procurement regulations to implement the provisions of the **PPL** within one month from the entry into force of the **PPL**.

Article 75/1 Special provision¹⁵³

1. The Procedures initiated pursuant law no. 7971, dated on 26.7.1995 "On Public Procurement" with all amendments, including complaining, shall be addressed following this law.
2. Article 13, para 3, letter d, shall be applicable even for contracts concluded prior to the entry into force of this law.
3. Article 33, para 2 (a) and para 5, shall be applicable even for contracts that were concluded after the termination of procurement procedures, base on law no. 7971, dated on 26. 7. 1995 "On Public Procurement" with all its amendments, even when this is not provided with the initial contract.

Article 75/2¹⁵⁴

Awarding procedures for sectoral contracts initiated before the entry into force of this Law shall be carried out in compliance with the Law 9643, date 20.11.2006 "On public procurement", amended.

Article 76 Appointment of the PP Advocate

Within one month from the entry into force, the Parliament should appoint the **Public Procurement Advocate**, and approve the structure and personnel of the Office.

¹⁵⁰ Amended by law no. 10170, dated 22.10.2009

¹⁵¹ Amended by law no. 131/2012, dated 27.12.2012

¹⁵² Abrogated by law no. 10170, dated 22.10.2009

¹⁵³ Added by law no. 9800, 10.09.2007

¹⁵⁴ Added by law no. 10170, dated 22.10.2009

Article 76/1 Appointment of the Public Procurement Commission members¹⁵⁵

The Council of Ministers shall be assigned the task to appoint the members of the Public Procurement Commission, within 1 month from the moment this law shall enter into force.

Article 76/2¹⁵⁶

Examination of complaints shall begin to be carried out by this Commission four months after its establishment. Until then the examination of complaints shall be carried out by the Agency of Public Procurement, in accordance with the rules and timelines referred to in this law.

Article 77 Abrogation

The law nr. 7971, dated on 26.07.1995 “On Public Procurement” together with amendments and any other provision in contradiction with this law, are abrogated.

Article 78 Entry into force

The PPL enters into force on January 1, 2007.

SPEAKER Jozefina Topalli (Çoba)

¹⁵⁵ Added by law no. 10170, dated 22.10.2009

¹⁵⁶ Added by law no. 10170, dated 22.10.2009



REPUBLIC OF ALBANIA
The Assembly

LAW¹

No. 182/2014

ON

**ON SOME ADDITIONS AND AMENDMENTS TO LAW NO. 9643, DATED 20
NOVEMBER 2006 “ON THE PUBLIC PROCUREMENT” AS AMENDED**

Pursuant to Articles 78 and 83 paragraph 1 of the Constitution, upon the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

DECIDED:

The amendments and additions as hereunder described shall be made to Law No. 9643, dated 20 November 2006, “On Public Procurement”, as amended.

Article 1

The amendments as hereunder described shall be made to Article 3:

1. Second sentence of Paragraph 2, shall be repealed.
2. Subparagraph “c” of Paragraph 4 shall be amended as follows:

“c) Assistance or loan funds as provided by foreign donors under an international agreement, in which the application of provisions of this Law shall be required.”

Article 2

The amendments and additions as hereunder described shall be made to Article 7:

¹ No. Celex 32004L0018

1. Subparagraph “c” shall be amended as follows:
 - c) Arbitration and conciliation services, ex officio assigned lawyers, as well as the expertise for the purposes of criminal proceedings as regulated under the Code of Criminal Procedure.
2. Subparagraph “e” with the content as hereunder provided shall be added after Subparagraph “dh”:
 - e) Employment contracts.
3. Subparagraph “dh” shall be replaced with Subparagraph “dh” in the last paragraph.

Article 3

The words “recommendations of the auditing bodies for procurement procedures” shall be added after the words “and legal acts” in Paragraph 2, Subparagraph “g” of Article 13.

Article 4

The amendments as hereunder described shall be made to Article 19/2:

1. Paragraph 1 shall be amended as follows:
 - “1. The Public Procurement Commission shall consist of five members.”
2. Paragraph 4 shall be repealed.

Article 5

Subparagraph “b” of Article 19/3 shall be amended as follows:

“b) has a law degree;”

Article 6

The word “accepted” shall be replaced with the word “submitted” in Paragraph 1, Subparagraph “d” of Article 24.

Article 7

First sentence of Paragraph 3, of Article 29 shall be amended as follows:

“3. The Contracting Authority shall use the open procedure and the restricted procedure for contracts above the low monetary threshold.”

Article 8

Paragraph 2, Subparagraph “dh” of Article 33 shall be repealed.

Article 9

The amendments as hereunder described shall be made to Article 35:

1. Paragraphs 1 shall be amended as hereunder described:

“1. The Contracting Authority may organize a design contest as part of a procedure, which leads to the award of contract for a plan or design, which has been chosen by a jury, on the bases of a competition procedure, mainly in the field of urban, rural, architecture, engineering, etc., planning.”

2. The expression "against a monetary remuneration" shall be replaced by the phrase "against a price" in Subparagraph "b" of Paragraph 2”.

Article 10

1. Article 35/1 shall be amended as follows:

“1. For public contracts, contracting authorities may conclude a framework agreement after having organized an open, restricted procedure, request for proposal, consultancy service or negotiated procedure with prior publication of a contract notice procedure, while for sector contracts the contracting authorities may conclude an agreement even after having carried out a negotiated procedure without prior publication of a notice”.

2. The first sentence of Subparagraph 6 of Paragraph 2, shall be amended as follows:

“Contracts based on framework agreements, as reached between several economic operators, may be concluded in one of the following ways:”

Article 11

Article 43 shall be amended as follows:

1. First sentence of Paragraph 3, shall be amended as follows:

“In the open procedure, in the negotiated procedure, in the procedure with publication of notice, in the consultancy service procedure and in the design contest procedure, with a value higher than the high monetary threshold.....”

2. Paragraph 6/1 with the content hereunder provided shall be added after Paragraph 6:

“6/1. In consultancy service procedure and in the design contest procedure with the value below the high monetary threshold:

a) The minimum deadline for submitting the applications to participate shall be 15 days from the date, on which the contract notice is published on the website of the Public Procurement Agency.

b) The minimum deadline for submission of the bid shall be 15 days from the date, on which the call for bids has been sent to the candidates.

3. The phrase "...and Paragraph 6/1" shall be added after the expression "...of Paragraph 6” in Paragraph 8, while the set of words “consultancy service and design contest" shall be added after the phrase “on restricted procedures..”.

Article 12

Subparagraph “ë” with the content as hereunder described shall be added after Subparagraph “e” of Article 45”:

“ë) The candidate or the bidder is excluded from participation in procurement procedures upon the decision of the Public Procurement Agency under paragraph 3 of Article 13 of this Law”.

Article 13

The following amendments shall be made to Article 49”:

1. Paragraph 1, first sentence shall be amended as follows:

“1. In procurement procedures with a higher value than the high monetary limit, the Contracting Authority may require bidders to submit the bid security under the public procurement rules”.

2. Paragraph 1/1 shall be repealed.

3. Paragraph 2, first sentence shall be amended as follows:

“2. If the contracting authority has requested bid security, pursuant to paragraph 1 of this article, the contracting authority shall not claim the security value, if”

Article 14

Paragraph 2 of Article 50 shall be amended as follows:

1. The set of words “if it is required...” shall be added after the set of words “bid security” in Subparagraph “a”.

2. The set of words “is such a security is required” shall be added after the set of words “the bid security shall also be extended” shall be added in the first sentence of Subparagraph “b”.

Article 15

Paragraph 4 of Article 53 shall be amended as follows:

“4. The Contracting Authority shall consider a bid as valid even if it contains minor deviations, which are justified and, which do not substantially change the characteristics, conditions and other requirements as specified in the tender documents, as well as spelling mistakes, which may be corrected without affecting its content.”

Article 16

Paragraph 1 of Article 56 shall be amended as follows:

“1. When the contracting authority finds that one or more bids for contracts of goods, works or services, are abnormally low, it shall ask the relevant economic operator before it continues with the binds evaluation process to submit in writing and within 3 work days explanations for specific elements of the bid, for: ”

Article 17

The first and the second sentence of Paragraph 1 of Article 58 shall be reworded as follows:

“5. When the winning bidder fails to provide the bid security or fails to sign the contract, the contracting authority shall seize the bid security, if so required. In the case when the "lowest price" is used a determining criterion for the winning bid, and when the winning bidder fails to provide the bid security or fails to sign the contract, the contracting authority shall select the bidder ranked second in the list of selected bids, which have remained, only if the difference between the bid ranked in first place and the bid ranked in the second place will not be higher than 2% of the budget estimate”.

Article 18

Article 63 shall be subject to the amendments and additions as hereunder described:

1. The set of words “... the next working” shall be added before the set of words “...the day” in Paragraph 2 of Article 63.
2. Paragraph 8 shall be amended as follows:

“8. Upon receipt of the appeal of the complainant as filed with the Public Procurement Commission, the Contracting Authority shall keep the procurement procedures suspended, except cases when otherwise decided by the Public Procurement Commission, under Article 64, Paragraph 2 of this Law. The Contracting Authority shall send to the Public Procurement Commission all the information, which is has available about the procurement procedure that has been once appealed, but in any case not later than 5 days to the Public Procurement Commission.
3. Figure “20” shall be changed into “10” in paragraph 9, while the set of words “after having received the information” shall be added in the end”.
4. The word “review” shall be replaced by the word “appeal” in Paragraph 11.

Article 19

The term “relevant court” shall be changed into the “First Instance Administrative Court of Tirana” in Paragraph 1 of Article 64/3.

Article 20

Article 63 shall be subject to the amendments and additions as hereunder described:

1. Paragraph 1 shall be amended as follows:

“1. Public Procurement Agency shall verify the implementation of public procurement procedures after the stage of the signing of the procurement contract, but in any case not later than two years of its signing.
2. Paragraph 5 with the content as hereunder provided shall be added after Paragraph 4:

“5. The Contracting Authority shall have the obligation to inform the responsible persons involved in the administrative inquiry as initiated by the Public Procurement Agency and to document the notification”.

Article 21

1. Paragraph 2 of Article 66 shall be amended as follows:

“2. In any case, the parties shall be notified in writing of the decision. The contracting authority shall have the obligation to notify the responsible persons involved in the administrative inquiry about the decision, which the Public Procurement Agency has made and, to document the notification”.

Article 22

Article 72 shall be subject to the amendments and additions as hereunder described:

1. Paragraph 1 shall be amended as follows:

“1. Failure to comply with the procurement rules, under the provisions of this law, when it constitutes an administrative offense, shall be punishable by a fine as follows:

a) Failure to fulfill the obligation set forth in Article 4 of this law shall be punishable by a fine of 20, 000 up to 1, 000, 000 Albanian Leks;

b) Failure to fulfill the obligation set forth in paragraph 2 of Article 12 of this law shall be punishable by a fine of 15, 000 up to 30, 000 Albanian Leks;

c) Failure to fulfill the obligation regarding the form of communication, exchange and saving of information, as defined in Article 21 of this law, shall be punishable by a fine of 30, 000 to 100, 000 Albanian Leks;

ç) Failure to fulfill the obligation provided for in Article 23 of this law shall be punishable by a fine of 50, 000 up to 200, 000 Albanian Leks;

d) Failure to fulfill the obligation set forth in Article 25 of this law shall punishable by a fine of 50, 000 up to 100, 000 Albanian Leks;

dh) Failure to fulfill the obligation set forth in Article 28 of this law shall punishable by a fine of 20, 000 to 1, 000, 000 Albanian Leks;

e) Failure to fulfill the obligation set forth in Article 33 of this law shall be punishable by a fine of 100, 000 to 1, 000, 000 Albanian Leks;

ë) Failure to fulfill the obligation set forth in Article 38 of this law shall be punishable by a fine of 50, 000 to 1, 000, 000 Albanian Leks.

f) Failure to fulfill any of the obligations set out in Articles 39, 40, 41 and 42 of this law shall punishable by a fine of 50, 000 to 300, 000 Albanian Leks;

g) Failure to fulfill the obligations laid down in Article 43 of this law shall be punishable by a fine of 50, 000 to 500, 000 Albanian Leks;

gj) Failure to fulfill the obligation set forth in Article 45, except for the Subparagraph "h" of Paragraph 2 of this Article and in Article 46 of this law shall be punishable by a fine of 30,000 to 500,000 Albanian Leks;

- h) Failure to fulfill the obligation set forth in Paragraph 2, Subparagraph "ë" of Article 45 of this law shall be punishable by a fine of 100,000 to 1,000,000 Albanian Leks;
- i) Failure to fulfill the obligation set forth in Article 53 of this law shall be punishable by a fine of 50,000 to 1,000,000 Albanian Leks;
- j) Failure to fulfill the obligation set forth in Article 56 of this law shall be punishable by a fine of 50,000 to 100,000 Albanian Leks;
- k) Failure to fulfill the obligation set forth in Article 63 of this law shall be punishable by a fine of 50,000 to 1,000,000 Albanian Leks;
- l) Persons who attempt to influence the decision of the Public Procurement Commission, contrary to Article 19.7 of this law, shall be punishable by fine of 50 000 to 100 000 Albanian Leks.

2. Paragraph 1/1 with the content hereunder described shall be added after Paragraph 1.

“1/1. The fine shall be imposed in proportion to the estimated value of the contract and under the descriptions of the public procurement rules”.

3. Paragraph 3 shall be amended as follows:

“3. Interested persons may appeal to the competent court against the decision of the Public Procurement Agency”.

4. Paragraph 4 with the content as hereunder provided shall be added after Paragraph 3:

“4. The contracting authority shall be responsible for the collection of fines as imposed under Paragraph 1 of this article”.

Article 23

Article 73 “shall be amended as follows:

“Article 73

- 1. The head of the contracting authority shall be liable when the contracting authority refuses to cooperate with the Public Procurement Commission and Public Procurement Agency and these institutions shall impose a fine of 50, 000 to 1, 000, 000 Albanian Leks for this refusal”.
- 2. The fine shall be imposed in proportion to the estimated value of the contract and under the descriptions of the public procurement rules
- 3. Interested persons may appeal to the competent court against the penalty as imposed under Paragraph 1 of this Article.

Article 24

This law shall enter into force 15 days after its publication in the Official Journal.

SPEAKER
Ilir META

Adopted on 24 December 2014.

VENDIM
Nr. 852, datë 7.12.2016

**PËR KRIJIMIN DHE MËNYRËN E ORGANIZIMIT E TË FUNKSIONIMIT TË
AGJENCISË PËR EFIÇENCËN E ENERGJISË**

Në mbështetje të nenit 100 të Kushtetutës, të nenit 6, të ligjit nr.90/2012, “Për organizimin dhe funksionimin e administratës shtetërore”, dhe të nenit 25, të ligjit nr.124/2015, “Për efiçencën e energjisë”, me propozimin e ministrit të Energjisë dhe Industrisë, Këshilli i Ministrave

VENDOSI:

I. KRIJIMI I AGJENCISË PËR EFIÇENCËN E ENERGJISË

1. Agjencia për Efiçencën e Energjisë (AEE) është person juridik publik, buxhetor, në varësi të ministrit përgjegjës për energjinë (Ministri), me seli në Tiranë.

2. AEE-ja është përgjegjëse për zbatimin e politikave dhe nxitjen e masave për efiçencën e energjisë.

II. ORGANIZIMI DHE FUNKSIONIMI I AEE-së

1. AEE-ja ka statusin e drejtorisë së përgjithshme dhe organizohet në nivel qendror.

2. AEE-ja drejtohet nga drejtori i Përgjithshëm, i cili organizon dhe drejton të gjithë veprimtarinë e kësaj agjencie dhe përgjigjet para ministrit.

3. AEE-ja financohet nga buxheti i shtetit dhe nga burime të tjera të ligjshme. AEE-ja administron të ardhurat nga buxheti i shtetit dhe ato të siguruara nga donacionet dhe shërbimet ndaj palëve të tjera, sipas legjislacionit përkatës në fuqi.

4. Rregullorja për metodat e brendshme të punës dhe për sjelljen e personelit të AEE-së miratohet nga ministri, me propozimin e drejtorit të Përgjithshëm të kësaj agjencie.

5. Struktura dhe organika e punonjësve të AEE-së miratohet me urdhër të Kryeministrit, me propozimin e ministrit.

6. Marrëdhëniet e punës së drejtorit të Përgjithshëm dhe nëpunësve të AEE-së rregullohen në bazë të legjislacionit për nëpunësin civil. Marrëdhëniet e punës së punonjësve administrativë rregullohen në bazë të dispozitave të Kodit të Punës.

III. PËRGJEGJËSITË DHE DETYRAT E AEE-së

1. AEE-ja ushtron juridiksionin dhe veprimtarinë e saj në të gjithë territorin e Republikës së Shqipërisë, nëpërmjet zyrës së saj qendrore në Tiranë.

2. AEE-ja ka këto detyra dhe përgjegjësi:

a) Të përgatisë, të zbatojë dhe të monitorojë politikën dhe programet për përdorimin efiçent të energjisë në sektorët rezidencialë të shërbimeve, të industrisë, të transportit dhe të bujqësisë;

b) Të përgatisë dhe të monitorojë Planin Kombëtar të Veprimit për Efiçencën e Energjisë;

c) T’i paraqesë, çdo vit, ministrit një raport të hollësishëm lidhur me zbatimin e Planit Kombëtar të Veprimit për Efiçencën e Energjisë;

ç) Të bashkëpunojë me autoritetet qendrore dhe vendore, shoqëritë që operojnë në objektet industriale dhe organizatat e ndryshme jofitimprurëse për krijimin dhe përditësimin e bazës së nevojshme të të dhënave të energjisë, përfshirë llogaritjen e treguesve të efiçencës së energjisë, si dhe për zbatimin e masave për nxitjen e efiçencës së energjisë;

d) Të përgatisë dhe t'i propozojë ministrit aktet e nevojshme nënligjore për nxitjen e efijencës së energjisë, siç parashikohet në ligjin për efijencën e energjisë dhe në ligjin për performancën e energjisë në ndërtesa;

dh) Të përgatisë standardet, normat dhe rregulloret teknike, me qëllim rritjen e efijencës së energjisë së pajisjeve, aparaturave dhe makinerive që përdoren për prodhimin, transportin, shpërndarjen dhe konsumin e energjisë në sektorët rezidencialë të shërbimeve, të industrisë, të transportit e të bujqësisë;

e) Të vlerësojë teknikisht projektet e investimeve në fushën e efijencës së energjisë, të paraqitura pranë Fondit të Eficencës nga subjektet e interesuara;

ë) Të lidhë marrëveshje vullnetare, sipas përcaktimeve të pikës 3, të nenit 12, të ligjit nr.124/2015, "Për efijencën e energjisë";

f) T'i propozojë Fondit dhënie e mbështetjes financiare për projektet që aplikojnë për financime nga buxheti i shtetit dhe burime të tjera të brendshme ose të jashtme për marrjen e masave për efijencën e energjisë, sipas parashikimeve të pikës 3, të nenit 12, të ligjit nr.124/2015, "Për efijencën e energjisë";

g) Të përgatisë kontrata standarde për shërbime energjetike që financohen nga Fondi, të cilat miratohen nga ministri, dhe t'i publikojë ato në faqen e saj zyrtare;

gj) Të koordinojë programet e efijencës së energjisë, të financuara nga institucionet ose organizatat ndërkombëtare, mbështetur në marrëveshjet qeveritare;

h) Të bashkëpunojë me institucionet dhe organizatat vendase e ndërkombëtare, me qëllim përdorimin me efijencë të energjisë dhe reduktimin e ndikimit negativ në mjedis;

i) Të këshillojë autoritetet e administratës publike vendore, administratorët e ndërtesave publike dhe atyre me destinacion banimi për përgatitjen dhe zbatimin e projekteve të efijencës së energjisë;

j) Të bashkëpunojë me organet akredituese për marrjen e informacionit për rezultatet e testeve dhe të matjeve, për përmbushjen e standardeve kombëtare të efijencës së energjisë;

k) Të zhvillojë dhe të koordinojë programet e trajnimit;

l) Të këshillojë konsumatorët fundorë për programet e efijencës së energjisë, të ndërmarra prej tyre;

ll) Të mbështesë dhe të këshillojë kryerjen e fushatave të ndërgjegjësimit publik dhe veprimtarive të tjera edukative, lidhur me nxitjen e efijencës dhe kursimit të energjisë;

m) Të verifikojë, në rast se e çmon të nevojshme, saktësinë e të dhënave të raporteve të hartuara nga një auditues energjetik;

n) Të mbikëqyrë dhe të verifikojë, në rast se e çmon të nevojshme ose në rast se identifikohen parregullsi, saktësinë e të dhënave të raporteve të hartuara nga një auditues energjetik;

nj) Të mbledhë dhe të administrojë të dhëna të monitorimit;

o) Të mbajë dhe të përditësojë bazën e të dhënave me regjistrin e audituesve të energjisë, të kompanive të shërbimit të energjisë, kopje të certifikatave të energjisë, të raporteve të auditimit, të raporteve të verifikimit, bilance të konsumit të energjisë të ardhura nga deklarimi i konsumatorëve të mëdhenj;

p) Të kryejë aktivitete të tjera me interes publik, në bazë të dispozitave ligjore dhe të akteve të tjera ligjore në fuqi;

q) Të vendosë masa administrative, sipas ligjit për efijencën e energjisë dhe ligjit për performancën e energjisë në ndërtesa;

r) Të lajmërojë organet shtetërore kompetente, në rastet kur vërehen shkelje administrative, veprime apo mosveprime në kundërshtim me ligjin, duke u propozuar organeve përkatëse marrjen e masave disiplinore ndaj personave përgjegjës, si dhe përgatitjen e kallëzimit penal për veprat penale të vëna re gjatë ushtrimit të kontrollit dhe paraqitjen e tyre pranë organeve përgjegjëse, sipas legjislacionit në fuqi;

rr) Çdo detyrë tjetër të përcaktuar nga legjislacioni në fuqi.

IV. STEMA DHE VULA ZYRTARE E AEEsë

1. AEE-ja ka stemën, logon dhe vulën e vet zyrtare, të cilat miratohen me urdhër nga titullari. Stema përbëhet nga Stema e Republikës së Shqipërisë me shënimet: “Republika e Shqipërisë, Ministria e Energjisë dhe Industrisë, Agjencia për Eficiencën e Energjisë”, në përputhje me përcaktimet e vendimit nr.474, datë 10.7.2003, të Këshillit të Ministrave, “Për mënyrën e përdorimit të Stemës së Republikës si dhe raportin e përmasave të saj”.

2. Vula zyrtare e AEE-së ka formën dhe elementet e përcaktuara në pikën 2, të vendimit nr.390, datë 6.8.1993, të Këshillit të Ministrave, “Për rregullat e prodhimit, administrimit, kontrollit dhe ruajtjes së vulave zyrtare”, të ndryshuar. Vula e AEE-së prodhohet, administrohet dhe ruhet në përputhje me legjislacionin në fuqi.

V. DISPOZITA TË FUNDIT

1. Ngarkohet ministri që të marrë masa për sistemimin e AEE-së në mjedise të përshtatshme pune si dhe për financimin me fonde buxhetore të AEE-së për vitin buxhetor 2016.

2. Efektet financiare, që rrjedhin nga zbatimi i këtij vendimi, të përballohen nga buxheti i shtetit.

3. Ngarkohen Ministria e Energjisë dhe Industrisë dhe AEE-ja për zbatimin e këtij vendimi.

Ky vendim hyn në fuqi pas botimit në Fletoren Zyrtare.

KRYEMINISTRI
Edi Rama

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 2(d), 24, 100 (ii) thereof,

Whereas the Ministerial Council in December 2007 established a Task Force which, among other tasks, was requested to identify the pieces of EC legislation in the field of energy efficiency suitable and appropriate to be implemented in the Contracting Parties to the Energy Community,

Whereas this Task Force subsequently identified three pieces of legislation, namely Directive 2006/32/EC on energy end-use efficiency and energy services, Directive 2002/91/EC on the energy performance of buildings and Directive 92/75/EEC and the implementing Directives on the indication by labeling and standard product information of the consumption of energy and other resources by household appliances,

Whereas the Ministerial Council, at its meeting of 26 June 2009 requested the Secretariat to prepare the relevant decisions for the introduction in the framework of the Treaty of the above-mentioned Directives,

Whereas the Permanent High Level Group, at its meeting on 24 September 2009, elaborated and proposed to adopt the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. Each Contracting Party shall implement Directive 2006/32/EC of the European Parliament and of the Council on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC ("Directive 2006/32/EC").
2. For the purpose of implementing Directive 2006/32/EC within the institutional framework of the Treaty,
 - a. the term "Member States" shall read "Contracting Parties" throughout Directive 2006/32/EC;
 - b. the term "Commission" in Article 4(2) subparagraph 2, Article 5(1) subparagraph 3, Article 7(3), Article 14(1), (2) subparagraph 1 and (5) subparagraph 1, Article 18(1) subparagraph 1 and (2) shall read "Secretariat";
 - c. the term "in accordance with the procedure referred to in Article 16(2)" in Article 14(4) shall read "by the Secretariat";

- d. the term “the European Parliament and to the Council” in Article 14(5) subparagraph 3 shall read “the Ministerial Council”;
 - e. the term “and/or the Commission” in Article 14(5) subparagraph 2 shall not be applicable.
3. For the purpose of implementing Directive 2006/32/EC by the Contracting Parties to the Treaty the deadlines set in Article 18(1) subparagraph 1 of Directive 2006/32/EC shall be “31 December 2011” instead of “17 May 2008” and “31 December 2009” instead of “17 May 2006”. The other deadlines set by Directive 2006/32/EC shall be adapted as follows:
- a. in Article 14(1): “30 June 2010”;
 - b. in Article 14(2) subparagraph 1: “30 June 2010” (first indent), “30 June 2013” (second indent), “30 June 2016” (third indent);
 - c. in Article 14(4): “1 January 2011” (first indent), “1 January 2014” (second indent), “1 January 2017” (third indent);
 - d. in Article 14(5) subparagraph 1: “1 January 2011” (first indent), “1 January 2014” (second indent), “1 January 2017” (third indent).
4. Further to the specific monitoring duties conferred on it by Directive 2006/32/EC as adapted, the Secretariat shall monitor and review the implementation of Directive 2006/32/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012.

Article 2

1. Each Contracting Party shall implement Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings (“Directive 2002/91/EC”).
2. For the purpose of implementing Directive 2002/91/EC within the institutional framework of the Treaty,
 - a. the term “Member States” shall read “Contracting Parties” throughout Directive 2002/91/EC;
 - b. the term “Commission” in Article 8(b), Article 12, Article 15(1) subparagraph 1 and (2) shall read “Secretariat”.
3. For the purpose of implementing Directive 2002/91/EC by the Contracting Parties to the Treaty, the deadline set in Article 15(1) shall be 31 December 2011.
4. The Secretariat shall monitor and review the implementation of Directive 2002/91/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012.
5. In its meeting following the recast of Directive 2002/91/EC by the competent institutions of the European Community, the Ministerial Council shall take a Decision on its adoption within the Energy Community.

Article 3

1. Each Contracting Party shall implement Council Directive 92/75/EEC on the indication by labeling and standard product information of the consumption of energy and other resources by household appliances, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the

Council and Regulation (EC) No 1137/2008 of the European Parliament and of the Council ("Directive 92/75/EEC") as well as the following Implementing Directives:

- a. Commission Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric refrigerators, freezers and their combinations, as amended by Commission Directive 2003/66/EC ("Directive 94/2/EC");
 - b. Commission Directive 95/12/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household washing machines, as amended by Commission Directive 96/89/EC ("Directive 95/12/EC");
 - c. Commission Directive 95/13/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric tumble driers ("Directive 95/13/EC");
 - d. Commission Directive 96/60/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household combined washer-driers ("Directive 96/60/EC");
 - e. Commission Directive 97/17/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household dishwashers, as amended by Commission Directive 1999/9/EC ("Directive 97/17/EC");
 - f. Commission Directive 98/11/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household lamps ("Directive 98/11/EC");
 - g. Commission Directive 2002/31/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household air-conditioners, ("Directive 2002/31/EC");
 - h. Commission Directive 2002/40/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric ovens ("Directive 2002/40/EC");
2. For the purpose of implementing all Directives covered by paragraph 1 within the institutional framework of the Treaty,
- a. the term "Member States" shall read "Contracting Parties" throughout all Directives covered by paragraph 1;
 - b. the term "Commission" in Articles 11, 14(3) of Directive 92/75/EEC, in Article 4(2) of Directive 94/2/EC, Article 4(2) of Directive 95/12/EC, Article 4(2) of Directive 95/13/EC, Article 4(2) of Directive 96/60/EC, Article 4(2) of Directive 97/17/EC, Article 4(2) of Directive 98/11/EC, in Article 5(3) of Directive 2002/31/EC, and in Article 5(2) of Directive 2002/40/EC shall read "Secretariat";
 - c. the term "the European Parliament and to the Council" in Article 11 of Directive 92/75/EEC shall read "the Ministerial Council".
3. For the purpose of implementing all Directives covered by paragraph 1 by the Contracting Parties to the Treaty,
- a. Articles 14(1) subparagraphs 1 and 2 of Directive 92/75/EEC, Article 4(1) subparagraph 1 of Directive 94/2/EC, Article 4(1) subparagraph 1 of Directive 95/12/EC, Article 4(1) subparagraph 1 of Directive 95/13/EC, Article 4(1) subparagraph 1 of Directive 96/60/EC, Article 4(1) subparagraph 1 of Directive 97/17/EC, Article 4(1) subparagraph 1 of Directive 98/11/EC, Article 5(1) subparagraphs 1 and 2 of Directive 2002/31/EC, Article 5(1) subparagraphs 1 and 2 of Directive 2002/40/EC shall be replaced by the following: "The Contracting Parties shall implement this Directive by 31 December 2011."
 - b. The dates referred to in Article 4(1) subparagraph 2 of Directive 95/12/EC, Article 4(1) subparagraph 2 of Directive 95/13/EC, Article 4(1) subparagraph 2 of Directive 96/60/EC, Article 4(1) subparagraph 2 of Directive 97/17/EC, Article 4(1) subparagraph 2 of Directive 98/11/EC, Article 4 of Directive 2002/31/EC, and Article 4 of Directive 2002/40/EC shall be replaced by "30 June 2012";

4. Each Contracting Party shall prepare a label design based on the template annexed to the respective Implementing Directives and translated into the official languages. The label design shall be submitted to the Permanent High Level Group not later than 30 June 2010 for approval.

Article 4

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

Done in Zagreb, on 18 December 2009

For the Ministerial Council:



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Presidency