

THE APPROXIMATION OF THE ALBANIAN PROCUREMENT LEGISLATION WITH THE EU LEGISLATION

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ABSTRACT: *Public procurement is a process performed by the Contracting Authorities which select the Economic Operators through a public competition, to enter into public contracts for the provision of goods, services, or works, against payment from public funds. The area of public procurement is very important in the management and spending of public money because public procurement is the environment where public money is filtered to have the least possible misuse, and financial stability of state institutions so that they are more consistent in the functioning and development of professional activities. Therefore, in this context, the present paper will analyze the Albanian perspective on public procurement to comprehend its alignment with EU legislation. This paper is coherent with the integration process requirements imposed on Albania and will demonstrate the positive achievements reached and the long path ahead to become a member of the European Union family.*

KEYWORDS: *public procurement; legislation; Albania; EU procurement legislation.*

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1. INTRODUCTION

Public administration, given the plurality of public bodies (Snyder, 2000, p. 152), for the implementation of activities for which it is responsible and its function, with a certain frequency, usually use the legal instrument of procurement. The main purpose of the procurement contract is the fair, transparent and effective use of public funds, the acquisition of services necessary for the implementation of the purposes of public administration, which is not used to fulfill direct public interests but to ensure means for such purpose: consequently, it must be recognized as an instrument of an instrumental nature. (Dupee, 2000, pp. 334, 423) A discipline that must combine the fulfillment of the

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public interest in accordance with the principles of transparency, equal conditions, market access, effectiveness (OECD, 2007, p.11), and efficiency in respect of negotiating autonomy. (Piga & Treumer, 2013, p. 165)

“A public procurement, in the legal system of a State, is a contract of monetary interest entered into in writing between one or more economic operators and one or more contracting authorities whose object is the execution of works, the supply of products or provision of services in accordance with Directive 2004/18 / EC of 31 March 2004”.

Through public procurement is channeling the implementation of governance policies and most of the State Budget funds, estimated at hundreds of millions of euros annually.

It is in the interest of Albanian citizens and taxpayers that this use of funds be made by the rules updated by the EU Procurement Directives, to minimize the possibility of misuse or abuse of these funds, through violations and misinterpretation of procurement. Public procurement is the process of selection by contracting authorities, through public competition, of economic operators. Since the process is directly linked to public funds, it is conducted by certain rules enshrined in public procurement legislation, which aims at cost-effectiveness and value for money.

The area of public procurement is very important in the management and spending of public money because public procurement is the environment where public money is filtered to have the least possible misuse, and financial stability of state institutions so that they are more consistent in the functioning and development of professional activities. Public procurement legislation, which has its own principles, guarantees any contracting authority that the following principles must be respected to conduct a public procurement activity: transparency, competition, non-discrimination, and professionalism.

The basic rule in entering public procurement contracts is transparency, equal treatment, and competition, with a view to fair, transparent and effective use of public funds. Competition is not an end, but it is a means of achieving the goal of fair, transparent and effective use of public funds, as well as a means of rationalizing and moralizing administrative activity. This is because, since competition is mandatory, it imposes public procurement notice, reducing the chances of corruption and conflicts of interest. The legal obligation of competition also obliges the contracting authority to identify its needs and to compare the different solutions offered by economic operators, while the latter are urged to make every effort to deliver the highest quality at the best price.

2. PUBLIC PROCUREMENT IN ALBANIA

The history of public procurement in Albania, to the current law, is relatively short. Up to the 90's there was no market economy in Albania, as a result, the public procurement concept did not exist. The Decision of the Council of Ministers no. 400, dated November 17, 1990 “On the purchase and provision of services outside the state sector” can be considered as the first legal act that paved the way for the private-state relationship. (Licenji, 2015)

After this first transition phase and the evolution of the concept of private entrepreneurship and the free market, an evolution of the concept and of the legal framework regulating the public procurement system in Albania was required as well. DCM no. 191 of 22 March 1993 “On the system of public purchase and the activity of buying and of services realized by enterprises and institutions financed by the state

budget”, provided for situations and detailed rules for the purchase of goods and services, but the term “public procurement” had not been introduced yet. (Kashta, 2015, p. 68). In Albania, for the first time, Law no. 7971 of 26 July 1995 "On public procurement" was drafted and adopted. It was based on the legal model of procurement of goods, civil works, and services adopted from the UNCITRAL model law on public procurement (United Nations Commission on International Trade Law). This law created the first normative framework on which public procurement practices were based, and despite its shortcomings and ambiguities, it deserves credit for sanctioning several basic principles that would be reiterated, strengthened, and supplemented by evolving legislation.

The new procurement law, oriented towards EU legislation, has completely changed Albania's procurement system. On 20 November 2006, the Albanian Parliament approved Law no. 9643/2006 on Public Contracts and entered into force on 1 January 2007, thus repealing previous Law no. 7971/1995 and all secondary laws. Tender standards documents and guidelines are prepared based on this legislation. The new legal framework led to fundamental changes in the sector. Firstly, the new law provides for detailed and clear public procurement processes, from the announcement of procurement orders to the closing of the contract and several provisions on the execution of contracts. The new laws clearly define equal treatment, non-discrimination, transparency, money-savings, and the legal protection of the interests of economic operators. One of the most important changes to the new law is that it excludes direct procurement from the list of procedures under which public contracts must be awarded. Furthermore, the new law introduced the concept of "abnormally low tenders". All these questions, which have been for the first time envisaged in the new law, reflect the provisions of their respective laws.

Although the new legal framework marked an important step towards the alignment of public procurement with the EU *acquis*, the alignment at this stage was still partial.

In December 2007, the Parliament of Albania approved several amendments to Law no. 9643/2006 "On public procurement" as amended. The Law no. 9855 of December 26, 2007, presented the new regulations on the procurement of electricity and hydrocarbons. Law no. 10309 of 22 July 2010 and Law no 22/2012 introduced some changes, which were not significant in terms of approach to *acquis*. The first was the reformulated authority of the Public Procurement Office for administrative supervision and investigation, and the second was highly technical, removing the Board of Public Procurement from the Council of Ministers' dependency and placing it under the responsibility of the Prime Minister. By the end of 2011, the Law on Public Procurement was still considered partially aligned with the *Acquis* and in some aspects showed serious problems. In this context, Law no. 131/2012 presented the latest amendments to Law no. 9643/2006. (Bardhi, 2026, p.10). The Law no. 9643 had several amendments in year 2014.

The field of public procurement includes also procurements in the field of defense and security, which is regulated through bylaws adopted by DCMs or instructions issued by each institution, according to the respective field, without clear and unified rules. However, with the finalization of the law on procurement in the field of defense and security and its approval by the Assembly in April 2020, these types of procurement are regulated through this law, which is drafted in accordance with Directive 2009/81/EC on procurements in this field. (AIS, 2022)

3. THE APPROXIMATION OF THE PUBLIC PROCUREMENT LEGAL FRAMEWORK WITH EU DIRECTIVES

The main purpose of the creation of the European Union's Single Market (EU) has been and remains the guarantee of the free movement of goods, capital, services, and people between its member states. (Ehlers & Becker, 2007, p. 176) The award of public works contracts for the purchase of goods and services by various public authorities, both at the level of the EU institutions as well as the central, local, or independent institutions of its Member States, constitutes one of the fundamental issues of the EU the functioning of this EU Common Market.

Directive 2014/24 / EU of the European Parliament and of the Council of the EU of 26 February 2014 on "Public Procurement" represents one of the key directions of European Union legislation in the good management of public funds and of the "Acquis Communautaire", the entirety of the laws and regulations of the European Union. Albania is gradually installing the "Acquis Communautaire" through the approximation and adaptation of laws and regulations to the Albanian legislation, as a necessary precondition for the rapid integration of our country into the large European family.

The same Official Journal of the European Union with Directive 2014/24 / EU also published the new Directive 2014/23 / EU on "Concessionary Contracts" as part of a "legislative package" for reforming public procurement rules in the European Union. Prior to the adoption of this directive, the lack of clear EU-level rules on concession contracts created obstacles and legal uncertainty for the free provision of services, disrupting the functioning of the internal market. For this reason, the European Commission sought to create an appropriate, flexible, and balanced legal framework for the award of concessionary contracts, to provide economic operators, in particular small and medium-sized businesses, with effective and non-discriminatory access to European concession markets. (Sjåfjell & Wiesbrock, 2016. p. 139) Given today's very serious commitments by various EU member states to this coalition, Directive 2014/24 / EU represents not only the updating of Community rules in public procurement but together with the new Directive 2014/23 / EU also a direct contribution to transparency and the fight against corruption and financial fraud. Directive 2014/24 / EU is in full compliance with international rules and laws, facilitating participation in procurement processes for firms outside the European Union as well, maximizing competition transparency and safeguards for increase the integrity, where necessary, of the adaptation of national legislation to that of EU legislation.

An important aspect of this Directive is the focus on the fight against corruption. Practical manuals to avoid irregularities, fraud and manipulation of the procurement procedure have accompanied it. Given that public funds are being deployed to meet the needs and interests of the public, access to the audit purpose that ECA must do over important procurement procedures and complex and high-value contracts is considered very useful, which most significantly and directly affect the interests and portfolios of individuals (taxpayers). This practice is accompanied by a practical manual, which facilitates the audit procedure by ECA auditors and SAI auditors of member countries.

In Albania, a fundamental change in the public procurement framework was necessary, mainly for two reasons: (i) the legal framework for public procurement and the problems of its practical application, and (ii) Albania's commitments to integration into the European

Community (EU21). The signing of the Stabilisation and Association Agreement (ASA) by Albania meant an engagement and obligation to bring national legislation closer to European legislation. The process of European integration is regulated in the implementation instruments, as is the National Plan of European Integration. The document mainly deals with the process of harmonizing Albanian legislation with the *acquis*, which is an obligation derived from the SAA to monitor and improve the legislative and institutional framework. The document defines the priorities and their respective implementation time frames: short-term, medium-term and long-term. The process of approving public procurement legislation to the relevant EU directives and their respective time frame is reflected in this document. Given the commitment to public procurement in SAA, Albania drafted a law project in 2006 that approximated Directive 2004/18/EC on the coordination of public procurement procedures for goods and services. The new Public Procurement Act, which was aimed at European legislation, completely changed Albania's public procurement system. (Kashta, 2015, p.70)

Another amendment to the PPL was adopted at the end of 2014. The aim of the amendments and additions introduced by this law is to further enhance the efficiency and effectiveness of public procurement procedures, encourage both local and foreign economic operators to participate in public procurement procedures, and at the same time align more closely with the corresponding EU directives. The changes consist of rephrasing existing provisions and technical modifications of a more substantive nature to these provisions. One of the novelties of the public procurement law is the exclusion of employment contracts from the scope of this law. This provision is in line with Directive 2014/24/EU, which for the first time provides for such an exclusion. Another novelty is the removal of the mandatory requirement for bid security, thus bringing the law closer to the provisions of the Directive in this aspect, as the latter does not absolutely require a bid security requirement. (Bardhi, 2016 p.11)

Public procurement in Albania has made significant progress in the last decade. New contemporary methods have been applied, such as e-procurement in 2008, continuing in 2009 with the introduction of an electronic system of all procurements of more than € 3,000. The European Union and other international institutions as one of the greatest achievements since 1990 have considered this.

The legal framework on public procurement in Albania is largely aligned with the 2014 Directive on public procurement and procurement of utilities. Albania is also partially aligned with the EU *acquis* on defense and security procurement.

The Constitution and the PPL contain provisions on the right to legal remedy that are mostly in line with the Remedies Directive. The decisions of the Public Procurement Committee (PPC) can be challenged before the Administrative Court of Appeals (and Supreme Court for subsequent appeals). A regulation was adopted in 2022 that further clarified the rules on the invalidity of procurement contracts and the role of the PPC in this respect. (European Commission, 2023)

Public procurement reform will succeed when the process provides high-level political support, comprehensive training for procurers, modern and appropriate procurement legislation: both primary legislation and implementing legislation, information on the advantages of the new system, and cooperation between the public and private sectors. The latter enables mutual benefits, by better understanding each other's problems and needs.

The aim of the last changes to the public procurement legal framework to further approximate the EU directives. The new law "On Public Procurement" 2020 brings innovations in several areas, such as:

- Clarification of the scope of the law, specific exemptions, and mixed procurement contracts;
- Introduction for the first time of the concept of reserved contracts and contracts between entities within the public sector;
- Provision for preliminary and periodic releases of information, as tools to increase transparency, and enable economic operators to familiarize themselves with the data of a concrete planned procurement object well ahead of time;
- The law sets low and high monetary thresholds, where for all procedures above the high monetary threshold the provisions of the directive are maintained, providing for shorter deadlines for procedures below this threshold, i.e. for the national procedures;
- Facilitate the participation of economic operators in public procurement procedures, through the use of a summary self-declaration form, instead of some certificates issued by public authorities or third parties;
- Reduction of the minimum term of the period of exclusion of economic operators from the right to win public contracts, starting from 3 months.
- Provision of a waiting period, during which the contracting authority may not sign a contract, a period which starts from the announcement of the winner;
- Facilitation of procurement of social services and other special services, which are subject to a special, simplified procurement regime; - Increase the control role of the PPA in terms of verifying compliance with the law on procurement procedures, including canceled ones, and monitoring the implementation of contracts;
- Complaints of economic operators, both in the contracting authority and in the Public Procurement Commission, shortening the process of administrative review of the complaint deadlines;
- Introduction for the first time of the concept of modification of contracts, as well as cases of invalidity of contracts. (AIS, 2022)

In terms of developing an effective system for the prevention of corruption in public procurement, Albania should focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalization. Albania has laid a good foundation by significantly improving transparency through its comprehensive electronic procurement and e-appeals system and in terms of giving participants access to redress by developing its review system. (European Commission, 2023)

It is noted the lack of qualified staff and knowledge in the field of public procurement, as well as the lack of coordination of the four main pillars of the public procurement system. In many cases, the legal frameworks are complex and subject to individual interpretations, where space for abuse and corruption is allowed. Honesty and accuracy at all stages of public procurement is one of the core values that prevent any kind of corruption. This is one of the primary reasons the European Union has made public procurement a priority. Calling it a "corruption-generating system" that could turn into a "cancer" that delays economic-social development and "kills" free competition. These challenges become all and more difficult when we consider the fragility and the constant demographic, political, and economic changes in our country, which may have a direct impact on the performance of this system and may result in a failed government attempt

to build a flexible, sustainable, long-term, transparent, public-trusted system that encourages economic growth.

4. CONCLUSIONS

Public procurement is a very important part of the well-functioning of state system, organized based on some strict regulations concerning the management and investment of public funds. Albania is a country aiming for the process of integration into the European Union, and therefore its economic policies, especially those related to the management and organization of state funds, should be oriented towards EU schemes.

The implementation of governance policies is channeled through public procurement and most of the state budget funds, estimated at hundreds of millions of euros annually. It is in the interest of Albanian citizens and taxpayers that this use of funds be made by the updated rules of the EU Procurement Directives, to minimize the possibility of misuse or abuse of these funds, through violations and misinterpretation of procurement rules.

Public procurement, as a complex process of competition, the final act of which is to sign a contract for public purposes, carries with it the risk of being involved in corruptive affairs or conflicts of interest.

Public procurement issues should be the subject of a wide-ranging discussion involving academics, professionals, and practitioners on current challenges, reforms, and socio-economic and environmental benefits, through public procurement, in line with the experience of recent EU and ECA practices

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