

# ALBANIAN INSTITUTE of SCIENCE



**Object:** Opposure. Draft Law on Amendments to the Public Procurement Law  
**Author:** AIS organization/Open Data represented by its Director A. Brahaj  
**Directed to:** The Parliament and Parliamentary Commissions examining the Draft Law

**Date:** February 5, 2024

The organization Albanian Institute of Science/Open Data Albania has previously participated in the public consultation process, held by the Albanian Government, regarding the Draft Law "ON SOME ADDITIONS AND AMMENDMENTS TO LAW NO. 162/2020, "ON PUBLIC PROCUREMENT".

Given that this week (Monday, February 5 and onwards) this Law, now newly reformulated, will be examined in the Economy Committee, the Legal Affairs Committee, as well as the Integration Policy Committee, we find it appropriate to bring to the attention of the Parliament and request adjustments, before the Draft-Law is passed for voting in the Parliamentary Session concerning the following aspects:

## **Issue no. 1: Article 48/2 conflicts with SAA, more specifically with Article 74.**

The wording of this point is a classic formulation of a provision, that goes against the principles and definitions established by the "corruption proofing of legislation" analysis. ”.

### **“Article 48**

#### ***Transitional provisions***

1. ...

2. *Within a 3-year period from the entry into force of this law, the Council of Ministers may authorize state/public administration institutions at central level to negotiate and conclude international consultancy agreements within the scope of their competence, in areas of strategic interest, in terms of the application of artificial intelligence, cyber security, critical infrastructure and the fight against organized crime and corruption.*”

3. ... “

Our concern is that the transitional article may be applied arbitrarily during the use of negotiated contracts. This specific article added in the Draft Law allows the Contracting Authorities to avoid having to explain why they implemented the Negotiated Procedures. All this under the guise of "strategic interests", a notion that is difficult to define (given the law does not clearly address it).

The existence of Article 48, point 2, of the Draft Law invalidates all the positive definitions made in the previous amendments to the law "On public procurement".

There is no logical and legitimate reason for this formulation to stand. If in the future there is a need for consulting services - in any of the areas mentioned in point 2 of this article - the Albanian legislation provides an answer between:

- a) the law "On public procurement"; and/or
- b) law no. 36/2020 "On procurement in the field of defense and security"

We have in place much more detailed and procedurally correct legal definitions regarding all types of situations and circumstances the central authorities may find themselves, than those provided for by Article 48, point 2.

The latest formulation offers legal incentive to corruption activities in the fields of public procurement, apart for being in flagrant contradiction with all the preceding provisions of the law "On public procurement".

**Opposing argument:** We deem this amendment as not in line with the directive, as well as the spirit of Article 74 of the SAA. The law holds a potential risk of being applied as a Corruptive Law.

**Recommendation:** Point 2 of Article 48 of the Law "On Certain Additions and Amendments to the Law "On Public Procurement" be removed from the Draft Law.

### **Issue nr. 2: The accompanying Report has no information on financial costs**

This Draft Law predicts public works be carried out for the creation of an Integrated Electronic System and its implementation. In the accompanying Report, no financial costs have been foreseen for the system or other interventions foreseen on the Draft-Law. Likewise, there are no such provisions neither in the list of Public Investment Projects, not in the Medium-Term Budget Plan.

Conclusion. The Draft- Law cannot pass without proper calculations of its financial burden by the Council of Ministers.

**Recommendation.** The Parliament should return the Accompanying Report of the Draft Law to the PM's office in order for the latter to complete its Financial Costs, as foreseen in point 20 of the DCM N.584, dated 28.03.2003. Point 20 of the Decision of the Council of Ministers no. 584, dated 28.03.2003, "On the approval of the regulation of the Council of Ministers" lists as part of the accompanying Report, an assessment of budget revenues and expenditures for at least three years before the implementation of the legal act.

### **Concerning the above**

This Law should not pass into the Plenary Session on February 8, without being accompanied by a detailed Report from the PM's Office on the financial costs it bears and without carefully

examining possible issues, such as holding the potential to being a law with a corruptive risk and which is in conflict with the SAA.

We suggest that the Parliament, before the Final Review Session concerning this initiative takes place, request a Consultative Meeting with organizations that act as Business Associations, along with associations that work in the field of the Rule of Law, European Integration and Transparency.

**Respectfully,**  
**Aranita BRAHAJ**  
**AIS / Open Data Albania**