



### **POLICY BRIEF**

Elusive standards:
Governance and oversight
of security sector
procurement in Albania

# Elusive standards: Governance and oversight of security sector procurement in Albania

#### By Alban Dafa

Alban Dafa is a governance and security researcher at the Institute for Democracy and Mediation. He has previously served in the Albanian military in various capacities.

#### Introduction

Defence and security procurement in Albania has been traditionally unregulated. Excluded from the scope of the public procurement law, defence and security institutions have had substantial leeway to determine the type of procurement procedures for goods and services they wanted to implement. The Public Procurement Agency, the country's public procurement regulatory institution, has had no role in regulating defence and security procurement, whilst parliamentary oversight has been largely limited to the procurement of weapons' systems, the contracts of which require parliamentary approval.

In April 2020, the Albanian Assembly approved the Law on Defence and Security Procurement (LDSP), in an attempt to regulate defence and security procurement in line with European standards. The LDSP regulates the procurement of military and classified equipment, works, and other related services, as well as equipment that could be adapted for military purposes.

#### **Key points:**

- 1. Although the transposition of EU directives on defence and security procurement has contributed to the establishment of basic standards on transparency and accountability, governance and oversight of security sector procurement remain problematic.
- 2. The Albanian Assembly and the Supreme State Audit Institution lack the independence, technical resources, and expertise to effectively implement their oversight duties.
- 3. Governance of defence and security procurement suffers from ineffective inter-institutional coordination and accountability mechanisms.



At roughly the same time, as part of international efforts to prevent money laundering and terrorism financing, and again seeking to approximate Albanian law to EU legislation, the Law on Beneficial Owners' Registry (LBOR) and subsequent relevant sublegal acts were approved in June 2020.<sup>2</sup> The beneficial ownership legislation includes basic requirements for companies registered in Albania to provide information on their beneficial owners.

These new laws are important to ensure the procurement of reliable equipment and services from trusted providers. Although their adoption has set basic standards in the governance, security, and integrity of security sector procurement, the institutional governance and oversight structure remains largely the same. Furthermore, loopholes in the new legislation on defence and security procurement seem to offer a backdoor for security institutions to circumvent the new requirements and continue to exercise significant leeway in the conduct of procurement procedures.

This policy brief examines some of the key shortcomings in the oversight and governance of Albania's defence and security procurement system by discussing (i) the oversight exercised by the Albanian Assembly when reviewing the bill on defence and security procurement and the bill on beneficial owners' registry; (ii) the vetting of defence and security economic operators; and (iii) the challenges related to the internal accountability mechanisms of contracting authorities and the inter-institutional cooperation needed to ensure the integrity of the procurement system. The paper posits that to improve the governance and oversight of Albania's defence and security procurement system, it is fundamental that legal loopholes are effectively addressed, institutional accountability improved, and inter-institutional cooperation strengthened.

#### Ineffective parliamentary review of legislation

The Law on Defence and Security Procurement and the Law on the Beneficial Owners' Registry were approved only after opposition Members of Parliament (MPs) had resigned en masse. Their withdrawal had significantly undermined parliamentary debate and scrutiny of the bills proposed by the Council of Ministers. Consequently, the review of the bills on defence and security procurement and on the beneficial owners' registry received little scrutiny in the Committee on National Security and the Committee on Economy and Finance.

After little discussion, the Committee on National Security unanimously decided that the draft law on defence and security procurement be forwarded to the plenary session of the Assembly.<sup>3</sup> In the Committee hearing, there was only one point raised, pertaining to the oversight of classified procurement. One of the Committee members proposed that the Subcommittee on State Intelligence Service, which should have been established

- 1. The LDSP seeks to partially approximate Albanian law to EU Directive 2009/81/EC.
- 2. LBOR seeks to partially approximate Albanian law to EU Directive 2015/849/EC.
- 3. minutes of the hearing held on the LDSP can be accessed here <a href="http://parlament.al/ProjektLigje/">http://parlament.al/ProjektLigje/</a> Other related documentation regarding the law can be found here <a href="http://parlament.al/ProjektLigje/ProjektLigje/Details/51344">http://parlament.al/ProjektLigje/ProjektLigje/Details/51344</a>.



in accordance with the Law on the State Intelligence Service <sup>4</sup>, be established and tasked also with classified procurement oversight. The proposal was dismissed by the Committee chair, who maintained that this oversight issue could be addressed by requiring that the Supreme State Audit Institution (SSAI) – which typically reports to the Committee on Economy and Finance – report also to the Committee on National Security specifically on classified procurement. Despite this discussion, the Committee did not discuss concrete next steps, and the proposal has not been implemented.<sup>5</sup>

If the Assembly had intended to effectively implement the proposal, it would have needed to first discuss whether SSAI's institutional capacities were adequate for the task. According to SSAI, since 2021 its institutional capacities to audit central government institutions have been inadequate. SSAI maintains that it employs external experts to audit classified procurement. <sup>6</sup> External experts need to be certified by the National Security Authority (NSA), but neither SSAI nor the NSA have been able to cite specific cases when such experts had been certified to work for SSAI. <sup>7</sup>

Taking a slightly more critical stance, the Committee on Economy and Finance approved the bill on beneficial owners' registry with 11 votes in favour and 7 against. Nevertheless, the nature of the discussion on this draft law was similar to the one on defence and security procurement in the national security committee. It centred mainly on secondary issues such as the severity of sanctions on economic operators for not submitting the required information on beneficial ownership, the deadlines for submission of the required information by companies, and the administrative capacities of the National Business Centre (NBC) to process the information submitted.<sup>8</sup> Committee members asked no questions on the proposed processes to ensure the authenticity of the information submitted or on the institutional infrastructure established to ensure beneficial ownership transparency. Furthermore, no representatives from the competent authorities – the main institutions entrusted with ensuring the authenticity of the information – were invited to the hearing.

- 4. See Article 7, Law no. 8391, date 28.10.1998, 'On the State Intelligence Service', available at <a href="https://www.shish.gov.al/pages/kontakt/ligje.html">https://www.shish.gov.al/pages/kontakt/ligje.html</a>.
- 5. See for example the 2020 SSAI report, which is addressed to the speaker of the Assembly and chair of the Committee on Economy and Finance, but not to the chair of the Committee on National Security, available at <a href="https://www.parlament.al/Files/Kerkese/20210430111316shkresa%20dhe%20raporti%20KLSH%202020.pdf">https://www.parlament.al/Files/Kerkese/20210430111316shkresa%20dhe%20raporti%20KLSH%202020.pdf</a>.
- 6. Information provided by SSAI on 15 November 2021 through an FOI request.
- 7. Interview with the director of the Directorate of Industrial Security and Vetting at the National Security Authority, 24 November 2021.
- 8. The minutes of the hearing held on the Law on the Beneficial Owners' Registry can be accessed here <a href="http://parlament.al/Files/Procesverbale/20200916090335Komisioni%20i%20%20Ekonomise%20dt%2024.07.2020%20pj%201.pdf">http://parlament.al/Frocesverbale/20200916090335Komisioni%20i%20%20Ekonomise%20dt%2024.07.2020%20pj%201.pdf</a>-Additional documentation regarding the law can be found here <a href="http://parlament.al/ProjektLigje/ProjektLigjeDetails/51439">http://parlament.al/ProjektLigje/ProjektLigjeDetails/51439</a>.



The discussions on the two draft laws in the relevant parliamentary committees suggest that the members were not well informed neither on the content of the EU directives that the bills sought to partially transpose into Albanian legislation, nor on the defence and security procurement challenges and their implications for the nation's security. This could be partially due to the Assembly's lack of sufficient staff and expertise; <sup>9</sup> however, it is also a matter of institutional independence and accountability, since the parliamentary committees were not willing to review the content of the bill on defence and security procurement even after the President refused to sign it into law by returning it to the Assembly for further review. <sup>10</sup>

Instead of ensuring that these bills effectively addressed their intended objectives, the legislative review of the Assembly was rather procedural, thus failing to uphold the power and independence of the institution. Members of the two parliamentary committees displayed a clear unwillingness to change any substantial provisions to require greater transparency and accountability from defence and security institutions. By failing to critically examine the proposed legislation, the Assembly failed to ensure the establishment of a robust institutional governance architecture for security sector procurement.

#### **Law on Defence and Security Procurement**

Although the provisions of the LDSP generally follow those of the relevant EU directive, the law has some additional provisions – not found in the directive – that make it possible for defence and security institutions to circumvent the provisions designed to make procurement procedures more accountable and transparent. These 'loophole' provisions claim that certain military equipment and procurement procedures during emergency crises are exempt from the scope of the law. But the definitions for the military equipment and crises that fall outside the scope of the law are virtually the same as those that are subject to the law, thereby presenting a difficult challenge for the law's sound implementation and undermining transparency and accountability of defence and security procurement procedures.

#### Exclusion of certain 'military equipment'

The procurement of military and classified equipment and their parts and services is subject to the LDSP. Article 4, Point 23 of the law defines military equipment as 'parts designed specifically or adapted for military purposes and that are used as weapons, munition, war material, which are designed, developed, produced, assembled, or modified for military purposes, to include the technology and software related to those goods'. Simultaneously, Article 5, Point 1 (i) of the law features an exclusionary provision that essentially contradicts the scope of the law. The provision stipulates that 'contracts to purchase equipment/parts specifically designed or adapted for military purposes, as well

<sup>10.</sup> See Committee on Economy and Finance, Raport mbi Dekretin e Presidentit të Republikës nr. 11482 datë 08.5.2020 'Për kthimin e ligjit nr. 36/2020 'Për prokurimet në fushën e mbrojtjes dhe të sigurisë'' (Report on the Decree of the President of the Republic no. 11482, date 08.5.2020, 'On returning law no. 36/2020 ''On defence and security procurement'''), 11 June 2020, available at <a href="https://bit.ly/34D7MLl">https://bit.ly/34D7MLl</a>.



<sup>9.</sup> See Alban Dafa, 'Defence policy oversight: Challenges and needs of the Albanian Assembly', Institute for Democracy and Mediation, January 2021, available at <a href="https://idmalbania.org/defence-oversight-albanian-assembly-2021/">https://idmalbania.org/defence-oversight-albanian-assembly-2021/</a>.

as weapons, munitions, or war material for operational purposes, to include the technology and software related to those goods' are to be excluded from the scope of the LDSP.

The similarities between the exclusionary provision and the definition of 'military equipment' provide a loophole for contracting authorities to circumvent the legal requirements for publishing procurement calls. They also provide a legal argument for the pursuit of a restricted – rather than open – procurement procedure for military equipment. Contracting authorities can circumvent these requirements by using Decision of Council of Ministers (DCM) 1085, which provides a framework for the procurement of military equipment/parts and their technology and software outside the scope of the LDSP. <sup>11</sup>

Through the provisions of DCM 1085, contracting authorities can use two procurement procedures that undermine transparency and accountability: the competitive procedure and the direct negotiation procedure. When the contracting authority uses a competitive procurement procedure, it may restrict the number and type of contractors eligible to bid, and – crucially – it is not required to publish the procurement call, which would otherwise be required if the procurement procedure were to be governed by the LDSP instead of the DCM. Similarly, the use of the direct negotiation procedure allows contracting authorities to directly enter negotiations with a contractor of their choosing without the need to publish a procurement call or to provide evidence that no suitable offer has been received after having exhausted other procurement procedures that require the publication of the procurement call. Conversely, if the contracting authority were to use the negotiating procedure without prior notification of the procurement call in accordance with the LDSP, it would be required to justify its use by arguing that no suitable offer had been received after having published calls for the restricted procurement procedure, negotiation procedure with prior notification of the procurement call, or competitive dialogue.

While this DCM provides contracting authorities with the legal means to arbitrarily choose their procurement procedure, the lack of distinction between the procurement of military equipment/parts – and their technology and software – through the LDSP and through the DCM enable contracting authorities to arbitrarily decide whether or not to procure military goods and services through a transparent procedure. The Ministry of Defence (MoD) has confirmed that it chooses which provisions to apply on an ad hoc basis. According to the MoD, the Special Qualification Committee – a decision-making body within the MoD – determines whether requests for contracts submitted by relevant military structures qualify under the provisions of the DCM. <sup>12</sup>



<sup>11.</sup> Decision of the Council of Ministers no. 1085, date 24.12.2020, 'On establishing the rules for contracts to purchase equipment specifically designed or adapted for military purposes, as well as weapons, munitions, or other war material for operational purposes, including the technology and software related to those goods, and the organisation and functioning of the Special Qualification Committee for such contracts.

<sup>12.</sup> Information provided by the Ministry of Defence on 9 November 2020 through an FOI request.

#### Exclusion of crises and extreme situations

The second exclusionary provision places procurement under emergency conditions outside of the scope of the LDSP. Article 5, Point 1 (h) excludes 'all procurement of works, goods and services in cases of crises and/or extreme national security situations' from the scope of the law. The inclusion of this provision is rather peculiar, since the LDSP includes specific provisions to deal with crises and other emergency situations.

Article 28 of the LDSP stipulates that the contracting authority may initiate the negotiation procedure without prior notification of the contract if the deadlines foreseen in other procurement procedures – the restricted procedure or the negotiation procedure with prior notification of the contract – cannot be met due to a crisis. The same procedure applies when procurement deadlines cannot be met due to an urgent (extreme) need caused by events unforeseen by the contracting authority.

The MoD claims that the exclusionary provision refers to 'crises or extreme situations that may harm national security, independence, territorial integrity, and the constitutional order', whilst other emergency situations – without defining them – are subject to Article 28. <sup>13</sup> This claim, however, does not correspond to the legal definition of 'crisis'. The LDSP defines 'crisis' as a 'security situation in a defined or undefined area that cannot be contained with regular measures and resources, threatens the fundamental social values for military, economic, social, or other reasons, and which may cross state borders. Armed conflicts and wars must be considered crises for the purposes of this law'.

According to this definition, unforeseen situations that cause both an urgent (extreme) need and those that threaten national security are considered crises. It is hard to distinguish between the crises and extreme situations in the exclusionary provision and those in Article 28, and thus, it is unclear when the MoD or any other contracting authority might decide not to follow the legal provisions for the procurement of goods and services subject to the LDSP during emergencies. Since there are no specific bylaws to provide a framework for the procurement of military and classified equipment and services during emergency situations, it is also unclear how procurement procedures in such cases are governed.

#### Broadening the scope of classified procurement

A further concern is the misuse of the provisions of the LDSP that expand the scope of classified procurement procedures by including goods and services, which would otherwise undergo standard procedures. This is done through Article 12, which enables contracting authorities responsible for the procurement of goods and services related to drinking water infrastructure, energy, postal services, transportation, and other sectors to use classified procurement. Any contracting authority may initiate a classified procurement procedure as long as they argue that the goods or services have defence, public safety, or – broadly – national security implications.

<sup>14.</sup> Aside from these four sectors, the LDSP does not specifically mention any others, but includes 'etc.' after 'transportation'.



<sup>13.</sup> Information provided by the Ministry of Defence on 9 November 2020 through an FOI request.

Although procurement of goods and services in sectors other than defence and security may indeed have national security implications – particularly energy and telecommunications – the law does not specify the conditions under which contracting authorities responsible for those sectors may conduct classified procurement tenders. During 2018, for example, the Directorate of Government Services, which is responsible for the administration of government residences used for official receptions, including the catering services during such functions, used almost the same number of classified procurement procedures as the State Intelligence Service. <sup>15</sup> While the exclusionary provisions suggest an attempt to prevent defence and security procurement accountability, the expansion of the scope of classified procurement procedures through Article 12 suggests an attempt to restrict information on the procurement of other goods and services, which would otherwise be subject to standard procurement procedures. Instead of establishing a defence and security procurement regime according to European standards, these provisions present significant corruption risks as they enable contracting authorities to evade public scrutiny and thus weaken institutional accountability.

## Governance challenges of defence and security procurement

The new defence and security procurement legislation has established some basic standards and processes to enable inter-institutional coordination and accountability mechanisms. Nevertheless, the contracting authorities and the institutions involved in the vetting of defence and security contractors have not established standards and processes that would enable a smooth flow of information across institutions. <sup>16</sup> These institutions exchange information on a case-by-case basis, and based on requests. The inadequacy of this type of inter-institutional cooperation is best illustrated by the lack of a system to vet and track the performance of contractors by integrating the information that ought to be provided by the competent authorities.

#### Vetting and tracking of defence and security contractors

Due to the confidential nature of their work, defence and security contractors must be properly vetted to prevent the potential misuse of classified information, collusion with an adversarial entity seeking to undermine national security, or financial schemes designed to unfairly profit from government contracts. Standing legislation includes provisions to assess the contractor's ability to secure classified information, its financial stability, performance and experience, and ownership structure.

<sup>16.</sup> The competent authorities are tasked with verifying the information submitted by companies registered and operating in Albania. These include the State Intelligence Service, the Service for Internal Affairs and Complaints, the Agency for Defence Security and Intelligence, the State Police, the Prosecutor General, the Financial Intelligence Unit, the Bank of Albania, the General Directorate of Taxation, and the General Directorate of Customs.



<sup>15.</sup> See Decision of Council of Ministers no. 34, date 7.1.1999, 'On the Directorate of Government Service and the treatment of high-level personalities'. For a breakdown of classified procurement tenders by institution in 2018, see Gjergj Erebara, 'Qeveria kontraktoi miliona euro me kontrata sekrete' ('The government spent millions of euros through secret contracts'), Reporter.al, 27 May 2019, available at <a href="https://www.reporter.al/qeveria-kontraktoi-miliona-euro-shpenzime-me-kontrata-sekrete/">https://www.reporter.al/qeveria-kontraktoi-miliona-euro-shpenzime-me-kontrata-sekrete/</a>.

To effectively assess the trustworthiness of contractors, inter-institutional coordination and information exchange are paramount. The legislation on defence and security procurement tasks the NSA with vetting defence and security contractors. The NSA, however, collects information from security vetting institutions (see Figure 1). The NSA certifies both the contractor – by issuing the Industrial Security Certificate (ISC) – and the employees responsible for handling classified information – by issuing the Personal Security Certificate.



Fig. 1. Institutional overlap between security vetting and beneficial ownership transparency

To issue an ISC, which is needed to bid for defence and security contracts, the NSA needs to ensure that the contractor is financially stable and has no outstanding tax liabilities, has not been excluded from defence and security procurement procedures in the last three years, and that owners and managers have not been convicted and are not under investigation. Contractors are also required to have at least 51 per cent of their company stock held by Albanian citizens and no more than 5 per cent held by foreign citizens of a country that is not a member of NATO or the EU, or of a country with which Albania does not have a security agreement.

The NSA verifies the documentation submitted by the contractor, inspects the contractor's main offices to ensure that appropriate technical and physical conditions are in place to guarantee the security of classified information, and decides whether or not to issue the ISC. The ISC is issued for five years. After the NSA issues the certificate, it does not further verify whether the requirements with regards to the contractor's financial stability and ownership structure are still being met. It does, however, conduct inspections to confirm that requirements to ensure the security of classified information are being met throughout the implementation of the contract.

<sup>17.</sup> See for example, United States Government Accountability Office, Department of Defence: Ongoing DOD Fraud Risk Assessment Efforts Should Include Contractor Ownership, November 2019.



If there are changes in the financial stability, ownership structure, or legal status of the contractor that may warrant a suspension or revocation of the ISC, the NSA must be alerted by the relevant authorities that are primarily responsible for the verification of those requirements. But the contracting authorities and other institutions responsible for national security and financial governance – upon which the NSA relies for updated information to vet contractors – maintain that they have no role in the vetting and tracking of contractors to mitigate national security and financial risks.<sup>17</sup> They delegate this responsibility exclusively to the NSA, despite the NSA's dependence on the information provided by them. This suggests that there is little proactive cooperation between contracting authorities, the Public Procurement Agency, and the competent authorities responsible for security vetting to ensure that contractors bidding for defence and security contracts are trustworthy and financially stable.

The lack of cooperation to track defence and security contractors is rather worrisome. Article 13 of the LDSP empowers the contracting authorities to ban contractors from bidding if they have provided fraudulent information, failed to meet contractual obligations in previous contracts, or undermined national security. Similarly, the Public Procurement Agency may provide information regarding the performance of the contractor, since it is obligated to verify whether defence and security contracts are implemented in accordance with relevant legal and contractual provisions in accordance with Article 14 of the LDSP. The Agency, however, is yet to have a cadre of officials with the required security clearance to examine classified procurement contracts. <sup>18</sup>

#### Beneficial ownership transparency

An important – yet rather neglected – part of the vetting of contractors is their ownership structure. Transparency of the contractor's ownership structure is important to protect national security by ensuring that classified information is not shared with an untrustworthy entity and that the Albanian taxpayer is not financially exploited through subcontracting and ownership schemes that are designed to artificially inflate the price of the goods or services provided. Albania has established a beneficial ownership registry in accordance with the Law on Beneficial Owners' Registry. The law, however, does not have adequate provisions to ensure beneficial ownership transparency.

Companies registered in Albania are required to provide first/last name, personal identity number, date/place of birth, nationality, and current address of beneficial owners. If the reporting entities prove through supporting documentation that the beneficial owner information could not be found, DCM 1088 <sup>19</sup> allows them to provide only the information of the individual who exercises control over the decision-making and/or executive bodies. This provision effectively absolves reporting entities from disclosing information on trust companies. This means that the beneficial owners of a trust company that may own stock in a defence and security contractor registered in Albania are well hidden.

18. Information provided by the Public Procurement Agency on 3 November 2021 through an FOI request.

19. Decision of Council of Ministers no. 1088 (2020), Section III, Point 1 (d), date 24.12.2020.



The disclosure of information on the beneficial owners of a trust is made even more difficult by the lack of specific provisions on trusts in the law, and the lack of a clear mandate for competent authorities to further investigate the information provided by companies and issue fines when fraudulent information is provided. While the National Business Centre is responsible for managing the beneficial owners' registry and ensuring that companies file the information and supporting documentation in the required format and within legal deadlines, the competent authorities responsible for ensuring beneficial ownership transparency (see Figure 1) have a mandate to merely verify whether the information submitted by companies matches their records, and to notify the NBC when they do not. Their verification is rather formal and is not designed to investigate and verify the identity of the beneficial owners of a shell company that is operating in Albania or has an ownership stake in a company registered in Albania. Similarly, the NBC may impose fines if companies fail to provide the required information within the legal deadline, but this is merely a procedural fine and thus has no tangible impact on beneficial ownership transparency.

The legal mandate given to the competent authorities is static and passive. It assumes that the information and data in possession of the competent authorities are accurate and do not warrant further investigation. Consequently, the issue of beneficial ownership transparency is reduced to a mere administrative process of cross-referencing the information and data provided by companies with those in the possession of the competent authorities.

Despite the adoption of two laws that seek to approximate EU standards on defence and security procurement and on beneficial ownership transparency, Albania's governance of security sector procurement continues to suffer from an inadequate institutional infrastructure and accountability mechanisms. The current institutional infrastructure is not conducive to a smooth exchange of information and does not seem adequate to meet the national security and financial challenges posed by increasingly interconnected and complex company ownership structures. Accurate information, inter-institutional coordination, and effective policies are critical to ensure beneficial ownership transparency.



#### **Conclusion and recommendations**

Albania's defence and security procurement governance requires greater institutional accountability, inter-institutional coordination, and oversight. The objective of improving the efficiency of defence and security procurement through the approximation of EU directives has not been fully pursued. Although important parts of EU directives have been transposed into Albanian defence and security procurement legislation, the new legislation has been simultaneously undermined through provisions that contradict the scope of both laws.

The transposition of EU legal standards is effectively reduced to a box-ticking exercise. Public authorities could claim that the legislation on defence and security procurement is in line with EU standards, but such claim would be rather hollow, as the institutional governance and oversight infrastructure have not been adapted to meet the new standards and procedures. This inevitably means that the new legal framework only superficially improves defence and security procurement standards, as institutional practices continue to undermine transparency and accountability despite the new laws.

Institutional stakeholders that are part of the security sector should consider the following recommendations regarding procurement:

Defence and security procurement governance and oversight

- 1. Establish a central government database that can be used as a repository of information to vet and measure the performance of defence and security contractors. In addition to the contracting authorities, the database should be accessible to relevant regulatory, law enforcement, and oversight institutions. This way, all stakeholders involved can better assess potential candidates for tenders.
- 2. Design a standard operating procedure that details and clarifies the institutional responsibilities of the NSA and the contracting authorities concerning the vetting and performance evaluation of defence and security contractors. Such a procedure would improve institutional accountability, inter-institutional coordination, and further exchange of information.
- 3. To improve defence and security procurement oversight, relations between the Assembly's Committee on National Security and SSAI should be strengthened, whereby the former should task the latter with systematically auditing defence and security procurement. SSAI audits should not focus merely on compliance, but also on performance and governance.
- 4. To be able to effectively audit defence and security procurement, SSAI should request that the Assembly arrange more funding to augment and strengthen its personnel and technical capacities.



#### Defence and security procurement legislation

- 5. The Assembly should remove the exclusionary provisions from the Law on Defence and Security Procurement, since they could be used to circumvent transparency and oversight of defence and security procurement.
- 6. The Assembly should amend the LDSP to clearly determine the cases in which its provisions can be used by contracting authorities other than defence and security institutions.

#### Legislation on beneficial ownership

- 7. The Law on the Beneficial Owners' Registry should include a provision for the disclosure of beneficial ownership information on trusts, so that the ownership structure of companies registered in offshore jurisdictions becomes more transparent.
- 8. The Law on the Beneficial Owners' Registry should be amended to empower competent authorities to investigate the information and documentation filed by reporting entities, rather than merely compare such data with their files to identify inconsistencies.
- 9. The Law on the Beneficial Owners' Registry should include provisions for fines in case of submission of fraudulent information by reporting entities to mitigate fraud and to incentivise companies to be fully transparent.

These recommendations could be used to begin a comprehensive review of legislation on defence and security procurement, current institutional practices and procedures, and oversight capacities. The purpose of such process should be to establish substantive governance and oversight. Defence and security contracting authorities, as well as regulatory and oversight bodies, should appreciate the need to further improve the governance and oversight of security sector procurement rather than assume that reform needs have been addressed through the legal approximation to relevant EU directives. As the effects of the newly-adopted legislation on defence and security procurement are becoming evident, Albanian institutional stakeholders should have sufficient data to start a comprehensive review process and correct its shortcomings.





#### **CESS**

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The DECOS project seeks to empower democratic institutions and civil society actors in their function of oversight of security. It does so by increasing capacities, enhancing cooperation, and fostering a culture of oversight of the security sectors of Albania, Kosovo, and North Macedonia.

In the DECOS project CESS works with:

- The Albanian Institute for Political Studies
- The Institute for Democracy and Mediation, Albania
- The Kosovar Institute for Policy Research and Development
- The Institute for Democracy 'Societas Civilis', North Macedonia



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