

Rule of Law or Rule of Deals? Public Procurement as a Measure of Democratic Consolidation in Albania

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Abstract

The article examines whether Albania's EU-aligned public procurement framework reform, culminating in Law No. 162/2020 "On Public Procurement" and DCM No. 285/2021 "On Public Procurement Rules" represent genuine democratic consolidation or mainly symbolic Europeanization. By analysing the gap between legal alignment and real-world practice, the study determines whether the procurement framework enhances transparency, accountability and rule-of-law governance. The article contributes to scholarly debate on how institutional reforms in post-communist states shape democratic trajectories, particularly in contexts where formal legal compliance coexists with entrenched informal networks and discretionary government practices. A qualitative, interpretive research design is applied through doctrinal analysis of the public procurement framework, policy and performance analysis based on reports from national oversight bodies and international institutions. Legal developments are further correlated with governance

and corruption indicators in order to evaluate the broader impact on democratic governance. The findings indicate that Albania's procurement framework is largely aligned with the 2014 EU directives and is supported by comprehensive secondary rules and an electronic procurement and e-appeals system (European Commission , 2023). Nevertheless, implementation remains uneven. Critical elements of functional alignment, particularly the interoperability with European platforms and other national platforms remain underdeveloped. The study relies on secondary data and official statistics. It does not include original econometric testing or interviews with procurement officials and economic operators. Mixed-methods research could further refine the causal link between procurement practice and democratic consolidation. The article offers concrete recommendations for reducing the implementation gap, including limiting derogations and strengthening institutional coordination and interoperability. Because public procurement represents 16.5% of Albania's GDP in 2024 (European Commission, 2025), the article frames public procurement as a political test of democratic consolidation rather than a purely technical compliance field. It demonstrates how the coexistence of EU-aligned law and "rule-of-deals" practices reveals the hybrid nature of Albania's post-communist transformation.

Keywords: *Public procurement; Europeanization; corruption; democratic consolidation; rule of law.*

Introduction

Albania's transition from authoritarianism to democracy has unfolded under intense external and internal pressure to build rule-based institutions, market economy mechanisms and credible checks on political power. Public procurement, the process through which the state purchases works, goods and services has become a central arena where these transformations can be observed.

Since the mid-1990s, public procurement has moved from a largely unregulated and discretionary domain to an increasingly codified system, now governed by Law No. 162/2020 "On Public Procurement" and its implementing DCM No. 285/2021 "On Public Procurement Rules". These instruments seek to align Albania with EU directives, particularly Directive 2014/24/EU and 2014/25/EU, and to establish a transparent, competitive and non-discriminatory market for public contracts.

At the same time, Albania continues to face persistent concerns about corruption, state capture and weak rule-of-law enforcement. The European Commission Report in 2025 still assesses the country as "moderately prepared" in public procurement and notes that only limited progress was made in 2025 in aligning the legal framework. This report states that recommendations from the previous year were partially implemented and remain mostly valid. A virtual entity

was given the portfolio of Ministers of State for Artificial Intelligence and Public Procurement under the authority of the Prime Minister. Recent developments illustrate the hybrid character of Albania's reform trajectory, which signals political attention to this strategic sector. At the same time, confrontational rhetoric by both the ruling majority and the main opposition towards the judiciary raise concerns about separation of powers. According to the European Commission Progress Report, the government continues to place EU-related reforms at the center of legislative planning, but transparency in decision-making remains limited and coordination between ministries and executive institutions constrains the delivery of quality public services. (European Commission, 2025)

Against this background, the article asks whether Albania's public procurement framework today reflects democratic consolidation or the continuation of informal, deal-based governance beneath a layer of Europeanized law.

Literature Review and Analytical Framework

In the early 1990s, Albania largely lacked a modern procurement regime. The first comprehensive law on public procurement was adopted in 1995, establishing basic procedures, contracting methods and central oversight but with limited administrative capacity and weak enforcement mechanisms. This period was characterized by fragmented implementation across ministries and municipalities, low awareness of procurement principles among officials and economic operators and minimal use of competitive procedures and weak remedies systems. The most recent phase is defined by full digitalization, anti-corruption agendas and direct linkage to EU accession Chapters 5, 23 and 24. Law No. 162/2020 "On Public Procurement" (Law no 162/2020 "On Public Procurement" as amended, 2020), in force since March 2021, replaces the 2006 law and aligns the Albanian framework with Directive 2014/24/EU and 2014/25/EU.

(DCM "On the approval of public procurement rules", as amended, 2021) operationalizes the law by detailing:

- Planning and publication of procurement forecasts;
- Standard procedures for open, restricted, negotiated and competitive dialogue methods;
- Rules on technical specifications/terms of reference, award criteria (including the most economically advantageous tender – MEAT), abnormally low bids and framework agreements;
- Obligatory use of the central e-procurement platform for almost all procedures, including low-value contracts;
- Contract implementation and reporting obligations of contracting authorities to APP.

The public procurement literature emphasizes that procurement is not merely an administrative technique, but a core component of state / market relations and a key channel through which political power is exercised. (Thai, 2001) describes public procurement as a “policy tool” that affects economic efficiency, distribution of resources and perceptions of fairness.

Comparative research on public procurement (Bosio, Djankov, Glaeser, & Schleifer, 2022) shows that countries may develop sophisticated legal frameworks aligned with international standards, but real-world outcomes depend on enforcement. In several systems, weak oversight, corruption risks and informal practices continue to undermine procurement integrity despite formal compliance. This echoes broader governance scholarship stressing that rule of law requires both normative alignment and behavioral change within institutions.

In post-communist contexts, procurement reform is frequently embedded in broader democratization and market-building agendas. EU candidate countries are expected to transpose procurement directives and ensure effective remedies, oversight and transparency as part of Chapters 5 (Public Procurement) and 23/24 (Judiciary and Fundamental Rights; Justice, Freedom and Security) (European Commission, 2023). Democratic consolidation is strengthened when procurement systems limit political favoritism, protect competition and provide credible accountability mechanisms.

Albania has progressively aligned its procurement law with EU *acquis* since the (Stabilisation and Association Agreement, 2009) entered into force, moving from the first law on public procurement in 1995 to Law No. 9643/2006 and finally to Law No. 162/2020. Secondary rules have been adopted through a series of decisions of the Council of Ministers (DCMs), culminating in DCM No. 285/2021, which consolidates the “Public Procurement Rules” and operationalizes the 2020 law, including mandatory e-procurement for nearly all procedures (Public Procurement in Albania in 14 years, 2021).

Civil society analysis by Albanian Institute of Science (Public procurement through the lens of European Integration, 2022) underscores that Law No. 162/2020 is broadly assessed as a “good law” aligned with EU principles of non-discrimination, transparency and proportionality, but warns that frequent special laws and DCMs carve out exceptions and weaken the general regime.

Recent academic work on Albanian procurement similarly stresses the implementation gap. An article published in 2021 in the *Academic Journal of Business, Administration, Law and Social Sciences* (Pelinku, 2021) finds that despite digitalization and formal harmonization, Albania still struggles with low competition, high perceptions of corruption, and weak monitoring and inter-institutional coordination.

Conceptual framework and variables

Building on Europeanization theory, the article distinguishes between:

- Formal Europeanization – adoption of EU-compatible laws and institutional structures;
- Substantive Europeanization – change in actual behavior, improved integrity and effective enforcement.

The independent variable is the sequence of legal and institutional procurement reforms in Albania (1995–2025), measured by:

- Formal alignment with EU directives;
- Introduction of e-procurement and e-appeals;
- Establishment and empowerment of the Public Procurement Agency (APP), the Public Procurement Commission (KPP), the State Supreme Audit (KLSH) and specialised anti-corruption bodies (SPAK);
- Changes in procedures (open vs negotiated, framework agreements, PPP rules, etc.). (European Commission , 2023) (European Commission, 2025)

The dependent variable, democratic consolidation, is approximated through:

- Transparency and openness of procurement data;
- Competition (number of bids, share of open vs. negotiated procedures);
- Integrity indicators (CPI scores, EC assessments of corruption risks in procurement);
- Effectiveness of enforcement (number and outcomes of appeals, State Supreme Audit (KLSH) findings, SPAK cases);
- Public trust and perceptions of fairness in contracting. (European Commission , 2023) (European Commission, 2025)

Intervening factors include political patronage, clientelism, administrative capacity and the intensity of EU conditionality.

Research Question, Hypothesis and Methodology Approach

Hypothesis

Although Albania has progressively aligned its public procurement legislation with EU standards, the persistent gap between formal rules and practical implementation suggests that procurement reform has functioned primarily as a symbolic instrument of Europeanization rather than a substantive indicator of democratic consolidation.

Derived testable expectations

H1a. The modernization of procurement law primarily reflects external EU conditionality and formal compliance, rather than domestic demand for rule-of-law-based governance.

H1b. The persistence of informal political-economic networks limits the effectiveness of procurement oversight mechanisms, sustaining patterns of low competition, circumvention and public distrust.

Democratic consolidation is treated here as a process in which political competition is regulated by stable, impersonal rules, public authority is constrained by law and citizens develop sustained trust in institutions. Public procurement, which accounts for a significant share of public expenditure, offers an empirical window into whether Albania's state has moved from "rule of deals" to "rule of law".

Methodology

The study adopts a qualitative legal-institutional methodology, combining:

1. Doctrinal legal analysis of:
 - Law No. 162/2020 "On Public Procurement";
 - DCM No. 285/2021 "On Public Procurement Rules";
 - Earlier procurement laws and implementing DCMs to reconstruct the trajectory of reforms.
2. Policy and institutional analysis drawing on:
 - Annual reports of the Public Procurement Agency (APP); (Public Procurement Agency of the Republic of Albania)

- State Supreme Audit (KLSH) reports on irregularities in procurement;
- European Commission 2025 report on Albania (Chapter 5 – Public Procurement); (European Commission, 2025)

SPAK and KLSH data are used not to measure corruption prevalence directly, but as institutional indicators of enforcement capacity and accountability performance within the procurement system.

3. Governance indicators:

- Transparency International’s CPI for Albania (2016–2024); (Transparency International , 2024)
- Selected quantitative indicators from the EC report (share of procurement in GDP, bids per tender, share of negotiated procedures, use of MEAT criteria and framework agreements). (European Commission , 2023) (European Commission, 2025)

The research is interpretive rather than econometric. It triangulates legal texts, institutional data and independent assessments to evaluate whether the evolution of procurement law and practice supports the claim of democratic consolidation.

Law on paper: Design of Law No. 162/2020 and DCM No. 285/2021

Law No. 162/2020 and DCM 285/2021 embody the core EU principles of transparency, equal treatment, non-discrimination, proportionality and mutual recognition.

The law applies to most contracts for works, supplies and services concluded by central and local authorities and certain publicly controlled entities. It sets out:

- Thresholds and types of procedures (open, restricted, negotiated with/without prior publication, framework agreements);
- Use of standard tender documents and clear time-limits;
- Publication of notices and documents on the e-procurement portal as a general rule;
- Legal grounds for exclusion of tenderers, including conflict of interest and serious professional misconduct.

Institutions include:

- Public Procurement Agency (APP) – regulatory and monitoring body, issuing instructions, providing training and publishing annual reports;

- Public Procurement Commission (PPC/KPP) – independent review body for complaints, with decisions appealable to administrative courts;
- State Supreme Audit (KLSH) – ex post audit of legality and efficiency of public spending;
- Special Anti-Corruption Structure (SPAK) – investigating high-level corruption, including in public contracts. (European Commission , 2023) (European Commission, 2025)

The EC’s 2025 report notes that Albania has laid a good foundation by improving transparency through its comprehensive electronic procurement and e-appeals system, however Albania should focus on further strengthening the function of the overall system to increase competition and compliance (European Commission, 2025)

Digitalization is a major achievement. The e-procurement system now covers virtually all stages: publication, submission, evaluation, award and contract notices. Since 2021, contracting authorities must also submit contract implementation plans, and APP provides real-time open data on procedures. (European Commission , 2023)

Civil society platforms such as (Open Procurement Albania , 2022) use these data to track trends in single-bid contracts, high-value tenders and special procedures, increasing external scrutiny.

On paper, Albania’s framework:

- Meets most EU requirements on procedures and remedies;
- Provides for MEAT criteria and framework agreements;
- Establishes a dedicated review body and recognizes the right to effective remedy. (European Commission , 2023)

However, AIS’s 2022 (Albanian Institute of Science, 2022) policy paper highlights a paradox: “the better the general law becomes, the greater the number of special procedures that circumvent it”, often via special acts or DCMs that exclude specific projects from the ordinary regime. This is a crucial channel through which informal decision-making can persist despite formal legal alignment.

Adding on this, as confirmed by the European Commission Progress Report of 2025, Albania’s legal alignment has not translated into substantive progress, with the country remaining “moderately prepared” and only limited implementation observed. (European Commission, 2025)

Implementation GAP: Practice on the ground

According to the European Commission Progress Report of 2023, public procurement represented about 9.4% of GDP in 2022. The average number of bids per tender was 2.5 (compared with 2.5 in 2021 and 2.57 in 2020), essentially unchanged. (European Commission , 2023)

A 2025 empirical study using APP data finds that more than 40% of procedures in 2022 had only one participating economic operator, signaling low competition and potential barriers to entry. Open Procurement Albania reaches similar conclusions, pointing to “tailored tenders” and repeated winners as indicators of informal favoritism.

Negotiated procedures without prior publication represented 3.3% of all procedures in 2022 (up from 143 to 157 procedures compared to 2021), though their share of total contract value fell to 0.9% (from 3.4% in 2021) (European Commission , 2023). The relatively small share by value should not obscure that negotiated procedures can be used strategically for specific sectors or politically salient projects. AIS warns that special DCMs and laws often function as “exclusionary procedures outside the common rule”.

Compared to European Commission Progress Report of 2025, public procurement represented about 16.5% of GDP in 2024. There was no report on 2025 on the average number of bids per tender (European Commission, 2025).

Negotiated procedures without prior publication reduced in 2024 both in number (2.3% of all procedures from 2.9% in 2023) and in related value (0.4% of total value from 2% in 2023) (European Commission, 2025).

Award criteria, PPPs and special laws

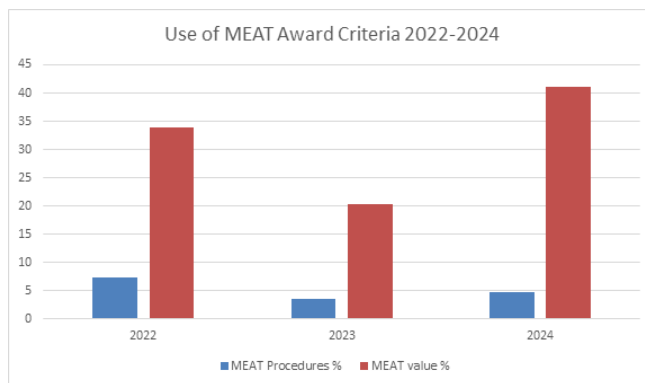
The use of MEAT criteria has increased but remains limited in terms of number of procedures: in 2022 they were applied in 7.3% of procedures, although these accounted for 33.9% of contract value. (European Commission , 2023)

The use of MEAT criteria in 2025 is reported to be increased in terms of awarded tenders (4.8% in 2024, compared to 3.6% in 2023) and particularly in terms of value of associated contract (41% in 2024 compared to 20.3% in 2023). (European Commission, 2025)

This suggests that high-value contracts are more likely to integrate quality and long-term value considerations, but most everyday procurement still uses lowest-price criteria, which can be vulnerable to underpricing and poor quality.

On PPPs and concessions, the EC notes that Albania’s PPP law is only partly aligned with EU acquis and that a large registry of PPPs (over 220 contracts) has raised concerns about fiscal risks and transparency (European Commission , 2023). Although the number of new PPPs has recently decreased, legacy contracts and unsolicited proposals illustrate how special regimes can bypass ordinary procurement rules.

The Constitutional Court’s decision on the “National Theatre” special law, found unconstitutional for multiple reasons, is emblematic: it illustrated how ad hoc legislation can be used to tailor procurement for a single project and how constitutional review remains a crucial, but ex post and exceptional safeguard.



As shown in the above Chart, the use of MEAT criteria in Albania remains limited in terms of number of procedures, declining from 7.3% in 2022 to 3.6% in 2023, before slightly increasing to 4.8% in 2024. However, MEAT is applied to high-value contracts, accounting for 33.9% of total contract value in 2022, 20.3% in 2023, and 41% in 2024. This pattern indicates that quality-based award criteria are selectively used for major projects, while everyday procurement remains dominated by lowest-price criteria.

Oversight and remedies

The EC reports that the PPC received 782 complaints in 2022, with nearly 90% decided within statutory deadlines and only around 5.45% appealed to administrative courts. (European Commission , 2023). This indicates a functioning remedy system on formal criteria.

However, State Supreme Audit (KLSH) continues to identify irregularities in tender design, evaluation and contract execution at both central and local levels. Overlapping mandates and limited coordination between APP, PPC, State Supreme Audit (KLSH), the Ministry of Finance and SPAK reduce the coherence of enforcement and the impact of their findings.

Audit evidence from the State Supreme Audit (KLSH) provides systematic confirmation of persistent weakness in procurement governance. In 2023, State Supreme Audit (KLSH) conducted 160 audit missions covering 195 public entities and issued a total of 5,759 recommendations, with recurrent findings related to non-compliance, inefficiency and procedural irregularities in public procurement. (State Supreme Audit, 2024) Audit results identify procurement as one of the primary sources of inefficient use of public funds, with economic damage amounting to approximately 386 million ALL and negative budgetary effects exceeding 4.3 billion ALL attributable solely to procurement related irregularities. (State Supreme Audit, 2024) Despite the scale of audit activity, the implementation of recommendations remains partial, indicating weak follow-up mechanisms and limited institutional learning. These findings suggest that audit oversight identifies systematic risks but lacks sufficient enforcement leverage to transform compliance into effective accountability.

SPAK has launched high-profile investigations into corruption in infrastructure and local government contracts, contributing to a modest increase in Albania's CPI score and public visibility of procurement-related corruption. Yet the number of final convictions relative to the size of the procurement market remains limited, and many cases concern fraud after contract award rather than systemic manipulation of procurement design.

Criminal enforcement data provided by SPAK further illustrates the limits of procurement accountability despite an increasingly active prosecutorial framework. According to SPAK's Annual Reports for 2023 and 2024, investigations into high-level corruption have intensified, with 33 former senior officials under investigation in 2024 and 19 cases sent to trial, alongside asset seizures and confiscations exceeding €65 million (SPAK, 2024). However, referrals originating from public institutions remain limited, accounting for approximately 15 per cent of all referrals, while a significant share of cases continue to derive from citizen complaints (SPAK, 2023) (SPAK, 2024). This pattern indicates that anti-corruption enforcement in procurement field remains predominantly reactive and *ex post*, rather than embedded within a preventive system of administrative accountability. As a result, criminal prosecution functions as a corrective mechanism rather than a structural deterrent, reinforcing the persistence of informal practices within EU-aligned procurement procedures.

Corruption indicators and public perceptions

From 2016 to 2022 Albania's CPI score stagnated around 35–36/ (State Supreme Audit, 2024)100, with the country ranking 101st worldwide in 2022 (Transparency International , 2024). In 2023 the score improved slightly to 37 points (rank 98), and in 2024 it rose to 42 (rank 80). While this trajectory is positive, Albania's

performance remains significantly below the EU average (around 64/100) and still indicates widespread perceptions of corruption.

Transparency International and regional analyses repeatedly highlight public procurement – alongside infrastructure, property rights, customs, education and health – as a high-risk area where corruption and opaque decision-making persist. (European Commission , 2023)

Discussion: Procurement as a Measure of Democratic Consolidation

The finding of SPAK and State Supreme Audit (KLSH) taken together, reveal a fragmented accountability chain in Albania’s public procurement system. While audit institutions systematically document procedural violations and financial inefficiencies and prosecutorial bodies intervene selectively through criminal proceedings, coordination between administrative oversight and criminal enforcement remains limited (SPAK, 2024) (State Supreme Audit, 2024). This disconnect allows procurement practices to remain formally compliant yet substantively vulnerable to discretionary and informal arrangements. The coexistence of extensive audit findings with a relatively narrow scope of criminal enforcement underscores the hybrid character of Albania’s procurement governance, where EU-aligned legal frameworks operate alongside rule-of-deals practices rather than displacing them.

The empirical findings confirm the existence of a significant implementation gap between Albania’s EU-aligned procurement law and everyday practice. Drawing on the conceptual framework, several points emerge.

1. Formal Europeanization without full behavioral change.

Law No. 162/2020 and DCM 285/2021 closely follow EU directives and embed EU principles, and the EC explicitly notes that legal alignment is largely achieved (European Commission , 2023). However, persistent low competition, continued use of negotiated procedures and special regimes, and frequent audit findings indicate that institutional behavior has not fully internalized these norms.

2. Hybrid governance: rule of law and rule of deals in parallel.

The coexistence of a sophisticated legal framework and practices such as “tailored tenders”, single-bid procedures and ad hoc DCMs supports the view that Albania operates as a hybrid system. Formal rules project an image of compliance and openness, crucial for EU accession and international partners, while informal networks and political discretion still influence who wins major contracts and on what terms.

3. Procurement as a stress test for democratic consolidation.

In a consolidated democracy, procurement should:

- channel competition rather than close it;
- protect public resources through predictable rules;
- enable citizens, media and opposition to track and contest abuses.

Albania's progress, such as full e-procurement, e-appeals and more active oversight marks important steps towards this model (European Commission , 2023). Yet the persistence of low trust, reliance on special laws, and concentration of economic opportunity among politically connected actors suggests that procurement is still a site where contested practices of democratic and non-democratic governance collide.

4. The role of EU conditionality.

The evidence indicates that EU conditionality has been a central driver of reform – from the 2006 law to the 2020 overhaul. However, in line with Europeanization theory, conditionality appears more effective in shaping formal legislation than in transforming underlying power relations and administrative culture. The proliferation of special procedures and the slow pace of sanctioning procurement abuses illustrate the limits of external leverage when domestic elites retain incentives for discretionary allocation. Taken together, these findings support the article's hypothesis: public procurement reform in Albania has been an important marker of Europeanization but is not yet conclusive evidence of democratic consolidation.

Limitations

The study has several limitations:

- It relies on published statistics and reports; more granular micro-data (e.g., full contract-level datasets, firm-level participation histories) were not systematically analyzed.
- It does not incorporate interviews with procurement officials, judges, auditors or economic operators, which could reveal informal practices and pressures more directly.
- The focus is national; local-level dynamics, where clientelism and political capture may be particularly strong, are only indirectly addressed through audit reports and case law.

- The study does not systematically assess the extent to which State Supreme Audit (KLSH) findings are referred for criminal investigation or lead to final convictions, which limits conclusions on the full accountability chain.

Future research could combine quantitative contract-level analysis with qualitative case studies of selected sectors (infrastructure, health, energy), and comparative work with other Western Balkan states to better situate Albania's trajectory.

Conclusions and Policy Reflections

Over the last thirty years, Albania has transformed its public procurement framework from a rudimentary, discretionary system into a formally sophisticated regime aligned with EU standards and fully digitalized. Law No. 162/2020 and DCM No. 285/2021 are not window-dressing: they embody genuine legal modernization and provide powerful tools for transparency and accountability.

However, democratic consolidation requires more than good laws. The continued prevalence of low competition, selective use of special laws and PPP arrangements, audit findings of irregularities, and only gradual improvements in corruption indicators prove that the practice of procurement in Albania remains “in between” – neither fully rule-bound nor openly arbitrary. (European Commission, 2023) To move procurement from a symbolic to a substantive pillar of democratic governance, the article suggests several priorities:

1. Constrain special regimes and derogations.
 - Introduce stricter constitutional and legislative safeguards for special procurement laws and DCMs, requiring demonstrable necessity and proportionality, plus ex ante review.
2. Strengthen enforcement and sanctions.
 - Enhance the resources and independence of State Supreme Audit (KLSH), PPC and SPAK in procurement-related cases;
 - Ensure systematic follow-up of audit recommendations and PPC decisions by contracting authorities. (European Commission, 2023) (European Commission, 2025)
3. Deepen professionalization and integrity of procurement officials.
 - Mandatory certification, continuous training and clear conflict-of-interest rules (partially done)
 - More robust internal audit and risk-based monitoring within contracting authorities. (European Commission, 2023) (European Commission, 2025)

4. Empower civic and media oversight.
 - Facilitate user-friendly access to procurement datasets;
 - Institutionalize civil-society monitoring of high-value contracts and PPPs, following regional best practices.

5. Integrate procurement reform into a broader rule-of-law strategy.
 - Link procurement integrity indicators to judicial reform, political finance regulation and public administration professionalization, recognizing that procurement cannot be insulated from wider governance dynamics.

If implemented consistently, these measures could help transform procurement from an arena of “rule of deals” into a credible test and driver of democratic consolidation, aligning Albania’s legal Europeanization with lived realities for citizens and economic operators.

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