

51. The Parties shall ensure that an operationally independent public body is delegated with the powers necessary for the full application of categories i) and ii), regarding private and public undertakings and undertakings to which special rights have been granted (Article 37.3). Albania shall establish an operationally independent authority entrusted with the powers necessary for the full application of category iii) within four years from the date of entry into force of the Agreement. This authority has, *inter alia*, the powers to authorize State-aid schemes and individual aid grants based on Articles 81-82, and 86-87 of the Treaty establishing the European Community and interpretative instruments adopted by the EC institutions. It also has the power to order the recovery of unlawfully granted State-aid (Article 37.4).

52. Albania must establish a comprehensive inventory of aid schemes before establishing an operationally independent authority within four years from the date of entry into force of the Agreement (Article 37.6). Albania has prepared a list of existing State-aid schemes before the entry into force of the State-aid law. A comprehensive report on the inventory of aid schemes is in the process of finalization, and will be submitted to the European Commission.

(c) State monopolies

53. Albania shall progressively adjust any State monopolies of a commercial character to end discrimination between nationals of EC Member States and Albania concerning the conditions under which goods are procured and marketed by the end of the fourth year following the date of entry into force of the Agreement (31 December 2010).²³ The measures adopted to pursue this aim must be notified to the Stabilization and Association Council (Article 27).

✓ (d) Government procurement

54. Article 40 establishes a regulatory framework for government procurement (referred to in the Agreement as public contracts) and considers the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity, in particular in the WTO context, to be a desirable objective (Article 40.1).

55. Whether Albanian companies are established in the EC or not, they shall be granted access to contract award procedures in the EC according to EC procurement rules under no less favourable than that accorded to EC companies from the date of entry into force of the Agreement. With respect to the utilities sector²⁴, once Albania has adopted legislation introducing EC rules, Albanian utility companies shall be granted access to contract award procedures under the same conditions as mentioned above. The EC shall conduct periodic examinations to determine whether Albania has introduced such legislation (Article 40.2).

56. EC companies established in Albania, on the date of entry into force of the Agreement, shall have access to contract award procedures under treatment no less favourable than that accorded to Albanian companies (Article 40.4). EC companies not established in Albania shall be granted access to contract award procedures in Albania pursuant to the Albanian Law on Public Procurement under treatment no less favourable than that accorded to Albanian companies at the latest four years after the date of entry into force of the Agreement (Article 40.3).²⁵ Albania's legislation on government

²³ According to Albania, new developments in this regard consist of i) account separation for railway of passenger tickets; ii) privatization of the only fixed-line telephone company ALBTELECOM sh.a.; and iii) division of state energy enterprise, KESH sh.a. into three companies, each of them responsible for one of three activities: generation, transmission and distribution. The measures in the energy sector aim to prepare the company for the privatization process.

²⁴ There is no definition of utilities in the Agreement.

²⁵ Albania has applied for membership of the WTO Agreement on Government Procurement (GPA/57, 2 October 2001).

procurement has been notified to the WTO. According to the authorities the new law and sub-legal acts are partially approximated with the respective EU directives in this field. The full approximation is foreseen in medium-term priorities under SAP.

(e) Intellectual property

57. In Article 39 and its related Annex IV, the Parties confirm their obligations as set out in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and other multilateral agreements relating to intellectual property.

58. Albania shall take all the necessary measures to guarantee a similar level of protection of intellectual, industrial and commercial property rights to that existing in the EC, no later than four years after the entry into force of the Agreement including using effective means of enforcement (Article 39.2).²⁶ With respect to the recognition and protection of intellectual, industrial and commercial property, Albania will grant, from the date of entry into force of the Agreement, EC companies and nationals treatment no less favourable than that granted by it to any third country under bilateral Agreements (Annex IV, Article 3). In addition to this, Albania, within four years after the date of entry into force of the Agreement, undertook to accede to the WIPO Copyright Treaty; the Convention for the Protection of Producers of Phonograms against Unauthorized Duplications of their Phonograms; and the International Convention for the Protection of New Varieties of Plants; according to Albania, this has occurred.²⁷ The Stabilization and Association Council may also oblige Albania to accede to other specific multilateral conventions in this area (Article 39.3).²⁸ When there are problems in the area of intellectual, industrial and commercial property affecting trading conditions, they shall be referred urgently to the Stabilization and Association Council, with a view to reaching mutually satisfactory solutions. This can occur at the request of any Party to the Agreement (Article 39.4). There are also provisions in the Agreement for the protection of names, geographical indications, and traditional expressions under Protocol 3. See Section D, sector-specific provisions of the Agreement in this factual presentation.

(f) Shortage clause

59. According to Article 26, a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or shortage or major difficulties resulting from re-export to a third country of a product against which the exporting Party maintains quantitative export restrictions, export duties or measures or charges having equivalent effect, exporting Party may take appropriate measures in accordance with the procedures laid down below.

60. Before taking the measures which disturb least the functioning of the arrangements (Article 26.2), the Parties shall supply the Stabilization and Association Council with all relevant information, seeking a solution acceptable to the Parties. The Parties within the Council may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Council, the exporting Party may apply measures on the export concerned (Article 26.3). Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Parties may apply the precautionary measures necessary to deal with the situation and shall inform the other Party immediately (Article 26.4). Any measures applied pursuant to this Article shall be immediately notified to the Council which will conduct

²⁶ According to Albania, the new draft law on industrial property has been finalized and is in the process of being approved.

²⁷ According to Albania, it acceded to the WIPO Copyright Treaty on 6 August 2005; the Convention for the Protection of Producers of Phonograms against Unauthorised Duplications of their Phonograms on 26 June 2001; and the International Convention for the Protection of New Varieties of Plants on 15 October 2005.

²⁸ According to the Parties, there are no new developments in this regard.