



ReSPA

Regional School
of Public Administration

Regional Comparative Study on Management of Irregularities in Public Procurement and e-Procurement

ReSPA activities are
funded by the EU





ReSPA

Regional School
of Public Administration

Regional Comparative Study on Management of Irregularities in Public Procurement and e-Procurement

Authored by:

*Lead authors:
Biljana Lerman
Darko Janevski*

National authors:

*Manjola Dhamo, Albania
Anela Duman, Bosnia and Herzegovina
Ilaz Duli, Kosovo^{*1}
Darko Janevski, Macedonia
Sanja Mugosa, Montenegro
Slavica Jokovic, Serbia*

December 2016

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory Opinion on the Kosovo Declaration of independence

The Regional School of Public Administration (ReSPA) is an inter-governmental organisation supporting regional cooperation of public administrations in the Western Balkans. Its activities are supported by the European Commission (EC), and co-funded through annual contributions of the ReSPA Members. ReSPA Members are Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, while public servants from Kosovo* participate in ReSPA activities funded by the European Commission. The Purpose of ReSPA is to support governments in the Western Balkan region develop better public administration, public services and overall governance systems for their citizens and businesses, and prepare them for membership in the European Union.

LEGAL NOTICE

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of ReSPA and can under no circumstances be regarded as reflecting the position of the European Union.

COPYRIGHT

© Regional School of Public Administration, 2016

This publication is the property of ReSPA. Any unauthorized reprint or use of this material is prohibited

CONTACT

Regional School of Public Administration
Branelovica
P.O. Box 31, 81410
Danilovgrad, Montenegro
Telephone: +382 (0)20 817 200
Internet: www.respaweb.eu
E-mail: respa-info@respaweb.eu

Table of Contents

1	EXECUTIVE SUMMARY	8
2	INTRODUCTION AND PURPOSE OF THE ANALYSIS	13
2.1.	THE REGIONAL SCHOOL OF PUBLIC ADMINISTRATION IN THE WESTERN BALKANS	13
2.2.	PURPOSE, RATIONALE AND CONTENTS OF THIS COMPARATIVE STUDY	13
2.3.	METHODOLOGY OF SURVEY AND ANALYSIS	14
3	EUROPEAN UNION CONTEXT	15
4	MANAGEMENT OF IRREGULARITIES – FINDINGS ON THE LEGAL AND IMPLEMENTATION LEVEL PER COUNTRY	17
4.1.	GENERAL LEGAL FRAMEWORK AND STRATEGIC DOCUMENTS RELATED TO MANAGEMENT OF IRREGULARITIES IN THE PUBLIC PROCUREMENT	17
4.2.	INSTITUTIONAL FRAMEWORK OF PPA AND OTHER INSTITUTIONS RESPONSIBLE FOR MONITORING OF IRREGULARITIES IN PP - KEY FUNCTIONS AND DIFFERENCES AMONG THEM	20
4.3.	POWER OF THE MONITORING AUTHORITY TO INDICATE AND TO INFORM ABOUT SPECIFIC VIOLATIONS AND SYSTEMIC PROBLEMS	28
4.4.	PUBLICATION OF MONITORING ACTIVITIES, REPORTS ON SYSTEMIC RISKS, CORRUPTION, FRAUD (READINESS TO PERFORM), REPORTS ON AGGREGATED VALUE	33
4.5.	CONSULTANCY SUPPORT BY CENTRAL GOVERNMENT PP CONTROL INSTITUTIONS	41
4.6.	KEEPING AND ACCESS OF PP DOCUMENTS	44
4.7.	INDIVIDUAL REPORTS ON AWARDS	46
4.8.	CIVIL SOCIETY’S INVOLVEMENT IN CONTROL OF PUBLIC PROCUREMENT	50
4.9.	DEALING WITH CORRUPTION AND CONFLICTS OF INTERESTS IN PUBLIC PROCUREMENT	54
4.10.	HOW PP IS MAINSTREAMED IN PUBLIC FINANCE MANAGEMENT?	61
4.11.	PERFORMANCE INDICATORS FOR CENTRAL PUBLIC PROCUREMENT CONTROL/AUDIT INSTITUTIONS	65
4.12.	ADMINISTRATIVE CAPACITIES OF PPA AND ALLOCATION OF RESOURCES IN PPA	68
4.13.	REGULATORY IMPACT ASSESSMENT IN PUBLIC PROCUREMENT REGULATION AND REGULATION MONITORING	74
4.14.	RISK BASED ANALYSIS FOR AUDITS/OTHER CONTROL INSTRUMENTS	75
4.15.	QUALITY CONTROL CERTIFICATION/USAGE OF STANDARDS: ISO, CAF, OTHER	76
4.16.	CERTIFICATION OF PP OFFICERS	77
4.17.	SYSTEMIC MEASUREMENT OF PP SYSTEM FUNCTIONING AND INDICATORS USED FOR THIS	80
4.18.	CONTROL IN EX ANTE STAGE: PROCUREMENT PLANNING	82
4.19.	REGISTER OF BIDDERS	84
4.20.	EXCLUSION OF BIDDERS AND BLACKLISTING	85
4.21.	AWARDING OF CONTRACT	89
4.22.	CONTROL IN EX POST STAGE: AUDITS OF PP PROCEDURES	92
4.23.	CONTROL IN EX ANTE STAGE: CONTRACT MANAGEMENT: PERFORMANCE AND MODIFICATION	96
5	E-PROCUREMENT – FINDINGS ON THE LEGAL AND IMPLEMENTATION LEVEL PER COUNTRY	100
5.1.	LEGAL FRAMEWORK: PRIMARY AND SECONDARY LEGISLATION ON E-PROCUREMENT	100
5.2.	FINANCIAL ASPECTS OF E-PROCUREMENT	103
5.2.1.	<i>Value of e-procurement in comparison with total PP amount</i>	103
5.2.2.	<i>Saving effect of e-procurement</i>	104
5.3.	TECHNICAL SOLUTIONS AND PLATFORMS USED TO IMPLEMENT E-PROCUREMENT	105
5.4.	OWNERSHIP OF AN IT INFRASTRUCTURE IN TERMS OF PUBLIC/PRIVATE	108
5.5.	USER-FRIENDLINESS	109
5.6.	DIVERSITY OF LANGUAGES	111
5.7.	USAGE OF E-PROCUREMENT	112
5.7.1.	<i>Amount of registered EO and contracting authorities</i>	112

5.7.2.	<i>Increase of user participation</i>	113
5.8.	MANAGEMENT OF CHANGES IN E-PROCUREMENT (FACILITATION) – PROMOTION, TRAINING, CONSULTATIONS AND ALTERNATIVE SOLUTIONS FOR FACILITATION OF E-PROCUREMENT	115
5.9.	E-PROCUREMENT IN POST-AWARD PHASES.....	117
5.9.2.	<i>E-notices - online publication of notices</i>	117
5.9.3.	<i>E-access to tender documents</i>	118
5.9.4.	<i>E-submission of bids</i>	119
5.9.5.	<i>E-evaluation of the proposals</i>	121
5.9.6.	<i>E-award of the contract</i>	122
5.10.	E-PROCUREMENT IN POST-AWARD PHASES.....	123
5.10.2.	<i>E-ordering</i>	123
5.10.3.	<i>E-invoicing (Directive 2014/55/EU)</i>	123
5.10.4.	<i>E-payment</i>	124
5.11.	TECHNIQUES AND INSTRUMENTS FOR E-PROCUREMENT	124
5.11.2.	<i>Dynamic purchasing systems</i>	124
5.11.3.	<i>E-auction</i>	125
5.11.4.	<i>E-catalogue</i>	127
6	MAIN FINDINGS - MONITORING OF IRREGULARITIES	128
6.1.	PPA AND OTHER INSTITUTIONS RESPONSIBLE FOR MONITORING OF IRREGULARITIES IN PP - KEY FUNCTIONS AND DIFFERENCES AMONG THEM	128
6.2.	POWER OF THE MONITORING AUTHORITY TO INDICATE AND TO INFORM ABOUT SPECIFIC VIOLATIONS AND SYSTEMIC PROBLEMS	128
6.3.	PUBLICATION OF MONITORING ACTIVITIES, REPORTS ON SYSTEMIC RISKS, CORRUPTION, FRAUD (READINESS TO PERFORM), REPORTS ON AGGREGATED VALUE	129
6.4.	CIVIL SOCIETY'S INVOLVEMENT IN CONTROL OF PUBLIC PROCUREMENT	130
6.5.	DEALING WITH CORRUPTION AND CONFLICTS OF INTERESTS IN PUBLIC PROCUREMENT.....	131
6.6.	PERFORMANCE INDICATORS FOR CENTRAL PUBLIC PROCUREMENT CONTROL/AUDIT INSTITUTIONS.....	132
6.7.	ADMINISTRATIVE CAPACITIES OF PPA AND ALLOCATION OF RESOURCES IN PPA	133
6.8.	QUALITY CONTROL CERTIFICATION/USAGE OF STANDARDS: ISO, CAF, OTHER / REGULATORY IMPACT ASSESSMENT IN PUBLIC PROCUREMENT REGULATION AND REGULATION MONITORING AND RISK BASED ANALYSIS FOR AUDITS/OTHER CONTROL INSTRUMENTS.....	134
6.9.	TRAINING AND CERTIFICATION OF PP OFFICERS.....	134
6.10.	PROCUREMENT PLANNING	135
6.11.	REGISTRY OF BIDDERS AND BLACKLISTING.....	136
6.12.	CONTROL IN EX-POST STAGE: AUDITS OF PP PROCEDURES.....	138
6.13.	CONTRACT MANAGEMENT: PERFORMANCE AND MODIFICATION.....	139
7	MAIN FINDINGS - E-PROCUREMENT	140
7.1.	TYPES OF E-PROCUREMENT SYSTEMS IN RESPA MEMBERS	140
7.2.	FINANCIAL ASPECTS OF E-PROCUREMENT.....	140
7.3.	TECHNICAL SOLUTIONS AND PLATFORMS USED TO IMPLEMENT E-PROCUREMENT / OWNERSHIP OF AN IT INFRASTRUCTURE.....	141
7.4.	USAGE OF E-PROCUREMENT	141
7.5.	MANAGEMENT OF CHANGES IN E-PROCUREMENT (FACILITATION) – PROMOTION, TRAINING, CONSULTATIONS AND ALTERNATIVE SOLUTIONS FOR FACILITATION OF E-PROCUREMENT	142
7.6.	E-PROCUREMENT IN PRE-AWARD PHASES.....	142
7.7.	E-PROCUREMENT IN POST-AWARD PHASES.....	142
7.8.	TECHNIQUES AND INSTRUMENTS FOR E-PROCUREMENT	142
8	RECOMMENDATIONS	144
8.1.	GENERAL RECOMMENDATIONS.....	144
8.2.	RECOMMENDATIONS RELATED TO THE MANAGEMENT OF IRREGULARITIES	145
8.3.	RECOMMENDATIONS RELATED TO THE E-PROCUREMENT.....	147

Acronyms

The following is an alphabetical list of acronyms and their meanings used in the report

ACA	Anti – Corruption Agency of Kosovo*
CA	Contracting Authority
CSO	Civil Society Organisation
EC	European Commission
EO	Economic Operator
EU	European Union
IT	Information Technology
OAG	Office of the Auditor General of Kosovo*
PA	Public Administration
PAR	Public Administration Reform
PKI	Public Key Infrastructure
PP	Public Procurement
PPA	Public Procurement Authority
PPP	Public-Private-Partnership
PPL	Public Procurement Law
PPRC	Public Procurement Regulatory Commission
PRB	Public Procurement Review Body
ReSPA	Regional School of Public Administration
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank

1 Executive Summary

The rationale of the regional comparative study is the development of national public procurement systems in the region in light of the EU integration processes and EU legislative and policy framework on public procurement. This comparative study is focused on some of the most important and challenging aspects to be faced by national policy makers related to putting in place and implementing national frameworks in line with the new EU public procurement framework, for the selected topics of management of irregularities in PP (aside the review process) and e-procurement. This Study involves the countries of the region that are at the stage of harmonization of national legislation to EU rules. It provides an overview of national public procurement systems, and in that way can be easily determined if and to which extent national legislation of each country is in line with EU public procurement legislation. The report has been prepared by six national experts from ReSPA members and Kosovo*, whose work was coordinated and provided input further analysed by two international experts.

The Directive 2014/24/EU on public procurement requires the Member States to ensure that the application of the public procurement rules is monitored by one or more authorities, bodies or structures. Where monitoring authorities identify specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures. The results of the monitoring activities shall be made available to the public through appropriate means of information, as well as the European Commission (EC). Every three years, starting from 2017, Member States shall submit to the Commission a monitoring report covering information on the most frequent sources of wrong application or of legal uncertainty. Taking these provisions from the Directive into account, the following are the most relevant findings related to the management of irregularities:

- Each ReSPA member and Kosovo* has appointed public procurement authority (PPA) as a central level institution. Some of them have higher degree of independence as they report directly to the Government (Albania, Bosnia and Herzegovina) while others operate under certain Ministry (Macedonia). Each PPA, among other tasks, monitors the public procurement system in general and the specific public procurement procedures. The way this monitoring role is performed differs among them.
- In case in the process of monitoring an irregularity has been identified, the PPAs are tasked to take actions and / or inform other competent bodies (audit institutions, courts, etc.) to further proceed with the case. It seems that some PPAs have greater authorities to deal with the irregularities than the others, such as the possibility to impose sanctions (fees).
- PPAs and other bodies that have monitoring roles in the public procurement prepare annual reports in which findings of irregularities are reported. Cases of identified irregularities have been reported in the last years, though not on a large scale, but imposed criminal or misdemeanour sanctions are seldom.
- No specific provisions in the national public procurement legislation can be found regarding the Civil Society Organization (CSO) involvement in the public procurement procedures. Almost all countries have adopted a Law on Freedom of Information, provisions of which are increasingly used by the CSO to obtain information on the specific public procurement procedures. In some

countries, CSO have gone further by regularly publishing relevant reports on public procurements (identifying weaknesses and irregularities and providing proposals for improvements) or being involved in the drafting of the laws, thus reinforcing the role of the CSO in the control of the public procurement.

- In each ReSPA member and Kosovo* appropriate legal framework and institutional mechanism have been established to prevent and deal with corruption including in the field of public procurement. Although high level of corruption in the public procurement is often indicated in relevant international reports or surveys among the stakeholders, still the official figures of the responsible institutions show very small number of cases initiated and even smaller of cases that ended up in sanctioning the participants involved in the allegedly corruptive behaviour.
- In general, performance indicators are not present at all or not so well defined or regularly followed and measured by the responsible PPAs. What is present is more of statistical nature. However, it gives information on the performance, weaknesses, trends, etc. that is comparable on yearly basis.
- The number of employees is more or less the same in each national PPA. All PPA are small organizations with 15 – 30 employees. They all seem to lack IT staff, especially in light of the introduction of e-procurement systems. Their work is almost exclusively financed from the state budget and the annual amount allocated is constant for the last few years and dominantly spent for salaries of the employees.
- ISO, CAF and similar quality management standards, as well as Regulatory Impact Assessment (RIA) and Risk based analysis are not commonly implemented processes in the legal and / or public procurement systems in the ReSPA members and Kosovo*.
- Training of public procurement officers is foreseen in the legislation of each ReSPA member and Kosovo*. In all countries, the trainings are organized or at least supervised by the PPA. In some countries institutions responsible for public administration affairs are involved in the delivery of trainings or in the examination process. The certification of public procurement officers is mandatory, except in Albania and Bosnia and Herzegovina.
- The legislation of each ReSPA member and Kosovo* foresees obligation for the CA to prepare annual procurement forecast within 30 to 60 days from the beginning of the current year. Plans can be easily modified during the year. Not each legislation provides obligation for online publishing of the procurement plans. It seems that the Albanian legislation gave greatest significance to the procurement plans, as the Ministry of Finance doesn't allow any payment for procurement contracts if the procurement registry isn't respected.
- Registry of certified bidders is only present in Serbia. The Business Registers Agency in Serbia keeps public register of tenderers who are not obliged to prove fulfilment of mandatory selection criteria when submitting a bid. Countries that have e-procurement systems have sort of registries / lists of registered EO. Possibility for some sort of blacklisting exists in Albania and Kosovo*, but it has not been practiced much, unlike the blacklisting in Macedonia where it is common and severe.
- Each ReSPA member and Kosovo* has state audit institution that is responsible to conduct ex-post control of the public procurement award procedure and contract performance. The identified

irregularities are processed to other institutions, while in case of Albania it is the PPA that decides on irregularities and the final administrative sanction. In addition to the state audit institutions, some systems have introduced internal audits, which objective is to prevent or identify any misconduct of the civil servants.

- State audit institutions are responsible to audit the contract performance in the ReSPA members and Kosovo*, except for Bosnia and Herzegovina where such power has not been allocated to any institution. Additionally, internal audits in central institutions have been introduced to, among other tasks, control the contract performance. Furthermore, Albanian PPL obliges the CA to establish a commission that will monitor the implementation of the special conditions of the contract. Contract modifications are possible in all countries in strictly defined cases.

According to the Directive 2014/24/EU, the electronic means of information and communication should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of EO to participate in procurement procedures across the internal market. For that purpose, first the transmission of notices in electronic form, electronic availability of the procurement documents and last the fully electronic communication at all stages of the procedure should be made mandatory. Mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting authorities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication. Taking these provisions from the Directive into account, the following are the most relevant findings related to the e-procurements:

- Fully-fledged e-Procurement systems are present only in Albania (as of 2009) and Macedonia (as of 2006). E-Procurement means that all pre-award public procurement phases are carried out using electronic means (web based platforms), not just for publishing contract notices and contract award notifications. Bosnia and Herzegovina has introduced electronic public procurement portal, in which every year limited number of functionalities is planned to be added, while in 2014 Kosovo* begun to develop the e-procurement platform through a project funded by the World Bank (WB). Montenegro and Serbia have public procurement portals where all e-notices are published, but do not provide possibility for conducting the other pre-award phases online.
- In 2014, the number of awarded contracts through e-procurements in Albania was 4.600, while the value was 315 million EUR. In Macedonia, 2.303 is the number of awarded contracts through e-procurements in 2014, while the value is around 200 million. There is no exact data about the costs for implementing paper-based procedures, so it is difficult to estimate the amount of savings with the use of the e-procurements in Albania and Macedonia.
- In all countries that introduced or going to introduce e-procurement systems there is only one centralized web-based e-procurement platform owned and managed by PPAs. The tools used for communicating by electronic means in the public procurement are fully non-discriminatory and interoperable with ICT products in general use.
- There are approximately 1,700 contracting authorities (CA) and 3,870 economic operators (EO) registered on the Albanian e-Procurement system, while by the end of 2015, around 10,400 EOs

and 1.390 CAs were registered on the Macedonian e-Procurement system. The average number of submitted bids in the paper-based procedures in Albania was 3 (in 2009), while in Macedonia 2.9 (in 2014). The average number of submitted bids in the e-procurement procedures in Albania was 6 (in 2014), while in Macedonia 3.4 per tender (in 2014).

- In Albania and Macedonia where the e-Procurement is mandatory, there are no longer promotional activities. Delivery of training and provision of consultancy services are carried out by PPAs. They also developed guidance and manuals and have established phone and e-mail user support.
- Electronic publication of contract notices (e-notices) and tender documentation is present in each ReSPA member state, except for Kosovo* which was still working to introduce this possibility. E-submission of bids as core aspect of the e-procurements, e-evaluation of bids and online submission of information on the award decision are present only in Albania and Macedonia.
- E-ordering, e-invoicing and e-payment are not present in the ReSPA members and Kosovo*. Macedonia has introduced legal possibility for e-invoicing in 2014, but it is not implemented in the public sector.
- Dynamic Purchasing Systems are not implemented in the ReSPA members and Kosovo*, although legislation of Bosnia and Herzegovina and Serbia allow for such techniques to be implemented. Same conclusion refers to the e-auctions, which are implemented only in Macedonia. Macedonia started with the e-auctions in 2008, making them in 2012 fully mandatory. In 2014, a total of 29,477 auctions were conducted, an average of 112 auctions per day. E-catalogue is not implemented nor foreseen in the ReSPA members and Kosovo*.

The main recommendations related to management of irregularities are:

- Fully harmonize the national PP legislation with the 2014 EU directives on PP, especially the provisions for monitoring of PP procedures and management of irregularities
- Review and amend the national PP laws so that monitoring (in the course of the public procurement procedure) is assigned to public authority/s with clearly defined roles and responsibilities, including possibility to impose sanctions
- Define annual monitoring plans and criteria based on which sample-based monitoring of the ongoing public procurement procedures will be performed by the PPA or another appointed authority
- Empower PPA to define criteria and to perform sample-based ex-post control of the efficiency and effectiveness of the conducted PP procedures and / or executed contracts
- Introduce civil supervisor to monitor the ongoing public procurement procedures (the value of which exceeds certain threshold) with clearly defined roles and responsibilities
- Define criteria to become public procurement officer and the required competences for this position, as well as criteria (pre-knowledge) for attending training for PP officers

- Define and use clear performance indicators to measure the performance and results accomplished by the PPA and the PP system in general
- Make the publishing of the annual PP plans on the e-Procurement systems mandatory
- Establish register of certified bidders within the institution that keeps the trade register or PPA and/or introduce self-declaration document for EO like the EU ESPD
- Draft provisions in the present or new PPL that will regulate the basic aspects of the contract management, such as the obligation for Contract Management Plan

The main recommendations related to e-Procurement are:

- Prepare a strategy / plan for gradual introduction of the electronic means of communication (e-procurements) in all phases of public procurement procedures and special techniques such as e-auction, e-catalogue, dynamic purchasing systems
- Review and amend the national legal framework to introduce and / or facilitate the implementation of the e-procurements such as the legislation on public procurement, e-data, e-signature, e-archiving, etc.
- Prepare a study and/or strategy / plan to facilitate the establishing of an appropriate national legal framework and implementation of the post-award phases such as e-ordering, e-invoicing, e-payment
- Take into consideration and learn from the experience of the countries that already have e-procurements by establishing strong links for regular exchange of information
- Prepare feasibility study with options for development, maintenance and upgrade of the system - roles and responsibilities of the Public Procurement Authorities and providers of IT services such as software developers, HW platforms, cloud, etc.
- Design and establish a system for promoting the use of e-procurements and e-provision of training and user support
- Prepare study / guidance for transposition of the EU e-IDAS Regulation (e-Identity and e-Signatures) in the national legislation and for facilitation of the cross-border (ReSPA members and Kosovo*) recognition of e-signatures
- Implement activities aiming to make the present and the new e-procurement platforms as "open data" (data automatically readable and re-usable by other IT systems) and interoperable with other government IT systems (e-services), with focus on creating "regional standard that is based on EU TED information exchange format

2 Introduction and purpose of the analysis

2.1. The Regional School of Public Administration in the Western Balkans

The Regional School of Public Administration (ReSPA) is a unique historical endeavour to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession. The initial objectives behind the ReSPA initiative were to boost regional co-operation in the field of public administration, and strengthen administrative capacity and the development of human resources in line with the principles of the European Administrative Space.

2.2. Purpose, rationale and contents of this Comparative Study

The rationale of the regional comparative study is the development of national public procurement systems in the region in light of the EU integration processes and EU legislative and policy framework on public procurement. In that respect, reform of public procurement rules at EU level reflected in adoption of the new 2014 directives is one of the key elements of future measures and activities focused on further development of national public procurement systems in the region. “Classical” directive (2014/24/EU), as setting general patterns and covering the widest range of application is of the most importance and emphasis in this Study is made on it. This comparative study is focused on some of the most important and challenging aspects to be faced by national policy makers related to putting in place and, of no less importance, implementing and enforcing national frameworks in line with the new EU public procurement framework, for the selected topics of management of irregularities in PP (aside the review process) and e-procurement. EU public procurement legislation provides standardization of rules and forms which facilitates the Member States and those who are about to become, to participate and compete in the EU market. This Study involves the countries of the region that are at the stage of harmonization of national legislation to EU rules, which is one of the basic prerequisites for accession to the EU. Those countries are Albania, Bosnia and Herzegovina, Kosovo*, Macedonia, Montenegro and Serbia (Western Balkan countries).

Public procurement has been recognized as a very important area with high level relations with overall national, but also international economic and political development. Covering significant percentage of national GDPs, public procurement is directly related with other important development aspects, such as the increase of competitiveness of the markets, the improvement of electronic administration and business environment, the promotion of environmental and social aspects and innovation. Due to its high total value, public procurement also has significant influence on the risk of corruption level, as well as enforcement of integrity aspects at various levels.

The goal of this Study is to provide an overview of national public procurement systems in the region, taking into account EU integration processes and EU legislative and policy framework on public procurement. The point is to determine whether and to which extent national legislation of each country is in line with EU public procurement legislation and to give recommendations for further actions.

2.3. Methodology of survey and analysis

The report has been prepared by six national experts from Albania, Bosnia & Herzegovina, Kosovo⁶, Macedonia, Montenegro, and Serbia, supported by two international experts. It is based on desk research of each country's relevant legislation and regulation, official publications, statistics, and information systems, plus selected interviews with key persons in each country. The input provided by the national experts was coordinated and further analysed and elaborated by two lead experts.

⁶ <http://www.sigmaweb.org/publications/Principles-Public-Administration-Overview-Nov2014.pdf>

3 European Union context

Transparent and competitive public procurement has a significant impact on the public procurement market in terms of opening up business opportunities, impact on economic growth and development, as it has an impact on the labour market. The public procurement, as regulated by the EU legislation, implies an open market and creates opportunities for the provision of services, delivery of goods and works in other Member States, other than those in which the tenderers have their registered office. The emphasis is on non-discrimination, efficiency and delivery of benefits for the society in general. The core principles of EU legislation are transparency, equal treatment, open competition, and sound procedural management. The purpose of the EU is the creation of the single market and for that reason it provides the adoption of common rules and ways for the public and utility sector. Public procurement is one of the instruments used to achieve smart, sustainable and inclusive growth, and ensuring the most efficient use of public funds. For this purpose, the public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council² and Directive 2004/18/EC of the European Parliament and of the Council³ were revised and improved. Consequently, in the Official Journal of the European Union L 94 of 28 March 2014, three new Directives on public procurement are published, as follows:

- a) Directive 2014/24/EU of the European parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- b) Directive 2014/25/EU of the European parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- c) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

The intention of adopting the new Directives is to increase the efficiency of public spending, especially to facilitate the participation of SMEs in public procurement and to enable suppliers to make better use of public procurement to achieve the common social objectives. Also, the reason for the adoption of new Directives in the public procurement was also a need to clarify the fundamental notions and concepts to ensure legal certainty and to take into account certain aspects of related well-established case law of the Court of the European Union. By adopting new rules on public procurement the European Parliament introduced new provisions that allow taking into account green, social and innovative aspects of the bids in selecting the best bid. The main purpose of this legislative initiative is to open public procurement to small companies and to encourage public authorities to consider new ways in which they can improve the services they provide to their customers, in particular by introducing the obligation of electronic means of communication in public procurement procedures. Expectations of the changes in the Directives are an increase the efficiency of expenditure, simpler and more

² Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004).

³ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004).

flexible rules, clearly regulated procedures, reduction of irregularities and promotion of social objectives.

A "directive" is a legislative act that sets out a goal that all EU countries must achieve, while the Member States are required to transpose the directive into their national system, choosing form (statute, regulation, etc.). The new Directives on public procurement entered into force on the twentieth day after its publication in the Official Journal of the European Union. Since the publication date was 28.03.2014, the Directives came into force on 17.04.2014 and the deadline for Member States to implement the new directives is 18.04.2016. Possible cases of delayed implementation of certain provisions of the Directives are set out in Article 90 of Directive 2014/24/EU of the European Parliament and the Council and Article 106 of Directive 2014/25/EU of the European Parliament and the Council. Taking into account that the new Directives came into force and the deadline for the implementation of the new Directives, Member States need very soon to adapt their existing Laws on Public Procurement to new EU rules on public procurement.

Considering the extensiveness of the text of new Directives, in this Study we present the situation in the Western Balkan countries in accordance with Directive 2014/24/EU of the European Parliament and of the Council on public procurement, which regulates the public procurement procedures regarding contracting authorities in the classical sector. The provisions of the Directive for the utility sector are revised in almost the same terms as those of the classical Directive and many changes in the classical Directive can be found in the Directive for the utility sector.

4 Management of irregularities – findings on the legal and implementation level per country

Article 83 of the Directive 2014/24/EU on public procurement requires the Member States to ensure that at least the tasks set out in this Article are performed by one or more authorities, bodies or structures. Member States shall ensure that the application of public procurement rules is monitored. Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof. The results of the monitoring activities shall be made available to the public through appropriate means of information. These results shall also be made available to the Commission. Every three years, starting from 2017, Member States shall submit to the Commission a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

4.1. General legal framework and strategic documents related to management of irregularities in the public procurement

ALBANIA

- Law on Public Procurement no. 9643, dated 20.11.2006, as amended
- Decision of Council of Ministers on approval of public procurement rules no. 914, dated 29.12.2014

In December 2014, the Council of Ministers has approved the Public Finance Management (PFM) Strategy⁴, which includes the National Strategy on development of the public procurement system as well. The aim of this strategy is to define the main goals in the development of the public procurement system and measures required for their achievement. In Albania there is only one PFM Strategy and it is published on the PPA official website www.app.gov.al and Ministry of Finance official website www.financa.gov.al.

BOSNIA AND HERZEGOVINA

- Bosnia and Herzegovina Law on Public Procurement (OG BIH, No. 39/14);
- Regulation on monitoring public procurement procedures (OG BIH, No. 48/08 and 50/19);
- Regulation on establishment and conduct of Procurement Commission (OG BIH, No. 103/14);

⁴ http://www.financa.gov.al/files/userfiles/Raportimet/Albanian_PFM_strategy_2014-2020.pdf and <https://www.app.gov.al/ep/DokumenteStrategjike.aspx>

- Rules of procedure for the PPA of Bosnia and Herzegovina in case of corruption report submission by anonymous persons or persons who are not employees of the Agency (www.javnenabvke.ba);
- Competition Act of Bosnia and Herzegovina (OG BIH, No. 48/05);
- Bosnia and Herzegovina Law on Freedom of Access to Information (OG BIH Nos. 28/00, 45/06, 102/09 and 62/11, 100/13);
- The Law on the Prevention of Corruption and Coordination of the Fight against Corruption (OG BIH, No. 103/09);
- Law on Agency for Prevention of Corruption and Coordination of the Fight against Corruption (OG BIH, No. 103/10); as well as regulations at, i.e. Brcko District level, that regulate the issues of operation and management of public enterprises. For example, Article 13 of the Law on Public Enterprises in Republic of Srpska (OG RS, Nos. 75/04 and 78/11), and Article 14 of the Law on Public Enterprises in the Federation of Bosnia and Herzegovina (OG FBIH, Nos. 05/08, 81/08 and 22/09) regulate and define the issues of conflict of interest in public enterprises and, within this framework, also in contracting authorities, which are considered to be public enterprises;
- Law on Conflict of Interest in Institutions of Bosnia and Herzegovina (OG BIH, Nos. 16/02, 14/03, 12/04, 63/08, 18/12 and 87/13);
- Correction to the Translation of the Text of the Decision of the High Representative enacting the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina (OG BIH, No. 14/03);
- Law on Conflict of Interest in Governmental Institutions of the Federation of Bosnia and Herzegovina (OG BIH, No. 70/08);
- Law on Prevention of Conflict of Interest in Governmental Institutions of the Republic of Srpska (OG RS, No. 73/08);
- Law on Conflict of Interest in Institutions of the Brcko District of Bosnia and Herzegovina (OG BD BIH", Nos. 43/08 and 47/08);
- Law on Auditing of Institutions of Bosnia and Herzegovina (OG BIH, No.12/06);
- Law on Auditing of Institutions of FBIH (OG FBIH, No. 22/06);
- Law on Public Sector Audit of RS (OG RS, No. 98/05);
- Law on Audit of Financial Operation of the Institutions of Brcko District of Bosnia and Herzegovina (OG BD BIH, No. 21/05), Law on Audit of Public Administration and Institutions in Brcko District (OG BD BIH, No. 40/08 and 29/14);
- Law on Free Access to Information (OG BIH, Nos. 28/00, 45/06, 102/09, and 62/11);
- Laws on Obligations (OG SFRJ, Nos. 29/78, 39/85 and 57/89; OG RBIH, Nos. 2/92, 13/93 and 29/03).

The strategy for development of the public procurement system in Bosnia and Herzegovina was adopted in May 2010 encompassing a period of five years.⁵ The strategy is based on the programme priorities related to the harmonization in legislative activities for the implementation of the European Partnership and the Interim Agreement⁶ (31 December 2009) and the Action Plan⁷ for the implementation of priorities of the European Partnership with Bosnia and Herzegovina document, as well as the decision of the Parliamentary Assembly of Bosnia and

⁵ It was adopted by the BIH Council of Ministers at its 131st meeting on 26/08/2010; www.javnenabvke.ba. At the meeting convened on 16/9/2013, the Board of the PPA decided to postpone the revision of the Strategy pending the adoption of a new law on public procurement

⁶ www.europa.ba

⁷ Ibid

Herzegovina related to the accession of Bosnia and Herzegovina to the EU, by signing and ratifying the agreement. The Stabilization and Association Agreement (SAA)⁸ has been ratified and entered into force on June 1, 2015. The review of the strategy (or drafting of a completely new strategy) is planned with the development of the Action Plan for the first year, having in mind the introduction of the new PPL, and new Directives in this field.⁹

KOSOVO*

- Public Procurement Law No. 04/L-042;
- Public Procurement Regulation;
- Operational Guideline for Public Procurement;
- Procurement Code of Ethics;
- Law on the Establishment of the Office of the Auditor General of Kosovo* (OAG) and the Audit Office of Kosovo* No. 03/L-075;
- Law on Internal Audit No. 03/L-128;
- Law on Anti – corruption No. 03/L-159;
- Law on Conflict of Interest No. 04/L-228;
- Law No. 04/L-050 and 04/L-228 on the Declaration, Origin and Control of Property of Senior Public Officials and on the Declaration, Origin and Control of Gifts of Public Officials.

MACEDONIA

- Public Procurement Law (Official Gazette no. 136/07, 130/08, 97/10, 53/11, 185/11, 15/13, 148/13, 28/14, 43/14, 130/14, 180/14, 78/15, 192/2015 and 27/2016);
- Law on Prevention of Corruption (Official Gazette no. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 and 148/2015);
- Law on Prevention of Conflict of Interests (Official Gazette no. 70/2007, 114/2009, 6/2012 and 153/2015);
- Law on Public Sector Employees (Official Gazette no. 27/2014 and 199/2014);
- Law on Prevention of Money Laundering and Other Proceeds from Crime and Financing of Terrorism (Official Gazette no. 130/2014);
- Criminal Code (Official Gazette no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014);
- Public Procurement Code of Conduct (Official Gazette no. 39/2012);
- Code of Ethics for the Administrative Servants (Official Gazette no. 183/2014);
- Law on Public Internal Financial Control (Official Gazette no. 90/2009 and 188/2013).

The PPB has adopted the strategic priorities for further development of the public procurement system in the Republic of Macedonia for period 2014-2018. It is available on the PPB web site (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=strategic-documents&lang=en>).

⁸ Ibid

⁹ The Agency work program for public procurement for 2015

MONTENEGRO

- Law on Amendments to the Law on Public Procurement (“Official Gazette of Montenegro”, no. 57/14 and 28/15).

Adopted document: Strategy for development of the Public Procurement System in Montenegro for the period 2011-2015, with Action Plan and Coordinating body for Monitoring and Implementation of the Strategy for Public Procurement.

Action plan is available on the website of PPA <http://www.ujn.gov.me/>

The general objectives of the Strategy include: further improvement of a unified public procurement system in Montenegro; increasing the efficiency of the public procurement system; reducing irregularities in the public procurement system; further harmonization with the directives and other acts of the EU; and promotion of sustainable economic development of Montenegro and the growth of living standards.

In the plan of PPA for 2015, there is a written note that the Strategy of the development of Public Procurement 2016-2020 will be adopted. Until this moment it has not happened.

SERBIA

- Public Procurement Law („Official Gazette of RS“, no. 124/2012, 14/2015 and 68/2015);
- Law on State Audit Institution („Official Gazette of RS“, no. 101/2005, 54/2007 and 36/2010);
- Law on the Anti-Corruption Agency („Official Gazette of RS“, no. 97/2008, 53/2010, 66/2011 and 67/2013);
- Law on Protection of Competition („Official Gazette of RS“, no. 51/2009 and 95/2013).

The Government of the Republic of Serbia adopted on 30 October 2014 the Public Procurement Development Strategy of the Republic of Serbia for the period 2014-2018 and Action Plan.

4.2. Institutional framework of PPA and other institutions responsible for monitoring of irregularities in PP - key functions and differences among them

ALBANIA

Public Procurement Agency (PPA) in Albania is established by Law on Public Procurement no. 9643, dated 20.11.2015, as amended, which regulate its activities and tasks as well. The PPA is a central body, with a legal and public personality reporting to the Prime Minister, and financed by the State Budget. The main tasks of PPA are:

- a) to submit proposals for procurement regulations to the Council of Ministers;
- b) to promote and organize training of central and local government officials engaged in public procurement activities;
- c) to edit and issue a Public Announcements Bulletin, as described in the procurement regulations. The PPA shall publish in the PA Bulletin the list of excluded EO;
- d) to prepare standard tender documents to be used in awarding procedures;

- e) on request, to give advice and provide technical assistance to CA, when launching and conducting awarding procedures;
- f) to present an annual report to the Council of Ministers regarding the overall functioning of the public procurement system;
- g) (g) to co-operate with international institutions and with other foreign entities on issues related to the PP-system;
- h) to plan and coordinate foreign technical assistance to Albania in the field of PP;
- i) to encourage and support the use of international technical standards for the preparation of national technical specifications, as well as to maintain an ongoing relationship with the National Directorate of Standardizations;
- j) to monitor the public procurement system;
- k) in case of misconduct, to penalize with fines or to propose to the head of CA or higher bodies disciplinary measures against the individual in the CA, who committed the infringement;
- l) to prepare and adapt its internal regulations;
- m) to carry out any other task, as specified by law.

The PPA can exclude an EO from participation in awarding procedures – without prejudice of criminal proceedings, which may have started – for a period of 1 to 3 years in the cases stipulated in the law.

As explained above, PPA is doing only ex-post monitoring, in order to avoid the conflict of jurisdiction with PPC, which has the review competences. All other auditing institutions (internal audits and Supreme State Audit) have also ex-post monitoring competences of public procurement procedures.

Bosnia and Herzegovina

Pursuant to Article 92 of the PPL, the role of **Public Procurement Authority** (PPA) has been defined. PPA is responsible for drafting laws, implementing regulations, standard models for tender documentation, providing advice and technical support to participants in the procurement process and providing training. The PPA is also responsible for monitoring public procurement procedures for all contracting bodies; collecting, analysing and publishing information regarding public procurement procedures, and developing electronic information systems in the field of public procurement in Bosnia and Herzegovina.

The **Public Procurement Review Body** (PRB), instead is an independent, autonomous institution that decides on appeals in public procurement procedures.

The **Audit Office of the Institutions of Bosnia and Herzegovina** provides independent opinions on budget execution and financial statements with regard to the Government and state institutions of BOSNIA AND HERZEGOVINA, ensuring reliable reporting on budget execution and transparent and quality management of public revenues, including irregularities in public procurement procedures.¹⁰

¹⁰ More information's are provided under 3.1.3.2.1. Audits of PP procedures.

The **Competition Council of Bosnia and Herzegovina**, which was established as an independent public institution in 2004, has the mandate to ensure: consistent implementation of the Bosnia and Herzegovina Competition Act¹¹, effective and transparent application of the Bosnia and Herzegovina Competition Act; effective mechanism of market control; cooperation with international agencies in this field; application of all forms of prevention and restriction of distortion of market competition in the entire territory of Bosnia and Herzegovina or out of Bosnia and Herzegovina that have a substantial effect on its market. The procedures may be initiated at the request/claim of the party or ex-officio when the Bosnia and Herzegovina Competition Council finds that the practice in question is likely to cause considerable obstruction, restriction or distortion of competition. The Competition Council issues a final decision¹², which can be challenged at the Court of Bosnia and Herzegovina.

The **Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in Bosnia and Herzegovina**, became operational in 2013.¹³ In cooperation with the Inter-Ministerial Working Group comprised of representatives of 23 institutions from the state level, entity level and Brcko District of Bosnia and Herzegovina, as well as representatives of NGOs, the Strategy for Combating Corruption 2015–2019 and the Action Plan for the Implementation of the Strategy for Combating Corruption 2015-2019 were developed.¹⁴ The Strategic Plan under section 2.9 of the Strategy pertaining to public procurement and fight against corruption is of particular significance.

KOSOVO*

According to the PPL No. 04/L-042, there are two independent central procurement institutions which deal with the monitoring of procurement activities and the finding of irregularities in the field of public procurement in Kosovo*.

The main institution in the field of public procurement in Kosovo* is **Public Procurement Regulatory Commission (PPRC)**, which was established in February 2005. PPRC is a legislative and monitoring body for public procurement in Kosovo*. With the exception of the Public Procurement Law, which is approved by the Assembly of Kosovo*, the complete accompanying legislation for the implementation of the law is prepared and approved by the PPRC. The PPRC is led by a three-member board proposed by the Government and appointed by the Assembly of Kosovo*. PPRC's members are appointed for a term of five years, and may be reappointed only once. The PPRC Board reports directly to the Assembly of Kosovo*.¹⁵ According to the PPL No. 04/L-042, the PPRC has the following competencies and responsibilities:

- It prepares and publishes detailed rules as well as the entire secondary legislation on public procurement aiming at the implementation of the law by contracting authorities;
- Conducts monitoring of procurement activities carried out by the contracting authorities;
- Interprets provisions of the law, rules on public procurement and offers technical assistance to contracting authorities and EO;

¹¹ BIH Competition Act (OG BIH, No. 48/05)

¹² *ibid*

¹³ Established through the Law on the Prevention of Corruption and Coordination of the Fight against Corruption (OG BIH, No. 103/09, which was adopted in 2009)

¹⁴ Strategy for Combating Corruption 2015-2019 published on www.apik.ba

¹⁵ Dr. Sc. Ilaz DULI, "Public Procurement Reforms in the Western Balkans" page 196; Publisher: "Balkan Procurement Consultancy" – 2014, Pristina

- Establishes and maintains an information website and an electronic information system throughout Kosovo*, offering unlimited access to the public;
- Examines reports by contracting authorities where the negotiated procedure without the publication of a contract notice, and in cases when less than two responsive tenders are accepted;
- Supports the Kosovo* Institute for Public Administration and other public training authorities for the development of training programs in the field of public procurement;
- Initiates and supports the development of electronic procurement and communication within the field of public procurement;
- Develops and maintains a list of contracting authorities in Kosovo*, which are subject to the Public Procurement Law;
- Develops and implements detailed rules relating to the sale of assets of the contracting authorities;
- Monitors contract management and its implementation by contracting authorities;
- Prepares and submits to the Assembly of Kosovo* an annual report presenting and analysing procurement activities;
- Cooperates with other organizations in Kosovo* and abroad on issues related to public procurement.

PRB is a complaints review body in public procurement of Kosovo*. According to the PPL of Kosovo* No. 04/L-042, the PRB has the following competencies and responsibilities:

- Reviews all complaints addressed to the PRB in the field of public procurement concerning possible violations of the law,
- Conducts investigations on its own initiative or at the request of any party involved in the procurement process related to any irregularities during procurement activities,
- On the basis of a written request by the Contracting Authority (CA), regarding the submission of false data or a forged document by the EO, the PRB is responsible and has the authority to review and disqualify the EO from participating in public procurement for a period up to one year,

Reports annually to the Assembly of Kosovo* on the progress of complaints procedures.

In addition to these two central procurement institution, the field of public procurement in Kosovo* monitored and by:

a) **OAG** is a supreme audit institution under the Assembly of Kosovo*. OAG of Kosovo* is established for the purpose of promoting high standards of transparency, accountability and integrity in the financial management and performance of public administration in Kosovo*¹⁶.

b) **Anti – Corruption Agency of Kosovo* (ACA)**, based on the Law No. 03/L-159, is focused on discovering and researching corruption cases, efforts to prevent and combat corruption and to raise awareness in public opinion about the goal of building a healthy society based on a just state. To carry out activities related to corruption in public procurement, the ACA is it draws its responsibilities primarily from the Law on ACA No. 03/L-159, Law on Conflict of Interest No. 04/L-228, Law on Public Procurement No. 04/L-042, Law on Public-Private Partnership No. 04/L-045, and other laws relevant to the prevention of corruption. In addition to the above laws, ACA also ensures the

¹⁶ Law No. 03/L-075, on the Establishment of the Office of the Auditor General of Kosovo* and the Audit Office of Kosovo*; <http://www.oag-rks.org>

implementation of secondary legislation documents from bidding entities, particularly of the following acts: Rules on procurement procedures, Procurement Code of Ethics, Regulation for the Review Procedure, Guidelines for Public Procurement Procedures etc.

c) Competition Commission of Kosovo*

MACEDONIA

The Public Procurement Bureau (PPB) was established in 2004 under the PPL as body within the Ministry of Finance. The PPB is headed by a Director who is appointed by the Government and has a mandate of 4 years. The mandate of the PPB is to monitor the development of the public procurement system and to ensure rationality, efficiency and transparency in the procurement process.

The PPB is collecting and monitoring data regarding ongoing and conducted contract award procedures across the entire country. It makes the data available to all stakeholders and general public. The PPB has the following specific tasks: initiate proposals for the adoption of legal acts in the field of public procurement; monitor and analyse the enforcement of the public procurement laws and regulations, functioning of the public procurement system; provide opinions regarding the provisions and the application of the Public Procurement Law (PPL), published in the Official Gazette of the Republic of Macedonia¹⁷ and on the PPB web site (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=law-on-public-procurement>); advise and assist the CA and the EO; prepare models of tender documentation and model forms for the procedures, which are not mandatory and are available on the PPB web site (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=tender-doc>); keep single records and maintain and update the records of the public procurement contracts, and make them available to the public on the e-Procurement system; monitor the timely submission of data and disable use of e-procurement system for users who disobey their obligations with regard to the use of e-procurement system; reschedule electronic auction in case of technical mistake, system crash and upon decision of the State Appeals Commission; analyse the elaborations on non-implementation of e-auction, propose Code of Ethics when implementing public procurement; collect, process and analyse public procurement data and prepare statistical reports; inform the contracting authorities, and if necessary, the competent authorities regarding the determined irregularities that were notified; determine the minimum requirements regarding the professional qualification of persons performing professional tasks in the field of public procurement; organize and conduct public procurement training for civil servants and other persons; cooperate with international institutions and other foreign entities in relation to the development of the public procurement system; coordinate foreign technical assistance in the field of public procurement; submit an annual report to the Government regarding its activities in the functioning of the public procurement system; give guidelines and prepare manuals and comments on the rules for public procurement and publish an electronic bulletin.

According to article 14 of the PPL, the PPB immediately informs the contracting authorities, and if necessary, the competent authorities regarding the determined irregularities from the received notifications. PPB's duty is only to inform and there are no other measures or sanctions that PPB can impose.

¹⁷ Official Gazette of the Republic of Macedonia (27/2015-consolidated text and 78/2015)

Public Procurement Council (PPC) was established in 2014, first as a body within the PPB and as of January 1st, 2016, it became an independent entity under direct control of the Government. The objective of this body is to increase the competition in the public procurements and to prevent discrimination of EO by approving the draft technical specifications and tender selection criteria.

In addition to the PPB and PPC, the following institutions have certain responsibilities related to control and review of public procurement procedures:

- **State Appeal Commission for Public Procurements** is an independent state body consisting of 5 members appointed by the Parliament. Its mission is to provide fast, efficient and objective review of the procedures for the award of public procurement, concessions and public private partnership.

- **State Audit Office (SAO)** performs ex-post audit concerning the utilization and spending of the procurement funds. The audits cover the entire procurement process, from the time of preparation (e.g. securing funds) until the signing of the contract, including the outcome of the contract execution (final prices in the contracts, completion dates, etc.).

- **State Anti-Corruption Commission** has authority and responsibility to investigate corruption complaints and allegations raised by a range of sources. This Commission has identified public procurement as an area of great risk for corruption; its annual report always addresses this issue in a separate chapter. As its goal is to prevent corruption, the Commission prioritizes allegations of corruption in procurement. This means that any complaint received about the conduct of an ongoing public procurement procedure must be dealt with swiftly if the corrupt award of a contract is to be prevented. The annual reports of the Commission are published on its web site

(http://www.dksk.org.mk/index.php?option=com_content&task=blogcategory&id=18&Itemid=47).

- **Commission for Protection of Competition** has the authority to investigate cases of collusion and similar actions between EO and impose sanctions. In 2012, the Commission initiated procedure against two wholesale pharmaceutical companies because they have submitted almost identical and mutually agreed prices for the drug with generic name “docetaxel” on two tenders published by public health institutions

(<http://www.kzk.gov.mk/images/Vestiimages/1139/%D0%9F%D0%A0%D0%95%D0%97%D0%95%D0%9C%D0%98.pdf>).

MONTENEGRO

Competences in the public procurement field are exercised by the Public Procurement Authority, Ministry of Finance as a line ministry responsible for the procurement area and the State Commission for the Control of Public Procurement Procedures in the rights protection area. The Ministry of Finance supervises the legality and effectiveness of PPA. Judicial control over legality of the public procurement procedures is ensured by the administrative dispute, before the Administrative Court of Montenegro.

According to the Law on Amendments to the Law on Public Procurement, **Public Procurement Authority (PPA)** is entitled to perform the following tasks:

- 1) to monitor implementation of the public procurement system;

- 2) to monitor the compliance of the legislation regulating the public procurement system with EU legislation, to prepare technical basis, to initiate and participate in preparation of the public procurement regulations;
- 3) to give approval to CA on fulfilment of conditions for conducting certain public procurement procedure in the cases envisaged by this Law;
- 4) to provide advisory assistance upon CA request;
- 5) to organize and conduct professional development and advanced training of the human resources in charge of performing public procurement tasks;
- 6) to organize professional exam for performing tasks in the area of public procurement;
- 7) to establish and maintain the Public Procurement Portal for the purpose of ensuring transparency of public procurement;
- 8) to publish public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favourable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, as well as of other acts in accordance with this Law;
- 9) to prepare and publish a List of CA on the Public Procurement Portal;
- 10) to encourage the conducting of public procurement in electronic form;
- 11) to pursue cooperation with international organizations, institutions and specialists in the field of public procurement;
- 12) to prepare and submit to the Government annual reports on the public procurement, carried out in the previous year;
- 13) to prepare and publish a list of bidders on the basis of decisions on selection of the most favourable bid;
- 14) to prepare and publish a common public procurement vocabulary on the Public Procurement Portal;
- 15) to perform inspection control;
- 16) to issue publications and other technical literature;
- 17) to perform other tasks, in accordance with the Law.

PPA focuses on procedures in awarding public procurement contracts. Other institutions that have certain responsibilities and tasks in the field of public procurement are:

- **State Audit Institution** controls the regularity (legality), economy, effectiveness and efficiency of budget spending and management of state assets. The State Audit Institution has a yearly plan of controlling the budget spending units and controls, among other things, whether procurement procedures are conducted in accordance with the Law on Public Procurement.
- **Anti-Corruption Agency** (Directorate for Anti-Corruption Initiative) mandate is to fight against corruption.
- **Commission for Prevention of Conflict of Interest** mandate is to prevent or discover conflict of interest.
- **State Commission on the protection of rights of bidders (system of appeal)** is reviewing the public procurement procedures.

- **Agency for Competition** was formed in 2012, in line with the Law on Protection of the Competition¹⁸ and its main role in the system is to monitor and analyse conditions of competition in the general market as well as in the markets of particular economic sectors, as well as to take measures against undertakings and associations of undertakings for impairment of competition in the market, or take measures with a view to preventing the occurrence of or terminating the infringement and eliminating harmful effects for undertakings and consumers.

SERBIA

The PPL is prescribing the organization, competence and way of acting for the **Public Procurement Office (PPO)**. The PPO monitors the application of the PPL, as well as the conducting of public procurement procedures, adopts bylaws and performs professional activities in the areas of public procurement, runs the Public Procurement Portal, prepares reports on public procurement and provides consultancy support to contracting authorities and tenderers. Functioning and organization of the PPO are governed by legislation on civil service and its director is appointed by the government. Some of its main tasks, according to the art. 136, paragraph 1, are:

- files requests for the protection of rights,
- informs the State Audit Institution and Budgetary Inspection on identified irregularities in conducting public procurement procedures and delivering public procurement reports,
- initiates the procedures for annulment of a public procurement contract,
- prepares model decisions and other acts that contracting authorities make in public procurement procedures,
- collects statistical and other data on conducted procedures, concluded public procurement contracts and overall efficiency, etc.

The Republic Commission for protection of rights of tenderers imposes fines to contracting authorities and the responsible persons therein, annuls public procurement contracts, conducts minor offence proceedings in the first instance etc. **The Republic Commission** decides on requests for the protection of rights which may be filed during the entire public procurement procedure against any action of CA and may be submitted by tenderer, applicant, candidate or interested person as well as by the PPO, the State Audit Institution, public attorney and civil supervisor. According to the art. 149 of the PPL, after the CA makes the decision on awarding the contract, the time limit for filing a request for the protection of rights is ten days from the day of publishing of the decision on the Public Procurement Portal (in low-value public procurement five days).

¹⁸Law on Protection of the Competition, Official Gazette no 44/12

Regarding the management of irregularities, there are some other relevant institutions, such as:

- **State Audit Institution**, established in 2005 by the Law on State Audit Institution¹⁹, as the highest authority for auditing public funds, including financial transactions and decisions in public procurement²⁰. It revises an enactment on past, present as well as planned operations of beneficiary of public funds and independently determines the auditees, subject, scope, outset and duration of auditing.

- **Commission for Protection of Competition**, established by the Law on Protection of Competition in 2005 as an independent autonomous organisation²¹. This Commission has special authorization to ban a tenderer from participating in public procurement procedure, where it determines that the tenderer violated competition rules in public procurement procedure and these measures may last up to two years.

- **Anti-Corruption Agency** in charge of overseeing the implementation of the National Anti-Corruption Strategy, including issues dealing with public procurement²². According to the Law on the Anti-Corruption Agency²³, the procedure to establish whether there is a violation of this law and order measures shall be initiated and conducted by this Agency ex officio, and may also be initiated upon the request of an official, its superior officer and on the basis of the report of a legal entity or a natural person.

There are differences among control institutions for the area of public procurement according to the different laws that regulate their functions, responsibilities, tasks, way of acting etc. In general, concerning control on irregularities, the PPO is focusing on procedures in awarding public procurement contracts; the Anti-Corruption Agency on the fight against corruption and conflict of interest; the State Audit Institution on auditing of public funds spending; the Republic Commission on the protection of rights of tenderers in public procurement procedures and the Commission for Protection of Competition on infringement by tenderers regarding competition rules.

4.3. **Power of the monitoring authority to indicate and to inform about specific violations and systemic problems**

ALBANIA

PPL provides in article 13 that the monitoring competence will be within PPA. PPA monitors procurement procedures, after the conclusion (signing) of the contract. This means that PPA can not intervene once the procedures are still in progress. Except for this direct competence given by PPL, PPA has the right to monitor procurement procedures through the reports of auditing institutions. In this case all auditing institutions, including internal audits and Supreme State Audit, refer to PPA all their findings regarding public procurement procedures and PPA

¹⁹ Law on State Audit Institution („Official Gazette of RS“, no. 101/2005, 54/2007 and 36/2010)

²⁰ Website: www.dri.rs

²¹ Law on Protection of Competition („Official Gazette of RS“, no. 79/2005); existing Law on Protection of Competition („Official Gazette of RS“, no. 51/2009 and 95/2013)

²² Website: www.acas.rs

²³ Law on the Anti-Corruption Agency („Official Gazette of RS“, no 97/2008, 53/2010, 66/2011 and 67/2013)

decide on irregularities and the final administrative punishment. Considering all said above, monitoring tasks on procurement procedures are performed in two ways: a) through PPA initiative and b) through auditing reports of auditing institutions. In both cases, the final decision is made by PPA.

When the monitoring task is executed by PPA initiative, PPA prepares a monitoring plan. In preparing the monitoring plan, PPA considers information on specific violations, referred from interested parties (mainly EO), as well as types of procedures, estimated fund, number of participants, etc. As a source of incentives to prepare the monitoring plan by PPA, is used also the electronic portal of anti-corruption (www.stopkorrupsionit.al) where are denounced among others irregularities and corruptive behaviours in public procurement. However, there is no closed or approved list of incentives used to initiate monitoring plan by PPA.

The decision made by PPA at the end of the monitoring process is final and can be appealed only in the administrative court.

PPA normally works with three months monitoring plans, and always monitors a procedure for which the contract has been already concluded.

BOSNIA AND HERZEGOVINA

The PPA monitors the proper application of the PPL or the legality of the application of public procurement procedures by CA with an aim of providing cost-effective and rational expenditures of public funds based on the principle “best value for money”. With the new PPL coming into force, the PPA was empowered to submit infringement reports to the competent court, once it identified violations of this Law that fall within its scope of competence, even when no appeal was filed.²⁴ The role of and assistance from institutions such as the Audit Office of the Institutions of Bosnia and Herzegovina, Audit Office of the Federation Bosnia and Herzegovina, Audit Office of the Republic of Srpska, Bosnia and Herzegovina Competition Council, and Anti-Corruption Agency of Bosnia and Herzegovina, are adding to the management of public procurement irregularities.

The regulation on monitoring public procurement procedures²⁵ defines the monitoring system, which has a dual effect on contracting authorities - preventive and educational. When conducting the monitoring, the PPA first and foremost uses the data sources from: the notices published in the Official Gazette of Bosnia and Herzegovina and the Public Procurement Portal (www.ejn.gov.ba), reports on the implementation of public procurement procedures (which the contracting authorities submit to the PPA), the decisions of the PRB, the reports of the Audit Office, the requests that contracting authorities and/or bidders submit to the PPA, and official letters of other institutions (inspections, courts, prosecutors), reports/publications/information from non-governmental sector and the media.

The PPA conducts the monitoring on the basis of information at any stage of a procurement procedure. When identifying violations of legal regulations, the PPA submits a letter to the CA to remedy the mentioned violation with a recommendation and a deadline of 7 days. In case

²⁴ Article 116, paragraph 1, of the PPL.

²⁵ Regulation on monitoring public procurement procedures (BIH OG, No. 48/08); Guidelines on amendments and supplements to the Regulation on monitoring public procurement procedures (BIH OG, No. 50/10)

the CA does not comply with the recommendation, the PPA is required to submit all the information in its possession to the competent Auditor's Office. This information is also published on the PPA website (www.javnenabavke.ba) including information on the violation of the law, the name of the CA and the respective recommendation to remedy the violation.

The Director of the PPA takes a decision regarding the periodic publications of the identified deficiencies/violations and the actions of contracting authorities to comply with the same. In cases in which review procedure has not been initiated, the PPA shall submit an infringement report to the competent misdemeanour court, once it establishes the violations of the PPL that fall within its scope of competence.

KOSOVO*

PPRC is the main institution which deals with management of irregularities which appear in the field of public procurement in Kosovo*. PPRC based on the Article 87.2.13 of PPL No 04/L-042, every year has to prepare and deliver at the Government and at the Assembly an annual report with analysis of public procurement activities in Kosovo*, together with the recommendations for improving the system of public procurement.

Based on Article 87 and 88 of the PPL No. 04/L-042, the PPRC shall have the authority and responsibility to:

- Monitor and supervise the implementation of the provisions of the PPL, and the rules issued by the PPRC under the authority of the PPL;
- Conduct investigations of procurement and contract management activities for the purpose of monitoring the application of this law;
- Issue an order requiring law enforcement officials to assist the PPRC to ensure compliance with another order of the PPRC;
- Examine reports from contracting authorities concerning the implementation of paragraph 4 of Article 32 (If during the conduct of a procurement activity, less than two responsive tenders or, where applicable, requests to participate are received; the CA shall cancel the procurement activity), and Article 35 (Negotiated Procedures Without Publication of a Contract Notice) of the PPL
- Collect, analyse and publish information about public procurement procedures and awarded public contracts.

MACEDONIA

There is no a single body in the Republic of Macedonia to which with all the competences provided in article 83 of the EU Directive are allocated.

The PPB takes care of the proper functioning of the public procurement system, as well as of its further modernization and enhancement with a view to increasing its efficiency and functionality. Article 14 of the PPL stipulates that the PPB is obliged to inform immediately the contracting authorities, and if necessary, the competent authorities (Public Prosecutor Office, Ministry of Interior, State Audit Office) regarding the determined irregularities in the received notifications. PPB receives information and notification from different parties (from bidders, procurement officers, NGOs, anonymous). These public authorities, based on provisions of other laws, such as Criminal Code and Law on Criminal Procedure, are responsible for taking

further actions and imposing sanctions for irregularities in the public procurements based on the provisions from the PPL and Criminal Code²⁶.

According to article 232 of the PPL, the SAO is performing ex-post audit concerning the utilization and spending of the procurement funds. Public procurement is always part of the audit procedure and sometimes the SAO performs thematic audits (special procurement audits). Two aspects of the public procurements are monitored: the contract award procedure and the execution of the public procurements contracts. There is also a special audit unit within the SAO that measures the performance - efficiency, effectiveness and cost-effectiveness. The frequency of the audits depends on the size of the CA; smaller ones are audited once in 5 years, while the bigger ones almost every second year. Annually, SAO carries out around 100 audits. As a result of the audit the SAO presents its findings and recommendations to the contracting authorities. The audited CA has 90 days to notify if and how the recommendations were implemented. In some cases, SAO does a follow-up audit to check if the recommendations have been properly implemented. Audit reports that contain findings of substantial irregularities are submitted to the Public Prosecution Office (PPO) and the State Anti-Corruption Commission.

The mandate of the PPO is to prosecute the perpetrators of criminal offences and in that respect it has the following authorities:

- to take actions to identify the crime and its perpetrator;
- to request investigation to be carried out;
- to order implementation of special investigation measures;
- to submit indictment and represent it to the court;
- to lodge appeal against the court decisions.

The PPO informs the SAO on further actions taken.

In accordance with the Law on Prevention of Corruption, the State Anti-Corruption Commission can look into all public procurement procedures. If the Commission identifies a corruptive behaviour it can initiate further actions (e.g. request dismissal of the person or request initiating a criminal procedure). Statistics regarding the work of the SAO and State Anti-corruption Commission are given in the next sub-section.

MONTENEGRO

The Directorate for Public Procurement is licensed to monitor the system of public procurement as well as correlations of regulations of Public Procurement with EU law, to perform inspection control and other duties in accordance with the Law. The inspection control over application of Law and regulations is performed by the competent state authority (Administration of the inspection affairs). The Directorate for Public Procurement through daily communication with the different CA in direct contact makes changes in the documentation. Namely, documentation can't be published on the Public Procurement Portal if not checked whether all the dates and all other criteria are followed. For the purpose of monitoring, advisory and consulting services, PPA has institutionalized its activity through a functional "help desk", as

²⁶ Criminal Code (Official Gazette no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014)

well as through the portal and direct communication. In the premises of the PPA, at the request of CA and bidders, regular meetings are held in order to eliminate irregularities observed in the implementation of control.

If a public procurement plan, contract notice, decision on qualification of candidates, decision on selection of the most favourable bid, decision on suspension of the public procurement procedure, decision on annulment of the public procurement procedure, public procurement contract or amendments thereof, submitted to the PPA for the purpose of their publishing, fail to comply with the law, PPA shall notify the CA thereof immediately so as to eliminate the perceived irregularity. If the CA fails to eliminate the irregularity, PPA shall publish the CA's act in the submitted text and inform a public procurement inspector thereof.

A public procurement inspector, working in the separate body – Administration of the Inspection Affairs, division Inspection in the area of Public Procurement – shall perform inspection control (article 149 of the Public Procurement Law) in particular in relation to:

1) adoption, amendments and publishing of public procurement plans; 2) fulfilment of conditions for the performance of tasks of public procurement officers and of the Commission for the opening and evaluation of bids; 3) fulfilment of conditions for initiating public procurement procedures; 4) content, publishing, advertising and amendments and the submission of tender documents; 5) content, manner and timeliness of publishing and delivery of clarifications of tender documents; 6) establishment and extension of time limits for the submission and opening of bids; 7) implementation of anticorruption measures and measures for the prevention of conflict of interest in public procurement procedures; 8) keeping and storing records and documents on public procurements; 9) application of rules of reception of bids, and of issuance and provision of related proofs; 10) application of rules for the opening of bids, preparation, content and delivery i.e. submission of the minutes of public opening of bids; 11) application of rules for the procedure of review, assessment and evaluation of bids; 12) adherence on the part of CA to the time limits for the adoption of decisions on the completion of public procurement procedure; 13) content of decisions of CA 14) conclusion and implementation of the public procurement contracts“.

The inspector shall not perform control over actions and decisions of the CA against which an appeal has been lodged to the State Commission. On the website <http://www.uip.gov.me/inspekcije> various inspection types are listed. Under no. 1 Sector for protection of markets and economies, game of chance and public procurement, there is a section for public procurement inspections.

Article 149 of the Law on Public Procurement prescribes a pecuniary fine ranging from EUR 2 000 to EUR 20 000 that shall be imposed on a legal person for an infringement. The same article defines that for an infringement a responsible person of the legal person, the state authority or the local self-government unit shall be fined by pecuniary fine ranging from EUR 250 to EUR 2 000. An entrepreneur shall be fined by a fine ranging from EUR 500 to EUR 6 000 for the misdemeanour described in article 149 of the Law.

SERBIA

The PPO is the most important institution in the field of public procurement system in Serbia, which is in charge of overseeing the conducting of public procurement procedures in practice and monitoring the application of public procurement rules, with the power to indicate and to inform on concrete infringements and specific problematic issues.

According to the PPL, the PPO performs monitoring activities, and then controls the use of negotiated procedure without publication of invitation to submit tenders. The PPO has also the power to file a request for the protection of rights and to initiate misdemeanour procedure when it discovers in any way an infringement of the PPL which can be the base for this responsibility.

According to the PPL, contracting authorities are obliged to deliver to the PPO public procurement reports quarterly. Furthermore, the PPO may request, in case that it needs so, additional information from contracting authorities on particular public procurement contracts or procedures.

There is also a very important provision in the PPL concerning amendments to public procurement contracts, which have been essential factor of irregularities. In that case, CA shall deliver a report to the PPO and the State Audit Institution, which should control these amendments.

Concerning problems of corruption, the PPL contains specific provisions in order to inform competent authorities, such as the PPO and the Anti-Corruption Agency and initiate their activities. According to the article 24 of the PPL, persons involved in public procurement procedure as well as any other interested person who possesses information on corruption in public procurement, shall inform the PPO and the Anti-Corruption Agency.

The PPL also envisages special authorization of the Commission for Protection of Competition, which may ban a tenderer from participating in public procurement procedure for a period up to two years, where it determines that this tenderer infringed competition rules.²⁷

4.4. Publication of monitoring activities, reports on systemic risks, corruption, fraud (readiness to perform), reports on aggregated value

ALBANIA

PPA discloses the information on monitoring findings in its Annual Report, which is published on the PPA website www.app.gov.al. Except for this, by the end of each year, PPA prepares a short report dedicated to monitoring findings, which provides main findings, which are most often irregularities, that the CA should consider when conducting a procurement procedure and the administrative measures taken by PPA, regarding these irregularities. This report is published at PPA website as well, and it aims to increase the awareness of CA while conducting procurement procedures.

²⁷ See art. 167. of the PPL

The monitoring task of PPA is carried out for all types of procedures, despite the public fund spent with certain procedure. This means that the thresholds are not an indicator for monitoring task of PPA.

In this regard, PPA has a very close collaboration with all auditing authorities which, as provided above, refer all their findings on procurement irregularities to PPA, for the final decision.

BOSNIA AND HERZEGOVINA

The PPL implementation monitoring system is defined by the Regulation on monitoring public procurement procedures.²⁸ The monitoring encompasses the legality of application of individual public procurement procedures in CA. The Board of the PPA is the body that approves the monitoring reports. The reports are submitted to the Council of Ministers of Bosnia and Herzegovina, as necessary and at least once a year, and published on the webpage of the PPA (www.javnenabavke.ba). The purpose of the monitoring is to serve as guidelines for the preparation and organization of trainings for all actors in public procurement procedures. The PPA monitored notices on public procurement, contract awards and cancellation of public procurement procedures that were published in the Official Gazette of Bosnia and Herzegovina and, as of 27/11/2014, when the new PPL entered into force, monitoring of notices published through the Public Procurement Portal (www.ejn.gov.ba).

In 2014, the PPA has observed a total of 582 irregularities, out of which most irregularities relate to the violation of the Article 18, paragraph 4 of the PPL (the procurement notice states high fees for the purchase of tender documentation) - 340 irregularities; violation of Article 6 of the PPL (irregular division of public contracts into lots) – 83 irregularities; violation of Article 34 of the PPL (misuse of sub-criteria) - 18 irregularities.²⁹

In the aforementioned report, the PPA also states that 149 contracting authorities acted in accordance with the recommendations of the Agency and rectified the irregularities; 79 contracting authorities explained and justified why the fee of tender documentation is high; 59 stated that, in future procedures, they will act in accordance with the PPA recommendations, while 12 contracting authorities cancelled the public procurement procedure due to identified irregularities.

In regard to the irregularities, PPA informs, first and foremost, the CA that have committed the violation and, if necessary, other relevant institutions such as the Audit Offices and the PRB. The PPA organizes coordination meetings with the Audit Offices and the PRB, and presents the findings of the monitoring based on the reports of the Audit Offices. Subsequently, together they state their opinion which is then made publicly available through the PPA website (www.javnenabavke.ba). With its recommendations to eliminate identified irregularities and bad practices in procurement procedures and to apply the PPL and implementing regulations, the PPA can have an educational effect on the CA.³⁰

²⁸ Regulation on monitoring public procurement procedures (OG BiH, Nos. 48/08 and 50/19).

²⁹ PPA Monitoring Report for 2014, from March 2015 (www.javnenabavke.ba)

³⁰ The Regulation on monitoring public procurement procedures and the Regulation on the amendments and supplements: Regulation on monitoring of public procurement procedures ("OG" 48/08); Guidelines on amendments and supplements to the Regulation on monitoring public procurement procedures ("OG" 50/10) www.javnenabavke.ba

The cooperation between the PPA and other institutions that ensure proper application of the PPL, especially the PRB, is at a satisfactory level.³¹

KOSOVO*

PPRC performs the monitoring role through the Division for Monitoring. This division monitors the CA based on the annual plan, but also upon request from the CA themselves. From altogether 173 CA that are registered in Kosovo*, during 2014, the Monitoring Division has conducted monitoring based on yearly plan in 38 CA, with a total of 282 procurement activities, and in 7 cases on the basis of the request of the CA.

The main challenges that accompany the public procurement system in Kosovo* are:

- Non-appropriate implementation of public procurement legislation;
- Insufficiently training for procurement officers;
- Frequent turnover of the procurement officers in the CA;
- The pressure made to procurement officers during the performance of procurement activities, especially on the contract award;
- Very small number of licensed procurement officers in Kosovo*, relative to the budget spent for procurement;
- Lack of e-procurement.

The challenges facing the implementation of the procurement legislation are the main reasons for the appearance of irregularities in the public procurement system of Kosovo*. The irregularities that are identified from the Monitoring Department are the violations of the Articles of PPL No. 04/L-042, which are mostly repeated³²:

- Article 7: Equality of Treatment/Non-Discrimination and Transparency = 23 times
- Article 8: Procurement Forecast = 11
- Article 9: Determination of Needs to be Satisfied and Availability of Funds = 36 times
- Article 10: Means to promote Transparency = 1 time
- Article 16 & 17 & 18: Calculating the Estimated Value = 14 times
- Article 22: Initiation of a Procurement Activity = 22 times
- Article 26: Signing of Public Contracts = 19 times
- Article 28: Technical Specifications = 8 times
- Article 32: General rules- received less than two responsive tenders = 1 time
- Article 36: Price Quotation Procedures = 13 times
- Article 38: Public Framework Contracts = 1 time
- Article 42: Publication of Notices = 6 times
- Article 44: General Rules for Setting a Time Limit for the Receipt of Tenders = 1
- Article 46: Special Rules Permitting the Reduction of Time Limits = 1 time
- Article 51: Notification of Selection Criteria = 10 times
- Article 52: Notification of Contract Award Criteria = 2 times
- Article 54: Notification to Eliminated Candidates and Tenderers 30 times
- Article 58: Opening of Tenders(not signed by the procurement officer) = 27 times
- Article 59: Examination, Evaluation and Comparison of Tenders = 40 times

³¹ On 26/01/2015, the PPA, PRB and the Court of BIH have signed a Protocol on procedures in the publication of decisions of the Procurement Review Body of BIH and the Court of BIH www.ejn.gov.ba

³² PPRC Archive: Report on Public Procurement Activities in Kosovo for 2014

- Article 62: Termination of a Procurement Activity = 2 times
- Article 63: Performance Security = 33 times
- Article 68: Economic and Financial Standing = 1 times
- Article 69: Technical and/or Professional Capability (Selection Criteria) = 11 times
- Article 91: Implementing Measures (standard forms approved by PPRC) = 72 times.

From the data presented above, it may be noted that the most frequent irregularities during the performing public procurement activities are:

- Implementing Measures by not using standard forms approved by PPRC;
- Examination, Evaluation and Comparison of Tenders;
- Determination of Needs to be Satisfied and Availability of Funds;
- Performance Security
- Notification to Eliminated Candidates and Tenderers;
- Opening of Tenders by not signed from the procurement officer;
- Equality of Treatment/Non-Discrimination and Transparency.

All reports prepared by monitoring Division are sent to the relevant CA, as well as published on the official web-site for public procurements in Kosovo*.

PPL No. 04/L-042 determines that the decisions of the PRB, following the review of appeals are final, but some CA have delayed – neglected by not respecting the decision of the PRB for the re-evaluation of bids or annulment of procurement activities. Because of this, PRB during 2014 has issued 30 ordinances to the CA by requesting the implementation of decisions issued by the PRB. Furthermore, the PRB has issued 1 fine in the amount of 20.000 €, against the Ministry of Local Government Administration. PRB has also cancelled the procurement certificate for one procurement officer.

OAG annually conducts a Regularity Audit of the Kosovo* Consolidated Budget, and reports to the Assembly of Kosovo*. Reports of the Auditor General are made available to the public. A comprehensive overview of the irregularities in the field of public procurement of Kosovo* is presented in the Annual Audit Report³³ of this office for the year 2014 in which is concluded: Public procurement has made limited progress with shortcomings repeated in all procurement phases this year and the improvement of the procurement system remains a future challenge for the Government / Assembly of Kosovo*. Regularity audit reports on all levels, especially at the local level, have identified shortcomings in the implementation of the PPL. This indicates that the management of Budget Organizations (BOs) have not managed to overcome the challenges to make this system work better. Improper preparation of the procurement process, shortcomings in developing the process and shortcomings in procurement contracts management indicate that BOs need to address the identified problems and improve this process. During the audit of public procurement activities in Kosovo* in 2014, the Auditor General of Kosovo* has faced these procurement findings³⁴.

Individual audit reports of 2014 highlight that BOs still have shortcomings in terms of managing procurement processes. Despite recommendations given in the 2013 Annual Audit Report, processes are not developed fully in compliance with PPL framework. Different challenges were found in the whole process starting from the planning over to projects implementation.

³³ Office of the Auditor General of Kosovo*: Annual Audit Report for the year ended on 31 December 2014; <http://www.oag-rks.org>

³⁴ Ibid

These may lead to a situation where goods & services and capital projects of poor quality and higher costs would be procured. Based on individual audit reports, the most frequent weaknesses identified in procurement during 2014 are:

- Weak procurement planning;
- Weak needs assessment and weak preparation of pre-calculation and bill-of-quantities;
- Shortcomings in the preparation of the Tender Dossier;
- Splitting of tenders in order to avoid the open procurement procedure;
- Weaknesses in tender evaluations;
- Shortcomings in the conduction of procurement procedures when it comes to co-financing;
- Poor procurement planning and management and practices of contracts entered into in the year end;
- Lack of works execution projects before starting with procurement procedures and lack contracts management plans;
- Entry into contracts outside the procurement plan and without procurement procedures;
- Entry into contracts with abnormally low or higher prices compared to the market prices;
- Delayed execution of works and failure to impose penalties;
- Tender dossier criteria overlooked;
- Customization of the tender criteria thus favouring certain operators;
- Payment made for unexecuted works and unclear progress payments.
- Entry into contracts without committed funds;
- Purchase orders processed after receiving the invoice;
- Weaknesses in receiving goods and services.

The ACA prepares and presents the annual report to the Assembly of Kosovo*. The ACA initiates and undertakes the detection and preliminary investigation procedure of corruption, and forward criminal charges if, for the suspected cases of corruption in competent public prosecutor's office.

The ACA activities related to prevention of corruption in public procurement is carried by the Division for Prevention of Corruption in Public Procurement (DPCPP). The main monitoring performed by the ACA experts is confined to examination of the tendering process, which is up to the point of the signing of the contract. It does not cover the monitoring of the implementation and execution of the contracts, unless a specific reason arises, or a request is made. During 2014, 11,362 procurement contracts were signed in Kosovo* based on PPL No. 04/L-042, with a total budget of 445,208,500 €³⁵. In this period, DPCPP handled a total of 86 cases in the field of prevention of corruption in public procurement. If these data are compared, a very small percent are monitored, therefore the result is that very few procurement irregularities are uncovered. From the 86 cases handled by DPCPP, in the field of prevention of corruption in public procurement, for 67 cases are provided opinions for prevention; 57 opinions for violations; for 7 cases opinion for no violation was provided; 3 cases the opinion was not considered; 6 cases they were closed without any proposal; 7 cases ACA participated as an observer; 2 cases were proceeded to the Department of Combating Corruption; 4 cases are being processed³⁶.

³⁵ Annual Report of PPRC for 2014; <http://krpp.rks-gov.net>

³⁶ Annual Report of ACA for 2014; <http://akk-ks.org.r>

Upon performing procurement activities, opinions given by ACA, refer to violations of procurement procedures, or in the worst cases, to complete avoidance of these procedures, thus avoiding transparency and fair competition. Violations of procurement procedures are presented as:

- Compiling of tender files contrary to public procurement law and regulation;
- Setting unlawful selection criteria with the aim of favouring certain EO;
- Allowing the continuation of procurement procedures even though they are followed by violations of the procurement law;
- In procurement planning, which is envisaged as a co-funded project, it is prepared and signed the "Statement of Needs and Determination of Availability of Funds" in the projected amount, although there were no sufficient funds available for the procurement activity in its projected amount;
- The recommendation for awarding the contract to the irresponsible EO, who based on the lowest price is ranked as the seventh of EO;
- Signing the contract with EO contrary to the PPL, even though the procurement procedures should have been terminated due to the lack of two responsive bids;
- Awarding the contract to EO, knowing that the same has manipulated the prices provided for certain items because the same EO possessed information that items had not been used during last year;
- Awarding the contract to EO, which had offered the lowest price, even though knowing that the same EO manipulated the prices provided for certain parts of the equipment in the procurement activity since the EO possessed information regarding the condition of the equipment from the preliminary contract;
- Signing the contract only with the funds collected from residents in the co-funded projects and not with the commitment of sufficient financial means to fulfil the obligations that emerged or could emerge from the contract,
- The oversight of works related to the entire restoration of certain facility, without the approval of the Chief Administrative Officer and without notice to the Procurement Manager;
- Despite delays in the delivery of goods/services of CA or the completion of works, no penalties are imposed;
- Contrary to the specific provisions of the contract signed between the CA and EO, CA officer did not reported about the EO delay in performing the contract in compliance with the dynamic plan and the aforementioned contract.

On April 8th, 2010 PPRC and ACA have signed an Agreement of Cooperation for investigating cases of corruption in the field of public procurement³⁷.

MACEDONIA

PPB prepares and publishes Annual Report on the functioning of the public procurement system (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=annual-reports&lang=en>). The e-Procurement system database is one of a kind in the Republic of Macedonia and it reflects overall actual developments in the field of public procurement in the country. Still, the accuracy of the data presented may fluctuate with a slight statistical error, which is due to the incorrect entering of some data by the CA when they are filling in the contract award notices. The system

³⁷ <http://www.akk-ks.org>

is configured to prevent making errors when entering data in the web forms of the contract notices and contract award notifications, but complete automated or manual control or review of the filled in forms is not possible to be carried out.

The 2014 report does not indicate any irregularity identified by or notified to PPB, for which the PPB should officially inform the competent institutions to take actions.

According to the State Anti-Corruption Commission Annual report for 2014, the Commission acted upon 25 charges lodged for possible corruption in the field of public procurement regarding the contract award procedures carried out by the contracting authorities. With respect to 6 of the concerned cases, State Anti-Corruption Commission considered for there to be grounded suspicion for criminal deed committed in performing ex-officio duties and authorities by the responsible persons at the contracting authorities. This led to raising 6 initiatives before the PPO for initiating a procedure for criminal prosecution of officials, officers or responsible persons at the CA due to existence of basis for suspicion for committed criminal deed "abuse of official position and authorisation". In the indicated cases, the suspected perpetrators failed to ensure, while carrying out public procurement procedures, proper, earmarked and legal use and protection of the financial resources of the institutions in which public procurement procedures were carried out. The procedures are ongoing. Compared to the previous years, there is continuous downward trend of lodged charges (there were even 45 charges lodged in 2011).

According to the SAO annual reports the most frequent findings and irregularities related to the public procurements are: no procurement procedure at all, evaluation and decision-making processes were not in line with PPL and the tender documentation, no Annual Procurement Plan, content of the contract was not in line with the contract notice/tender documents, the additional contracted values in the annexes were above the allowed 30% of the initially contracted price, no decision for public procurement or the decision is not in line with the legally required elements, problems in the phase of contract execution.

The above-mentioned institutions (PPB, SAO, State Anti-corruption Commission) have signed memorandums of cooperation, according to which they have regular exchange of information. Usually they held coordination meetings on semi-annual or annual basis. Sometimes they exchange information regarding specific cases, or they cooperate together for the implementation of projects. Sometimes these institutions have different standpoints regarding the practical implementation PPL provisions, but in general there are no problems or blockage in their communication and cooperation. Differences in the interpretation of the PPL provisions causes legal uncertainty to the CA, because they sometimes face the dilemma of how to act in situations where these institutions have different points of view, i.e. whose opinion or instruction should they follow?

MONTENEGRO

PPA discloses the information on monitoring findings in its Annual Report, which is published on the PPA website www.ujn.gov.me. Inspection writes a report of their findings and shares it with CA. Inspection control prepares a report on their work every year and in the available report for 2014 we can find, on page <http://www.uip.gov.me/biblioteka/dokument>, information about the conducted control over the system of public procurement. According to that report,

the number of conducted inspection controls were 148 last year, and the amount of fines was EUR 22.000,00.

To increase transparency, all decisions made by the State Commission are made public in one part of the website, after each of the Commission's meetings. Listed in chronological order, all decisions can be found under the link "Overview of orders and conclusions".

http://www.kontrola-nabavki.me/1/index.php?option=com_content&view=article&id=82&Itemid=123&lang=en.

In line with the national legislation, all written adopted audit reports are as well published on the website of the State Audit Institution

http://www.dri.co.me/1/index.php?option=com_content&view=article&id=123&Itemid=24&lang=sr. Monitoring activities are carried out for all types of public procurement procedures.

SERBIA

The PPO prepares quarterly reports on the basis of contracting authorities' reports on conducted public procurement procedures and concluded and amended contracts with data prescribed by article 132 and posts it on the Public Procurement Portal: <http://portal.ujn.gov.rs> and website: www.ujn.gov.rs. These monitoring activities are carried out for all types of public procurement procedures, including low-value contracts.

Quarterly reports of contracting authorities contain data on; conducted public procurement procedures; conducted procurement procedures to which the CA did not apply the provision of the PPL; conducted negotiated procedures without publication of invitation to submit tenders; costs for preparation of tenders; awarded as well as amended public procurement contracts; unit prices for goods, services and works; cancelled public procurement procedures; public procurement procedures with filed request for the protection of rights and execution of public procurement contract.

Concrete provisions are introduced in order to prevent or reduce irregularities, including certain measures against corruption and conflict of interest. In order to address irregularities in practice and establish better monitoring and control of public procurement, the PPL foresees civil supervisor for public procurement with estimated value exceeding 1 billion RSD.³⁸ According to article 28 of the PPL, CA may not initiate a public procurement procedure before the appointment of civil supervisor by the PPO. Civil supervisor supervises public procurement procedure and has permanent insight into documents and communication between CA and tenderers.

The rulebook on civil supervisor³⁹ sets out the requirements and criteria for the appointment as well as mode of operation of the civil supervisor. In case of irregularities, the civil supervisor shall notify the CA and if the irregularities cannot be remedied otherwise, it shall submit a request for protection of the rights and notify the authority that supervises the operation of contracting authority, the relevant state authorities and the public. If the civil supervisor receives a report of suspected corruption, it shall notify the PPO, the Anti-Corruption Agency and the competent prosecution's office.

³⁸ 8.3 million € (the value in euro is not prescribed in the PPL)

³⁹ Rulebook on civil supervisor ("Official Gazette of RS", no. 29/2013)

The civil supervisor files a report on the conducted public procurement procedure to the committee of the National Assembly in charge of finance or the assembly of autonomous province or local self-government as well as to the PPO. The report of the civil supervisor shall be published on the website of the PPO and the CA concerned. There are 20 reports of the civil supervisors which are published on the website of the PPO. For example, the newest report, dated 21 September 2015, concerns the public procurement of work: Corridor 10, highway E-75, Beograd – Nis – border with Republic of Macedonia/one section, with estimated value of 30 million €. For this open procedure, where the civil supervisor was the Association of Tenderers of Serbia, there was not a request for protection of the rights.

There is a lack of information in the PPL and the bylaw, since it is not mentioned who, when and where should publish information on the appointment of the civil supervisor for a given public procurement. In some cases in practice, civil supervisors have submitted a request for the protection of the rights in public procurement procedures. The civil supervisor has no right to remuneration for its work, which is a weakness of this, otherwise very useful, institute.

Monitoring entities in Serbia are collaborating at national level through numerous coordinative and working meetings and they formalized their cooperation in the field of fight against corruption in public procurement system. PPO, Ministry of Finance, Ministry of Economy, State Audit Institution, Anti-Corruption Agency, Anti-Corruption Council, Commission for Protection of Competition, and Republic Commission signed Memorandum on Cooperation on 29 April 2014.

4.5. Consultancy support by central government PP control institutions

ALBANIA

To assist CA in the procurement activities, PPA has the task to prepare detailed instructions on how to understand and implement the legislation in force. Under this legal requirement, PPA has prepared and published in its website (www.app.gov.al) all the needed instructions, which are divided in two main categories: legal instructions and technical instructions. The first refers to the interpretation of the legal rules, while the second, aims to instruct all CAs how to “legally” operate in the electronic procurement system.

PPA has approved guidelines to help EO using e-procurement, lately the guideline no. 10, dated 05.22.2015 “For the registration of EO and the submission of bids in electronic procurement system”⁴⁰.

Except for the above instructions, PPL gives PPA the task of advising CA to prepare and conduct procurement procedures. Under this legal requirement, PPA advises contracting authorities, when is required by them. This task is carried out in all possible manners; if the CA wants written advice they get it in a written way, if they want it via e-mail, they get it via e-mail, and if they want it just by phone, they get it by phone. PPA advice is mandated by public procurement law, and as such CAs that ask for advice usually follow it.

⁴⁰ <https://www.app.gov.al/ep/Regulations.aspx>

In cases when the PPA notices that there is a common problematic created among CA in understanding certain provision, it prepares an opinion/notice, which is addressed to all CA interested and is published in PPA website.

BOSNIA AND HERZEGOVINA

Within its primary legal power, the PPA has an obligation to prepare draft-laws, draft amendments to the law and accompanying implementation regulations in order to ensure their effectiveness and efficiency; raise awareness among contracting authorities and bidders on the regulations in public procurement and their aims, procedures and methods; publication of manuals and instructions, as well as, designing and updating standard forms and models in accordance with the provisions of this law, providing technical assistance and advisory opinions to contracting authorities and bidders regarding the proper application of the laws and implementing regulations.⁴¹ With the aim of supporting prevention and education, the PPA also publishes answers to frequently asked questions. The decisions of the PRB and the decisions of the Court of Bosnia and Herzegovina are published on the Public Procurement Portal (www.ejn.gov.ba).

CA and any other interested parties and/or institutions can approach the PPA in order to provide technical and advisory assistance in writing – free of charge (by mail, fax or through electronic mail) or by phone (numbers indicated on the website of the PPA). Opinions of the PPA are of advisory nature and non-binding. Information provided in the latest PPA Audit Report can be used as an example: advisory and technical assistance to CA and EO regarding the application and interpretation of the current regulations - 956 written opinions, 4339 telephone consultations, and 420 conducted meetings.⁴²

Besides this advisory and technical assistance, the PPA - because of limited capacities - is not able to provide assistance in terms of direct support to CA in the implementation of public procurement procedures.

KOSOVO*

Based on PPL No. 04/L-042, PPRC is the authorized institution for consultancy support for contracting authorities and EO in Kosovo*. PPRC through the Department of Rules, from January 1 until December 31, 2014 has offered a significant number of interpretations and professional opinions through the archive of PPRC, through the electronic address info.krpp@rks-gov.net, through consultation meetings regarding procurement, as well as by telephone, as follows:

- Eighty-seven (87) Interpretations in writing - via archive;
- Nine hundred and two (902) Interpretations - via email;
- One thousand and eighty-three (1083) Interpretation/advice by phone.

⁴¹ PPA publications, manuals, instructions as well as standard forms and models are available on the PPA web site (www.javnenabavke.ba) free of charge

⁴² Audit Report on Financial Audit of PPA for 2014 No. 01/02/03-07-16-1-496/15 (www.revizija.gov.ba)

Opinions are not mandatory to be implemented but they have advisory role. Opinions of PPRC are sent to the relevant CA or to the EO, and are published on the official web-site for public procurement in Kosovo*: <http://krpp.rks-gov.net>. Opinions given by PPRC are free of charge.

MACEDONIA

One of the most significant and regularly practiced tasks of the PPB stipulated in article 14 of the PPL is the provision of opinions on the application of the PPL, thus helping both the CA and the EOs. Opinions are not mandatory to be implemented and they are published on the two web sites administered by PPB (http://bjn.gov.mk/bjn-portal/wordpress/?page_id=31 and <https://e-nabavki.gov.mk/PublicAccess/home.aspx#/faq>). The PPB carries out this advisory function in several manners: by giving opinions to the letters of the CA and the EOs submitted by mail, answering questions submitted through the web sites' contact forms, as well as by answering questions posed through the User Support Centre.

Continuing its practice established in 2013, in the course of 2014, the PPB also kept on organising Open Doors Day, an event at which both the EO and the CA can give their opinions about the Law and the manner of its implementation in practice. According to the PPB Annual Report, during 2014, 443 requests for opinion were submitted to the PPB by mail and 865 requests were submitted through its web contact forms. In 2014 the User Support Centre, which is available to the CA and the EO on daily basis, received a total of 5,892 calls. The PPB official opinions are regularly shared with the State Appeal Commission and SAO.

MONTENEGRO

In order to improve the activities of monitoring the implementation of the Act, by-laws, further monitoring the development of EU legislation, standards and practices, the PPA is organizing conferences, seminars, round tables, on the topic of public procurement. In connection with the actions taken, PPA is informing interested public through its website <http://www.ujn.gov.me/category/publikacije/>, as well as through the press. All regulations, publications, reports and other documents and records published are usually available on website in English and Montenegrin.

Beside all this, official consultation is carried out in written, but representatives of Directorate for Public Procurement are willing to give consultation by telephone or meetings as well. According to the Report on PPA work 354 meetings were held with official notes in 2013 and 580 in 2014, on the basis of which PPA proposed certain opinions and recommendations to remedy identified deficiencies.

SERBIA

The PPO has prepared numerous models of documents and instructions, available on its website, in order to ensure better implementation of public procurement legislation and rules. It gives opinion on the justifiability of applying the negotiated procedure without the publication of the invitation to submit tender, which should be requested by contracting authorities prior to initiating this procedure. In 2014, the PPO has delivered 4.338 opinions, according to its report for 2014.

The PPO is giving consultancy support concerning implementation of the PPL, planning, Public Procurement Portal, reporting on concluded contracts and conducted public procurement procedures; as well as issues opinions (which are not mandatory) on interpretation and application of law provisions. The total number of requests for these opinions in 2014 was 881 and the number of answers was 744. The PPO has published answers to the most frequent questions on its website. The consultations are carried out also by telephone.

In overall terms, consultancy support of the PPO is ensured, but considering numerous challenges in the area of public procurement, the need emerged for further improvement.

4.6. Keeping and access of PP documents

ALBANIA

Considering that the majority of procurement procedures are conducted by electronic means, the main documents are electronically archived through the e-procurement platform (notice of contract, procurement (tender) documentation, evaluation, awarding of contract, etc.). E-procurement legislation does not establish a specific archiving period. From 2009, when the use of e-procurement started in Albania, every procedure or document, as above stated, is archived. There are no differences according to type of the procurement procedure, estimated value, value of the contracts, etc. or between public supply contracts, public service contracts and public works contracts. CA documents the progress of all procurement procedures, whether or not those are conducted by electronic means. They keep the entire documentation to justify the decisions taken in all stages of the procurement procedure. The dossier of procurement procedure, in paper, is archived for a period of 10 years, as defined in Law on Archive no. 9154 dated 06.11.2003 and its subsidiary acts.

The main documents in procurement dossier are: 1. Notification of technical specifications/terms of reference – in paper; 2. procurement order – in paper; 3. Minutes of the approval of contract notice, procurement (tender) documentation – in paper, 4. Contract notice, procurement (tender) documentation – in paper & electronically, 5. Order for creation of the Bid Evaluation Committee – in paper, 6. Request for clarification/modification of tender documents – in paper & electronically, 7. Clarification/modification of tender documents – electronically, 8. Decision of Bid Evaluation Committee for selection/rejection of candidates or bidders and the reasons for their selection/rejection – in paper & electronically, 9. Communication CA – EO about abnormally low bid and mathematical errors – in paper. CA also communicates electronically, 10. EO complain and the decision of CA – in paper, 11. Decision of PPC – in paper & electronically, 12. Report rating – in paper & electronically, 13. Award of the contract – in paper & electronically, 14. Contract and contract insurance – in paper, and 15. Notice of signed contract – in paper & electronically.

BOSNIA AND HERZEGOVINA

Pursuant to Article 76 of the PPL, documentation related to a public procurement procedure: decision on initiation of public procurement procedure; prior indicative notification; contract notice for awarding a public procurement contract; tender documentation; received requests to participate; communication between the CA and the EO; report assessing the qualification

of the candidates; clarifications – clarifications provided to the bidders; decision on the selection of qualified candidates; received tenders; minutes of the public opening; statements on the existence/non-existence of conflict of interest; reports by external experts; conducted evaluation report; decision for selection of the most favourable tender, concluded procurement contracts and other documents related to procurement, should be kept in accordance with the laws of Bosnia and Herzegovina related to archiving.⁴³

The category list of registry materials with periods for archiving is an implementing regulation issued by the CA and approved by the Archives of Bosnia and Herzegovina. Public archival materials are delivered to the competent Archive institution within a time line, which normally cannot be longer than 30 years since its origin.

A fine in the amount from 767.00 to 7.670,00 € shall be imposed on the contracting authority, while the person responsible in the CA shall be fined with a penalty amounting from 153.40 to 1534.00 € if they fail to keep the documentation on public procurement in compliance with the regulations on document archiving (Article 116 of the PPL).

KOSOVO*

In Kosovo*, on 30 September 2015, the number of registered CA was 170⁴⁴. All CA are obliged to keep a dossier of the all procurement procedures for each awarded contract, as well as of the tenders that were cancelled. So far, no PPL has regulated the way of keeping public procurement documents. Now, in the the article 10.1 of the draft Procurement Law is foreseen that: Relevant documents of public procurement are stored pursuant to the applicable legislation on State Archives.

MACEDONIA

All CAs are obliged to keep a dossier of the procedure for each awarded public procurement contract, as well as of the tenders that were cancelled. This obligation applies to all types of contracts (supply, service and public works) and regardless of the contract value.

The CA shall keep the dossier of the contract award procedure for at least 5 years as of the day of realization of the contract. Depending on the applied contract award procedure, the procedure dossier shall in particular contain: public procurement decision; prior indicative notification and proof that it has been sent for publication; contract notice for awarding a public procurement contract and proof that it has been sent for publication; tender documentation; received requests to participate; communication between the CA and the EO; report assessing the qualification of the candidates; decision on the selection of qualified candidates; received tenders; minutes of the public opening; statements on the existence/non-existence of conflict of interest; reports by external experts; conducted evaluation report; decision for selection of the most favourable tender; signed public procurement contract or framework agreement and contract award notice and proof that it has been sent for publication. When the CA conducts a contract award procedure by using electronic means, through the e-Procurement system or

⁴³ BIH Law on Archival Material and the Archive (OG BIH no. 16/01); FBIH Law on Archival Material (OG FBIH no.45/02; RS Law on Archival Service(OG RS no.35/99); Regulation on protection and preservation of archival material in BIH (OG BIH no.10/03)

⁴⁴ PPRC Archive

e-auctions, they are obliged to ensure complete monitoring of the activities carried out during the contract award procedure, for the purpose of keeping the dossier.

MONTENEGRO

According to article 119 of the Law on Public Procurement, CA is obliged to keep documentation regarding contracts up to 15.000EUR for 3 years, while CA for procurements over this threshold, the CA is obliged to keep all relevant documentation for 5 years.

SERBIA

The PPL contains specific provisions concerning data protection, documentation and keeping records of the procedures including article 16 on the documentation and record keeping of the procedure. The CA keeps public procurement documents for at least 10 years from the expiry of contracting deadline for the implementation of public procurement contract or at least 5 years from making the decision on cancelling procedure. There are no differences according to the type of the procurement procedures nor estimated values and between public supply contracts, works or services.

Article 16, paragraph 1 of the PPL envisages that the CA shall: “keep records of all actions and legal acts during the planning, conducting the procedure and implementing public procurement procedure.”

4.7. Individual reports on awards

ALBANIA

After the completion of deadlines for appeal, the Bid Evaluation Committee prepares a summary report and submits it for approval to the head of CA. The summary report contains at least the reference of procedure, the description of works / goods / services; price / value bided by participating bidders; the disqualified bidders and the reasons for their disqualification; the first ranked bidder, information on whether there have been complaints and decision in relation to them.⁴⁵

Upon approval of the summary report, the successful bidder shall be immediately electronically notified by the CA of the acceptance of his bid and signing of the contract (notification of award). In the case of procedures, which are not conducted by electronic means the CA within 5 days of notification of award, shall send a notice to the PPA for publication in the Public Announcements Bulletin. In the case of procedures, which are conducted by electronic means, the notification of award shall be send to the electronic procurement platform.

⁴⁵ Article 68 of DCM no. 914, dated on 29.12.2014 “On approval of public procurement rules”

The notification shall contain at least the following information⁴⁶:

- a) Reference to the procedure.
- b) Name and address of the winning bidder.
- c) Description of works / goods / services.
- d) Duration of the contract and the price / value of the contract.
- e) The names and prices / value of other bidders.
- f) The names of the bidders disqualified and the reasons for their disqualification.
- g) Information on whether there have been complaints.
- h) The requirement that the contract will be signed, on the condition that the security has been made.

This notification is automatically included in the Public Announcements Bulletin⁴⁷. The Public Announcements Bulletin is edited and issued by PPA. It includes EO excluded from participation in public procurement, PPA Announcements, Contract notices, Notifications of award, Notices of signed contract, Notices for annulment of procedure, Corrections, Bulletin of the Department of Public Administration, Journal of Auction, Newsletter Bids leases, Concessions, Bidding procedures for the Mining License, Other news. Public Announcements Bulletin is published at www.app.gov.al.

BOSNIA AND HERZEGOVINA

For open and restricted procedure, negotiated procedure with and without publication of notice, design contest and competitive dialogue, the CA is obliged to appoint a Procurement Commission. Among the activities under the competence of the Procurement Commission is to prepare a report with recommendation to managers (the recommendation is not of binding character and can be rejected but, in that case, must be explained by the manager of the contracting authority) and upon the finalization of the contract award procedure, to prepare the final report to be submitted to the PPA.

Upon tender evaluation, the Procurement Commission is obliged to make the minutes on tender evaluation that contains at least the following information: name of contracting authority; subject matter of public procurement; name of bidders whose tenders were rejected and reasons for the rejection; methodology of points allocation under the sub-criteria for tender evaluation - if the criterion is the most economically advantageous tender; rank-list of evaluated bidders, beginning with the most successful toward the least successful; name of bidder whose tender is most eligible; contract or framework agreement value. In open and restricted procedure, negotiations between CA and bidders on basic aspects of contract are not allowed.

The contract award decision should be sent to all candidates or bidders within 3 (three) days, and at the latest within 7 (seven) days from the day they were made, by electronic means, post or directly. The contracting authorities publish all notices through the e-procurement system. The published notices are made publicly available at the Public Procurement Portal (www.ejn.gov.ba) within 24 hours and, exceptionally, not later than 72 hours after the notice was sent.

⁴⁶ Article 58 of the Law on Public Procurement no. 9643, dated on 20.11.2006, as amended, Article 21 of DCM no. 914, dated on 29.12.2014 "On approval of public procurement rules", standard bidding documents, Annex 14

⁴⁷ https://www.app.gov.al/ep/Arkiva_e_Buletineve.aspx

KOSOVO*

All CA in Kosovo* are obliged to prepare summary report on all signed contracts during the whole year, and send them electronically to the PPRC. Based on individual reports received by the contracting authorities, the PPRC prepares summary report for all Kosovo*, and sends it to Parliament. This report analytically presents the data for public contracts, their classification based on the type of procedures used by CA, the level of use of these procedures, the level of competition within the public market, as well as many other important indicators for measuring the public procurement performance in Kosovo*. Based on reports received by the CA, 11,362 contracts governed by PPL are signed in 2014 in Kosovo*.

A report on contract award contains:

- Name and address of the contracting authority
- Contract title attributed by the contracting authority
- Common Procurement Vocabulary classification
- Type of procedure
- Award criteria
- Administrative information
- Number of received tenders
- Name and addresses of EO to whom the contract has been awarded
- Information on value of contract
- Complementary information.

MACEDONIA

It is mandatory for the procurement (evaluation) commission to prepare a written report regarding the conducted procedure, regardless of the type of procedure. Depending on the conducted procedure, the report in particular contains: the name and address of the CA, subject-matter and estimated value of the public procurement contract or the framework agreement; the names of the selected candidates or bidders and explanation in connection with their selection; the names of candidates or bidders whose requests to participate or tenders have been dismissed and the reasons for their dismissal; the reasons for the rejection of tenders with unusually low price, and the name of the bidder or the bidders whose tender is chosen as most favourable and the manner and the reasons of the selection. The form and the content of the report is prescribed in a Rulebook adopted by the Ministry of Finance and published in the Official Gazette no. 36/2008, 155/2010 and 162/2014 and on the PPB web site (<http://bjn.gov.mk/bjn-portal/wordpress/?documents=pravilnik-za-formata-i-sodrzhinata-na-obrazecot-na-izveshtajot-od-sprovedenata-postapka>).

The responsible person at the CA is obliged to accept the report of the commission, containing the proposal for the selection of the most favourable bidder, unless he/she determines that the proposal has been prepared contrary to the provisions of the Law. These reports are not publicly available, but the EOs that have participated in the procedure have the right to inspect the report.

MONTENEGRO

In accordance with the Article 59 of the Law on Public Procurement, the public procurement procedure is carried out by the Commission for opening and evaluation of the bids. In line with article 103 of the Law on Public Procurement, the Commission for the opening and evaluation of bids keeps the Minutes on the review, assessment and evaluation of bids which, in particular, contain:

- data on the type and number of the public procurement procedure;
- data on the subject and the manner of conducting the public procurement;
- data on time of commencement of review, assessment and evaluation of bids;
- envisaged requirements and evidence for participation in the public procurement procedure and the requirements for preparation and submission of bids;
- data on submitted bids, listed in the order indicated in the minutes of public opening of bids, title and seat, or name and address of bidders having submitted the bid;
- assessment of timeliness and un-timeliness of bids, supported by reasons and evidence based on which such timeliness or un-timeliness of bids has been established;
- assessment of validity or invalidity of bids, supported by assessment of facts, evidence and reasons based on which validity or invalidity of bids has been established;
- observation on the manner of evaluation of bids;
- opinion of experts engaged to provide assistance in the assessment and evaluation of bids;
- comparative overview, analysis and descending order of bids according to the number of points awarded;
- proposal for the adoption of decision on the selection of the most favourable bid, or on the suspension of public procurement procedure, along with a rationale for such proposal.
- date on which minutes have been prepared and signatures of all members of the Commission for the opening and evaluation of bids, or the public procurement officer.

The more detailed content and the form of the Minutes of review, assessment and evaluation of bids and the form of the report on public procurement procedure are prescribed by the Rulebook, available on the website <http://www.ujn.gov.me/2015/05/pravilnik-o-obrascima-sa-uputstvom-za-popunjavanje/> (available only in Montenegrin).

The members of the Commission for the opening and evaluation of bids who do not agree with the final report of the Commission for the opening and evaluation of bids, present their opinions in the form of a written statement enclosed with the text of the minutes of the review, assessment and evaluation of bids.

Based on the minutes, a report on a public procurement procedure shall be drawn up and delivered to the responsible person of the CA, with a proposal for selection of the most favourable bid. CA shall make a decision and submit it to all bidders within 3 days of making the decision and publish it on the Public Procurement Portal (<http://portal.ujn.gov.me/delta2015/login.jsp?locale=en&>).

SERBIA

EO are notified about concluded contracts through the Public Procurement Portal and contracting authority's website. The contents of the notices on concluded public procurement contracts and concluded framework agreements are determined by the PPL in Annex 3.

According to the article 110 of the PPL, the CA shall enable tenderers to have insight into and copy documents on conducted public procurement procedure after the decision is made to award the contract.

4.8. Civil society's involvement in control of public procurement

ALBANIA

Procurement legislation does not provide any specific provision on rights and powers of civil society organizations, media and the wider public, on a procurement procedure. However, considering the transparency and publicity of a procurement procedure, each of them can access the main information regarding a procurement procedure, giving to them the possibility of participating in the control of public procurement. In this way, civil society participates through surveys and studies on irregularities procurement processes and can come up with recommendation for improvements. Media as well has the possibility to access all information on publication of a contract notice, requirements of the CA and the winner of the procedure, and often happens to have writings in newspapers on irregularities in certain procurement procedures.

As explained above the principle of transparency and publicity in the procurement process in the Albanian system is achieved through the usage of the e-procurement platform, where are performed all types of procurement procedures that require publication of the contract notices. All the information referred above, is accessed by anyone who is interested, free of charge and without the need of any specific account in the e-procurement system.

BOSNIA AND HERZEGOVINA

Having in mind the new EU regulations, a number of national and international reports dealt with the significant level of corruption in public procurement in Bosnia and Herzegovina. In the period right before the adoption of the new Law, civil society organizations (coalition of non-governmental organizations that, in addition to Transparency International Bosnia and Herzegovina, established the following: Association of Employers of Bosnia and Herzegovina, network ACCOUNT, Bosnia and Herzegovina Open Society Fund, and Association of Citizens Tender) prepared an analysis and came up with proposals for the improvement of certain provisions of the then draft-new law, with particular emphasis on the proper protection against corruption, as well as transparency, efficiency and rational use of public funds.

In cooperation with the business sector, non-governmental organizations continuously inform about inadequate solutions of the new PPL, and provide proposals for its improvement in cooperation with relevant institutions and organizations, as well as other interested parties.

Civil society, as well as any other interested parties, whether they are from the private or public sector, have increasingly more opportunities to, if interested, monitor the implementation of public procurement procedures. To be precise, the obligation of publishing an increasing amount of information on the Public Procurement Portal (www.ejn.gov.ba) is foreseen by the new PPL. This is the hub where the following is published: public procurement plans of contracting authorities; public procurement notices for open and restricted procedures; negotiated procedure with publication of notice; design contests; competitive dialogue; notice on contract award and implementation; decisions of the PRB. The possibility of publishing tender documentation is also foreseen.⁴⁸

Interested parties have the opportunity to attend the public opening of bids as observers. Furthermore, access to information is provided (except to confidential information as stipulated in the PPL) in accordance with the Regulations on freedom of access to information.⁴⁹ List of relevant reports are published by Transparency International Bosnia and Herzegovina and Analitika Centre for Social Research.⁵⁰

KOSOVO*

Civil Society Organisations (CSO) in Kosovo* aim to contribute in preventing and fighting corruption in public procurement by increasing oversight mechanisms in a number of directions.

One of the most active NGOs that monitors developments in the field of public procurement in Kosovo* is NGO "FOL Movement". Since March 2011, FOL Movement has started to monitor the public procurement procedures of government ministries and from 2013 those of municipalities. This was the first time that a civil society actor in Kosovo* embarked in such a process. The project presented a new approach to preventing and reducing corruption in Kosovo*, since for the first time civil society representatives were allowed to be present and monitor directly the work of respective government structures in awarding public contracts via public procurement. This was a result of government ministries responding positively to FOL's

⁴⁸ Instruction on amendments to the Instruction on the conditions and manner of publication of notices and the submission of public procurement procedure reports into the "e-Procurement" information system (OG BiH, No. 53/15)

⁴⁹ BiH Law on Freedom of Access to Information (OG BiH Nos. 28/00, 45/06, 102/09 and 62/11, 100/13)

⁵⁰ Transparent Public Procurement in BiH: Between Theory and Practice: <http://www.analitika.ba/en/publications/transparent-public-procurement-BIH-between-theory-and-practice>

-Policy Brief - Transparent Public Procurement in Bosnia and Herzegovina: A New Solution for an Old Problem: <http://www.analitika.ba/en/publications/transparent-public-procurement-bosnia-and-herzegovina-new-solution-old-problem>.

- Mapping key obstacles to equal participation of economic operators in public procurement in Bosnia and Herzegovina: <http://www.analitika.ba/bs/publikacije/mapiranje-kljucnih-prepreka-za-ravnopravno-ucescje-privrednih-subjekata-u-javnim>.

- Key problems in public procurement in Bosnia and Herzegovina: Experiences of private companies: http://www.analitika.ba/sites/default/files/javne_nabavke_brief_eng_06_april_2015.pdf

- Open public procurement – Status and perspectives in the world of international standards: http://ti-BIH.org/wp-content/uploads/2015/10/Otvorene_javne_nabavke_Stanje_i_perspektive_u_svijetu_medjunarodnih_standarda.pdf.

- Free access to information in BiH: <http://ti-BIH.org/wp-content/uploads/2015/08/Sloboda-pristupa-informacijama-u-BIH.pdf>.

- Analysis of the new Law on Public Procurement in BiH and the implementing regulations: <http://ti-BIH.org/wp-content/uploads/2015/05/Analiza-novog-Zakona-o-javnim-nabavkama-BIH-i-pratecih-podzakonskih-akata-maj-2015.pdf>.

- Proposal for amendments to the Law on Public Procurement: <http://ti-BIH.org/wp-content/uploads/2015/05/Prijedlog-izmjena-Zakona-o-javnim-nabavkama-BIH-maj-2015.1.pdf>.

- Best practices in identifying and sanctioning corruption: <http://ti-BIH.org/wp-content/uploads/2014/12/Najbolje-prakse-u-otkrivanju-i-sankcionisanju-korupcije.pdf>.

- Report on the evaluation of the Strategy for fight against corruption in BiH 2009-2014:

<http://ti-BIH.org/izvjestaj-o-evaluaciji-strategije-za-borbu-protiv-korupcije-2009-2014---finalni-nalazi-i-preporuke/izvjestaj-o-evaluaciji-strategije-za-borbu-protiv-u-BIH-2009-2014/>

request to sign MoUs allowing it to participate in the meetings of the procurement offices and subsequently monitor the process. FOL Movement was the only organization from the civil society that has been invited to participate in the inter-governmental working group on amending the Law on Public Procurement. FOL has been very active member of the working group since FOL has prepared a document with overall 19 recommendations that the new law should include in order to prevent corruption in procurement through increasing transparency and accountability legal mechanisms in this sector. Out of the 19 recommendations, the working group has approved 15 of them to be part of the law articles in the new Law on Procurement. NGO - FOL has prepared an advocacy campaign for legislative reforms in the area of public procurement. Also, FOL has been invited in the inter-governmental working group for amending the Draft Law on Procurement in 2015.

The first draft Law of this working group has included three main requirements of FOL:

- Article for transparency in public procurement (article 10 of the PPL)
- Article for conflict of interest in public procurement (article 4.1.75), and
- Article that's put in force the e-procurement in procurement procedures and obliges every CA to implement e-Procurement System and to carry out complete public procurements electronically (article 129 of the PPL).

After this period, there are also two other NGOs that are involved in monitoring the procurement sector from different perspectives and using different monitoring methods:

- 1) NGO "Kosovo* Democratic Institute – KDI" is focused on monitoring irregularities in specific procurement contracts.
- 2) NGO "Organization ÇOHU" is focused on investigating procurement contract related to political parties' finances.

MACEDONIA

The information regarding the public procurement procedure is publicly available on the e-Procurement system and it is free of charge. Interested parties can easily find the relevant information for making qualitative and quantitative analyses related to the public procurement system. The PPB Annual report contains additional data categorized by different parameters and types, allowing the wider public to better observe the developments in the field of public procurement.

Any person can be present at the public opening of the bids as an observer. Based on the Law on Free Access to Public Information⁵¹, any person can request and obtain information from the CA regarding specific procurement procedures they have carried out.

Lately this right has been exercised a lot by the media and NGOs. In the beginning, due to the contracting authorities' ignorance of this law, the requests were very often rejected, but in the recent years this right is granted, i.e. information provided to the persons who requested it. There are reports issued by a couple of NGOs that contain data on the responsiveness of the public institutions with regard to the requests for information, including in the field of public procurement. The following reports need to be mentioned as the most relevant:

⁵¹ Law on Free Access to Public Information (Official Gazette no. 13/2006, 86/2008, 6/2010, 42/2014 and 148/2015)

- “Six years later: Is the Wall of Silence cracking? – Analysis of the implementation of the Law on Free Access to Public Information” from 2013 prepared by the Foundation Open Society Institute Macedonia:
(<http://www.fosm.mk/en/Home/Publication?newsID=295&catID=9>);
- “Research on the application of the right of free access on the public information on the part of journalists” from 2012 prepared by the Centre for Civil Communications (<http://ccc.org.mk/images/stories/research.pdf>);
- Reports from the monitoring of the public procurements that were initially published quarterly and now semi-annually by the Centre for Civil Communications;
- (http://ccc.org.mk/index.php?option=com_content&view=category&id=35&Itemid=117&lang=en).

MONTENEGRO

The transparency of the procedures is ensured by publishing public procurement plans, notices of public competition, decisions of candidates’ qualifications, decisions on the selection of the best bid, decisions on suspension of a public procurement procedure, public procurement contracts, changes or addenda to the plan, notice or contract, as well as by undertaking other actions and measures. All of these documents are published on Public Procurement Portal.

According to the Law on free access to the information⁵² every person and legal entity has the right to access the information without explaining its reason except in particular cases defined by this Law. In accordance with the Law on free access of the information, interested public can ask for free access to the information. In last few years there has been several projects financed by the EU in order to explain closer to the society how control of the budget spending can be reported. For example, if a person suspect in corruption, it can be reported to the Directorate for Anti-corruption Initiative, in phone line open only for this purposes.

SERBIA

The interested public, including civil society organization, media and the wider public, can participate in the control of public procurement through using the possibilities of free access to information of public importance.⁵³ According to the Law on free access to information of public importance, everyone has the right to be informed whether a public authority holds specific information of public importance. In practice, that means allowance of insight in a document containing information of public importance as well as the right to receive a copy of the document upon request.

Principle of transparency and publicity is achieved through the Public Procurement Portal by publishing the notices and reports on public procurement as well as tender documents.

⁵² Law on free access to the information (Official Gazette of Montenegro, no 44/12 of 9.08.2012)

⁵³ See: Law on free access to information of public importance („Official Gazette of RS“, no. 120/2004, 54/2007, 104/2009 and 36/2010) on website: www.poverenik.rs

4.9. Dealing with corruption and conflicts of interests in public procurement

ALBANIA

The CA excludes from participation in procurement procedures each candidate or bidder, where there is evidence that they are or have been convicted by final court decision for corruption. It is a general admission/qualification criterion that the candidate/bidder must submit a document certifying that the company is not convicted for a corruption. This requirement is supplemented by submitting the Extract of Commercial Register of the Data Subject, extract on the background of the Subject issued by National Registration Centre and the self-declaration of the subject, according to annex "Statement on the Judicial State", which is part of tender documents.

The definition of term "corruption" is stipulated in the Penal Code⁵⁴ (*"The promise, bid or giving, directly or indirectly, of any irregular benefit, to the person exercising a public function for himself or for other persons to perform or not perform an action related to the task or office, is punishable with imprisonment and fine"*).

The prosecutor is informed of the criminal offense on its own initiative and with the announcement made by others. Public employees, who during the exercising of their duty or because of their service functions, become aware of a criminal offense prosecutable ex officio, are obliged to make a written indictment even when the person to whom the offense is attributed, is not individualized. Any person who has been informed/has knowledge of a criminal offense prosecutable ex officio must indict him. Prosecution exercises criminal prosecution and represents the accusation in court in the name of state. The final decision is made in Court.

The definition of term "conflict of interest" is given in the Law on prevention of conflict of interest in the exercise of public functions No. 9367, dated 07.04.2005, as amended. Conflict of interest is a situation of conflict between public duty and private interests of an official, in which private interests, direct or indirect affect, might affect or appear to affect the unfair performance of duties and his public responsibilities. It is a specific admission/qualification criterion that the candidate/bidder must submit the declaration on conflict of interest according to the respective form part of standard bidding documents. Also at the time of bid opening, officials involved in the process of evaluation of bids sign a statement declaring that they are not in a situation of conflict of interest with participating bidders.

Article 26 of the PPL defines acts of corruption and conflict of interest in terms of procurement, the decisions that should be made by the institution and with what consequences and effects.

- 1) The CA refuses a bid or a request to participate in the tender if:
 - a) the bidder or candidate gives or promises to give, directly or indirectly, to any officer or employee remuneration in any form, employment opportunities or good, service or value, as an incentive for an act, decision or procedure followed by the CA for the procurement procedures;

⁵⁴ Law no.7895, dated 27.01.1995 "Penal Code of Republic of Albania", as amended, www.ligjet.org

- b) The bidder or candidate is in a conflict of interest. The refusal and the reasons for such action should be reflected in the minutes of procurement procedures and shall be promptly communicated formally to the candidate or bidder concerned. The decision can be appealed judicially.
- 2) Decisions taken by the CA, in accordance with paragraph 1 of this Article shall not impede criminal report to the relevant bodies, when the act or acts in question constitute penal act.
- 3) If, at the time of bid opening, it is noted that one or more of EOs are in a conflict of interest with one or more of officials assigned to the evaluation of bids and this situation could not have been evidenced before this moment, the official/officials concerned should be replaced, and then the process of procurement should continue.

E-procurement system is a very useful tool to fight against corruption, because it avoids the direct contacts among public side and private side on one hand and contacts among representatives of private side themselves. Higher transparency is a strong weapon against corruption in Albania.

To avoid the conflict of interest, to all parties involved in a procurement process is required to sign a self-declaration stating that they are not in conflict of interest with other parties with whom they will interact in the procurement procedures. As such, all members of the procurement unit and evaluation commission should sign the declaration on conflict of interests. On the other hand, even EO should sign a self-declaration on conflict of interests, based on the law no. 9367, dated 07.04.2005 "For prevention of conflict of interest in the exercise of public functions" as amended, declaring that they are not in conflict of interest to win public contracts.

Up to now there are no official cases of corruption evidenced. Regarding conflict of interests actually there are two decisions of PPA excluding two EO from the right to participate in procurement procedures for respectively 3 and 2 years, because they have submitted in procurement procedures a self-declaration stating they are not in any situation of conflict of interest, while it turned out that they were. PPA decisions are not published. However, most often such cases are made available to the public more by media coverage.

BOSNIA AND HERZEGOVINA

The PPL foresees that the CA are obliged to reject requests for participation in a public procurement procedure or tender if the candidate or bidder has given or is prepared a current or former employee of the CA bribe in the form of cash or in any non-cash form whatsoever, with the aim to exert influence on the course or outcome of the procurement procedure. However, there were no case reports, at least not in recent years, that offers of specific bidders were rejected or that the tender procedure was cancelled due to corruption action.

In case a request or tender received during the public procurement procedure by the CA causes or may cause any conflict of interests, the CA shall act in compliance with the regulations on the conflict of interest in Bosnia and Herzegovina.⁵⁵

⁵⁵ Law on Conflict of Interest in Institutions of Bosnia and Herzegovina (OG, No. 16/02), Correction to the Translation of the Text of the Decision of the High Representative enacting the Law on Conflict of Interest in Governmental Institutions of Bosnia and

Each bidder or candidate shall submit attached to the tender a separate written statement stating that it did not offer bribe or participate in any action that had corruption as its objective in the course of the subject public procurement procedure.

The CA may not conclude public procurement contracts with an EO if the manager or the authority or a member of the steering or supervisory board in the CA is at the same time performing managerial tasks in the EO, or the owner of business stocks, shares i.e. other rights based on which he/she participates in more than 20% in the management, i.e. in the capital of the EO.

Based on the internal document of the CA and in line with Article 52 of the PPL, the CA is obliged to draft a list of EO that have been disqualified from the public procurement procedure on grounds of conflict of interest. In addition, during the submission of bids, the EO is also obliged to submit a written statement in line with Article 52, paragraph 2, of the PPL, and Instructions on Application and Usage of Tender Documentation (Annex 8).⁵⁶

EO that directly or indirectly participated in technical consultations during the preparation of the public procurement procedure may not participate in that procurement procedure as bidder or candidate. The EO is obliged to sign and submit a statement (the form is a standard element of the tender documentation).

The CA is obliged to provide the same information to other candidates/bidders that were presented during the technical consultations or that incurred as a result of technical consultations and defining of adequate time limits for the receipt of the requests for participation and tenders. The CA states the undertaken measures in the minutes of the bid evaluation.

KOSOVO*

The ACA is competent institution for dealing with corruption and conflicts of interests in public procurement. The monitoring performed by the ACA experts is confined to examination of the tendering process, which is up to the point of the signing of the contract. During 2014, ACA handled a total of 86 cases in the field of prevention of corruption in public procurement, which compared to the total number of procurements in 2014 is a very small percent of irregularities uncovered. From these 86 cases handled by ACA, for 57 opinions for violations were issued; 2 cases were proceeded to the Department of Combating Corruption; 4 cases are being processed⁵⁷.

MACEDONIA

The following set of laws and regulations comprise the anti-corruption legislation in Macedonia: Law on Prevention of Corruption, Law on Prevention of Conflict of Interests, Law on Public Sector Employees, Law on Prevention of Money Laundering and Other Proceeds from Crime

Herzegovina (OG No. 14/03), Law on Amendments to the Law on Conflict of Interest in Institutions of Bosnia and Herzegovina (OG BiH, Nos. 12/04, 63/08, and 18/12).

⁵⁶ Instructions on Application and Usage of Tender Documentation Models and Bids (OG BiH No. 90/14).

⁵⁷ Annual Report of ACA for 2014; <http://akk-ks.org.r>

and Financing of Terrorism, Criminal Code, Public Procurement Code of Conduct and Code of Ethics for the Administrative Servants.⁵⁸ The Law on Prevention of Corruption contains a provision on abuse of public procurements. The Criminal Code also introduced abuse of the procedural rules within the public call, award of public procurement contract and public-private partnership public procurement as new criminal offence with severe sanctions against the perpetrators.

State institutions that have competencies in this field are: State Anti-Corruption Commission, Agency for Administration, PPO and SAO. In addition, based on the Law on Public Internal Financial Control⁵⁹ in each bigger CA internal auditors have been appointed, whose task is to audit and find possible irregularities in the work of the servants, including in the public procurement procedures and execution of procurement contracts.

Article 62 of the PPL stipulates that in order to prevent possible conflict of interest in public procurement procedures, the provisions from the Law on Prevention of Conflict of Interest will apply. A contracted EO for the purposes of the execution of the contract cannot engage a person who took part in the bid evaluation process. Accordingly, persons who assist or take part in the bid evaluation process (commission members, external experts) cannot at the same time submit a bid in any form. The term “affiliated persons” is defined in the Law on Prevention of Conflict of Interest and accordingly applies to the public procurements. This term includes not only the siblings and close relatives but also any natural or legal person with whom the official has a private interest.

The Law on Prevention of Conflict of Interest, among other things, defines what is deemed to be conflict of interest (*“a collision of public authorities and duties with the private interest of a public official, in which the official has a private interest that affects or may affect the performance of his public authorities and duties”*), the actions taken to prevent the conflict of interest, the prohibition for receiving gifts, the limitations after termination of the function, the competencies of the State Anti-Corruption Commission and procedure before it and the measures that can be taken when a conflict of interest has been determined. A National Programme for Prevention and Repression of Corruption and National Programme on Prevention and Reduction of the Conflict of Interest exists

<http://www.dsk.org.mk/images/stories/pdf/drzavna%20programa/dprograma%2026.12.11.pdf>) and contains provisions related to conflict of interest in public procurement.

In accordance with the Law on Prevention of Corruption, the State Anti-Corruption Commission can look into all public procurement procedures. If the Commission identifies a corruptive behaviour it can initiate further actions (e.g. request dismissal of the person or request initiating a criminal procedure). High fines and imprisonment are the sanctions that can be imposed against the perpetrators (ranging from 1,000 € for misdemeanour to at least 5 years of prison). The State Anti-corruption Commission has the power to impose a fine, which it has practiced

⁵⁸ Law on Prevention of Corruption (Official Gazette no. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 and 148/2015), Law on Prevention of Conflict of Interests (Official Gazette no. 70/2007, 114/2009, 6/2012 and 153/2015), Law on Public Sector Employees (Official Gazette no. 27/2014 and 199/2014), Law on Prevention of Money Laundering and Other Proceeds from Crime and Financing of Terrorism (Official Gazette no. 130/2014), Criminal Code (Official Gazette no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014), Public Procurement Code of Conduct (Official Gazette no. 39/2012) and Code of Ethics for the Administrative Servants (Official Gazette no. 183/2014)

⁵⁹ Law on Public Internal Financial Control (Official Gazette no. 90/2009 and 188/2013)

in several occasions so far. If the public procurement contract has not been awarded then the procedure will be cancelled. If the contract has been awarded and executed or still being performed, then the liability will be determined in a court proceeding.

The State Anti-Corruption Commission usually initiates procedures when a conflict of interest was determined or if there are allegations of corruptive behaviour. The statement of non-existence of conflict of interest that is signed by every member of public procurement commission is part of the tender dossier, but it is not checked internally. Only the SAO when performing the audit checks this document.

MONTENEGRO

Article 15 of the Law on Public Procurement, stipulates that the CA shall reject, or refuse, a bid if it finds or reasonably suspects that a bidder has given, offered or alluded to, directly or indirectly, a gift or some other benefit to a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of the contract notice, invitation to tender and tender documents, a person participating in planning the public procurement or some other person in order to influence them in order to discover confidential information or influence the CA action. CA shall also reject, or refuse a bid if it finds or reasonably suspects that a bidder has threatened, directly or indirectly, a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of the contract notice, invitation to tender and tender documents, a person participating in planning the public procurement or some other person in order to discover confidential information or influence the CA action. A CA shall record cases referred to in paragraphs 1 and 2 of this Article, make an official note thereof, submit a report to the competent state authorities which will take necessary measures in accordance with the law and immediately notify the competent body.

In accordance with article 16 of the Law on Prevention of Conflict of Interest, conflict of interest exists when a public procurement officer, members of the Commission for the opening and evaluation of bids, persons participating in the preparation of the contract notice, invitation to tender and tender documents, persons participating in public procurement planning, and other persons participating, directly or indirectly, in the public procurement procedure:

1) is a bidder, a bidder submitting the joint bid, subcontractor, legal representative, or attorney of the bidder, a bidder submitting the joint bid or subcontractor; 2) is a blood relative of the legal representative or attorney of the bidder or bidder submitting the joint bid or subcontractors in the straight line of kinship, or in the lateral line of kinship up to the fourth degree; 3) is a spouse or common-law partner of the legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor; 4) is an in-law up to the second degree of the legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor; 5) is an adopter or adoptee of the bidder, bidder submitting the joint bid, subcontractor, legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor; 6) is a shareholder or member of management bodies of the bidder, bidder submitting the joint bid or subcontractor.

Law on Prevention of Conflict of Interest and Rulebook on Manner of Keeping and Content of Records on Violation of Anti-Corruption Rules both adopted in 2011 and the Strategy for Fight against Corruption and Organized Crime 2010 – 2014 with Action plan for the implementation of the strategy for the fight against corruption and organized crime 2013 – 2014 are the key policy and legal documents in this field.

The Directorate for Anti-Corruption Initiative is in charge of raising public awareness on corruption and conducting research on the scope, forms, causes and mechanisms of corruption occurrence; monitoring implementation of GRECO recommendations; coordination of implementation of United Nations Convention against Corruption; cooperation with competent authorities on preparation and implementation of regulations and programme documents that are important for prevention and combating corruption, cooperation with NGOs and private sector in combating corruption; cooperation with state authorities in acting upon the corruption complaints received by Directorate for Anti-Corruption Initiative from citizens; collecting and processing the data on reports on corruption complaints for analytical purposes; giving authorization to conduct lobbying activities; certification and keeping register of lobbyists; acting upon the complaints against lobbyist who violated the law; preparation of Guidance for Integrity Plans in State administration bodies; performing other activities that arise from the membership in the Regional Cooperation Council in the South Eastern Europe.

According to this Law the key jurisdiction of the Commission is to conduct proceedings and issue decisions on the violation of this law and submits a request for misdemeanour proceedings. The Law on Prevention of Conflict of Interest was amended to empower the Commission to: 1) conduct proceedings and issue decisions on the violation of this law; 2) give an opinion on the existence of a conflict of interest; 3) determine the value of the gift; 4) adopt rules and rules of procedure of the Commission; 5) give opinions on draft laws, other regulations and general acts, if it considers it necessary in order to prevent conflicts of interest; 6) gives the initiative to amend the laws, regulations and by-laws, to bring them in line with European and other international standards in the field of anti-corruption initiative and transparency of business transactions; 7) submits a request for misdemeanour proceedings and 8) perform other duties in accordance with the law:

(<http://www.konfliktinteresa.me/new/index.php?lang=me>).

The task of the Directorate for Anti-Corruption Initiatives is cooperation with state authorities (State Prosecutor, Administrative Court), in acting upon the corruption complaints received from citizens. Corruption can be reported through open phone line or in written. The same applies for conflict of interest.

There are 11 open phone lines for reporting a corruption – Anticorruption Initiative, Supreme State Prosecutor, Office for reporting corruption in the judiciary, National Commission, Ministry of Health, Ministry of Education, Police, Custom Administration, Games of chance, Tax Administration, The Public Procurement Office. Any person having knowledge or suspicion that the offense of corruption, or which can provide information of interest to detect corruption offenses and their perpetrators, in accordance with the law, can submit an application and give information to the police or an authorized police officer for receiving reports of corruption. The police officer informs the Department for Combating Organized Crime and Corruption - the Group of corruption, as well as the competent State Prosecutor about the application and data. An authorized officer for the further procedure processing applications and data: deals with the

reliability and validity of sources collected applications and data; informs the competent State prosecutor and undertakes operational research within pre-trial proceedings.

The decision on the violations and reports can be found on the websites of both institutions.

SERBIA

The Anti-Corruption Agency is the institution in charge of combating corruption that is established by the Law on Anti-Corruption Agency. This Agency also deals with issues concerning conflict of interest.

The terms corruption and conflict of interests are defined by the Law on Anti-Corruption Agency. This Law envisages competences of this Agency, such as: institutes proceedings and pronounces measures for violation of Anti-Corruption Agency Law; issues opinions and instructions for enforcing this Law; supervises implementation of the National Strategy for Combating Corruption and the Action Plan etc. The Law on Anti-Corruption Agency envisages that this Agency submits an annual report on its activities to the National Assembly and may also submit special reports at own initiative or request of the National Assembly.

In case of infringement of this Law, the Anti-Corruption Agency shall:

- notify the competent body in order to initiate a disciplinary, misdemeanour or criminal procedure and shall also publicly announce;
- publicly announce a measure that is pronounced due to an infringement of this Law;
- publish information about the measure of public announcement or a recommendation for dismissal in the Official Gazette of RS.

This Agency can initiate the procedure concerning a measure as its own initiative or upon the request of an official or other natural person or on the basis of the report of a legal person.

According to the available information⁶⁰, in the field of conflict of interest, in 2014, the Anti-Corruption Agency worked on 1,286 issues and pronounced 143 measures of caution, 40 measures of public announcement of recommendation for dismissal, 40 measures of public announcement on violation of the Anti-Corruption Agency Law and initiated 68 requests for misdemeanour procedure.

According to the PPL, the CA cannot award a public procurement contract to the tenderer in case of conflict of interest, if existing conflict of interest has influenced or could influence on the decision making in the public procurement procedure. This solution with additional condition: "if existing conflict of interest has influenced or could influence on the decision making in the public procurement procedure" (as the result of PPL amendment that entered into force on 12 August 2015) is imprecise and inapplicable. It is not clear who will determine the influence and how to do it. There is space for subjectivity.

⁶⁰ The Anti-Corruption Agency, Information on work in 2014, March 2015. www.acas.rs

4.10. How PP is mainstreamed in Public finance management?

ALBANIA

CA are required to comply with the legislation and instructions on preparation of the budget and the budgeting process. All CA are subject to the Law on management of the budget system in the Republic of Albania No. 9936 of 23 March 2003 which covers the budget system, principles and basis of the budget process, as well as the guidelines for the implementation of this law. Local government CA are subject to specific legal requirements related with the preparation of local budgets and requirements to file a summary of their annual procurement budget on the PPA public procurement register at the beginning of the relevant financial year at www.app.gov.al.

The annual budgeting process means that the assessment and planning of procurement requirements is generally limited to a 12 month period.

According to the Albanian legislation there is no specific regulation which prescribes the financing of a concrete purchase. The applicable legislation in this case is budget legislation, as mentioned above.

According to the Albanian public procurement legislation, it is not possible to conduct any procurement procedure, to conclude any contract or to make any form of agreement for a potential contract, unless there is a final approval of the budget and this signs the strong “relation” between budget process and procurement process.

After the approval of the budget by the Parliament of the Republic of Albania, by January of the ongoing year, every institution, after being informed about the approved budget, must make an itemization of the budget execution and send it for a final approval to the Ministry of Finance. This itemization includes also funds to be used for procurement. The Ministry of Finance sends upon an aide-mémoire the approval of the itemized budget for the relevant calendar year. Following this approval, the CA may start the planned procurement procedures.

Public procurements budget assessment and planning is performed as part of the overall budget. If the needs assessment and planning for goods services and works to be performed through the procurement procedures would have been specifically regulated, bearing in mind the great importance that planning has in a procurement process, it could improve the results and effectiveness of the use of public funds. Moreover, coordination of budget legislation, which regulates the budget adoption and allocation, with the procurement legislation, which regulates the moment of the commencement of the procurement procedures and the conditions to be met (inter alia, having the budget available) to start these procedures, could be very important in terms of the effectiveness of the process.

The process of controlling of spending public funds is not an automated process.

BOSNIA AND HERZEGOVINA

The process of budget enactment at all four levels of government (Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republic of Srpska, and Brcko District) is carried out in a similar way. The first step involves the forwarding of Instruction No. 1 by the Bosnia and Herzegovina Ministry of Finance and Treasury to the budget users regarding the manner and elements for formulating the budget framework paper, which contains all the basic economic assumptions and guidelines for the preparation of the Budget Framework Paper (BFP). Deadlines for the submission of the Instruction to budget users range from January 31 till February 15 of the current year for the following year, depending on the levels of government.

The next step involves the proposals of funding of budget users for BFP preparation with a submission deadline by April 15 of the current year for the following year (except in the RS, where the submission deadline is April 30). The Bosnia and Herzegovina Ministry of Finance and Treasury is obliged to develop a draft BFP by April 28 of the current year for the following year, containing macroeconomic and fiscal projections for the current and the next three budget years.

Based on the submitted priority proposals of funding of budget users for BFP preparation, the Ministries of Finance (at each level of government) develop and submit the BFP to the Government by June 15 of the current year for the following year (except in the RS - where the deadline is not determined). The Governments (at each level of government) adopt the DOB by June 30 of the current year for the following year, when it is delivered (as info) to the Parliament and posted on the web site by July 15.

The requests for funding of budget users are submitted to the Ministries of Finance (at each level of government) within the August 1 till September 1 deadline. The final deadline for consultations between the ministries of finance and the budget users is October 1. As far as the Bosnia and Herzegovina level is concerned, the Bosnia and Herzegovina Ministry of Finance and Treasury has to submit a draft budget to the Council of Ministers of Bosnia and Herzegovina by October 1 of the current year for the following year. After the approval of the draft budget, the Council of Ministers of Bosnia and Herzegovina shall forward it to the Presidency of Bosnia and Herzegovina by October 15, when the Presidency of Bosnia and Herzegovina provides approval of the draft budget by November 1 and, subsequently, sends it to the Parliamentary Assembly of Bosnia and Herzegovina, which is obliged to adopt the budget for the following year by December 31.

Following the budget adoption, the CA shall not require additional approval for the conduction of the procurement procedures (commencement, contract award and contract conclusion). Often, the adopted budget requires some adjustments, meaning budget re-balance and in this case the procurement process is affected (change of the Annual Procurement Plan, the realization of the procurement procedure and awarding of the contract need to be re-scheduled and payments postponed). One of the common problems in Bosnia and Herzegovina is unsatisfactory budget execution.

KOSOVO*

Based on the Law on Budget of Kosovo*, before the beginning of each procurement activity, a valid justification shall be prepared by the head of the requesting budget organization which must include, at a minimum, evidence that the estimated cost of the capital project is greater than the available funds as determined in accordance with the Law on Procurement, or that a capital project requires less than the amount specified, as well as the description of the effect that the request may have on the Public Investment Program⁶¹. According to Article 8 of PPL, each CA shall prepare a procurement forecast, which identifies in reasonable detail all supplies, services and works that the CA intends to procure over the course of the fiscal year. After the approval of the budget, the CA is obliged to harmonize final procurement planning with the law of state budget for the respective year. Before a CA may initiate any procurement activity, it shall ensure that a formal needs assessment is conducted with respect thereto and that the results of such assessment are formally recorded in writing and maintained in the contracting authority's records.

MACEDONIA

The Budget Law⁶² stipulates the instruments used for financial planning purposes. Based on the provisions of this law, the Government and/or the Ministry of Finance prepare a list of annual priorities, a mid-term fiscal strategy and annual budgets. In general, the budgeting process starts when the Ministry of Finance sends out the budget circular that should guide the budget users how to prepare their budget requests. The budget requests are filled-in within the given ceiling and then submitted to the Ministry of Finance by 1st of September at the latest. Once it has collected all the budget requests, the Ministry of Finance prepares the budget and submits it to the Government by 1st of November at the latest. The Government submits the draft Budget to the Parliament by 15th of November at the latest. The Parliament must adopt the Budget by 31st of December at the latest. If the annual budget is not timely adopted, as it used to happen in the past and might happen in the future, the following rules from the Budget Law must be followed by the contracting authorities:

- a) The procurement procedure can commence, provided that the funds for that purpose have been planned with the budget that needs to be adopted and
- b) Payments based on the awarded public procurement contract can be made, if the Ministry of Finance gives an approval, which should be the case if the amount is within the limits set in the Budget Law.

Once the Budget is adopted, the CA do not require consent for its execution, including the procurement procedures (commencement, contract awarding and execution), unless it concerns a different purpose (re-allocation) of the funds. When the procedure for the re-balance of the budget has been initiated, the Ministry of Finance follows a methodology according to which it determines the budget items that will be cut down. Each re-balance of the budget affects procurement as it requires: a) modification in the Annual Procurement Plan, b) delays in the realization of the procurement procedure and awarding of the contract or c) delays in the payments. Another problem that sometimes CA faces in relation to procurement planning and budgeting is the risk of late signing of the contract. If a CA is not able to sign the

⁶¹ Law No.04/L-233 on Budget of Kosovo* for year 2014; <http://www.kuvendikosoves.org/>

⁶² The Budget Law (Official Gazette 64/05, 04/08, 103/08, 156/09, 95/10, 180/11 and 171/12) available on the Ministry of Finance web site (<http://finance.gov.mk/mk/node/186>)

procurement contract by 31st of December, when the budget for that year is closed, then it will lose the funds. In such cases CA usually re-allocate funds from other budget items or sources in order to realize the contract or they terminate the contracts (if concluded) or annul the procedure (if it is still ongoing).

On the basis of the specifics of the subject of the procurement and the market conditions, the CA may decide the contracts to cover a period longer than one year. When there are multi-annual contracts, the CA is obliged to plan the funds for payment for every year during which this contract will be realized. For a multi-annual public contract, except for the one financed by a development part of the budget, the CA on central level shall ask for an opinion from the Ministry of Finance. Upon a received positive opinion the CA submits a request for approval to the Government. The procurement procedure cannot be initiated before the approval from the Government is obtained.

MONTENEGRO

CA can start the process of procurement only if for this particular procurement financial resources through budget are secured. CA cannot spend budget funds in any other purpose different from the one described in the Public Procurement Plan.

After adoption of the annual Budget of Montenegro (we have yearly budget planning - no multiannual), CA are preparing a Public Procurement Plan for the next year. It has to be in line with the adopted Budget. Approval on the Procurement Plan has to be given from the side of the competent authority (for example, approval to the users of the budget is given by the Ministry or approval for the utilities under jurisdiction of the local self-government is given by the local self-government). Every public procurement plan has to be published on the website of PPA by the 31 January.

SERBIA

According to the PPL provisions on conditions to initiate a public procurement procedure, the obligations of contracting authorities that are envisaged by the public procurement contracts must be contracted in compliance with the legislation on budgetary system. The Budget Inspection Unit within the Ministry of Finance is in charge of control of spending public funds, including public procurement.

Furthermore, decision of CA to initiate a public procurement procedure contains, among other elements, data on budget appropriation or financial plan allocation.

4.11. Performance indicators for central public procurement control/audit institutions

ALBANIA

To measure the public procurement system functioning, PPA analyses and prepares statistics on public procurement procedures, of public fund procured, public fund saved, public fund spent, etc. Through the analysis of such statistics, PPA evaluates the functioning of the procurement system and at the same time, uses these statistics as incentives for the monitoring plan. For example, if based on the statistics, CAs have used the negotiated procedure without prior publication very often, this serves as an incentive for PPA to monitor the reasons of using such a procedure and if there are irregularities in this regard. As explained above, PPA has also the monitoring competences in public procurement field. This competence is performed primarily through its monitoring plan and secondly through the collaboration with all other auditing institutions which refer to PPA all their findings in the procurement field. The aim of all this monitoring mechanism (and institutions), is to ensure the well implementation of whole procurement legislation in practices. The statistics are available at www.app.gov.al.

BOSNIA AND HERZEGOVINA

The PPL has not established any performance benchmarks or indicators to measure the main public procurement parameters.

KOSOVO*

Kosovo* with support from WB through the project: Designing a public procurement compliance and performance monitoring system, preparations for the measurement of performance indicators in public procurement⁶³ have started in Kosovo*. Until now the following are prepared:

- Manual;
- Work Plan with methodology;
- Key Indicators and Sub Indicators;
- Procurement case questionnaire.

The manual provides guide to the four main steps in the performance measurement cycle: 1. Data collection; 2. Data aggregation; 3. Reporting of findings and 4. Using findings.

Based on the Manual, performance measurement will be oriented on three aspects:

- Measuring the performance of compliance in terms of the implementation of public procurement legislation in Kosovo*;
- Measuring performance in terms of achieving efficiency and effectiveness in carrying out procurement activities;
- Measurement of performance in terms of increasing transparency, and improving governance.

⁶³ PPRC Archive

Monitoring of Performance of public procurement will cover the following three phases:

- Pre-tender phase: the phase before the formal initiation of a contract notice;
- Contract award procedure: the phase from the formal initiation until the signature of the contract;
- Execution of the contract: the phase after signing the contract until final handing over the project.

Measuring performance is planned to make for these key indicators: Value, Quality, Timeliness, Economy, Competitiveness, Transparency, and Anticorruption Measures.

It is expected that measuring of performance in public procurement system of Kosovo* will start implementation in the beginning of 2016.

MACEDONIA

The PPB has not set any official performance benchmarks or indicators to measure the main public procurement parameters in a systematic manner. However, in its annual reports the PPB is providing detailed statistical data based on which the functioning of the public procurement system is measured and compared with the previous years. The PPB uses this data to draft findings and recommendation for further improvements, which are also part of the annual reports. The gradual mandatory use of electronic auctions (2010-2012) and e-procurements (2016-2018) laid down as mandatory annual targets in the PPL can be deemed as sort of benchmarks for use of the electronic means in the public procurement procedures.

The SAO carries out specialized audits to assess the successfulness of certain projects and measures (sort of ex-post cost-benefit analysis). In 2014, a total of 6 audits of this type have been performed over major projects, two of which include public procurement of equipment. These audits are based on SAO internal methodology and the results rarely show major shortcomings and deficiencies in the spending of public funds.

There are no indicators set to measure the performance of the PPB.

MONTENEGRO

Indicators that PPA is using in Report for 2014 (available on the website of PPA www.ujn.gov.me) are the following:

1. Draft of the changes of the Law on Public Procurement prepared
2. System of the fight against corruption improved
3. System of filing is improved by CA
4. Number of contracts who were subject to checking increased
5. Number of sanctions
6. Number of requests for negotiating procedure
7. Number of educational workshops and seminars
8. Number of public officer who passed the exam, etc.

PPA reports are adopted by the Government of Montenegro. Each calendar year PPA prepares and submits to the Government of Montenegro a report on public procurement for the previous year, no later than 31 May of the current year. The adopted reports are public on the website of the PPA <http://www.ujn.gov.me/> and Government of Montenegro http://www.gov.me/sjednice_vlade. To measure the public procurement system functioning, PPA analyses and prepares statistics on public procurement procedures, procured, public fund saved, public fund spent, etc. Those statistics data are available on the website of the PPA and Government and give information to the PPA for making analyses and improvement of the Law. If procedure other than the open procedure is used more frequently it can secure the information on which area they could focus on in their monitoring part of the task. Further, if the PPA notices that some procedures are not being used in a level that it should be, it can give them the information in which area training should be focused on for year to come.

If State Audit Institution has controlled the work of the PPA, that report would be available on the website of the State Audit Institution. State Audit Institution is controlling every budget spending unit and therefore the PPA as well, but according to the yearly plan of audits.

SERBIA

There are several existing indicators:

- involvement in the creation and improvement of legal and institutional framework in the field of public procurement (the PPO participates in drafting the PPL amendments, adopts bylaws in the field of public procurement, defines standard forms of public procurement notices);
- support and assistance on the interpretation and application of the national legislation in the public procurement (giving opinions on interpretation and application of the PPL provisions, guidance, preparation of framework agreement models, afterwards, manual for public procurement official, which is prepared with the support of the United Nations Development Programme (UNDP), standard tender documents and other publications);
- monitoring of application of public procurement rules (supervision of implementation of the PPL and bylaws, filing of request for the protection of rights, informing on identified irregularities in conducting public procurement procedures and delivering reports, initiating of misdemeanour procedure as well as procedure for annulment of public procurement contract);
- measurement of public procurement system functioning (collecting of statistical data on conducted public procurement procedure and concluded contracts as well as on overall efficiency of the public procurement system);
- organisation and support in education (workshops, seminars; determining of the manner and program of professional training);
- collaboration with other bodies and institutions (the PPO cooperates with other national governmental bodies and organizations as well as bodies of local government; monitoring entities in Serbia signed Memorandum on cooperation on 29 April 2014);
- anticorruption measures (the PPO appoints civil supervisors; the PPO will draft the model of internal plan for preventing of corruption in public procurement);
- transparency (managing of Public Procurement Portal).

4.12. Administrative capacities of PPA and allocation of resources in PPA

ALBANIA

PPA is an institution under the Prime Minister, but according to legal provisions its decisions should not have any prior or ex-post approval by Prime Minister' office or any other body. In this sense, PPA is independent in exercising its activities and competences.

The number of PPA staff has changed (decreased and increased) often over the last five years (from 36 up to 2010 to 18 by the end of 2010, 23 in 2012 and 28 in 2015). It is divided in two main Directories. The Legal and Monitoring Directory has a Director and two subordinated units: Legal Unit composed of 5 members and Monitoring Unit composed by 7 members. IT and Publication Directory has the Director, 4 IT specialists and 3 publication specialists and one specialist for statistics. Except for these two main Directories, there is also a Supporting Unit, dealing with integration, finance and human resources management composed of 3 members.

Conditions for employment of PPA staff depend on the level of a certain position, but by the law, even low level specialists should have at least one year experience in public procurement. The main academic background of PPA staff is legal and economic. There is no concrete mechanism which serves to ensure that procurement officials meet high professional standards of knowledge, skills and integrity in the Albanian procurement system.

In the internal Regulation of PPA, a clear chain of responsibility with effective control mechanisms is established for the PPA staff. The regulation contains detailed rules on responsibilities of each PPA employee, prescribing what duties they have, who prepares the monitoring reports and who approves the final decisions. The regulation also contains the deadlines for performing these duties. The objectives that should be reached by each employee are defined every six months and at the end of this period they are subject to performance evaluation.

In 2015 the Council of Ministers approved the request to increase the number of PPA staff from 23 to 28. The annual budget of PPA is approximately 350,000 Euro. PPA is well equipped with all necessary technical equipment to manage the e-procurement system and run day-to-day work.

Comparing PPA tasks and all its resources (human, technical, financial etc) it may be concluded that they are not proportional. It is evaluated that PPA needs more human resources to perform its tasks in the most efficient way possible, this considering also PPA competences given by concessions/PPP legislation and public auction legislation. PPA has almost the same competences in these two other fields, and has only 28 employees. Considering PPA competences on managing e-procurement platform, number of IT specialist is too low: there are only 4 IT specialists in PPA structure.

BOSNIA AND HERZEGOVINA

The PPA is an independent administrative organization with its headquarters in Sarajevo, which is comprised of 4 departments – Department for Legal Affairs, Training and Analysis; Department for IT, General and Administrative Affairs (14 employees in total), as well as two branch offices (one in Banja Luka and one in Mostar - 10 employees in total (5 per each branch office)).

PPA – Planned number of staff as per systematization and current number of employees

Organization unit	Planned number of staff as per systematization of jobs	Current number of employees
Cabinet of the Director	3	2
Department for Legal Affairs, Training and Analysis	7	5
Department for Legal Affairs, Training and Analysis – Banja Luka branch-office	7	5
Department for Legal Affairs, Training and Analysis – Mostar branch-office	7	5
Department for IT, General and Administrative Affairs	7	6
Total	31	23

The PPA is managed by the Director (appointed by the Council of Ministers of Bosnia and Herzegovina in cooperation with the Civil Service Agency of Bosnia and Herzegovina) and by the Board of the PPA. The PPA Director is appointed for a 5-year term (with the possibility of one additional consecutive term). The Board of the PPA is competent to consider issues in relation with public procurement functioning and improvement of the public procurement system, and to provide prior consent to enactments regulating the public procurement system, which shall be adopted by the Bosnia and Herzegovina Council of Ministers or the Director of the PPA. The Board of the PPA consists of seven members. The members are representatives of the: Bosnia and Herzegovina Ministry of Finance and Treasury, Federation of Bosnia and Herzegovina Ministry of Finance, Republic of Srpska Ministry of Finance, and four experts selected by open competitions in line with the implementing regulations. The representative of the Government of Brcko District, and the PPA Director and PRB Chairperson have the status of observers. The Council of Ministers of Bosnia and Herzegovina appoints the Board of the PPA for a 5-year term.

The PPA is a small organization and, as such, does not require to have an organizational unit that would be responsible for human resource management. However, it is recommended to fill in the planned position for human resource management and personnel matters.

Taking into consideration external demands and limitations, as well as, the existing capacities of the PPA (in relation to the job positions and skills and qualifications of the staff), it is necessary to re-evaluate the existing systematization, taking into account the existing

employees in the PPA, but also to find ways to better utilize the existing skills and the profiles of the existing PPA staff. In view of the above mentioned, the PPA has developed a new draft regulation related to the internal systematization of its staff and submitted it to the Council of Ministers of BOSNIA AND HERZEGOVINA for approval.

The responsibilities of the Sarajevo office and its two branch offices overlap in almost all matters. The only difference is that the Cabinet of the Director is located in Sarajevo and that it is comprised of two departments - the Department for Legal Affairs, Training and Analysis, and the Department for IT, General and Administrative Affairs - while the other two branch offices lack a department for IT, General and Administrative Affairs. The organizational structure of the three Departments for Legal Affairs, Training and Analysis is completely identical, with identical job descriptions, and staff number and profile.

Coordination between the Sarajevo office and its branch offices is hindered not only because their tasks are duplicated, but also by the fact that the contracting authorities and EO are free to contact any of the offices and ask questions or request opinions (what often happens in practice is that the same legal entity sends the same or very similar inquiry to all three offices). The introduction of the internal system for the management of documentation has to a large degree mitigated the problem of duplication. Likewise, efforts have been made in the allocation of certain types of responsibilities to individual offices (e.g. the Mostar office is currently managing all monitoring reports). However, this organizational structure is still not optimal and cannot ensure that the already scarce resources of the PPA are utilized in an effective and efficient manner.

The number of employees and the budget allocated to the PPA is constant over the last few years.

KOSOVO*

The PPRC was established in February 2005, based on PPL No. 2003/17, under the Parliament of Kosovo*. PPRC is a legislative and monitoring body for public procurement in Kosovo*. PPRC is led by a three member board proposed by the Government of Kosovo* and appointed by the Assembly of Kosovo*. Board members of the PPRC have a five-year mandate with the possibility of being reappointed only once. The Board reports directly to the Assembly of Kosovo*. At the moment, the PPRC has 30 full-time employees working in two departments, four divisions and administrative office.

Besides the three members of the Board of the PPRC who are appointed by the Assembly of Kosovo*, all other staff of PPRC are civil servants who are recruited based on the Law on the Kosovo* Civil Servants.

On 31 December 2014, the PPRC functioned based on the following organizational structure: four divisions (Rules, Training, Monitoring and IT) and administrative office that serves the President and the other two Board members.

PPRC is financed from the state budget, and there are no other revenues. Compared to the competences that PPRC has by the PPL, and the number of employees, it can be concluded that this budget is not sufficient to perform successfully the duties envisaged.

Budget spent by the PPRC during 2014, according to economic categories⁶⁴:

- Wages and Salaries	202,611.00 €
- Goods and Services	127,341.00 €
- Utilities	20,200.00 €
Total:	350,152.00 €

MACEDONIA

The PPB is the key policy making and training institution in the public procurement sector. The PPB is organized in two departments with 25 employees.

- Department for Normative Affairs, Training and International Relations, comprised of the following three Units:
 - o Unit for European Affairs and International Relations,
 - o Unit for Normative and Legal Affairs, and
 - o Training Unit.
- Department of Monitoring of the Public Procurement System and Management of the e-Procurement system, comprised of two the following two units:
 - o Unit for Review, Analysis and Preparation of Statistical Reports,
 - o Unit for ESPP Management and ICT Support, and

The Accounting Unit and Human Resources Unit act as separate units, reporting directly to the PPB's Director.

All employees in the PPB have status of administrative (civil) servants. The employment and promotion procedures and other labour related issues are governed by the Law on Public Sector Employees⁶⁵ and Law on Administrative Servants⁶⁶. The employees in the PPB have various educational background and expertise, and almost half of them have master degree. The most represented in the PPB are the economists and lawyers, while several of them have IT and public administration background. The employees continuously attend various trainings in their field of education and interest.

It now employs 25 full-time staff and one Director. Most of the present managers are with the PPB from its early days, which means that the institution has experienced and sufficient staff. The resources are allocated according to the strategic goals on the PPB. PPB's operations are funded from the central budget and PPB's own sources (e.g. revenues from the e-Procurement system and from delivery of trainings). Each year significant funds (around 200,000 € according to the published contract award notice) are spent for the maintenance and upgrade of the e-Procurement system, i.e. pay the outsourced software developer and storage centre.

In May 2014, the Public Procurement Council was established as a separate department within PPB. As of January 1st, 2016, the Public Procurement Council became an independent entity, thus releasing the burden from PPB to administer the Council's operations. The Council has 5 appointed councillors and around 35 support staff, and it also uses external experts. A huge amount of money is paid for the work of the Council. One of the Council authorities is to register experts in certain fields who help the Council to bring the decision. For the services provided,

⁶⁴ PPRC Archive

⁶⁵ Law on Public Sector Employees (Official Gazette no. 27/2014 and 199/2014)

⁶⁶ Law on Administrative Servants (Official Gazette no. 27/14, 199/2014, 48/2015 and 154/2015)

the experts charge a fee that depends on the estimated value of the contract (e.g. the fee for the expert's opinion on the use of technical specification for procurement of goods is 50 €). For each draft technical specification and tender documentation, the Council must engage and consult at least three experts.

The SAO has 93 employees, authorized state auditors, state auditors and administrative support employees organized in 7 sectors and 2 units (human resources and internal audit), out of which 4 sectors are directly involved in the performing of audits, 1 sector works on the improvement of the audit and quality control, and 2 sectors provide administrative support. Of the total number of employees, 96% have university degree in the field of economy, law, information technology and other areas, and the number of employees with master's degree continuously increases.

MONTENEGRO

The Public Procurement Directorate has clear organizational structure with defined division of responsibilities explained below.

The Director is the responsible person coordinating the work of all sectors. PPA consist of Sector for monitoring application of the legislation and for inspection control with Deputy Director and 4 associates, Department for monitoring of the public procurement procedures and administration of the electronic public procurement with Chief of the Department and 2 associates, Department for professional development, training and international cooperation with Chief of the Department and 2 associates and the Service for administrative and technical affairs and finances with Chief of the Service and 5 associates.

Human resources are allocated according to the Law on Civil servants⁶⁷ and in accordance with the Rulebook on internal organization and job descriptions. Title of job position determines required education and competences for performing the tasks within the scope of the job position. For example, position of Director: High education, Law Faculty, Faculty of Economics or other Faculty of Social Science or engineering 3 years of work experience in management or in other appropriate job that require independent work, civil service exam passed. Position of Senior Adviser I requires the following: Higher education in the scope of 240 credits CSPK, Law Faculty or Faculty of Economics, 5 years of work experience, civil service exam passed, computer literacy.

The Rulebook on internal organization and job descriptions (available on the website <http://www.ujn.gov.me/>) envisages that the Directorate shall have 18 civil servants and state employees. Human resources are allocated according to the Law on Civil servants, all procurements of goods and services are done in accordance with the Law on Public Procurement. Budget for 2015 for PPA was approx. 0.3 mil EUR. Gross salaries are planned in the amount of approx. 0.18 mil EUR, for 16 employees on the bases of the salaries of civil servants and employees. Expenditures for supplies and services and other expenditures are planned in the amount of 0.09 mil EUR and they include: expenditure for official travel in the country and abroad, expenses for communication services, services of professional training, consulting services, expenditures for the purchase of office supplies, procurement,

⁶⁷Law on Civil servants (Official Gazette no 39/11, 50/11, 66/12, 34/14)

development and maintenance of software related to the promotion of a new web portal to facilitate access and view all data.

Number of employees should definitely be higher, specially comparing PPA tasks. Furthermore, budget needs to be higher than it is now. If attracting professionals in the state administration is the goal (and it should be), especially in the PPA, salaries have to be higher. Considering PPA plans on e-procurement and managing e-procurement platform, number of IT specialists should be higher.

SERBIA

According to the job classification of the PPO⁶⁸, there are 22 jobs with 28 employees, namely: Director (I group of position);

Sector for public procurement work with 22 jobs of which:

- 1 deputy director (IV group of position),
- chiefs of Department (senior advisor),
- chiefs of Unit (advisor) and
- 16 civil servants;

Unit for financial work with 3 jobs of which:

- 1 chief of Unit and
- civil servants;

Unit for human resources with 3 jobs of which:

- 1 chief of Unit and
- civil servants.

In the structure of staff of the PPO, there are 21 employees with university education. The Unit for human resources is in charge of conducting of competition for new employment. The Director of the PPO is appointed by the government through public competition and must meet the conditions regarding the educational profile and work experience stipulated in Article 137, paragraph 2, of the PPL.

The management team includes: director, its assistant, chief of Department for regulation, chief of Unit for monitoring and control, chief of Department for public procurement system development, chief of Unit for public procurement system analysis, chief of Unit for financials work and chief of Unit for human resources.

According to the Information on work (on the PPO website), the budget for 2015 for the PPO is 50,830,000 RSD⁶⁹ which includes 28,000,000 RSD⁷⁰ for salaries. The resources are allocated according to the PPO activities. The PPO disposes with space and technical equipment.

⁶⁸ Information on work of the PPO, 2015. www.ujn.gov.rs

⁶⁹ 0.42 million €

⁷⁰ 0.23 million €

4.13. Regulatory impact assessment in public procurement regulation and regulation monitoring

ALBANIA

As described above, PPA monitors and evaluates the efficiency of implementation of PP legislation in practice through statistics and through its ex-post monitoring plan of procurement procedures. Through its monitoring tasks, PPA intends to find out irregularities in the procurement process and to improve it through education of CA and if it is the case, through amendments of the procurement legislations.

BOSNIA AND HERZEGOVINA

The PPL has not established any performance benchmarks or indicators to measure these main public procurement parameters.

KOSOVO*

According to Article 87.2.13 of the PPL No. 04/L - 042, the PPRC for each calendar year, prepare and submit to the Government and the Assembly an annual report analyzing public procurement activities in Kosovo* occurring in that calendar year and setting forth any recommendations for the improvement of the public procurement system and/or the present law. Based on the recommendations from the annual report for 2014, the working group appointed by the Government of Kosovo* was established to draft new PPL, which was approved by the Government on October 16th, 2015.

MACEDONIA

PPB in its annual reports provides rich and relevant statistical information, accompanied with findings and recommendations for the improvement of the legislation or the public procurement system in general.

Regulatory impact assessment (RIA) is supposed to be carried for every draft law, but in practice very often the completed report for the RIA is very poor and it does not contain any in-depth assessment. In order to facilitate the process of preparing RIA, the Ministry of Information Society and Administration developed methodology, instructions and template that need to be followed by the legal drafters (<http://mioa.gov.mk/> and <https://ener.gov.mk/default.aspx?item=news&newsid=ZWxFP0AkZvXWF7X/FG3djA==>).

The RIA includes analysis of the situation, identifying the problem, defining goals, determining possible solutions, cost-benefit analysis and options, monitoring and evaluation, etc.

The 2015 amendments to the PPL are accompanied with a report on the conducted RIA that is publicly available on the web site of ENER

(https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg&itemid=29mTcmAulCi7IFLG4whRBw==), but does not contain in-depth analysis of the possible options and implications. Other similar types of analysis (e.g. cost-benefit analysis or analysis of the effects of the implementation of certain solutions) were never prepared.

MONTENEGRO

Each CA is obliged to, by 28 February of the current year at the latest, submit to the PPA the report on conducted public procurement procedures and on public contracts concluded in the previous year. On the other side, PPA prepares a report on conducted procurements and sends it to the Government by the 31 May, at latest for adoption. In the report is described what has been done in line with the Plan of adoption and implementation the new amendments of the Law, assessments of the implementation of the Law, secondary legislation in the area of public procurement, process of involvement of local authorities in the process, etc.

On the bases of this report, monitoring activities and statistical data, PPA in practice can identify “weak points” of the public procurement system and improve it through educational activities, or amendments of the legislation in the future.

SERBIA

The PPO monitors and evaluates the efficiency of implementation of public procurement legislation in practice through public procurement plans and reports of the contracting authorities. According to the Information on work (2015), the PPO has initiated 26 misdemeanour procedures on the basis of collected documents.

The PPO analyses the public procurement reports of the contracting authorities and collects documents in order to check whether there is some reasons for initiating misdemeanour procedures. The PPO considers the intensity of competition as the average number of tenders relating to concluded contracts, which is very low (only 2.6 in 2014) as well as share of public procurement procedures with only one tenderer, which is very high (42.6% in 2014) and demonstrates the absence of interest for participating in public procurement procedures.

4.14. Risk based analysis for audits/other control instruments

ALBANIA

PPA does not prepare and provides risk audit and assessment.

BOSNIA AND HERZEGOVINA

The PPA or any other institutions performs risk audit and assessment.

KOSOVO*

Until now the PPRC does not carry out risk audit and assessment in a systematic way.

MACEDONIA

PPB does not carry out risk audit assessment in a systematic way.

Public procurement is always part of the ex-post audits and sometimes of the thematic audits performed by the SAO. Two aspects of the public procurements are monitored: the contract award procedure and the execution of the public procurements contracts. The SAO's regular financial audit, where relevant, includes a chapter on public procurement. The audit carried

out is based primarily on determining compliance with the PPL. A special audit unit within the SAO measures the performance - efficiency, effectiveness and cost-effectiveness of the programmes and projects, including the public procurements.

MONTENEGRO

Until now, no risk analyses are available to the public. In the report of the work of PPA for 2014, PPA is mentioning that a real risk analyses should be prepared in the area of Public Procurement, especially to control of the work of CA in the preparatory phase.

On the website of PPA the Pact of Integrity is available, which describes the methodology for assessing the intensity of the risk with respect to those particularly exposed to the corruption and risk map of working places.

SERBIA

The Public Procurement Office does not carry out risk audit and assessment in a systematic way.

4.15. Quality control certification/usage of standards: ISO, CAF, other

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

The application of standards in the BOSNIA AND HERZEGOVINA is at an early stage. However, public institutions - especially the municipalities - are beginning to see the advantages of defining internal procedures and establishing ISO standards (an example of good practice is the Municipality Centre in Sarajevo, which is among the first to implement this standard).

The BOSNIA AND HERZEGOVINA Public Administration Reform Coordinator's Office (PARCO) will be responsible for promoting the use of Total Quality Management (TQM) instruments, designing the required training, providing necessary information, and serving as the central point for the initiative. In early 2014, the process of designing a structured Road Map towards a sustainable quality management dynamics in the public sector of BOSNIA AND HERZEGOVINA started. Both these processes are supported by the Program for Strengthening of Public Institutions in BOSNIA AND HERZEGOVINA implemented by the German GIZ, with PARCO as the main institution responsible for the program.⁷¹

KOSOVO*

Not applicable.

⁷¹ Human Resources Management (HRM) section, the Revised Action Plan 1 (<http://parco.gov.ba/latn/?page=104>)

MACEDONIA

In 2013, a Law on Introducing Quality Management System and CAF has been enacted, according to which all central level administrative bodies have to go through a process of certification according to the ISO 9001 standard and to carry out CAF. The PPB is among the institutions that became ISO 9001 certified even before the law was passed, i.e. more precisely in late 2012. The implementation of this standard helps the PPB to better perform the internal operations and provide services to the clients. The adherence to this standard is monitored by the ISO 9001:2008 accredited body every two years. The results (findings and recommendations) from these regular controls are not publicly disclosed, except for the fact that after the last control carried out in 2014, the PPB was re-certified which is indicated in the PPB Annual Report for 2014. The PPB and SAO have not implemented CAF yet.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

4.16. Certification of PP officers

ALBANIA

PPA promotes and organizes training of central and local government officials engaged in public procurement activities. Trainings are organized in collaboration with the Albanian School of Public Administration. ASPA, based on the CA or PPA requirements, approximately twice a year, organizes training on public procurement. PPA prepares the general curriculum meanwhile the specific materials are prepared by the trainers based on the general one. The trainers are the specialists that have attended the "Training of Trainers" (ToT) program, first and second phase.

The participants obtain a certificate issued by ASPA for attending the training and the score, but Albanian procurement system does not have a system of certification (licencing) of procurement officers. The lack of this certification system let the procurement specialists exposed toward the phenomena of turnover of the staff, which is related mainly with political changes in the country.

BOSNIA AND HERZEGOVINA

The PPA has a mandate to organize trainings for certified trainers and public procurement officers, publish information regarding trainings, and develop manuals and other accompanying materials for professional development in the field of public procurement.

The PPA monitors the work of certified trainers and keeps a record on certified trainers and public procurement officers in the field of public procurement. A list of 95 certified public procurement trainers, with contact details, can be found on the PPA web page (www.javnenabavke.ba). The PPA is currently taking necessary measures to re-certify

individual trainers and to engage only those who have received a positive assessment of their prior performance. The PPA supervises the work of registered trainers who, in accordance with applicable regulations, are obliged to fulfil their obligations under the PPA.⁷²

In addition, the PPA prepares annual reports on conducted public procurement trainings, which were implemented by not only certified trainers and the PPA, but also by other institutions and enterprises that, on a profit-making basis, provide training in this field.

All institutions and enterprises interested in organizing trainings in the field of public procurement, and which want the PPA to be a supervisor, or plan trainings in cooperation with the PPA, have to address such a request in writing.

The PPA does not conduct public procurement trainings but can organize and supervise them through a supervisor (usually a PPA employee). According to the available information⁷³ the PPA organized training in the field of public procurement and engaged the PPA employees and trainers to conduct the trainings. A total of 102 civil servants employed in the BIH institutions received training, i.e. - 21 civil servants employed in the institutions of FBiH; 36 civil servants employed in the institutions of Brcko District BIH; 46 civil servants employed in the institutions of RS. Based on reports submitted to the PPA, profit-making establishments organized 45 trainings, which were attended by 2731 training participants.

The role and professional competence of public procurement officers is not yet defined by the implementing regulations, which should be prescribed by the PPA and adopted by the Council of Ministers of BIH.

KOSOVO*

All public procurement laws that have been in force in Kosovo* from 2004 have required mandatory training and certification of procurement officers. Kosovo* Institute for Public Administration (KIPA) in cooperation with PPRC is responsible to develop training modules and curriculum for procurement qualifications. KIPA and PPRC are required to identify experienced experts in public procurement, suitable to teach the procurement courses designed by PPRC. KIPA shall arrange for the development and delivery, of a procurement training courses having duration of at least 15 days. PPRC in cooperation with KIPA ensures that such courses are developed and delivered by a trained person or training organizations having substantial expertise in best international procurement practices and the procurement system of the EU. KIPA shall be responsible for organizing examinations.

Trainings are divided into two levels: a) Basic Level and b) Advanced Level. All procurement officials who attend training and successfully pass the exam receive procurement certificate. Both certificates shall be valid for three years. Persons holding an internationally recognized advanced or masters certificate or diploma in procurement are exempt from the KIPA certification requirements.

⁷² Regulation on certification and registration of public procurement trainers/lecturers ("OG BIH" Nos. 99/06 i 59/08)

⁷³ Information on conducted public procurement trainings in 2014 (PPA, March 2015, www.javnenabavke.ba)

MACEDONIA

According to article 29-a of the PPL, each CA must appoint a person or an organizational form within which frames public procurement tasks are to be performed. This person called public procurement officer must be employed in the CA, trained to perform public procurement tasks and must have certificate for passed exam for a public procurement officer. If the CA has appointed an organizational form to perform the public procurement tasks, all the employees within the organizational form must have a certificate for passed exam for a public procurement officer.

PPB has not determined the minimum or specific requirements relating to the public procurement officers. The general qualifications and requirements are given in the Law on Administrative Servants⁷⁴ and then in each internal act of systematization of posts additional specific requirements may be given, including ones for the public procurement officers. The only additional law requirement for these officers comes from the PPL, where it is stipulated that the person must complete the training and pass the exam in order to become certified public procurement officer.

The PPB, through its Training Centre, is carrying out training for the public procurement officers. Every year PPB is preparing and publishing the Annual Plan for trainings on their website: www.bjn.gov.mk. This certificate is valid for 3 years. PPB is also responsible for carrying out training and certifying public procurement trainers. This certificate is valid for 2 years. The training module for public procurement officers lasts for 35 school classes (5 days), whereas for officers who need to be re-certified the training lasts for 7 school classes (1 day). The Minister of Finance with a Rulebook⁷⁵ prescribed the public procurement training programme, the train-the-trainers programme, the form and contents of the certificate for passed exam for public procurement officer and public procurement trainer, as well as the amount of the fee paid by the participants attending the training.

MONTENEGRO

Under the jurisdiction of PPA is also the organisation and implementation of education activities in the area of public procurement and improvement of the employees' capacities for working in the area.

The CA delivers to the PPA the act on appointment of the person for performance of public procurement. A public procurement officer can only be a person with a university degree employed by the CA and who passed the professional exam for performing the public procurement tasks.

A person delegated to be Public Procurement officer should pass the professional exam for performing the public procurement tasks and that certificate is a precondition that person can work as a public procurement officer. It is in the jurisdiction of the PPA to organize the professional exam and training for the exam. PPA is preparing and implementing training in the field of procurement through its department for professional development, training and international cooperation.

⁷⁴ Law on Administrative Servants (Official Gazette no.27/14, 199/2014, 48/2015 and 154/2015)

⁷⁵ (Official Gazette no. 90/2012)

According to the available data for 2014, 122 persons applied for the professional exam, 70 passed. It was conducted through 3 exam deadlines in 2014, all 3 organized in the Capital City. The exam consists of written and oral part.

SERBIA

There is an established system of certification in the field of public procurement. The PPO is the competent authority for issuing certificates as well as for determining the manner and the program for professional training and examination for public procurement officers.

The condition for the issuance of certificate for public procurement officer is that the candidate passes the examination which is organized by the PPO. Furthermore, the candidate for examination can be every interested person who applies. According to the PPO Report on public procurement in 2014 there were 7 examinations for certification of public procurement officers in the period from 30 October to 31 December 2014. and 140 candidates passed exams.

4.17. Systemic measurement of public procurement system functioning and indicators used for this

ALBANIA

- Transparency and openness: Albanian public procurement system bids high transparency, as all public procurement procedures should be conducted through e-procurement platform (www.app.gov.al), where all information on procurement procedures is open and transparent to anyone interested.
- Institutional capacity: By PPL the procurement officers should be trained to increase their capacities and the level of their knowledge.
- Efficiency of the public procurement cycle: Using e-procurement system, the Albanian procurement system aims to provide value for money and increase the savings of public money.
- Contract performance management: PPL provides only general clauses on contract management.
- Surveillance: PPL provides competences only for procedure surveillance through ex-post monitoring and not for contract surveillance.

BOSNIA AND HERZEGOVINA

The PPA and Audit Offices reports are fairly comprehensive in providing statistical data, findings and recommendation on the public procurement system, but there is still place for improvement. None of the institution sets indicators based on which the functioning of the public procurement system can be measured in a systematic way.

KOSOVO*

Not applicable.

MACEDONIA

Though the annual PPB and SAO reports are very comprehensive and provide comparative statistical data, including findings and recommendation on the functioning of the public procurement system, it can still be concluded that neither institution sets indicators based on which the functioning of the public procurement system will be systematically measured.

MONTENEGRO

One of the preconditions of the successful implementation of the Law is the transparency of the information. One of the steps is the law on free access to the information, whose implementation started in 2012. Public Procurement portal is also a fine base of available information.

The process of training the procurement officials and introducing professionalism in public procurement started with the new law from 2012. Also, Public Procurement Law describes how ethical principles and principles of non-conflict should be followed.

Contract performance management is something that still needs to be developed. There exists no institutional approach to this issue.

SERBIA

Systematic measurement of public procurement system/transparency and openness as well as surveillance are provided through the Public Procurement Portal. According to Information on work of the PPO (2015):

- number of registered users of this Portal is 8,327;
- number of public procurement published is 89,193;
- number of the decisions of the Republic Commission is 2,902;
- total number of contracts concluded published is 256,125;
- total number of opinions for the negotiated procedures is 4,570.

Indicators used for systematic measurement of public procurement system:

- share of open and restricted procedures in total value of public procedure;
- number of the request for negotiated procedures without publication;
- share of amended contracts in total value of public procurement contracts;
- number of public procurement procedures which are executed successfully in comparison with procedures which are cancelled;
- number of misdemeanour procedures which are initiated by the PPO etc.

4.18. Control in ex ante stage: Procurement planning

ALBANIA

Pursuant to the requirements for works, goods or services, the CA is responsible for the preparation and submission of the annual registry of public procurement forecast, in accordance with the form and manner provided in the instructions of the PPA.

For the funds generated or enhanced, the CA designs and sends additional registers to PPA, the Department of Budget and Treasury in the Ministry of Finance or the central institution, if there is one. The CA or central institution notifies the PPA and the Department of Budget and Treasury in the Ministry of Finance to reflect changes in the relevant registers. Additions and changes made in the registers of forecast are published in PPA official website.

Public procurement forecast remain published at PPA official website www.app.gov.al. They are archived from 2009.

CA is responsible for preparation forecast registry and implementation of public procurement procedures registry.

Supreme Auditing Office, during the same auditing procedure, verifies the public procurement procedures and financial activity of CA.

Except the differences in planning time, The Department of Budget and Treasury in the Ministry of Finance doesn't allow any payment for procurement contracts if the procurement registry isn't respected.

BOSNIA AND HERZEGOVINA

The BIH PPL obligates contracting authorities, no later than two months after the adoption of the budget or the financial plan, to design a public procurement plan encompassing the types of services, goods and works that the contracting authorities intend to procure during the next year.

The CA may decide to make amendments to the procurement plan and publish the amended procurement plan on its web site or public procurement portal.

Within the scope of their activities, the audit institutions monitor the implementation of procurement plans and their reports are available to the public (they are published on the web page of the audit institutions). In the case that irregularities are found, the audit institution shall propose recommendations, while for serious violations of regulations, the relevant institutions can instigate infringement i.e. criminal procedures on the basis of published findings.

Procurement plans are published on websites of contracting authorities, although the PPL does not foresee a solution for the publication of procurement plans for those contracting authorities that do not have a website.

In addition, there is still no legal obligation for procurement plans to be published on the Public Procurement Portal, which serves as a central hub for information on public procurement. Contracting authorities are thus given the opportunity to exclude procurements through

competitive request for quotations and direct agreement in their procurement plans, and publish the summarized procurement plan on their websites.

KOSOVO*

Article 8 of the PPL lays down an obligation for the contracting authorities to plan their annual procurement needs. No less than sixty days prior to the beginning of each fiscal year, each CA shall prepare a preliminary procurement forecast.t

Within fifteen days after the promulgation of the appropriations legislation for a fiscal year, each CA shall prepare a final procurement forecast that identifies in reasonable detail all supplies, services and works that the CA intends to procure over the course of such fiscal year.

If the objects of the procurement activity have not been included in the contracting authority's final procurement forecast provided to the Central Procurement Agency (CPA), the CA shall provide a copy of the concerned Statement of Needs and Determination of Availability of Funds to the CPA at least five days before the initiation of the concerned procurement activity.

MACEDONIA

Article 26 of the PPL lays down an obligation for the CA to plan their annual procurement needs. This planning process finishes with the adoption of the Annual Procurement Plan no later than end of January of the current year. If necessary, the CA can amend or modify the annual procurement plan during the year, in accordance with the planned and provided funds for public procurement.

There is no obligation to publish the annual procurement plan anywhere, therefore a small number of the CA do so.

MONTENEGRO

Preparation of the procurement plan is done in accordance with the adopted budget for next year and approved by the relevant Ministry and/or competent authority. Public Procurement Plan is announced publicly on the website of the Directorate for Public Procurement. According to the Law on Public Procurement, every CA is obliged to publish Procurement Plan by not later than 31 January of the current budget or financial year.

Changes and amendments can be made during the year. The modifications of public procurement plan may be conducted no later than 5 days before conducting a public procurement procedure. The Ministry shall give its approval to the public procurement plans of the Budget of Montenegro beneficiaries, and the competent authority of a local self-government unit shall give the approval to the public procurement plan of the local self-government bodies. Controlling activities related to planning, procurement plans, amendments and other is done by PPA through its monitoring activity and inspection surveillance, in accordance with the article 19 of Law on Public Procurement. If some of these documents are not done in accordance with the Law, PPA will inform the CA and give it 3 days to change the irregularity. If the irregularity is not changed within given deadline, PPA will publish the document as it is and inform the inspection control about the irregularity.

SERBIA

According to the article 51 of the PPL, the CA is obliged to adopt an annual public procurement plan which must be published on the Public Procurement Portal. The PPO and the State Audit Institution control the activities related to procurement plans.

In the coming period, the PPO needs to develop a methodology of controlling public procurement plan.

4.19. Register of bidders

ALBANIA

Every Albanian EO that is registered at the National Registration Centre may create a user account at www.app.gov.al under the TIN (Taxpayer Identification Number).

Even foreign EO must register and obtain a user account in order to use the electronic procurement system. This can be accomplished through a formal request to the office of PPA or by registering on-line as the EO <https://www.app.gov.al/ep/Registration.aspx> address.

PPA manages the electronic procurement platform, including the official list as above approved EO. Excluded EO (Blacklisting) have no access in e-procurement system to submit a tender. The Public Announcements Bulletin, edited and issued by PPA, published at www.app.gov.al, contains the list of EO excluded. Also it is made public as a different document at <https://www.app.gov.al/ep/BlackList.aspx>.

The national procurement register is composed of all approved registered EO and updated after every new registration. It is public and accessible by every CA.

BOSNIA AND HERZEGOVINA

According to the information provided by the PPA, 1539 contracting authorities are registered - out of the 2000 subjects to the PPL by the end of 2014 on the e-procurement portal⁷⁶.

KOSOVO*

None of public procurement institutions in Kosovo* holds any record on the EO who participate in public procurement activities. The PPL does not provide the possibility to the PPRC to maintain such lists of EO.

MACEDONIA

There are no official lists of certified contractors. The PPL does not provide the possibility to the PPB or the CA to maintain such lists of qualified contractors.

⁷⁶ PPA Monitoring report for 2014 (www.javnenabavke.ba)

MONTENEGRO

There is a list of EO on the website of PPA, prepared from the side of PPA and it shows the EO with whom contracts have been signed. The register is made publicly available on the website of the PPA www.ujn.gov.me. Registration on the list is not obligatory in any way for the EO and it is not connected with future tenders and/or future EO.

SERBIA

There is the register of tenderers/official list of approved EO. The Business Registers Agency keeps public register of tenderers. The condition for registration in register of tenderers is submitting documents which prove fulfilment of mandatory eligibility requirements for participation in public procurement procedures. This is the reason why EO who are registered in register of tenderers are not obliged to prove fulfilment of mandatory requirements when submitting a tender or an application. Eo who are on the list and those who are not have equal treatment.

4.20. Exclusion of bidders and blacklisting

ALBANIA

CA may verify the submitted documents only in case of doubts on their accuracy. CA disqualifies an EO in case of submission of documents containing false information for purposes of qualification and notices PPA providing the relevant documentation resulted from the verifications.

In case of EO failure to comply with contractual obligations of public contracts, within the time specified in the procurement rules, CA has the obligation to notify PPA within 3 (three) months from the termination of the contract, including here the warranty period, providing the relevant documentation.

According to PPL, PPA can exclude an EO from participation in awarding procedures – without prejudice of criminal proceedings, which may have started – for a period of 1 to 3 years in the cases of:

- a) serious misrepresentation and submission of documents containing false information for purposes of qualification regarding exclusion criteria of candidates or bidders (participation in a criminal organization, corruption, fraud, money laundering, forgery) and qualification criteria of bidders.
- b) failure to comply with contractual obligations of public contracts, within the time specified in the procurement rules.
- c) when there is a final decision of the Competition Authority Commission on bids collusions.

PPA edits and issues the Public Announcements Bulletin containing also the list of EO excluded.

Excluded EO (Blacklisting) are not technically able to submit a tender due to impossibility generated by the electronic system.

The Public Announcements Bulletin, edited and issued by PPA, published at www.app.gov.al, contains the list of EOs excluded. Also it is made public as a different document at <https://www.app.gov.al/ep/BlackList.aspx>.

BOSNIA AND HERZEGOVINA

None of the institutions of BIH are responsible or liable for the establishment and management of a list of bidders who were brought into connection with corruption in public procurement. Such, so-called, "Blacklist" does not exist, and the contracting authorities do not have the option to exclude these bidders from the public procurement procedures.

However, the grounds for exclusion from public procurement procedures have been strengthened and broadened. In addition to accusations for fraud and corruption, the reasons for exclusion include: the situations when companies unjustifiably influence on the decision-making process leading to the conclusion of the contract; false statements regarding the procedures for awarding a public contract, either relating to the absence of grounds for exclusion, possession of professional, technical and financial capacities or failure to send the necessary certificates; agreed distortion of competition.

In compliance with the laws in BIH,⁷⁷ the CA shall reject a request for participation in procurement procedure or a tender if the candidate or bidder has given or is prepared to give a current or former employee of the CA a bribe, in the form of cash or in any non-cash form whatsoever, as an attempt to influence an action or decision or the course of public procurement procedure. The CA shall inform the bidder and PPA of the rejection of the request and the reasons for it in writing.

In case the requests or tender received during the procurement procedure by the CA cause or may cause any conflict of interests, the CA shall act in accordance with the legislation in Bosnia and Herzegovina.⁷⁸

Every bidder or candidate shall submit with the tender a separate written statement saying that they did not offer bribe or participate in any action that had corruption as its purpose in the given procurement procedure.

KOSOVO*

Based on Article 99.2 of the PPL, PRB is competent institution for disqualification of EO from participation in procurement activities and placement on the black list.

⁷⁷ The Law on the Prevention of Corruption and Coordination of the Fight against Corruption (OG BIH, No. 103/09, which was adopted in 2009)

⁷⁸ Law on Conflict of Interest in Institutions of Bosnia and Herzegovina (OG, Nos. 16/02, 14/03, 12/04, 63/08, 18/12 and 87/13); Law on Conflict of Interest in Governmental Institutions of the Federation of Bosnia and Herzegovina (OG BIH", No. 70/08); Law on Prevention of Conflict of Interest in Governmental Institutions of the Republic of Srpska (OG RS, No. 73/08); Law on Conflict of Interest in Institutions of the Brcko District of BIH (OG BD BIH", Nos. 43/08 and 47/08); Law on Agency for Prevention of Corruption and Coordination of the Fight against Corruption (OG, No. 103/10); as well as regulations that, at the entity level, i.e. Brcko District BIH regulate the issues of operation and management of public enterprises. For example, Article 13 of the Law on Public Enterprises in Republic of Srpska (OG RS, Nos. 75/04 and 78/11), and Article 14 of the Law on Public Enterprises in the Federation of BIH ("OG FBIH, Nos. 05/08, 81/08 and 22/09) regulate and define the issues of conflict of interest in public enterprises and, within this framework, also in contracting authorities, which are considered to be public enterprises

During 2014 PRB, has received only two requests from the contracting authorities for disqualification of EO from participation in procurement activities. PRB after reviewing the requests has decided that the requests of the contracting authorities for inclusion into black list of some EO to reject, since the requests were unfounded and did not meet the conditions laid down in article 99.2 of the PPL⁷⁹.

MACEDONIA

According to the Macedonian Criminal Code, both legal entities and natural persons can be criminally liable and can be sanctioned for misdemeanour as well.

Among the sanctions that can be imposed is the measure for prohibiting the company or its authorized person to operate or perform an activity or profession. These sanctions/measures are issued in the form of a decision brought by the courts of first instance in a misdemeanour procedure. In order to participate in a public procurement procedure the EO needs to submit a proof (certificate) that such measure (prohibition) has not been imposed, which is issued by the Central Registry. Otherwise, the EO will be excluded from the procedure.

According to article 145 of the PPL, as a proof of the fulfilment of criteria for determining the personal standing of the EO, the CA is obliged to accept all documents from the country where the EO is registered, issued by the competent authorities of that country. If the country wherein the EO is registered does not issue the documents or if these documents do not cover all cases referred to in Article 147 of the LPP, the CA shall accept a statement of the EO certified by a competent authority.

In addition to this certificate, the EO must complete, sign and submit a statement declaring that it (EO) has not been convicted, in the last 5 years, with effective court decision for participation in criminal organization, corruption, fraud or money laundering. This statement has not been further checked by the CA. Therefore, usually it is a formal requirement without any further consequences.

According to article 147 of the PPL, the CA shall exclude any EO from the contract award procedure, provided that it:

- is a under a bankruptcy or liquidation procedure;
- has unpaid taxes, contributions or other public duties, unless the EO is approved delayed payment of taxes, contributions or other public duties, in accordance with the special regulations and pays them on regular basis;
- has been imposed a secondary sentence prohibition on participation in open call procedures, awarding public procurement contracts and contracts for public private partnership;
- has been imposed a secondary sentence temporary or permanent prohibition on performing a certain activity;
- is being pronounced a misdemeanour sanction prohibition on practicing profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity, or
- presents false information or does not submit the information required by the CA.

⁷⁹ Procurement Review Body: Annual Work Report 2014; <http://oshp.rks-gov.net>

To prove that it fulfils the criteria, EOs must submit proofs – certificates that are issued by the Central Register and / or Public Revenue Office. The Central Register has developed templates for the requests which are very simple to fill in and can be downloaded from and even filled-in electronically on the Central Register's web site (<http://www.crm.com.mk/CRIS/>). According to the PPL, the validity of these certificates is 6 months, which means that each EO must obtain them twice a year. The documents issued by the Central Register are available in electronic form, which means that they can be uploaded on the e-Procurement system for participating on e-procurements.

Negative reference is an instrument limiting the right to participate in all future contract award procedures (blacklisting). This instrument protects the CA from the EO who are not serious, i.e. who do not adhere to the terms and conditions they offered in their tenders, as well as from the bidders selected as contractors who do not respect the contractual obligations. Up till now, the CA issued total of 70 negative references for the EO (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/negativereference>). CA is responsible for publishing negative references on the e-Procurement system. Negative references must be published for:

- Collection of the tender guarantee
- Non-accepted correction of arithmetical error
- EO refuses to sign the contract
- Failure to submit performance guarantee
- Activation of performance guarantee during realization of the contract.

There is no institution that is obligated to control if the CA had to publish a negative reference but it did not. That will be checked if the SAO performs ex-post audit. The negative reference shall be published by the CA at the same time as the publication of the contract award notification or notification for cancellation of the procedure. In case of simplified competitive procedures, the negative reference shall be published in a period of 5 days as of the day of conclusion of the public procurement contract or annulment of the procedure.

The PPB has prepared and published Guidelines on Negative References (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=procurement-manuals>), which are used by the CA to obtain, in a prompt and simple manner, answers to the questions and the dilemmas they face when implementing this instrument. A few EO, as a result of the issued negative reference, are forbidden to participate in contract award procedures for a period of five years. For example, in 2013, performance guarantees were activated to a local supplier of gas products because it failed to timely deliver the products in 5 different CA and after several repeated reminders the CA had to publish a negative reference.

MONTENEGRO

In order to participate in a public procurement procedure, the bidder must fulfil the following mandatory conditions:

- 1) is registered with the body in charge of registration of business entities;
- 2) has permit, licence, approval or other document necessary for the performance of the activity being subject of the public procurement, if it is prescribed by a special law;

- 3) timely settles all obligations in respect of taxes and contributions in accordance with law and regulations of the country of their registered office;
- 4) proves that himself and his legal representative are not convicted by a final court decision for any of the criminal offences of organized crime, corruption, money laundering and fraud may participate in a public procurement procedure .

Conditions do not apply to natural persons: artists, scientists and cultural workers.

The fulfilment of conditions is established on the basis of the following:

- 1) proof of registration with the body in charge of registration of business entities, along with data on the authorized persons of the bidders;
- 2) proof of possession of a valid permit, licence, approval or other document issued by the competent body;
- 3) proof issued by the body in charge of taxation affairs of timely reporting, calculation and execution of all obligations in respect of taxes and contributions up to 90 days before the day of the public opening of bids, in accordance with regulations of Montenegro, namely regulations of the country of bidder's registered office;
- 4) proof of competent body issued on the basis of criminal records which shall not be older than six months on the day of public opening of bids.

There is no legal possibility in Law on Public Procurement for blacklisting. During the working groups for changing the Law, this has been mentioned and proposed, but still not the part of the Law on Public Procurement.

SERBIA

The mandatory eligibility requirements are that: tenderer is registered with competent body; it has not been convicted for any criminal act; it has paid due taxes and other public charges and it has valid permit to carry out economic activity which is the subject of public procurement. Facultative eligibility requirements concern: financial, operational, technical and professional capacities for participation in public procurement procedure as well as additional requirements concerning bankruptcy or liquidation, social and environmental issues.

The proofs of eligibility are: excerpt from register of the competent body; certificates of the competent court and the competent tax authority as well as valid license for the performance of relevant activity.

There is no "blacklist".

4.21. Awarding of contract

ALBANIA

Through a written request, every EO can make insight into minutes, even though they are electronically informed about the minute evaluation content.

Upon approval of the summary report, the successful bidder shall be notified in writing by the CA of the acceptance of his bid and signing of the contract (award notification). Within 5 days of award notification, the CA shall send a notice to the PPA for publication in the Public

Announcements Bulletin. In the case of procedures, which are conducted by electronic means, the notification of award shall be sent to the electronic procurement platform.

The information/documentation which is declared as confidential by EO, is not published or/and shared with other parties of the process. Such information includes in particular technical aspects, trade secrets and confidential information of bids.

CA is the responsible body to follow all legal steps up to the contract awarding stage.

BOSNIA AND HERZEGOVINA

The CA are obliged to publish information on the offer that was selected as the most favourable, and on the conditions and requirements of the concluded contract. At the same time, through the submission of the contract award notice, the report on public procurement procedure is considered to be submitted as well. For public procurement procedures for which there is no obligation of contract award publication⁸⁰, the CA is obliged to enter the report into the e-Procurement system within 30 days upon public procurement procedure completion.

Decisions shall be sent simultaneously, and in writing to the candidates/bidders that have submitted requests or bids in a timely manner, within 3 days, and at the latest within 7 days from the day they were made, by electronic means, post or directly. CA should publish the decisions on its website, if it has one, simultaneously with the delivery of decisions to bidders that participated in the public procurement procedure.

After the receipt of the decision on the selection of most successful bidder or decision on cancellation of a public procurement procedure, and at the latest before the expiry of the time limit for appeal, the CA shall immediately upon receipt of the bidder's request, and not later than two days following the day of the receipt of the request, enable insight into each bid. The CA must enable insight into the bidding documentation in the manner preferred by the candidate/bidder, specifically: a) in the premises of the CA; or b) delivery via registered mail to the interested candidate/bidder with a return notice; or c) via electronic mail in secured, non-amendable form sent to the interested candidate/bidder.

According to the PPL,⁸¹ the following data may not be considered confidential:

- a) total and unit price stated in the bid;
- b) procurement subject matter, i.e. the offered supplies, services or works upon which the comparison with technical specifications and evaluation shall depend when deciding whether a bidder has offered the supplies, services or works in line with technical specifications;
- c) confirmations, certificates upon which the qualification relating to the personal state of the candidate/bidder shall depend.

⁸⁰ competitive dialogue and direct agreement - procedures for small-value contracts for supplies and services that amount up to 50,000 BAM (€ 25,565.00), and works that amount up to 80,000 BAM (€ 40,904.00)

⁸¹ PPL Article 12

KOSOVO*

Each CA is obligated to prepare minutes of evaluation of the bids, by using standard form - Tender Evaluation report for all procurement procedures. Unsatisfied EO has the right to insight the evaluation report.

CA is obligated of inform candidates/ tenderers on awarding contract, by using one of the standard forms promulgated from PPRC.

PPRC is responsible for the control of awarding of contract.

MACEDONIA

The public procurement commission carrying out the tender procedure is obliged to take minutes of the public opening of tenders. A copy of the minutes of the public opening of tenders must be delivered to all bidders which have requested so and whose tenders have been opened on the public opening of tenders, within a time period of 5 days as of the day of receipt of such request.

The commission shall prepare a written report regarding the conducted procedure. The EO that have participated in the procedure have the right to inspect the report of the conducted procedure. The PPL does not set time limit for the bidder to exercise this right. The CA must notify the bidders, in writing, about the decisions made in connection with the award of the public procurement contract or the cancellation of the contract award procedure.

The CA must publish a contract award notice on e-Procurement system within a time period of 30 days after the completion of the procedure, except for the simplified competitive procedure where the CA is obliged to complete record of awarded contracts and publish it on the e-Procurement system by 31st July and by 31st January at the latest for the awarded public procurement contracts concluded in the previous six months.

The process of awarding the contract and informing the participants of the procedure outcome is not particularly controlled by any institution.

MONTENEGRO

CA shall submit the decision to all bidders within three days as of the day of making the decision and publish it on the Public Procurement Portal.

SERBIA

Public procurement committee is in charge of drafting written report on the evaluation of tenders. Tenderers have the right to insight into documents on conducted public procurement procedure after the decision on awarding contract.

Notices on awarding public procurement contracts are published on the Public Procurement Portal and contracting authority`s website.

4.22. Control in ex post stage: Audits of PP procedures

ALBANIA

As explained above the monitoring mechanism, as an ex-post mechanism, intervenes only after the procedure is finished and the procurement contract is concluded. The procedure is performed in two main ways: a) through PPA initiative and b) through auditing reports of auditing institutions. In both cases, the final decision is made by PPA. As a source of incentives to prepare the monitoring plan by PPA, also the electronic portal of anti-corruption (www.stopkorrupsionit.al) is used, where among others irregularities and corruptive behaviours in public procurement are denounced. However, there is no closed or approved list of incentives used to initiate monitoring plan by PPA.

When the monitoring task is executed by PPA initiative, PPA prepares a monitoring plan. In preparing the monitoring plan, PPA considers information on specific violations, referred from interested parties (mainly EO), as well as types of procedures, estimated fund, number of participants, etc. PPA normally works with three months monitoring plans, and always monitors a procedure, once it has been already concluded with a contract, but in any case not later than two years of its signing.

Internal audits normally works with one year monitoring plans and Supreme State Audit with two year monitoring plans. All auditing institutions refer to PPA all their findings regarding public procurement procedures and PPA decide on irregularities and the final administrative punishment. Supreme Auditing Office approximately every 2 years verifies the public procurement procedures carried out from the last audit period.

The decision made by PPA at the end of monitoring process is final and can be appealed only in the administrative court.

BOSNIA AND HERZEGOVINA

The Audit Office of the Institutions of BOSNIA AND HERZEGOVINA provides independent external opinions on budget execution and financial statements with regard to the Government and state institutions of BOSNIA AND HERZEGOVINA, ensuring reliable reporting on budget execution and transparent and quality management of public revenues, including irregularities in public procurement procedures.

Within 60 days from the receipt of an audit report, an audited institution is obliged to submit a response to the Audit Office and BOSNIA AND HERZEGOVINA Ministry of Finance and Treasury indicating activities undertaken by this particular institution in order to overcome the weaknesses, irregularities and violations identified in the audit report.

Based on findings and recommendations from the Annual Report on Audit and/or Annual Report on Budget Execution, the BOSNIA AND HERZEGOVINA Parliament may decrease the budget of one or more budget institutions or undertake other appropriate corrective measures.

The Audit Office is obliged to collect the most important findings and recommendations from conducted financial audits, performance audits and special audits, and to compile them in the Annual Audit Report for the Parliament.

In accordance with the Law on Auditing Institutions of BOSNIA AND HERZEGOVINA,⁸² the Audit Office of the Institutions of BOSNIA AND HERZEGOVINA is obliged to submit the report to the audited institution and BOSNIA AND HERZEGOVINA Parliament. The report is simultaneously delivered to the Council of Ministers of BOSNIA AND HERZEGOVINA and BOSNIA AND HERZEGOVINA Presidency, and it may be delivered to any other competent institution as well. Once the reports are submitted, the Audit Office will make them public, in the "Official Gazette of BOSNIA AND HERZEGOVINA" and on the web page of the Audit Office (www.revizija.gov.ba).

KOSOVO*

The OAG is the main institution in Kosovo* that controls ex-post the legality of the public procurement procedure and the contract execution. The OAG detects violations from the PPL and secondary legislation of public procurement. The OAG shall annually conduct a Regularity Audit of the Kosovo* Consolidated Budget, and shall report to the Assembly of Kosovo*. Copies of the report of the Auditor General shall be made available to the public.

Apart OAG, the audit of procurement activities is also carried out by the Unit for Internal Audit, which acts across all contracting authorities in Kosovo*. The Unit for Internal Audit identifies and evaluates the effectiveness of policies to existing procedures in the management of budgetary resources, and makes eventual recommendations to improve procurement procedures, and development of procedures in respective units and prepares final reports; which then monitors the implementation of recommendations.

MACEDONIA

As already mentioned, the SAO is the leading institution that controls ex-post the legality of the public procurement procedure and the contract execution. It detects deviations from the PPL and procurement principles as well as violations of the principles of legality, efficiency, effectiveness and economy in public funds management.

The SAO public procurement task force is comprised of auditors who are specialized in public procurement. The aim of this task force is to develop a public procurement audit methodology that addresses: (1) organizational issues: how the contracting authorities' own internal systems assess risk levels and controls; and (2) procedural compliance: using detailed tests for each public procurement to identify irregularities and determine financial impacts. The SAO checks the entire process from the time of preparation until the conclusion of the contract, including the outcome of the contract execution (initial prices in the contract, completion dates, etc.). CA have 90 days to respond to the recommendations from the SAO report, after which SAO monitors compliance with these responses. This monitoring by the SAO is a powerful tool for improving procurement practice.

⁸² The Law on Auditing Institution of (BIH OG, No. 12/06)

Most frequent SAO findings were:

- contracts awarded without organizing a public procurement procedure;
- contract elements that were not part of the procurement procedure (“additional” procurements),
- over-exploitation of contracts,
- inconsistencies in performing evaluation of tenders (e.g. inappropriate application of the ranking methodology, proposing for selection of certain bidders although they did not meet the qualification criteria)
- the poor planning of public procurement: CA failed to adopt public procurement plans or failed to comply with them;
- CA not always providing complete, accurate and precise information in the tender documentation about the manner of performing the procedure; changes of technical specifications after the receipt of bids,
- contracts concluded do not include the basic elements of the tender documentation: price, quantity or deadlines, or include conditions different from those of the tender documentation (e.g. the price was higher than the one included in the tender or above the amount allowed by the law);
- CA did not apply the penalty provisions of the contract, or the submitted guarantees were not activated in cases of failure to meet the deadlines and/or other contractual obligations.

The SAO noticed improvements in the overall procurement system due to the proactive role of the PPB in amending the PPL, improving the e-Procurement system as well as the delivered trainings. Nevertheless, certain – sometimes basic - irregularities in award procedures have been found, which are reported to the PPB for further legislative improvements and published in the SAO Annual Report, such as: contract award without procedures as stipulated in the PPL, weaknesses in the bid evaluation and documentation, signature of contracts with other bidders than the selected ones or conditions changed in the contract or incomplete tender documentation. The statistics related to the work of the SAO in regards to the public procurement are given in the answer to the first section. The SAO regularly indicates the detected irregularities in its annual reports in aggregated manner (http://www.dzr.mk/Uploads/DZR_GI_2014.pdf).

Each bigger central level institution has internal auditor, whose tasks and responsibilities are given in the Law on Public Internal Financial Control⁸³. The main objective of the internal controls, which also include control of the conducted public procurement procedures, is to help the responsible person at the CA to detect irregularities and misuse of funds made by the servants. Taking into account the objective, the results of the internal controls are not publicly available.

MONTENEGRO

In ex-post phase, State Audit Institution can, in line with annual plan of audits, control all the documentation. If State Audit Institution in the process of auditing finds out that there has been a violation of the laws, their task is to file a charge at the relevant authority (State Prosecutor

⁸³ Published in the Official Gazette no. 90/2009 and 188/2013 and available on the: <http://finance.gov.mk/mk/node/679>

or Court). State Prosecutor and / or Court will conduct an investigation on the specific case and if there are grounds for next steps, start a procedure at the Court.

SERBIA

The competent authorities for control/audit (aside the review body-The Republic Commission) are the PPO and the State Audit Institution.

The PPO is in charge of initiating misdemeanour procedure when it is informed in any way on infringement of the PPL which can be basis for minor offence responsibility. According to the PPO Report for 2014, it initiated 26 misdemeanour procedures to the Republic Commission, which is in charge of conducting minor offence proceedings in the first instance. According to art. 136 of the PPL, the PPO also informs the State Audit Institution and Budgetary Inspection on identified irregularities in conducting public procurement procedures and delivering public procurement reports.

The State Audit Institution is the highest institution which controls public procurement in ex post stage. Results of the auditing in 2014⁸⁴ designate following irregularities in the field of public procurement:

- contracts on public procurement are concluded without conducting public procurement procedure;
- procurement is realized without considering public procurement plan and financial plan;
- contracts are awarded by using inappropriate public procurement procedure;
- decision to initiate public procurement procedure does not contain all relevant elements prescribed by the PPL;
- tender documentation does not contain all elements prescribed by the PPL and other irregularities.

In practice, there are examples that:

- contracting authorities have concluded public procurement contracts on maintenance and repair of buildings and facilities without contracting quantity/scope of works;
- estimated value of works has not been based on market research of subject of procurement;
- Commission for public procurement has not asked explanation concerning abnormally low tender, etc.

The State Audit Institution in its annual report recommends as following:

- Contracting authorities should conduct public procurement procedures pursuant to the public procurement plan and the PPL;
- Contracting authorities should regulate in writing procedure and manner of preparing and adopting of public procurement plan as well as initiation and conducting of public procurement procedure, awarding and monitoring of public procurement contract and reporting of contract execution.

⁸⁴ The State Audit Institution, Report on work in 2014, March 2015, www.dri.rs

4.23. Control in ex ante stage: Contract management: performance and modification

ALBANIA

Decision of Council of Ministers no. 914, dated on 29.12.2014 “On approval of public procurement rules” stipulates that: “*During the performance of the contract CA and / or other state bodies authorized by law, supervise the performance of the contractor, according to the requirements specified in the tender documents and legislation in force.*”

The other authorized state bodies which can monitor the contract performance except CA, are auditing institutions as is Supreme State Audit and internal audits in central institutions. These audit institutions while monitoring the whole activity of a CA, monitor also the performance of contracts signed by CA.

To make sure whether the quality of works, services or goods is the same quality for which the contract is awarded, CA establishes a commission that should monitor the implementation of the contract (Special Condition of the Contract). CA in the performance of controls keeps a written record in the presence of the contractor. If the contractor is not present, CA shall communicate in writing the contents of this record.

The general conditions of the contract, part of tender documents stipulates that:

- the parties shall not negotiate changes or amendments to any element of the contract that will considerably change the conditions constituting the basis for the selection of the contractor (price, technical specification, time).
- No amendment or other variation of the contract shall be valid unless it is in writing, is dated, expressly refers to the contract and signed by an authorized representative of the Contractor and the CA.
- The CA reserves the right to order additional goods or services to a size that does not exceed 20% of the total contract price. Any extra request should be done consistently with the rules and procedures stipulated in the PPL.

CA may terminate the contract in case of:

- non-fulfilment.
- bankruptcy.
- public interest.

GCC should not be changed by CA. CA may lay down special conditions relating to the performance of a contract different from the GCC, proportionate to the scope of the contract, provided these are lawful and have a non-discriminatory nature or effect. The Special Conditions of the Contract (SCC), part of tender documents, will be a complementary part of the General Conditions. In case of discrepancies between the GCC and SCC, the SCC shall prevail.

Not performing the contract in time constitutes most often a breach of the contract / framework agreements.

BOSNIA AND HERZEGOVINA

Although the implementation of the public procurement procedure ends with the award of the contract, its implementation is an important segment of public procurement. The PPL regulates the procedures of public procurement until the conclusion of contract with the selected bidder.

The execution of the concluded contract on the basis of public procurement procedures is regulated by the Laws on Obligations.⁸⁵ At the institutional level, the PPL has not foreseen the establishment of bodies responsible for monitoring the activities in public procurement procedures and in the execution of contracts. The PPA has no authority in the execution of the contract and, therefore, it does not request information on the implementation of the contract.

Monitoring of public procurement procedures are performed through external audit institutions,⁸⁶ which are inspecting previously signed and implemented contracts, and they have no authority in monitoring the course of contract implementation.

When it comes to the implementation of contracts, the PPL stipulates that, when awarding a procurement contract, the price indicated in the tender proposal has to remain exactly the same and cannot be changed in the procurement contract. If justifiable reasons exist for the amendment of the concluded contract, then it is necessary to initiate a new procurement procedure and conclude a new contract.

KOSOVO*

Article 81 of the PPL provides the manner for Contract Management Activities. Contracting authorities must, as part of the preparation of the procurement activity, produce a contract management plan in particular matters of organizational, economic, technical and legal aspects of contract management including as appropriate:

- Project management teams;
- Frequent review of the contract;
- Protocols for handover of commissioned equipment;
- Regular dialogue with the contractor;
- Use of correct quality standards;
- Management of payments/claims; (vii) complaints procedures;
- Control remedies specified in the contract, and
- Performance security is held for defects/corrections;
- Inspection of worksites, materials and production facilities;
- Insurance of effective delivery, storage and security of the items covered by the contract;
- Scheduling handovers;
- Variation/changes.

The management plan must be agreed between the parties of the contract and signed by them before implementation of the contract is initiated.

The PPRC monitors contract managing.

⁸⁵ Laws on Obligations (OG SFRJ, Nos. 29/78, 39/85 and 57/89; OG R BiH, Nos. 2/92, 13/93 and 29/03)

⁸⁶ The Law on Auditing Institution of (BiH OG, No.12/06)

MACEDONIA

The PPL does not contain special provisions regarding contract management. The only aspect that is regulated in article 99 of the PPL is the procedure for additional procurement of goods, services and works using negotiation procedure without prior publication of a notice. According to the provisions of this article when the CA has to procure additional deliveries from the original contractor for the purpose of partial replacement of common goods or installations or extension of the existing goods or installations, wherefore the change of the bidder would oblige the CA to buy material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of the additional procurement cannot exceed three years as of the day of concluding the basic contract, and their value cannot exceed 30% of the amount of the basic contract.

The amendments to the procurement contract should be in line with the conditions in the contract notice and tender documentation.

As indicated earlier, the SAO performs audits which include the procurement contract execution.

In the several previously carried out surveys (e.g. survey findings presented in the Exit Evaluation Report for the PPB prepared by the Human and Capacity Development Project funded by United States Agency for International Development (USAID) and implemented by World Learning and published in April 2011), the EOs pointed out the delivery terms as the most problematic provisions of the contracts and the late payments as the biggest issue in the contract execution phase. However, the EO rarely decides to use external mechanisms for resolution of disputes arising from the execution of the contract and tries to adjust to the requests of the contracting authorities.

MONTENEGRO

Contract management is not a subject of detailed analyses of Public Procurement Law. There is no concrete state institution with a task to perform a control over contract management. CA is conducting control under performance. For works contract, Supervision Company is obliged in accordance with the Law on Spatial Planning and Construction⁸⁷ to follow control under performing a contract and informing CA on their findings. There is no official institution, besides CA, which is performing the control of contract management. When it comes to the frequent breach of the contract, from experience, in case construction works, time for completion of the contract can be the reason for changing contract conditions.

In accordance with the Law on Public Procurement, article 26 in the framework agreement should be stated which parts of the agreement are considered changeable. It might be quantity of the goods, services or amount of work, dynamics of the delivering, place of the delivering, price.

From the side of CA, lack of regulation in contract management is causing a lot of problems in the implementation.

⁸⁷Law on Spatial Planning and Construction, Official Gazette no. 51, 2008, 40/10, 34/11, 47/11, 35/13, 39/13, 33/14

SERBIA

The PPO and the State Audit Institution are performing control. According to the article 115 of the PPL, after the conclusion of public procurement contract, the CA may:

- raise the value of contract without conducting public procurement procedure, up to 5% of total value of initial contract in such a manner that total amount of contract increase can be up to 5,000,000 RSD⁸⁸ in classical sector and 10,000,000 RSD⁸⁹ in utility;
- allow change in price and other essential contractual elements for objective reasons, which must be clearly and precisely defined in tender documentation, public procurement contract or envisaged by special regulation.

In these cases, the CA is obliged to adopt the decision on contract amendment and to publish it within three days on the Public Procurement Portal and to deliver report to the PPO and the State Audit Institution.

⁸⁸ 42,000 €

⁸⁹ 83,000 €

5 e-Procurement – findings on the legal and implementation level per country

According to the Directive 2014/24/EU, the electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of EO to participate in procurement procedures across the internal market. For that purpose, transmission of notices in electronic form, electronic availability of the procurement documents and – after a transition period of 30 months – fully electronic communication, meaning communication by electronic means at all stages of the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (electronic submission) should be made mandatory. Member States and contracting authorities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting authorities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication, nor should internal communication within the contracting authority.

5.1. Legal framework: primary and secondary legislation on e-procurement

ALBANIA

Based on the Law on Public Procurement No. 9643 dated 20.11.2006, as amended, all CA in Albania should perform their public procurement through e-procurement system. There is an exclusion from this rule for the negotiated procedures without prior publication.

The secondary (subsidiary) legislation implementing the PPL has completed the rules of performing the public procurement through e-procurement system:

- DCM on conducting the public procurement procedures with electronic means no. 918, dated on 29.12.2014”.
- PPA guidelines published at www.app.gov.al:
 - o No. 5, dated 27.01.2015 “On conducting small value procurements with electronic means”.
 - o No. 7, dated 22.05.2015 “On the actions of the Procurement Unit in electronic procurement system”
 - o No. 8, dated 22.05.2015 “On evaluation of submitted bidders in electronic procurement system”.
 - o No. 9, dated 22.05.2015 “On Audit's role in electronic procurement system”.
 - o No. 10, dated 22.05.2015 “On the registration of EOs and the submission of bids in electronic procurement system”.

- No. 11, dated 22.05.2015 "On suspension process, modification of standard tender documents and deferment of procurement procedures in electronic procurement system".
- No. 12, dated 22.05.2015 "On creation of user accounts by the system administrator".

This secondary legislation has amended and / or replaced the previous secondary legislation from 2009.

BOSNIA AND HERZEGOVINA

The Public Procurement Law foresees that systems such as e-Auction, dynamic purchasing system, e-Tendering, e-Awarding, small value procurement notice etc., can be implemented by the PPA, if the following legal, human and financial conditions are met:

- legal validity of public e-procurement is ensured through the application of solutions/awards/options based on the public key infrastructure (PKI), which includes digital signature and time-stamping services;
- proper financial means are secured in compliance with the adopted activity plan for the implementation of individual projects;
- human resource needs-assessment is conducted in terms of strengthening the capacities of the IT department and recruit new engineers according to plan.

Secondary legislation is not foreseen by the Bosnia and Herzegovina legislation and, therefore, not utilized, except for the the registration conditions and the utilization of this system, which aspects are defined by the implementing regulation passed by the Director of the PPA with the approval of the PPA Board.⁹⁰

KOSOVO*

Official web-site for public procurement in Kosovo*⁹¹ was established in July 2007, with technical assistance from EC, under the project: Reform of Public Procurement System in Kosovo*. Based on article 87.2.15 of the PPL, PPRC will develop a web-site and a Kosovo*-wide electronic information system to improve the publication of the notices required by the PPL. In this web-site, all information regarding public procurement system in Kosovo* is published, including all types of contract notices, notices for contract award, primary and secondary legislation for public procurement, and help information for public procurement.

The PPL in force in Kosovo* No. 04/L-042 establishes the legal base for developing electronic procurement in Kosovo*. Based on article 87.2.17 of the PPL, PPRC will support the development of electronic procurement, e-auction and communication within the field of public procurement. Whereas based on article 129 of the PPL, the government shall be authorized to issue rules concerning the contracting authorities' use of electronic procurement methods. The government in coordination with PPRC shall be authorized to issue rules regarding devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate. These rules must include an advanced electronic signature,

⁹⁰ Instruction on the conditions and manner of publication of notices and the submission of public procurement procedure reports into the "E-Procurement" information system (OG BIH, No.90/14)

⁹¹ <http://krpp.rks-gov.net>

in conformity with international standards. While Article 129.4 of the PPL says: “Use of electronic procurement is not mandatory”, the CA decide whether they want to make use of such methods”.

Having in mind that based on the PPL No. 04/L-042, the use of electronic procurement is not mandatory, Kosovo* is in the process of amending this law so that electronic procurements become mandatory in the moment the Government of Kosovo* takes a decision on this issue.

There is no secondary legislation in the area of e-procurement.

MACEDONIA

The Public Procurement Law is the key law that establishes, defines and determines how the e-Procurement system is managed. It also contains provisions on: procedures and communication that can be carried out by electronic means, conditions that should be met by the electronic means, reference to application of e-signature rules, keeping the tender dossier in electronic form, e-auction rules, etc.

The following laws contain provisions that are applicable to certain aspects of the procurements conducted by electronic means, though genuinely do not regulate the system:

- Law on Data in Electronic Form and e-Signature⁹²
- Law on Personal Data Protection⁹³.

Secondary legislation relevant for e-procurement system is comprised of:

- Rulebook on the manner of use of the e-Procurement system⁹⁴ that regulates the security, identification and data protection aspects, roles of each user, actions that can be taken by and through the system, details of the e-auction, etc.
- Tariff book for the fees for using the e-Procurement system⁹⁵
- Rulebook on technical and organizational measures for providing secrecy and security of processing personal data⁹⁶.

MONTENEGRO

Articles 114-116 of the Law on Public Procurement regulate the electronic form of conducting public procurement.

There is no secondary legislation in area of e-procurement.

⁹² Law on Data in Electronic Form and e-Signature (OG no. 34/2001, 6/2002, 98/2008 and 33/2015)

⁹³ Law on Personal Data Protection (OG no. 7/05, 103/08, 124/08, 124/10, 135/11, 43/14 and 153/15.)

⁹⁴ (Official Gazette no.18/2014)

⁹⁵ (Official Gazette no.44/2012)

⁹⁶ (Official Gazette no. 38/09 and 158/10)

SERBIA

The PPL envisages specific provisions on e-procurement, such as those concerning: electronic tender, electronic auction, dynamic procurement system. It defines electronic tender, electronic auction as well as dynamic procurement system and prescribes requirements for applying e-auction, manner of application of e-auction, e-auction in case of submission of electronic tender, transparency of e-auction, conclusion of e-auction and submitting electronic tender.

There is no secondary legislation in the field of e-procurement.

5.2. Financial aspects of e-procurement:

5.2.1. Value of e-procurement in comparison with total PP amount

ALBANIA

According to PPA annual analysis on PPA activities and the functioning of public procurement system in 2014, published at www.app.gov.al⁹⁷:

	Total awarded contract conducted with e-procurement	Negotiated procedures without prior publication
Number	4,600	2,100
Estimated value	44,000,000,000 ALL (approx. 315,000,000 Euro)	5,500,000,000 ALL (approx. 39,000,000 Euro)

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

According to the data from the PPB annual reports (<http://bjn.gov.mk/bjn-portal/wordpress/?docs=annual-reports&lang=en>), it can be concluded that there is continuous increase in the number of implemented e-procurement procedures (using electronic means in all phases of the procedure) - from 9 in 2008 through 58 in 2009 to 2,303 in 2014. This number represents 14.7% of the total number of public procurement procedures conducted in 2014. With the latest amendments to the PPL, e-procurements will gradually become mandatory, thus significantly increasing the number of e-procurements. It is not possible to give precise information for the value of the e-procurements compared to the total value of public procurements. In 2014, around 180.000.000 € were awarded through use of electronic means in open procedures. The total value of e-procurements is definitely higher, but the value of the contracts awarded by use of electronic means in simplified competitive procedure (procedure

⁹⁷ <https://www.app.gov.al/ep/AnalizatVjetore.aspx>

below the threshold which is 20,000 €) is not precisely known. PPB estimates are that the value of the e-procurements is around 20% of the total value of awarded contracts, i.e. 200.000.000 €.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.2.2. Saving effect of e-procurement

ALBANIA

The entire procurement process is carried out electronically. All the tender documents from contract notice to winner notice and further more to the notice of the signed contract are available in the electronic public procurement system (on the web-site www.app.gov.al), as well as all the transactions, starting from the download of documents till the moment of bidding are conducted by electronic means. All these transactions are free of charge.

The latest savings are generated from small value procurements (estimated value of the contract approx. 5,700 Euro), included in the e-procurement platform in January 2013.

There are no data about savings on paper-based procedures, while after the introduction of e-procurement in 2009, savings according to PPA annual analysis on PPA activities and the functioning of public procurement system in 2014, published at www.app.gov.al⁹⁸ are estimated as follows:

Estimated value of awarded procedures:	44,000,000,000 ALL (approx. 315,000,000 Euro).
The value of signed contracts:	40,000,000,000 ALL (approx. 286,000,000 Euro)

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

There is no official statistical data regarding the savings gained from the use of the electronic means in the public procurements, except for the savings gained from the e-auction. Moreover, it is very difficult to measure the total savings gained from transferring from paper-based procedure to e-procurements. To make such calculation the following should be taken into account:

- savings gained from publishing contract notices and contract award notifications

⁹⁸ <https://www.app.gov.al/ep/AnalizatVjetore.aspx>

- electronically - no fees for publishing some notices and notifications in the Official Gazette and / or for using postal services to deliver the notice to at least 3 EO,
- savings gained from publishing the tender documentation online – no costs for printing and / or copying the documents,
 - savings from communicating and submitting documents online – no costs for printing and / or copying letters (with questions and answers), bids, minutes from the public opening, reports on the bids evaluation and decisions and for using postal services,
 - time savings – significantly shortened time for communication and completion of the procedure. According to the PPB Annual Report for 2014, the average duration of the e-procurement procedures is 3, 5 times shorter than the paper-based procedures.

According to the Annual Report of the PPB for 2014, the average savings from the conducted e-auctions was 21% or 58,000.000 € in absolute figures. When these savings will be added to the savings gained by the use of the module for submitting final price, the total savings amount to nearly 70,000.000 € only for 2014. Ever since the e-auctions were introduced, the following method is used to calculate the savings - difference between the starting price of the e-auction (lowest price of all bids previously evaluated and accepted for participation in the e-auction) and the final price achieved in the e-auction (contracted price).

Savings from the e-auctions are higher for the procurements with higher thresholds, i.e. 84% of the total savings are gained in open procedures; the remaining percentage going to the simplified competitive procedure, while the savings in the restricted procedure and negotiated procedure with prior publication of a contract notice are insignificant due to their rare use. The biggest savings are achieved in sectors with standardized products and services, and where there is real market competition. In these sectors the average savings are over 20%. Savings in the health sector are increasing. There is a continuous trend of high savings in the procurement of works, as well as in the sector of supply of services, where savings often exceed 40%.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.3. Technical solutions and platforms used to implement e-procurement

ALBANIA

Giving the obligation of all CA in Albania to perform their public procurement through e-procurement system, it is completely ensured that all communications, information, electronic submissions, are performed using electronic means of communication. EO have full access to the procurement procedure. The tools used for communicating by electronic means are computers and internet connection. There aren't any exceptions to this rule.

There is only one public, centralized e-procurement platform managed by PPA. The only condition for using e-procurement platform by CA and EO is the registration. The Albanian EOs, which are registered at the National Registration Centre (Trade Registry), can apply to be registered in the electronic procurement system. Once they are registered, they have always the possibility to participate in the public procurement procedures and submit their bids electronically. The foreign EO should also be registered and be provided with a user name and password, in order to access the electronic procurement system. This can be realized through the on-line registration as an EO, or even at the PPA. The registration might be completed only once and is valuable for bidding in all public procurement procedures delivered in Albania, at any time. The registration is free of charge.

The electronic public procurement system guarantees the secrecy of bids. They are kept encrypted until the bids opening session. E-procurement system has a security certificate - SSL Secure.

The platform does not support automatic transmission of notices to TED. According to PPL, there is no obligation on publishing notices or tender documents in TED.

Albania has a new legislation regarding e-signatures⁹⁹ which is not implemented yet.

BOSNIA AND HERZEGOVINA

The e-Procurement application is optimized for the following three types of Internet browsers: Mozilla Firefox first (version 30+), Internet Explorer (version 10+) and Google Chrome (version 30+). It is quite important that the minimum versions of internet browsers are as specified in order that the application may run properly. In addition, the minimum screen resolution should be set to 1280X1024 or more.¹⁰⁰

The system users are CA (Articles 4 and 5 of the PPL), as well as EO (Article 2, par. (1) item c) of the PPL). Each user of the system is obliged to register by filling in the respective registration form, which contains the following information: name; IDB/JIB – unique identification tax number (TIN); level (for contracting authority); activity; location; contact details; data on the operator. It is important to note that "e-Procurement" system users are responsible for the accuracy of data entered.

KOSOVO*

Not applicable.

MACEDONIA

The e-Procurement system is defined as a single computerized system available on the Internet, which is used in order to enable greater efficiency and cost-effectiveness in the field of public procurement. It is a centralized system managed by PPB, which means no other e-Procurement system is available in the country and no possibility to conduct e-procurement outside this system. All 1.390 CA must use this system to publish contract notices and notifications and to conduct the e-procurements, including e-auctions. It is internet based,

⁹⁹ DCM No. 284, dated 01.04.2015 "On intersectoral strategy for the approval of" Digital agenda of Albania 2015-2020

¹⁰⁰ www.ejn.gov.ba

which means there is no need for the CA and EO to install any additional software or software components in order to use it.

The tools and devices that are used for communicating by electronic means, i.e. the e-Procurement system, are fully non-discriminatory and interoperable with ICT products in general use. The e-Procurement system is centralized web based software solution developed in .Net Microsoft technology that enables exchange of the most commonly used documents such as MS Office applications, Open Office applications, Adobe pdf, formats for pictures (jpg, jpeg, gif) etc. It can be accessed and used through the most popular web browsers: Internet Explorer, Mozilla Firefox, Google Chrome and Safari. The end users only need computer and stable internet connection in order to use the system. The 256 bit encryption and advanced e-signatures based on qualified certificates are used to guarantee integrity and confidentiality of the received bids, which are encrypted until their (public) opening.

Initially, the software application was installed on a server purchased and hosted by the USAID funded eGovernment Project. In late 2006, the server was moved to the premises of the General Secretariat of the Government, where it was stored in a dedicated server room for almost a year. Two new servers (one for web application and one for the database) for the system were procured and put in use. In 2008, the hosting and maintenance of the servers were outsourced to a private company specialized in hosting, for the purpose of which the PPB concluded a multiyear contract. In 2009 PPB purchased and put into operation new modern hardware equipment for the system.

Due to the sensitivity of the data communicated through the e-Procurement system, PPB has implemented all necessary security measures, which were recommended by the IT auditors, who performed three security audits over the last several years.

The e-Procurement system does not provide the possibility for automatic transmission of the published notices to TED. The advanced e-signatures used to sign the documents are issued by two local certificate service providers (private companies registered for performing this business activity at the Ministry of Information Society and Administration). The validity of e-signatures issued by certificate service providers based in other countries is decided on a case by case basis. According to the information PPB has, the CA almost always accept the validity of certificates issued by certificate providers based abroad, by checking on the internet the relevant lists of trusted certificate service providers. In light of the new EU Regulation on electronic identification and trust services (eIDAS Regulation) from 2014, the issues of cross-border recognition of certificates should no longer be a problem.

The PPL provides the possibility to the EO to submit certificates, statements and other documents in hard copy before the expiry of the time period for submission of the tenders or requests to participate, provided that they are not available in electronic form. There is no official data how frequent such possibility is practiced, but the unofficial information says that it has been rarely practised.

MONTENEGRO

There is one platform available, free of charge and open to the public. This system is managed by Public Procurement Authority. Registration on the website is free of charge as well.

SERBIA

Not applicable.

5.4. Ownership of an IT infrastructure in terms of public/private

ALBANIA

PPA is the owner of IT infrastructure that is used for e-procurement. It is also responsible for maintenance and functioning of the system, including improvements. PPA decides what should be maintained and what and when should be improved. The costs of maintenance and improvements are covered by PPA (state) budget.

The maintenance service is conducted by a contractor which is outsourced by PPA. For that, PPA organizes every two years an open procurement procedure and awards a two years contract, in order to ensure continuity of the maintenance for the electronic procurement system. The estimated value of the (two years) contract for the procedure conducted in 2014 is 21,840,000 ALL (approx. 156,000 Euro).

BOSNIA AND HERZEGOVINA

The PPA has ownership over IT infrastructure. The e-Procurement platform was developed with the financial and technical donor support. The selected local company designed the system, successfully trained and transferred knowledge to the PPA IT department. The information system for electronic publication of notices in public procurement procedures - "Go-Procure" - is integrated within the new information system "e-Procurement".

KOSOVO*

During 2014, Kosovo* has begun to develop the e-procurement platform. This project is funded by the WB under the Project Public Sector Modernization. The contract for this project was signed on 8 December 2014 and the implementation of the project began on 15 December 2014. Full Development of electronic procurement platform is expected to last one year, until 14 December 2015. On behalf of the Government, the main beneficiaries of this project are the PPRC, which is the implementing agency of the project. For the implementation of this project, the WB has contracted a consortium consisting of the Information Technology Company "Infodom" from Croatia and Company "Komtel" from Kosovo*. The contract value is 578,990.53 €, including all taxes. The project is estimated to be quite advanced, since the preparation of terms of reference, are compared to the experiences of some Western Balkan countries such as Albania and Macedonia¹⁰¹.

The source code of the e-procurement system shall remain property of Purchaser Authority. Source codes and the complete system upon submission will be undisputed property of the Government.

¹⁰¹ PPRC Archive

MACEDONIA

In 2005, the USAID funded eGovernment Project hired two IT companies (Seavus and Infinite Solutions) to develop the software application for the e-Procurement system. According to the originally signed contracts for the development, and thereafter for the maintenance and upgrade of the software, copyrights over the source code were divided between the e-Government Project (as of March 2009, the PPB took over) and the software developer. In 2013, the PPB acquired the software developer's share in the copyright of the source code, thus becoming a sole owner of the source code of the application and the entire e-Procurement system.

Despite being a sole owner, due to lack of internal capacities, PPB still outsources the maintenance and upgrade of the software application to a software company and the maintenance of the servers and storage to another IT company, having multi-year contracts with both of them. Initially the contracts for the maintenance and upgrade of the software application were awarded by applying negotiated procedure without prior publication of a contract notice on the following legal ground "*due to technical or artistic reasons, i.e. for reasons related to protection of exclusive rights (patents and alike), the contract can be carried out only by a particular EO*". As of 2013, PPB carries out open procedure for awarding the contract for maintenance and upgrade. The value of the 3-year contract for maintenance and upgrade signed in 2013 is around 480.000 including VAT. The contracts for hosting the servers on which the e-Procurement system is stored were always awarded by applying simplified competitive procedure.

MONTENEGRO

Public Procurement Authority establishes, owns and maintains the Public Procurement Portal.

SERBIA

Not applicable.

5.5. User-friendliness

ALBANIA

The entire procurement process is carried out electronically and EOs have full access to the procurement procedure. The PPA has issued the relevant instructions for the CA not only concerning their access to the system and the creation of the tender file by electronic means, but also regarding the bids reviewing and awarding in an electronic manner. To guide EOs in correctly completing tenders, PPA has issued Instruction on the registration of EO and the submission of bids in electronic procurement system No. 10, dated 22.05.2015¹⁰².

All the information on the contract notice published, requirements of the CA and the winner of the procedure, is accessed by anyone who is interested, free of charge and without the need of any specific account in the e-procurement system.

¹⁰² <https://www.app.gov.al/ep/Regulations.aspx>

EO can search the system by contract type (services, goods, works), estimated value, procedure, CA, published data. The e-platform is drafted in Albanian and English. The system cannot be searched by CPV categories.

In a short description the level of security required for the electronic means of communication in the various stages of the specific procurement procedure, is as follows:

Procurement Unit (Admin Officer) creates the procurement file - contract notice and tender documents. Once created, the procurement file cannot be changed. Member of Procurement Unit within CA can create a procurement file but they cannot access the tenders.

The electronic public procurement system guarantees the secrecy of bids, i.e. they are kept encrypted until the opening session.

Bid Evaluation Commission (Procurement Officer) can access the tenders only at the time limits laid down in contract notice. Only the member of Bid Evaluation Commission can access the tenders and once they have finished the evaluation they cannot access tenders anymore.

Auditing institutions (internal audits and Supreme State Audit) can access the documents only after procedure is finished and the procurement contract is concluded (ex-post). EO cannot make insight into the bids.

BOSNIA AND HERZEGOVINA

The e-Procurement system user is obliged to provide the minimum technical conditions necessary for the utilization of the system, such as internet access and a web browser.

The terms of payment for system utilization will be subsequently regulated in the implementing regulation of the Council of Ministers of BOSNIA AND HERZEGOVINA, at the proposal of the PPA and prior approval of the Ministry of Finance and Treasury of BOSNIA AND HERZEGOVINA.

KOSOVO*

Not applicable.

MACEDONIA

There is no need for the user to install additional software or configure its PC. The user can access and use the system from any of the most frequently used web browsers.

The information is available in the e-Procurement manual, which contains detailed instructions and print screens (available on the following page of the e-Procurement system: <https://e-nabavki.gov.mk/PublicAccess/home.aspx#/user-manual>), as well as in the contract notice and tender documentation.

In order to publish contract notices and contract award notifications and carry out e-procurement procedures (for contracting authorities), as well as to download tender documentation and participate in e-procurement procedures and e-auctions (for EO), prior registration is required. EOs pay annual fee, which differs depending of the size of the enterprise (from 40 € for microenterprises to 200 € for foreign EO). The CA do not pay for registration, but they pay for publishing of contract notices and addendums (10 € per notice).

The connection to the web site of the e-Procurement system is encrypted and it uses TLS 1.0. The user name and password of the registered user must be in line with the configured rules. The decisions, bids and reports communicated through the system must be electronically signed using digital certificate. In addition, at the moment of submission, the bid is encrypted and cannot be decrypted until the opening of the bids by the authorized user of the CA. Additional technical and organizational measures to protect the security and privacy of the data processed in the system are implemented.

Entering the CPV categories in the contract notice is mandatory for procurements whose estimated value is above 130,000 € for goods and services (200,000 € for CA from utilities sector) and 4,000.000 € for works. However, there is no possibility for the interested parties to search the contract notices by using the CPV code.

MONTENEGRO

Instructions for using the platform are available on following web address: <http://www.ujn.gov.me/wp-content/uploads/2015/06/uputstvo-za-Portal-za-narucioce.pdf>.

SERBIA

Not applicable.

5.6. Diversity of languages

ALBANIA

The interface of the e-platform is available in Albanian and English. In the case of procurement procedures above the high value threshold, tender documents must be drafted in Albanian and English.

BOSNIA AND HERZEGOVINA

The interface of the e-Procurement provides information on the three BOSNIA AND HERZEGOVINA official languages as well as English language.

KOSOVO*

E-procurement system will be prepared in three official languages in Kosovo*: Albanian, Serbian and English.

MACEDONIA

The interface of the e-Procurement system is bilingual (Macedonian and English). However, data entered and documents uploaded in the system have to be in Macedonian as official language in the public procurement procedures.

MONTENEGRO

Public Procurement Platform is available in Montenegrin and English. However, the language of the procurement procedures is Montenegrin.

SERBIA

As a rule, language in public procurement procedure is Serbian.

5.7. Usage of e-procurement

5.7.1.Amount of registered EO and contracting authorities

ALBANIA

There are approximately 1,700 CA at central and local government levels, not sorted whether they are in public or utility sector.

There are approximately 3,870 registered EOs, 175 of them are foreign EOs. EOs are sorted by whether they are in public or utility sector.

BOSNIA AND HERZEGOVINA

According to the information provided by the PPA, 1539 contracting authorities are registered - out of the 2000 subjects to the PPL by the end of 2014.¹⁰³ In order to search for basic data on the CA and/or EO it is necessary to type some of the information such as name of the contracting authority/bidder name; Unique Identification Number; CA level/postal code and location (municipality/city), etc.

KOSOVO*

Registration of EO and the contracting authorities will be free of charge.

MACEDONIA

At the moment, 10,400 EOs are registered on the e-Procurement system, out of which 4,800 are active (paid the annual fee). They are not sorted out based on their primary business activity nor by any other parameter. According to the information given by the PPB around 5% of all registered EO come from abroad.

All 1,390 CAs are registered on the e-Procurement system (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/registered-contracting-institutions>) with total of 9,717 individual users; out of which 7,476 users are active (others are deactivated). They are sorted out based on the category of CA (administrative bodies, public enterprises, public

¹⁰³ PPA Monitoring report for 2014 (www.javnenabavke.ba)

institutions, etc.), but such division is available only to the system administrator from PPB. The others can search the CA only by their name.

MONTENEGRO

Public Procurement Authority is obliged to prepare a List of CA and makes it public on the following address <http://www.ujn.gov.me/en/lista-obveznika-za-2015-godinu/>, as well as list of suppliers available on <http://www.ujn.gov.me/wp-content/uploads/ponudjaci/Ponudjaci2015.pdf>.

EO are not sorted by the type of business activities, but by the name of the company, name of the responsible person, contact info. According to the list available on the website, number of CA is 645. CA are sorted by the territorial criteria (by the municipalities they belong).

SERBIA

Not applicable.

5.7.2. Increase of user participation

ALBANIA

E-procurement system in Albania, is mandatory for all contracting authorities, as such all are registered and use the platform. As regards the EO participation, there are no statistics on paper procurement / e-procurement procedures, but we can attest that e-procurement has increased the number of EO participating in public procurement procedures due to its advantages. Examples of causes that have increased the number of participants:

- EO have the possibility to access all information on the publication of a contract notice and requirements of the contracting authorities, free of charge, so they can evaluate whether to participate or not to a procurement procedure without having the obligation to be present at CA for buying the documents and present the tender at specified time.
- EO have to present the bidding documents electronically as a scanned copy of them, without having the obligation to copy and notarized them.
- Lately using e-procurement for small value purchasing has increased the number of participating EO. At paper procedures, CA had the obligation to perform a market testing among minimum three EO and choosing the one with the smaller value.

There are statistics regarding the average number of EO participating at procurement: 3 EO per procedure at paper procurement procedures, 6 EO per procedure conducted with electronic means¹⁰⁴.

Year	2011	2012	2013	2014
No of new registered EO	350	370	1,570	1,580

¹⁰⁴ According to PPA annual analyses on PPA activities and the functioning of public procurement system in 2014, published at www.app.gov.al

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

According to the PPB annual reports, there is a continuous increase of the number of the registered CA on the e-Procurement system – from 222 in 2008, through 1,030 in 2010 to 1,390 in 2014, as well as of the number of EO. There are numerous CA that carry out only e-procurements, among them being the two biggest companies in the utility sector, several ministries and agencies, several large municipalities and health institutions.

In 2014, the average number of submitted bids in the e-procurement procedures was 3.4 per tender, while on the paper-based procedures the average number was 2.9.

Most of the system users face certain difficulties in using the digital certificates, especially when they need to install them and / or configure the PC.

The main obstacles for the users from the CA were:

- Reluctance to change the way they used to work (shift from paper-based procedure), and
- Ignorance of the public procurement area in general – very often people who are not familiar with the public procurement rules and procedures are appointed to be public procurement officers, which also reflect in the way they use the e-Procurement system.

The main obstacles for the users from the EO were:

- Scanning and uploading documents, and
- E-Procurement system running slow.

Most of these issues are no longer obstacles at least not on a large scale. It is owed to the permanent trainings, consultations and support provided to the system users.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.8. Management of changes in e-procurement (facilitation) – Promotion, Training, Consultations and alternative solutions for facilitation of e-procurement

ALBANIA

The usage of e-procurement is binding by PPL, therefore no need to promote its usage.

In 2009, when Albania started the use of e-procurement, PPA organized the trainings regarding e-procurement for all CA and EO. Trainings on PP, including e-procurement are organized in collaboration with the Albanian School of Public Administration, according to ASPA training plan and whenever there are significant changes in the system.

PPA has published at its official website the animated training. PPA has issued very detailed guidelines containing narrative and graphic explanations, published at www.app.gov.al.

PPA is also responsible for providing consultations in the field of e-procurement, free of charge. This task is carried out in all possible manners in a written way, via e-mail or by phone.

There is only one public, centralized e-procurement platform and there are no alternative solutions.

BOSNIA AND HERZEGOVINA

PPA is in charge for the development and promotion of the electronic information system in BIH. The PPA, in cooperation with other BIH public institutions (Civil service agencies, Chambers of commerce, etc.), organizes and participates in the different training and consultative activities. However, not so many promotional activities are performed. The PPA also developed manuals and other accompanying materials for professional development in the field of public procurement.

The PPA is also responsible to provide support to CA and EO, by issuing guidance for the use of the system, instructions, answering questions by telephone and by email.

KOSOVO*

Division of IT under PPRC is responsible for the promotion of the e-procurement. The implementing company until the conclusion of the project will conduct training of one procurement officer for each CA of Kosovo*, and other procurement officers will be trained by the PPRC and KIPA. Trainings for all procurement officers in the public sector will be free of charge.

MACEDONIA

PPB is managing the e-Procurement system and at the same time promoting its use. Ever since the e-Procurement system was put in place in 2006, promotion sessions and detailed trainings were organized. As the use of the e-auctions became mandatory in 2012, there was no need to use other means to promote the use of the system among the contracting

authorities. The same refers for the procurements conducted by electronic means, which as of 2016 will gradually become mandatory.

In 2010, PPB has established a Training Centre through which the trainings in the field of public procurement are organized. Training module for certification of public procurement officers from the CA lasts for 5 days, out of which 2 days are devoted to the e-Procurement system (presentation, demonstration of the system modules and exercises). Almost every second week there is a group of around 20 officers attending the training, each paying a training fee in amount of 150 €. Upon completion of the training, trainees have to take an exam and if they pass will become certified public procurement officers. Every 3 years, public procurement officers need to attend shorter training and take the exam in order to be re-certified. The training module for representatives of the EO lasts for 2 days. All trainings organized through the Training Centre are delivered by certified trainers - around 35 experts, who mostly come from the PPB and other contracting authorities, and only few from the EOs or independent consultants. In addition to the Training Centre, donor funded projects, private entities, associations and NGOs also organize trainings.

PPB is responsible to provide free of charge support to the e-Procurement users, which is implemented in the following manner:

- open telephone line available every working day in duration of 2 hours,
- answering questions that were sent through the web site contact form or by e-mail, and
- providing written opinions.

In addition, there are a couple of private companies and independent consultants that provide consultancy services related to the e-Procurement system, where the clients are mostly smaller and inexperienced contracting authorities. The fee they charge depends on the agreed scope of work.

There is no alternative means of access for the EO to participate on the e-Procurement procedures, except for the possibility to submit certificates and other documents in hard copy before the expiry of the time period for submission of the tenders or requests to participate, provided that they are not available in electronic form. This possibility is rarely practiced (most of the EO scan and upload these documents on the e-Procurement system) and it is applicable only to the documents that were not written by the EO but obtained from other sources (e.g. Central Registry).

MONTENEGRO

The department for monitoring of public procurement procedures and administration of electronic public procurement, as a part of Public Procurement Authority, is responsible for the promotion of the e-procurement, for organizing trainings, workshops and similar public gatherings, as well as for providing consultations to the procurement users, but for the time being does not include e-procurement support. It can be both, depending on whether it is a public hearing or meeting, in written and in direct consultation.

SERBIA

Not applicable.

5.9. e-Procurement in post-award phases

5.9.2. E-notices - online publication of notices

ALBANIA

All notices: contract notice, procurement (tender) documentation, clarification/modification of procurement documentation, notification of award, notification of the signed contract, are available in the electronic public procurement system (on the web-site www.app.gov.al). EO have the possibility to access all information on the publication of a contract notice free of charge, so they can evaluate whether to participate or not to a procurement procedure.

BOSNIA AND HERZEGOVINA

The CA publishes all notices through the e-Procurement system (in one of the three official languages in BOSNIA AND HERZEGOVINA):

- public procurement notice, including a procurement summary notice in English language;
- contract award notice;
- cancellation of public procurement procedure notice;
- voluntary ex ante transparency notice;
- prior information notice;
- notice on establishment of qualification system;
- correction notice.

KOSOVO*

In preparation.

MACEDONIA

As of 1 January 2008, the following contract notices are published on the e-Procurement system (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/home>):

- prior indicative notice,
- contract notice for conducting open procedure, restricted procedure, competitive dialogue, negotiated procedure with a prior publication of a notice and design contest,
- contract award notice, and
- notification on cancellation of the contract award procedure.

There is no legal requirement or practice for any external body to control the content of the e-notices before or after they are published. However, the e-Procurement system is configured in a way to control if the content is in line with the legal requirements. This configuration is applied to most but not all items/fields of the contract notice. For instance, if the CA wants to put a deadline for submission of bids that is shorter than the deadline given in the Law, the system will not allow the notice to be published until the deadline is changed.

MONTENEGRO

One of the tasks of PPA is publishing the documents on the Public Procurement Portal. In accordance with the Law on Public Procurement, the following documents are published: public procurement plans, tender documents for the implementation of the procedure following the contract notice, decisions on candidates' qualifications, decisions on selection of the most favourable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, on the Public Procurement Portal (<http://portal.ujn.gov.me/delta2015/search/noticeSearch.html>).

There is no external body with a task to control content of the e-notices before or after they are published, but PPA and Department for e-procurement are making controls before publishing.

SERBIA

The PPO has prepared the standard form of public procurement notices, which are published on the Public Procurement Portal (www.portal.ujn.gov.rs).

EO can evaluate whether they have interest to participate based on information available in contract notices.

5.9.3. E-access to tender documents

ALBANIA

All the tender documents, except for procedures with negotiation without prior publication, are available in the electronic public procurement system (on the web-site www.app.gov.al), free of charge and every EO can access them. There are no restrictions. The contract notice is part of standard tender documents.

BOSNIA AND HERZEGOVINA

The new PPL provides, for the first time, possibility of publishing the tender documentation on the Public Procurement Portal. The CA are obliged to publish the tender documentation on the Public Procurement Portal with a contract notice.

Contracting authorities are allowed the possibility of gradually introducing these obligations. During 2016, they are obliged to publish at least 30% of procedures advertised on the very Public Procurement Portal and, in 2017, this obligation is 60%. The deadline of 01.01.2018 is set as the final deadline for obligatory online publication of tender documentation for all public procurement procedures.

KOSOVO*

In preparation.

MACEDONIA

The CA makes the tender documentation available to any interested EO by uploading it on the e-Procurement system simultaneously with the publication of the contract notice. The tender documentation forms must be attached in a format which may be directly used by the EO. As an exception, the CA could make the tender documentation available in hard copy or by using magnetic medium only in the case the e-Procurement system does not support the format in which the tender documentation is prepared or a part of it. No fee shall be paid for the receipt of the tender documentation. The tender documents are published on the e-Procurement system simultaneously with the publication of the contract notice (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/home>).

MONTENEGRO

CA must publish the tender dossier for the following procedures: open procedure, first phase of negotiated procedure with publishing of notice, contest and shopping. If there are parts which can be considered as a secret, CA will explain in one part of tender dossier in which manner interested parties can take over that part of the tender dossier. Registration of EO and download of the tender documentation on the Public Procurement Portal is free of charge, and from publishing a Decision on starting the Public Procurement Procedure all the documentation is available on the website.

SERBIA

There is a possibility of e-access to all tender documents on the Public Procurement Portal. It is free of charge. Contracting authorities must post tender documents on the Public Procurement Portal simultaneously with publishing the invitation to submit tenders. (<http://portal.ujn.gov.rs>) Through the Public Procurement Portal, unrestricted and full direct access by electronic means to the procurement documents is ensured.

5.9.4.E-submission of bids

ALBANIA

All CAs in Albania should conduct their public procurement through e-procurement system. Therefore, EOs must submit bids electronically on the e-procurement platform (www.app.gov.al). There are no other means of communication.

E-procurement platform guarantees that:

- before the time limits laid down for opening of the bids, no-one has access to transmitted data.
- only authorized persons can set or change the dates for opening data received
- during the evaluation stages of the procurement procedure access to all data submitted, or to part thereof, is possible only for authorized persons

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

If the CA decides to carry out an e-procurement, then the EO are obliged to submit their bids electronically by using special module in the e-Procurement system.

EO must be registered on the e-Procurement system and pay annual fees in line with the tariff adopted by the Minister of Finance. They must also have and use advanced electronic signature based on qualified certificate to sign the bids.

The EO may submit certificates and other documents in hard copy for the purpose of establishing their qualification before the expiry of the time period for submission of the tenders or requests to participate, provided that they are not available in electronic form. This possibility applies only to the documents that the EO has obtained from other institutions, but it does not apply to the bids and statements the EO has written.

MONTENEGRO

Not applicable.

SERBIA

According to the PPL, the tenderer can submit its tender directly, by mail or by electronic means. Electronic tender must have timestamp. Where only a part of the tender is delivered in electronic form, it must make a clear unity with the other parts of the same tender. Tenderer may submit its tender in electronic form provides that CA defined such possibility in tender documents. Information system of CA must facilitate technologically independent reception of tenders and must be available to all interested parties free of charge.

Devices (means) for reception of electronic tenders must, assisted by technological devices and suitable procedures, enable that:

- 1) electronic tenders are signed in accordance with legislation governing the manner of their protection;
- 2) electronic signature is authorized by qualification confirmation;
- 3) electronic tender has timestamp, meaning that the date, hour and minute of the reception of tender can be specified;
- 4) before the previously defined moment for tender opening, no one has access to data from tenders;
- 5) it can be easily revealed if there has been a violation of prohibition of access to data from tenders;
- 6) only persons authorized by CA can set and change the date and hour of tender opening;
- 7) only authorized persons have access to data from tenders, and only so through their simultaneous action if there are several of them.

The IT system of CA must facilitate the archiving of electronic tenders in accordance with regulations governing electronic business and regulations governing documentation and

archives. The Law on Electronic Signature ("Official Gazette of RS", no. 135/2004) governs the issues concerning electronic signature.

These are the legal requirements for e-submission of tenders, but in practice e-submission does not exist.

5.9.5. E-evaluation of the proposals

ALBANIA

According to the Albanian PP legislation, e-evaluation is binding. E-evaluation is fully automatic and performed at e-procurement platform. To perform e-evaluation CA needs only computer and internet connection.

The electronic system generates reports that are automatically sent to participating EO thereby facilitating the work of CA and, enabling ulterior inspections, and reducing the possibility of corruptive deviations.

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

If the procedure is carried out by use of electronic means then all the phases must be conducted electronically through the e-Procurement. The same system, but different module is used to evaluate the electronically submitted bids, which means that the number of e-evaluations is equal to the number of e-procurements. None of the steps within the evaluation phase is carried out outside the e-Procurement system; some steps are fully automated, while for the other steps the public procurement evaluation commission has to check a box or enter data (e.g. the system automatically checks the completeness of the submitted documents, but the commission must check their validity and tick a box).

By using the module for e-evaluation of bids, the CA can save time and money. There is no need to print or copy the submitted documentation. The communication between the commission and the tenderers during the evaluation goes through the e-Procurement system. Completion of these steps in paper-based procedures could take several days, while through the system couple of minutes. The evaluation report is automatically generated by the system. In most cases the only manual input from the public procurement evaluation commission members is electronically signing the report.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.9.6. E-award of the contract

ALBANIA

The contract award notices are published for all contracts or types of the procurement procedures in the electronic public procurement system (on the web-site www.app.gov.al). The notice is sent to the electronic procurement platform immediately after the CA decision is made and will be made public the next working day.

BOSNIA AND HERZEGOVINA

After the submission of the report on the public procurement procedure to the PPA, the CA is obliged to publish on its web page, if it has one, the basic elements of the public procurement procedure contract, as well as the amendments occurring during the implementation of the contract.

KOSOVO*

Not applicable.

MACEDONIA

The CA must publish a contract award notice on the e-Procurement system within a time period of 30 days after the completion of the procedure if the estimated value is exceeding 20,000 € for supplies and services and 50,000 € for works (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/notifications-for-acpp>), or to publish the records of the contracts awarded through simplified competitive procedures on the e-Procurement system by 31st July and by 31st January at the latest for the awarded public procurement contracts concluded in the previous six months: (<https://e-nabavki.gov.mk/PublicAccess/home.aspx#/evidences>).

MONTENEGRO

The CA shall adopt the decision on the selection of the most favourable bid within the time limit specified in the contract notice or invitation to tender. The CA shall submit the decision of awarding a contract to all bidders within three days as of the day of making the decision and publish it on the Public Procurement Portal.

SERBIA

All contract award notices are published on the Public Procurement Portal. There is a standard form of the notice on concluded contract.

5.10. e-Procurement in post-award phases

5.10.2. E-ordering

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

Not applicable.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.10.3. E-invoicing (Directive 2014/55/EU)

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

The EU Directive on e-invoicing in the public procurements has not been transposed in the national legislation. Therefore, the e-invoicing as foreseen in this Directive is not used. However, the national VAT Law¹⁰⁵ where the invoicing rules are prescribed was amended in September 2014 in order to incorporate e-invoicing rules stemming from the EU e-Invoicing Directive 2010/45/EU. Still, the e-invoicing is not yet implemented in the execution of the public procurement contracts.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

¹⁰⁵ (Official Gazette no. 44/1999; 59/1999; 86/1999; 11/2000; 8/2001; 21/2003; 19/2004; 33/2006; 45/2006; 101/2006; 114/2007; 103/2008; 114/2009; 133/2009; 95/2010; 102/2010; 24/2011; 135/2011; 155/2012; 12/2014; 112/2014; 130/2014; 15/2015 and 129/2015)

5.10.4. E-payment

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

Not applicable.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

5.11. Techniques and instruments for e-procurement

5.11.2. Dynamic purchasing systems

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

The Council of Ministers of BOSNIA AND HERZEGOVINA should issue the implementing regulations defining the time limits and commencement of the Dynamic Purchasing System application.¹⁰⁶

KOSOVO*

Not applicable.

MACEDONIA

Not applicable.

MONTENEGRO

Not applicable.

SERBIA

Legal basis for using dynamic purchasing system exists, but such tools have not been developed and used.

¹⁰⁶ Article 122 of the PPL

5.11.3. E-auction

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

The Council of Ministers of BOSNIA AND HERZEGOVINA should issue the implementing regulations defining the time limits and commencement of the e-auction application. With the financial and technical support provided through the GIZ project - Strengthening of Public Institutions – the e-Auction system should be developed and implemented in February 2016.¹⁰⁷

KOSOVO*

Not applicable.

MACEDONIA

The electronic auctions were introduced in the PPL in 2007 and are in use since 01.01.2008. The module for e-auctions is integrated in the e-Procurement system. In 2012, the e-auctions became mandatory for use for all types of procurement subjects and in almost all public procurement procedures (open procedure, restricted procedure, simplified competitive procedure and negotiated procedure with a prior publication of a contract notice, as well as for awarding framework agreement; while it is not applicable in the following procedures: negotiated procedure without prior publication of a contract notice, competitive dialogue and design contest). The e-auction is defined as a reverse process of auctioning that is taking place after the full evaluation of bids, where bidders have a possibility by electronic means to revise the initially submitted price. The pre-condition to conduct e-auction is to have at least two acceptable bids.

E-auction is not mandatory, but it may be used, in the award of the following public procurement subjects:

- consulting services;
- intellectual services for designing and developing design and other creative solutions;
- services for preparation of studies or reports, and
- services and goods from artisans (craftsmen) with a total estimated value of up to 20,000 €.

The CA must be registered on the e-Procurement system and have internet access in order to log in, set the parameters (date, time, starting price, minimum price decrease, etc.) and send the invitation to the bidders to participate on the e-auction. The EO must be registered on the e-Procurement system and have internet access in order to log in and participate on the e-auction. The entire public procurement procedure could be conducted in traditional paper form (questions and bids submitted on paper), except for the e-auction, which must be carried out electronically through the e-Procurement system. Digital certificates are not needed for the CA to login to the system and to set the e-auction parameters and for the EO to participate on the e-auction.

¹⁰⁷ Ibid

E-auction is carried out regardless of the award criteria. In case of economically most advantageous bidder criteria, the price is the only element for which e-auction is conducted. Use of the e-auction is indicated in the contract notice, and additional information how the e-auctions function is given in the tender documentation. If the e-auction comes as an additional phase of the procedure conducted by electronic means, then the system is configured to automatically create the initial rank list of bidders, starting price and to send the invitation for participation (only the start/end date and time and the minimum decrease of the price should be set by the CA). If the e-auction comes as an additional phase of the paper-based procedure, then the CA must manually enter the above indicated data (initial rank list, starting price, select the bidders from the list, send the invitation, etc.). This information is provided to the bidder in the invitation. The e-auction may start no sooner than two days (48 hours) following the date on which the invitations to participate have been sent. The electronic auction shall be closed in one or several of the following manners:

- at a previously determined time for which the bidders have been informed in the invitation;
- or
- when new prices that meet the requirements concerning the minimum differences are no longer received, wherefore the CA, in the invitation, states the time period which is allowed to elapse after receiving the last tender before the e-auction is closed.

According to the PPB Annual Report for 2014 (http://bjn.gov.mk/bjn-portal/wordpress/wp-content/uploads/Report-_-2014.pdf), a total of 29,477 auctions were conducted, an average of 112 auctions per day. Only in cases where there was only one bidder or one bid was evaluated as acceptable no e-auctions were conducted. However, in those cases the bidder was invited to submit final price by using another module integrated in the e-Procurement system. Submission of final price is a possibility, not an obligation for the bidder to reduce its initially given price. In 2014 there were 19,744 invitations for submission of final price, an average of 75 per day.

According to the PPB Annual Report for 2014, the average savings from the conducted e-auctions was 21% or total savings in absolute figures amounted to 58,000.000 €. When these savings will be added to the savings gained by the use of the module for submitting final price, the total savings amount to nearly 70,000.000 €. Savings are calculated as difference between the starting price of the e-auction (lowest price of all bids previously evaluated and accepted for participation in the e-auction) and the final price achieved in the e-auction (contracted price). It is assumed that if there was no e-auction, the CA would have awarded the contract to the bidder who submitted the lowest initial price. The total annual savings increase each year (in 2013 the savings amounted to 55,000.000 €).

Based on the feedback from the contracting authorities, it can be concluded that very often the awarded EO provide the procured goods, services and works with lower quality, especially in cases where the price went down significantly and the technical specification was not sufficiently detailed. E-auctions are not the sole reason for this trend, but also the fact that the lowest price is the only award criterion that can be used.

For the EO, the e-auction is seen as a chance to correct their initial higher price and be awarded. However, knowing that the price would go down on the e-auction, many EO refrain from submitting bids, which is confirmed by the official average number of bidders per tender, as well as in the findings of several surveys.

Unofficially, there is often collusion among the EO, especially on tenders where there is no real competition (2 or 3 bidders participating on the e-auction). In such cases it often happens none of the bidders to decrease the initially given price, which are too high, thus forcing the CA to award the contract to the lowest initially given price, which is still higher than the average market price but within or a little bit exceeding the estimated amount (available funds). The Commission for Protection of Competition has the authority to investigate such cases and impose sanctions.

MONTENEGRO

Not applicable.

SERBIA

Legal basis for using e-auction exists, but such tools have not been developed and used.

5.11.4. E-catalogue

ALBANIA

Not applicable.

BOSNIA AND HERZEGOVINA

Not applicable.

KOSOVO*

Not applicable.

MACEDONIA

Not applicable.

MONTENEGRO

Not applicable.

SERBIA

Not applicable.

6 Main findings - Monitoring of irregularities

6.1. PPA and other institutions responsible for monitoring of irregularities in PP - key functions and differences among them

Each ReSPA member and Kosovo* has appointed public procurement authority as a central level institution. Some of them have higher degree of independence as they report directly to the Government (Albania, Bosnia and Herzegovina) while others operate under certain Ministry (Macedonia)

Among other tasks prescribed by the PPL, each PPA is also monitoring the public procurement system in general and the specific public procurement procedures. The way this monitoring role is performed differs among them.

PPA of Albania may penalize with fines or propose to the head of CA or higher bodies disciplinary measures against the individual in the CA, who committed the infringement. The PPA of Bosnia and Herzegovina conducts the monitoring on the basis of information at any stage of a procurement procedure. PPRC of Kosovo* is also monitoring the contract management and its implementation by CA. PPB of Macedonia must immediately inform the CA, and if necessary, the competent authorities regarding the determined irregularities from the received notifications. PPD of Montenegro is entitled to perform inspection control. In addition to the possibility of informing the State Audit Institution and Budgetary Inspection on identified irregularities in the public procurement procedures, PPO of Serbia may initiate procedure for annulment of a public procurement contract.

In addition to PPA, the following institutions are present and have certain roles and responsibilities in the management of irregularities in PP:

- State Audit - performs ex-post financial audit concerning the utilization and .spending of the public funds, including those spend through the procurement procedures.
- Anti-corruption Authority - in charge to establish whether there is a violation of the PPL and order measures shall be initiated and conducted by this authority.
- Competition Authority deals with the infringement of competition rules by tenderers.

6.2. Power of the monitoring authority to indicate and to inform about specific violations and systemic problems

As mentioned above, each national PPA has a certain role in the monitoring of the public procurement procedures. In case in the process of monitoring an irregularity has been identified, the PPAs are tasked to take actions and / or inform other competent bodies to further proceed with the case. It seems that some PPAs have greater authorities to deal with the irregularities then the others.

The role of the PPA in Albania is interesting as all auditing institutions have to refer to PPA all their findings regarding public procurement procedures and PPA will decide on irregularities and the final administrative punishment. PPA of Bosnia and Herzegovina is empowered to

submit infringement reports to the competent misdemeanour court, once it identified violations of the PPL, even when no appeal was filed. The PPD of Montenegro makes timely notifications and has regular meetings with CA in order to eliminate irregularities observed in the implementation. If the CA fails to eliminate the irregularity, PPA shall inform a public procurement inspector at the Administration of Inspection Affairs, who performs inspection control over application of the PPL.

6.3. Publication of monitoring activities, reports on systemic risks, corruption, fraud (readiness to perform), reports on aggregated value

In each ReSPA member and Kosovo*, PPAs and other bodies that have monitoring roles in the public procurement prepare annual reports in which findings of irregularities are reported. Cases of identified irregularities have been reported in the last years, though not on a large scale, but imposed criminal or misdemeanour sanctions are seldom.

By the end of each year, PPA of Albania prepares a short report dedicated to monitoring findings, which provides main findings and most frequent irregularities that the CA should consider when conducting a procurement procedure and the administrative measures taken by PPA regarding these irregularities. In 2014, fines were imposed to 80 CA, while disciplinary measure was sentenced to 41 CA.

The Board of the PPA of Bosnia and Herzegovina approves the monitoring reports, which are submitted to the Council of Ministers of BOSNIA AND HERZEGOVINA. In 2014, the PPA has observed a total of 582 irregularities, out of which most irregularities relate to the following violations: procurement notice states high fees for the purchase of tender documentation, irregular division of public contracts into lots and misuse of sub-criteria.

PPRC of Kosovo* monitors the CA based on the annual plan or at the request of the CA. From altogether 173 CA that are registered in Kosovo*, during 2014, the PPRC has conducted monitoring in 38 CA, with a total of 282 procurement activities, and in 7 cases on the basis of the request of the CA. The identified irregularities relate to the different stages of the public procurement procedures. In 2014, the Anti-corruption Authority handled a total of 86 cases in the field of prevention of corruption in public procurement. If these data are compared with the number of conducted procurements, it can be concluded that a very small percent are monitored, therefore the result is that very few procurement irregularities are uncovered (57 opinions for violations issued, 2 cases were proceeded; 4 cases are still being processed).

In 2014, no irregularity was identified by or notified to PPB. The State Anti-Corruption Commission of Macedonia acted upon 25 charges lodged for possible corruption in the field of public procurement regarding the contract award procedures carried out by the CA. With respect to 6 of the concerned cases, State Anti-Corruption Commission considered for there to be grounded suspicion for criminal deed committed in performing ex-officio duties and authorities by the responsible persons at the CA. This led to raising 6 initiatives before the public prosecutor for initiating a procedure for criminal prosecution of officials, officers or responsible persons at the CA. The procedures are ongoing. Compared to the previous years,

there is continuous downward trend of lodged charges (there were even 45 charges lodged in 2011).

Montenegrin Inspection of Administrative Affairs reported in its annual report for 2014 that the number of conducted inspection controls related to public procurement procedures was 148, and the amount of fines imposed is EUR 22.000.

The Serbian PPL foresees civil supervisor for public procurement with estimated value exceeding 8.3 million EUR, who supervises public procurement procedure and has permanent insight into documents and communication between CA and tenderers. In case of irregularities, the civil supervisor notifies the CA and if the irregularities cannot be remedied otherwise, it shall submit a request for protection of the rights and notify the authority that supervises the operation of CA, the relevant state authorities (PPO, the Anti-Corruption Agency and the competent prosecution's office) and the public. The civil supervisor files a report on the conducted public procurement procedure to the finance committee of the National Assembly and to the PPO.

6.4. Civil society's involvement in control of public procurement

No specific provisions in the national PPL can be found regarding the CSO involvement in the public procurement procedures. Almost all countries have adopted a Law on Freedom of Information, provisions of which are increasingly used by the CSO to obtain information on the specific public procurement procedures. In some countries, CSO have gone further by regularly publishing relevant reports on PP (identifying weaknesses and irregularities and providing proposals for improvements) or being involved in the drafting of the PPL, thus reinforcing the role of the CSO in the control of the public procurement.

Albanian PPL does not provide any specific provision on rights and powers of the CSO, media and wider public to control procurement procedures. Considering the transparency and publicity of a procurement procedure, as well as the type and volume of data available on the e-procurement system, each of them can access the main information regarding a procurement procedure, thus giving them possibility of participating in the control of public procurement.

Coalition of CSO in Bosnia and Herzegovina prepared an analysis and came up with proposals for the improvement of certain provisions of the then draft-new PPL, with particular emphasis on the proper protection against corruption, as well as transparency, efficiency and rational use of public funds. Other relevant reports on public procurement prepared by CSO are published by Transparency International Bosnia and Herzegovina and Analitika Centre for Social Research.

FOL Movement is the most active NGO that monitors developments in the field of public procurement in Kosovo* since 2011. This was the first time that a CSO in Kosovo* embarked in a process of presenting and monitoring directly the work of respective government structures in awarding public contracts via public procurement. It was also the only CSO that has been invited to participate in the inter-governmental working group on amending the Law on Public

Procurement. Out of the 19 recommendations proposed by FOL Movement, the working group has accepted 15 of them to be part of the new PPL. FOL has also prepared an advocacy campaign for legislative reforms in the area of public procurement. There are also two CSOs that are involved in monitoring the procurement sector from different perspectives and using different monitoring methods.

CSO and media control over the public procurements in Macedonia has been increased lately due to the data available the e-Procurement system and the proper implementation of the Law on free access to public information. There are reports issued by a couple of NGOs that contain data on the responsiveness of the public institutions with regard to the requests for information, including in the field of public procurement. The reports from the monitoring of the public procurements that were initially published quarterly and now semi-annually by the CSO Centre for Civil Communications need to be mentioned as the most relevant ones, which were voiced over the media and debated among the expert public.

CSO and media in Montenegro and Serbia obtain information regarding the public procurements on the basis of the Law on free access to the information.

6.5. Dealing with corruption and conflicts of interests in public procurement

In each ReSPA member and Kosovo* appropriate legal framework and institutional mechanism have been established to prevent and deal with corruption including in the field of public procurement. Although high level of corruption in the public procurement is often indicated in relevant international reports or surveys among the stakeholders, still the official figures of the responsible institutions show very small number of cases initiated and even smaller of cases that ended up in sanctioning the participants involved in the allegedly corruptive behaviour.

There are no official cases of corruption evidenced in Albania. Regarding conflict of interests there are two decisions of PPA excluding two EO from the right to participate in procurement procedures for respectively 3 and 2 years, because they have submitted in procurement procedures a self-declaration stating they are not in any situation of conflict of interest, while it turned out that they were.

In the recent years, there were no case reports in Bosnia and Herzegovina that offers of specific bidders were rejected or that the tender procedure was cancelled due to corruption action.

Anti-Corruption Agency in Kosovo* handled a total of 86 cases in the field of prevention of corruption in public procurement, which compared to the total number of procurements in 2014 is a very small percent of irregularities uncovered. From these 86 cases handled by ACA, for 57 opinions for violations were issued; 2 cases were processed to the Department of Combating Corruption; 4 cases were still being processed.

The State Anti-Corruption Commission of Macedonia initiates procedures when a conflict of interest is determined or if there are allegations of corruptive behaviour. In 2014, the Commission acted upon 25 charges lodged for possible corruption in the field of public

procurement and for 6 of the concerned cases there was grounded suspicion for criminal deed committed, leading to raising 6 initiatives before the public prosecutor. However, compared to the previous years, there is continuous downward trend of lodged charges. The State Anti-corruption Commission has the power to impose a fine, which it has practiced in several occasions so far.

Two separate public institutions are established in Montenegro to deal with these issues - Directorate for Anti-Corruption Initiative and Commission for prevention of conflict of interest. So far, no corruption or conflict of interest cases in the field of public procurement have been reported by these institutions.

In the field of conflict of interest, in 2014, the Anti-Corruption Agency of Serbia worked on 1,286 issues and pronounced 143 measures of caution, 40 measures of public announcement of recommendation for dismissal, 40 measures of public announcement on violation of the Anti-Corruption Agency Law and initiated 68 requests for misdemeanour procedure.

6.6. Performance indicators for central public procurement control/audit institutions

In general, performance indicators are not present at all or not so well defined or regularly followed and measured by the responsible PPA in the ReSPA members and Kosovo*. What is present is more of statistical nature. However, it gives information on the performance, weaknesses, trends, etc. that is comparable on yearly basis.

There are no specific performance indicators set in Albania. To measure the public procurement system functioning, PPA analyses and prepares statistics on public procurement procedures, public fund procured, public fund saved, public fund spent, etc.

The PPL of Bosnia and Herzegovina has not established any performance benchmarks or indicators to measure the main public procurement parameters.

Preparatory activities for the measurement of performance indicators in public procurement have started in Kosovo* with support from WB through the project: Designing a public procurement compliance and performance monitoring system. Performance measurement will be oriented on three aspects: 1. Measuring the performance of compliance in terms of the implementation of public procurement legislation in Kosovo*; 2. Measuring performance in terms of achieving efficiency and effectiveness in carrying out procurement activities; and 3. Measurement of performance in terms of increasing transparency, and improving governance.

The PPB of Macedonia has not set any official performance benchmarks or indicators to measure the main public procurement parameters in a systematic manner. However, in its annual reports the PPB is providing detailed statistical data based on which the functioning of the public procurement system is measured and compared with the previous years.

PPD of Montenegro is using the following indicators given in the Annual Report for 2014: 1. Draft of the changes of the PPL prepared; 2. System of the fight against corruption improved; 3. System of filing is improved by CA; 4. Number of contracts who were subject to checking

increased; 5. Number of sanctions; 6. Number of requests for negotiating procedure; 7. Number of educational workshops and seminars, and 8. Number of public officers who passed the exam.

PPO of Serbia has set the following indicators to measure its performance: 1. involvement in the creation and improvement of PP legal and institutional framework; 2. support and assistance on the interpretation and application of the national PP legislation; 3. monitoring of application of PP rules; 4. measurement of PP system functioning (collecting statistical data on conducted PP procedure and concluded contracts as well as on overall efficiency of the PP system); 5. organisation and support in education; 6. collaboration with other bodies and institutions; 7. anticorruption measures (the PPO appoints civil supervisors; the PPO will draft the model of internal plan for preventing of corruption in public procurement); and 8. transparency (managing of Public Procurement Portal).

6.7. Administrative capacities of PPA and allocation of resources in PPA

The number of employees is more or less the same in each national PPA. All PPAs are small organizations with 15 – 30 employees. They all seem to lack IT staff, especially in light of the introduction of e-procurement systems. Their work is almost exclusively financed from the state budget and the annual amount allocated is constant for the last few years and dominantly spent for salaries of the employees.

Comparing Albanian PPA tasks and all its resources (human, technical, financial etc.) it may be concluded that they are not proportional. PPA needs more human resources than the present 28 employees to perform its tasks in the most efficient way possible, this considering also PPA competences given by concessions/PPP legislation and public auction legislation. Considering PPA competences on managing e-procurement platform, the present 4 IT specialists are not sufficient.

Taking into consideration external demands and limitations, as well as, the existing capacities of the PPA of Bosnia and Herzegovina, it is necessary to re-evaluate the existing job systematization and to find ways to better utilize the skills and the profiles of the present PPA staff. Coordination between the Sarajevo office and its branch offices is hindered not only because their tasks are duplicated, but also by the fact that the CA and EO are free to contact any of the offices and ask questions or request opinions. The introduction of the internal system for the management of documentation has to a large degree mitigated the problem of duplication.

Compared to the tasks that PPRC of Kosovo* has and the number of employees, it can be concluded that the budget is not sufficient to perform successfully the duties envisaged. PPRC is financed strictly from the state budget, and there are no other revenues.

Most of the present managers and senior staff are with the Macedonian PPB from its early days, which means that the institution has experienced and sufficient staff. PPB's operations are funded from the central budget and PPB's own sources (e.g. revenues from the e-Procurement system and from delivery of trainings). The fact that PPB has only 2 IT was not

a major problem so far, because the maintenance and upgrade of the e-Procurement system is outsourced to software developer and storage centre.

Number of employees in the Montenegrin PPD should be higher, taking into account its tasks. Furthermore, budget needs to be higher than it is now. If attracting professionals in the state administration is the goal, especially in the PPD, salaries have to be higher. Considering PPA plans on e-procurement and managing e-procurement platform, number of IT specialists should be increased.

According to the job classification, PPO of Serbia has 28 employees and the budget for 2015 was 420,000 EUR, more than half of it allocated for salaries. The resources are allocated according to the PPO activities.

6.8. Quality control certification/usage of standards: ISO, CAF, other / Regulatory impact assessment in public procurement regulation and regulation monitoring and Risk based analysis for audits/other control instruments

ISO, CAF and similar quality management standards, as well as Regulatory Impact Assessment (RIA) and Risk based analysis are not commonly implemented processes in the legal and / or public procurement systems in the ReSPA members and Kosovo*.

The BOSNIA AND HERZEGOVINA Public Administration Reform Coordinator's Office (PARCO) will be responsible for promoting the use of TQM instruments, designing the required training, providing necessary information, and serving as the central point for the initiative. In 2013, a Law on Introducing Quality Management System and CAF has been enacted, according to which all central level administrative bodies in Macedonia have to go through a process of certification according to the ISO 9001 standard and to carry out CAF. The PPB is among the institutions that became ISO 9001 certified in late 2012.

As regards RIA, Macedonia is the only country where RIA is supposed to be carried for every draft law. In practice very often the completed reports for the conducted RIA are very poor and do not contain any in-depth assessment. The 2015 amendments to the PPL are accompanied with a report on the conducted RIA.

6.9. Training and certification of PP officers

Training of public procurement officers is foreseen in the legislation of each ReSPA member and Kosovo*. In all countries, the trainings are organized or at least supervised by the PPA. In some countries institutions responsible for public administration affairs are involved in the delivery of trainings or in the examination process. The certification of public procurement officers is mandatory, except in Albania and Bosnia and Herzegovina.

PPA, in collaboration with the Albanian School of Public Administration (ASPA), promotes and organizes training of central and local government officials engaged in public procurement

activities. The participants obtain a certificate issued by ASPA for attending the training and the score, but Albanian procurement system does not have a system of certification (licencing) of procurement officers.

The PPA of Bosnia and Herzegovina has a mandate to organize trainings for certified trainers and public procurement officers. PPA monitors the work of certified trainers, as well as the trainings that other institutions and enterprises organize on a profit-making basis. Though the PPA organized trainings, a total of 102 civil servants were trained, while through the trainings organized by other entities more the 2730 officers were trained. The role and professional competence of public procurement officers is not yet defined by the implementing regulations.

Kosovo* Institute for Public Administration (KIPA) in cooperation with PPRC is responsible to develop training modules and curriculum, as well as to organize and deliver training courses in duration of at least 15 days. Trainings are delivered by a trained person or training organizations, while KIPA is responsible for organizing examinations. All procurement officials who attend training and successfully pass the exam receive procurement certificate, which is valid for three years.

Each CA in Macedonia must appoint a person or an organizational form within which frames public procurement tasks are to be performed. This person called public procurement officer must be trained to perform public procurement tasks and must have certificate for passed exam for a public procurement officer. The PPB, through its Training Centre, is carrying out training for the public procurement officers and trainers based on its Annual Training Plan. The certificate for officers that is issued upon completed 5-days training and passed exam is valid for 3 years, while the certificate for the trainers is valid for 2 years. Before the expiry of the certificate, the officers and trainers must attend re-certification training and pass the exam.

A public procurement officer in Montenegro can only be a person with a university degree employed by the CA and who passed the professional exam / obtained certificate for performing the public procurement tasks. PPA is preparing and implementing training in the field of procurement through its department for professional development, training and international cooperation. According to the available data for 2014, 122 persons applied for the professional exam, 70 passed.

The PPO of Serbia is the competent authority for issuing certificates as well as for determining the manner and the program for professional training and examination for public procurement officers. The condition for the issuance of certificate for public procurement officer is that the candidate passes the examination which is organized by the PPO. However, the trainings are organized by private entities. In 2014 there were 7 examinations for certification of public procurement officers and 140 candidates passed exams.

6.10. Procurement planning

The legislation of each ReSPA member and Kosovo* foresees obligation for the CA to prepare annual procurement forecast within 30 to 60 days from the beginning of the current year. Plans can be easily modified during the year. Not each legislation provides obligation for online publishing of the procurement plans. It seems that the Albanian

legislation gave greatest significance to the procurement plans, as the Ministry of Finance doesn't allow any payment for procurement contracts if the procurement registry isn't respected.

Each CA in Albania is responsible for the preparation and publishing of the annual registry of public procurement forecasts at PPA official website www.app.gov.al. Additions and changes made in the registers of forecast are also published at the portal. Supreme Auditing Office, during the same auditing procedure, verifies the public procurement procedures and financial activity of CA. The Ministry of Finance doesn't allow any payment for procurement contracts if the procurement registry isn't respected.

The BOSNIA AND HERZEGOVINA PPL obligates CA, no later than two months after the adoption of the budget or the financial plan, to design a public procurement plan encompassing the types of services, goods and works that the CA intend to procure during the next year. There is no legal obligation for procurement plans to be published on the Public Procurement Portal. The CA may decide to make amendments to the procurement plan and publish the amended procurement plan on its web site or public procurement portal. The audit institutions monitor the implementation of procurement plans.

No less than sixty days prior to the beginning of each fiscal year, each CA in Kosovo* must prepare a preliminary procurement forecast. Within fifteen days after the promulgation of the appropriations legislation for a fiscal year, each CA must prepare a final procurement forecast. If the procurement subject has not been included in the final procurement forecast provided to the Central Procurement Agency (CPA), the CA must provide a Statement of Needs and Determination of Availability of Funds to the CPA at least five days before the initiation of the concerned procurement activity.

Each CA in Macedonia must prepare and adopt Annual Procurement Plan no later than end of January of the current year. If necessary, the CA can amend or modify the annual procurement plan during the year. There is no obligation to publish the annual procurement plan anywhere, therefore a small number of the CA do so.

Each CA in Montenegro is obliged to publish Procurement Plan not later than 31 January of the current budget or financial year on the PPD website. Changes and amendments can be made during the year, but no later than 5 days before conducting a public procurement procedure. The Ministry shall give its approval to the public procurement plans of the Budget of Montenegro beneficiaries, and the competent authority of a local self-government unit shall give the approval to the public procurement plan of the local self-government bodies.

Each CA in Serbia is obliged to adopt an annual public procurement plan which must be published on the Public Procurement Portal. The PPO and the State Audit Institution control the activities related to procurement plans.

6.11. Registry of bidders and blacklisting

Registry of certified bidders is only present in Serbia. The Business Registers Agency in Serbia keeps public register of tenderers who are not obliged to prove fulfilment of

mandatory selection criteria when submitting a bid. Countries that have e-procurement systems have sort of registries / lists of registered EO. Possibility for some sort of blacklisting exists in Albania and Kosovo*, but it has not been practiced much, unlike the blacklisting in Macedonia where it is common and severe.

There is a register of tenderers/official list of approved EO in Serbia. The Business Registers Agency keeps public register of tenderers. The condition for registration in register of tenderers is to submit documents which prove fulfilment of mandatory eligibility requirements for participation in public procurement procedures. This is the reason why EO who are registered in the Register are not obliged to prove fulfilment of mandatory requirements when submitting a tender or an application.

Albanian and Macedonian legislation do not provide the possibility to the PPA or the CA to maintain lists of qualified contractors. However, each EO that is registered at the national trade register may create a user account at the respective e-Procurement systems, including the foreign EOs. The procurement portal of the Montenegrin PPA contains a list of EO with whom procurement contracts have been signed, but the registration on the list is not obligatory in any way for the EO and it is not connected with future tenders and/or future EO. Bosnia and Herzegovina and Kosovo* have no registries of EO.

PPA of Albania can exclude an EO from participation in awarding procedures for a period of 1 to 3 years in limited number of cases related to bidding process, performance of the contract and in case of bids collusions. PPA edits and issues the Public Announcements Bulletin containing also the list of EO excluded, who are not technically able to submit a tender via the e-Procurement system.

PRB of Kosovo* is competent institution for disqualification of EO from participation in procurement activities and placement on the black list. During 2014, PRB has received only two requests from the CA for disqualification of EO from participation in procurement activities, which the PRB found ungrounded and rejected them.

According to the Macedonian PPL, negative reference is an instrument limiting the right to participate in all future contract award procedures (blacklisting). Up till now, the CA issued total of 70 negative references for the EO and published them on the e-Procurement system. Negative references must be published in the following cases:

- Withdrawal from the bid
- Non-accepted correction of arithmetical error
- EO refuses to sign the contract
- Failure to submit performance guarantee
- Activation of performance guarantee during realization of the contract.

A few EO, as a result of the issued negative reference, were forbidden to participate in contract award procedures in Macedonia for a period of one to five years.

There is no legal possibility in Bosnia and Herzegovina, Montenegro and Serbia for blacklisting.

6.12. Control in ex-post stage: Audits of PP procedures

Each ReSPA member and Kosovo* has state audit institution that is responsible to conduct ex-post control of the public procurement award procedure and contract performance. The identified irregularities are processed to other institutions, while in case of Albania it is the PPA that decides on irregularities and the final administrative sanction. In addition to the state audit institutions, some systems have introduced internal audits, which objective is to prevent or identify any misconduct of the civil servants.

The monitoring mechanism in Albania intervenes only after the procedure is finished and the procurement contract is concluded. The procedure is performed in two main ways: a) through PPA initiative and b) through auditing reports of auditing institutions. In both cases, the final decision is made by PPA. In addition to the PPA audits, there are also regular internal audits and Supreme State Audit audits. All auditing institutions refer to PPA all their findings regarding public procurement procedures and PPA decide on irregularities and the final administrative punishment.

The Audit Office of the Institutions of BiH provides independent external opinions on budget execution and financial statements with regard to the Government and state institutions of BiH, including irregularities in public procurement procedures. An audited institution is obliged to submit a response to the Audit Office and BiH indicating activities undertaken by this particular institution in order to overcome the weaknesses, irregularities and violations identified in the audit report.

The OAG is the main institution in Kosovo* that controls ex-post the legality of the public procurement procedure and the contract execution. Apart OAG, the audit of procurement activities is also carried out by the Unit for Internal Audit, which acts across all CAs in Kosovo* and it identifies and evaluates the effectiveness of policies to existing procedures in the management of budgetary resources.

SAO is the leading institution that controls ex-post the legality of the public procurement procedure and the contract execution. It detects deviations from the PPL and procurement principles. The SAO public procurement task force is comprised of auditors who are specialized in public procurement and who audit the entire process from the time of preparation until the conclusion of the contract, including the outcome of the contract execution (initial prices in the contract, completion dates, etc.). Each bigger central level institution has internal auditor, whose main objective is to help the responsible person at the CA to detect irregularities and misuse of funds made by the public servants.

The State Audit Institution of Montenegro can control all the procurement documentation. If State Audit Institution in the process of auditing finds out that there has been a violation of the laws, their task is to file a charge at the relevant authority (State Prosecutor or Court).

The competent authorities for public procurement control/audit in Serbia are the PPO and the State Audit Institution. The PPO is in charge of initiating misdemeanour procedure when it is informed in any way on infringement of the PPL which can be basis for minor offence responsibility. It also informs the State Audit Institution and Budgetary Inspection on identified

irregularities. The State Audit Institution is the highest institution which controls public procurement in ex post stage.

6.13. Contract management: performance and modification

State audit institutions are responsible to audit the contract performance in the ReSPA members and Kosovo*, except for Bosnia and Herzegovina where such power has not been allocated to any institution. Additionally, internal audits in central institutions have been introduced to, among other tasks, control the contract performance. Furthermore, Albanian PPL obliges the CA to establish a commission that will monitor the implementation of the special conditions of the contract. Contract modifications are possible in all countries in strictly defined cases.

CA, Supreme State Audit and internal audits in central institutions monitor the performance of contracts in Albania. The specific is that the CA must establish a commission that will monitor the implementation of the special conditions of the contract. The contract modifications are allowed in the strictly defined cases in the PPL. Not performing the contract in time constitutes most often a breach of the contract.

The PPL of Bosnia and Herzegovina regulates the procedures of public procurement until the conclusion of contract with the selected bidder. At the institutional level, the PPL has not foreseen the establishment of bodies responsible for monitoring the activities in in the execution of contracts. Monitoring of public procurement procedures are performed through external audit institutions, but have no authority in monitoring the course of contract implementation.

The PPL of Kosovo* provides the manner for Contract Management Activities. CA must produce a contract management plan in particular matters of organizational, economic, technical and legal aspects of contract management. The PPRC monitors contract management.

The PPL of Macedonia does not contain special provisions regarding contract management. Modifications to the procurement contract should be in line with the conditions in the contract notice and tender documentation. State Audit Office audits the procurement contract execution. EOs point out the delivery terms as the most problematic provisions of the contracts and the late payments as the biggest issue in the contract execution phase

Contract management is not a subject of detailed regulation of the PPL of Montenegro. There is no concrete state institution with a task to perform a control over contract management. Contract provision might be modified in the case defined in the PPL. From the side of CA, lack of regulation in contract management is causing a lot of problems in the implementation.

The PPO and the State Audit Institution are performing control of the contract performance. After the conclusion of public procurement contract, the CA may make modifications of the contract in strictly defined cases in the PPL. In these cases, the CA is obliged to adopt the decision on contract amendment and to publish it within 3 days on the Public Procurement Portal and to deliver report to the PPO and the State Audit Institution.

7 Main findings - e-Procurement

7.1. Types of e-Procurement systems in ReSPA Members

Fully-fledged e-Procurement systems are present only in Albania and Macedonia. E-Procurement means that all pre-award public procurement phases are carried out using electronic means (web based platforms), not just for publishing contract notices and contract award notifications. Albania has introduced the e-procurements in 2009 and ever since then this form of conducting is mandatory for all CA. Macedonia has introduced the e-procurement system in 2006, and as of 2016 will gradually become mandatory for all CA.

Bosnia and Herzegovina has introduced electronic public procurement portal, which every year adds new functionalities. In addition to the publication of different type of notices, with financial and technical support provided through the GIZ project, the e-Auction system was developed and should have been launched in February 2016.

During 2014, Kosovo* has begun to develop the e-procurement platform through a project funded by the WB. Once developed and put into operation, the source code and the entire e-procurement system will be become property of the Government of Kosovo*.

Montenegro and Serbia have public procurement portals where all e-notices are published, but do not provide possibility for conducting the other pre-award phases online.

7.2. Financial aspects of e-procurement

In 2014, the number of awarded contracts through e-procurements in Albania was 4.600, while the value was 315 million EUR. In Macedonia, 2.303 is the number of awarded contracts through e-procurements in 2014 (14.7% of the total number of public procurement procedures conducted), while the value is around 180.000.000 EUR (PPB estimates that the value of the e-procurements is around 20% of the total value of awarded contracts, i.e. 200.000.000 EUR which includes the contracts awarded by use of electronic means in simplified competitive procedure below the threshold which is 20,000 EUR).

There is no exact data about the costs for implementing paper-based procedures, so it is difficult to estimate the amount of savings with the use of the e-procurements in Albania and Macedonia. When the entire procurement process is carried out electronically the savings are gained in the following public procurement phases / aspects: publishing contract notices and contract award notifications electronically (no fees for publishing some notices and notifications in the Official Gazette or daily newspapers and / or for using postal services to deliver the notice to EO), publishing the tender documentation online (no costs for printing and / or copying the documents), communicating and submitting documents online (no costs for printing and / or copying letters, bids, minutes from the public opening, reports on the bids evaluation and decisions and for using postal services), and time savings (significantly shortened time for communication and completion of the procedure).

The total savings gained from the use of e-auction in Macedonia in 2014 was 21% or 58,000.000 EUR in absolute figures. Following method is used to calculate the savings - difference between the starting price of the e-auction (lowest price of all bids previously evaluated and accepted for participation in the e-auction) and the final price achieved in the e-auction (contracted price).

7.3. Technical solutions and platforms used to implement e-procurement / Ownership of an IT infrastructure

In all countries that introduced or going to introduce e-procurement systems there is only one centralized web-based e-procurement platform managed by PPA. Despite the initial donors' financial and technical support in developing the e-procurement systems, PPAs are the owners of IT infrastructure used for e-procurement, and they are also responsible for maintenance and upgrade of the system.

The tools used for communicating by electronic means in the public procurement are fully non-discriminatory and interoperable with ICT products in general use. The system users only need computers and internet connection, no need to install any additional software in order to use these systems. The only condition for using e-procurement systems by CA and EO is their prior registration. E-procurement systems have a security certificate - SSL Secure. They can be accessed and used through the most popular web browsers.

In Macedonia advanced e-signatures based on qualified certificates are used to guarantee integrity and confidentiality of the received bids, which are encrypted until their (public) opening.

7.4. Usage of e-procurement

There are approximately 1,700 CA at central and local government levels in Albania, and approximately 3,870 registered EOs, 175 of them are foreign EOs. The number of EO increased from 350 in 2011 to 3.870 in 2015.

In Bosnia and Herzegovina, 1539 CA are registered on the e-Procurement platform, out of the 2000 subjects to the PPL by the end of 2014.

By the end of 2015, around 10,400 EOs were registered on the Macedonian e-Procurement system, out of which 4,800 are active (paid the annual fee). Around 5% of all registered EO come from abroad. All 1.390 CAs are registered on the e-Procurement system.

The number of CA registered on the Montenegrin e-procurement system is 645.

The average number of submitted bids in the paper-based procedures in Albania was 3 (in 2009), while in Macedonia 2, 9 (in 2014). The average number of submitted bids in the e-procurement procedures in Albania was 6 (in 2014), while in Macedonia 3.4 per tender (in 2014).

7.5. Management of changes in e-procurement (facilitation) – Promotion, Training, Consultations and alternative solutions for facilitation of e-procurement

In Albania and Macedonia where the e-Procurement is mandatory, there are no longer promotional activities. Delivery of training and provision of consultancy services are carried out by PPAs. They also developed guidance and manuals and have established phone and e-mail user support. In Macedonia there are a couple of private companies and independent consultants that also organize trainings and provide consultancy services related to the e-Procurement system.

PPAa in Bosnia and Herzegovina, Kosovo* and Montenegro should also promote the e-procurement systems, but not much was undertaken in the recent years.

7.6. e-Procurement in pre-award phases

Electronic publication of contract notices (e-notices) and tender documentation is present in each ReSPA member state, except for Kosovo* which was still working to introduce this possibility.

E-submission of bids as core aspect of the e-procurements is present only in Albania and Macedonia. Kosovo* was in process of amending the legislation and in developing a system that will allow this possibility, while the Serbian PPL prescribes this possibility but it's not implemented in practice.

E-evaluation of bids is present only in Albania and Macedonia.

Online submission of information on the award decision is present only in Albania and Macedonia, while all ReSPA Members have implemented electronic form of contract award notifications, except for Kosovo* which was still working to introduce this possibility.

7.7. e-Procurement in post-award phases

E-ordering, e-invoicing and e-payment are not present in the ReSPA members and Kosovo*. Macedonia has introduced legal possibility for e-invoicing in 2014, but it is not implemented in the public sector.

7.8. Techniques and instruments for e-procurement

Dynamic Purchasing Systems are not implemented in the ReSPA members and Kosovo*, although PPLs of Bosnia and Herzegovina and Serbia allow for such techniques to be implemented. Same conclusion refers to the e-auctions, which are implemented only in Macedonia, although PPLs of Bosnia and Herzegovina and Serbia allow for such techniques to be implemented. Macedonia started with the e-auctions in 2008, making them in 2012 fully mandatory in almost all procurement procedures. In 2014, a total of 29,477 auctions were

conducted, an average of 112 auctions per day. Only in cases where there was only one bidder or one bid was evaluated as acceptable no e-auctions were conducted. However, in those cases the bidder was invited to submit final price by using another module integrated in the e-Procurement system. The average savings from the conducted e-auctions was 21% or total savings in absolute figures amounted to 58,000.000 EUR. E-catalogue is not implemented nor foreseen in the ReSPA Members.

8 Recommendations

This set of recommendations should be implemented in each country with the objective to establish a stable and transparent system of public procurement and reduce irregularities. In order to achieve the mentioned goals it is necessary to work further and provide more help to countries covered by this Study. In this sense, the proposal is that ReSPA, as an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans, closely supervise the implementation of proposals given in this Study.

8.1. General recommendations

- Since the Study shows that primary and secondary legislation in the field of public procurement is not fully compliant with the provisions of the new 2014 EU Directives, it is necessary to work on the harmonization as well as the implementation of legislative framework. When modifying the legislative framework, the findings and recommendations of this Study can be taken into account to correct deficiencies in the current legislation.
- It is necessary to consider the possibility to establish regional networks as well as organize conferences and other events through which countries would exchange their experience and knowledge. In that way, ReSPA could have good feedback regarding improvements that have been achieved.
- Good practice has shown that in addition to the establishment of regional networks, it is very useful to introduce the possibility of organizing staff exchanges for short or long periods, through study visits. Because of similar language and cultural backgrounds as well as challenges they face, it is very effective and recommendable that countries from this Study cooperate directly.
- The Study shows that there is a need for organizing training on the novelties in the EU public procurement directives as well as on the specifics of the two topics subject of this study. This should be carried out through both national and international approach. Concerning that, ReSPA could organize technical and consultancy assistance in order for PPA to reorganize and adapt to the requirements of the new EU Directives. After the establishment of good institutional infrastructure with strong and high-quality staff, ReSPA could give direct support by making field visits and workshops.
- It is important that countries take seriously the identified irregularities and take measures to reduce them and in the end eliminate them. The results of this Study with proposals for improvement can be presented to the government of each country.
- It is advisable to ensure support to procurement activities, in particular regarding technical infrastructure, giving advice on the conduct or design of public procurement procedures as well as the preparation and management of procurement procedures on behalf and for the account of the contracting authority. New EU regulation in the field of public procurement

opens the possibility for public or private body to offer ancillary purchasing activities on the market, so it would be recommendable that in further alignment of national legislation with EU legislation countries use all possible forms of assistance that exist in the market in order to reduce all irregularities.

8.2. Recommendations related to the management of irregularities

- PPAs need to have higher degree of independence. They should not be part or operate under any ministry. In that way, PPA would be more efficient in performing the tasks.
- Responsibility to monitor the public procurement procedures not just the system in general should be clearly assigned to the PPA and / or another central level body. The monitoring should not be performed only ex-post as is the case now in all countries with the auditing institutions, but also while the public procurement procedure is carried out. Having in mind the limited resources of the national PPA, which prevent them for performing monitoring on a full-scale, it is necessary to define criteria under which sample-based monitoring will be performed. The annual monitoring plans and the actual performance of monitoring over selected number of CA by the Kosovo* PPA might be a good example to follow or built upon. The role of the Serbian civil supervisor should be strengthened (completely independent, paid for the work and empowered to suspend actions of the CA in the procedure or to initiate procedures for determining CA responsibility in front of another body) and possibly replicated in other countries.
- PPA should have power not only to inform or initiate procedures in front of other bodies (anti-corruption agencies, public prosecutors, courts, etc.) in case of identified irregularity, but also to take actions and impose sanctions in such cases. The power of the Albanian PPA to impose fines and initiate disciplinary measures might be a good example to follow or built upon.
- In the annual and other reports of the PPA and other bodies that have monitoring roles in the public procurement special chapter should be dedicated to the general and specific findings of irregularities. Furthermore, the findings should be accompanied by concrete proposals for measures to be undertaken by the Government and / or other institutions to deal with the irregularities (from changes in the legislation to ending the bad practices).
- National public procurement policy makers and legal drafters should ensure that representatives of the relevant Civil Society Organizations are included in the process of amending the present or drafting the new public procurement legislation. The case of CSOs in Bosnia and Herzegovina and Kosovo* where their voice was heard in the drafting of PPLs should be an example to follow in all countries. The PPAs and CAs should aim to fully cooperate with the CSO and make their data open, thus allowing for additional and useful control of the public procurements.
- It should be ensured that the institutions established to prevent and fight against corruption and conflicts of interests are: 1. trained on public procurement rules, 2. proactive by taking initiative and deal thoroughly with the cases, including ongoing public procurement

procedures where allegations of corruption and conflict of interest exist, and 3. empowered not only to identify cases of corruption and conflict of interest in the public procurement but also to fully deal with the case, including authority to impose severe sanctions against the perpetrators.

- PPAs should define and use performance indicators for both its performance and performance of the public procurement system in general. The indicators should be clear, measurable and allow for comparison (e.g. for PPA indicators: increased number of monitored procurement procedures, increased number of irregularities dealt with, increased number of trainings delivered, etc.; e.g. for PP system indicators: increased competition / bids per tender, reduced number of negotiated procedures, etc.). The performance indicators in public procurement that should have been established in Kosovo* with support from WB project should be taken into consideration and replicated if possible in each country.
- PPAs from each country need to strengthen their capacities. In that respect, the following measures should be undertaken: increase the number of employees and /or the number of experienced staff, increase the number of IT employees, specialize the employees and efficiently allocate the limited internal resources, provide possibilities for the employees to attend training and other capacity building activities, etc. The limited funds allocated from the state budget might be increased by other sources – fees from training participants and from the e-Procurement system users.
- In order to improve the efficiency and effectiveness of their work, PPAs and other monitoring institutions should implement quality management standards and processes (ISO 9001, CAF, functional analysis. etc.)
- PPAs should be more active in organizing or supervising the PP trainings. Taking in to account the number of CA, EO and PP officers in each country, as well as the permanent legal and technical changes in the field of PP, training should be organized more frequently. The duration of the trainings based on which examination is organized for the purpose of issuing certificate for PP officer should be in duration of 5-8 days, so that on one hand could be attended by as many PP officers as possible (in case of longer duration it might prevent them from applying / participating) and on the other hand to transfer knowledge and skills on as many PP topics (in case of shorter duration many topics might not be covered). Furthermore, criteria to become public procurement officer and the required competences for this position, as well as criteria (pre-knowledge) for attending training for PP officers should be defined. Albania should introduce mandatory certification of PP officers as it is the case with the other countries.
- For the purpose of strengthening the monitoring and control of the preparatory phases in the public procurement, it is advisable to introduce legal obligation for the annual public procurement plans to be made publicly available (published on the procurement portals). To give greater significance to the procurement plans and not treat them as mere formality and indicative documents, the Albanian solution could be followed - Ministry of Finance (Treasury) should not allow any payment for procurement contracts if the procurement was not included in the annual procurement plans.

- In order to reduce the bureaucracy for the EO that participate in the PP procedures on one hand and to ensure the CA for the capacities and seriousness of the EO on the other hand, registry of certified bidders should be established in each country. The solution present in Serbia where the Business Registers Agency keeps public register of tenderers who are not obliged to prove fulfilment of mandatory selection criteria when submitting a bid could be a good example to be followed. Recently introduced solution in Macedonia, where the Central Registry issues a single document in electronic or paper form that certifies that EO meets all the personal and financial criteria (90% of all selection criteria)
- The possibility for introducing any type of blacklisting of the EO should be carefully approached and possibly avoided. The solutions for blacklisting present in Albania and Kosovo* might be followed, unlike the blacklisting (negative reference) solution in Macedonia which is too severe (ban to participate in all tenders in the country for period of 1-5 years) and not in line with the EU legislation and practice.
- State audit institutions that perform ex-post control of the public funds spending should have specialized unit or auditors that will focus on procedures for awarding public procurement contracts and their performance. Ex-post control of the public procurement procedures might be an additional task of the PPAs or other bodies, where the focus would be on the efficiency and effectiveness (cost-benefit analysis) of the conducted procurement. Introducing internal auditors in bigger CA, as solution already present in some countries, could help in identifying or even preventing irregularities in the work of the PP officers and bid evaluation commissions.
- Contract management is weak point in all countries. Many irregularities relate to the performance of the contracts. CAs apply the contract clauses (often very poor) and law on obligations (not sufficient for the procurement contract specifics). There are no institutions that monitor the contract during the performance period, except for Albania where the CA must establish a commission that will monitor the implementation of the special conditions of the contract. Another solution for external monitoring of the contract performance is to empower PPAs or another body to define criteria under which they will perform sample-based monitoring. In any case, PPL should introduced provisions for contract managements. Provisions from the PPL of Kosovo* related to Contract Management Activities (mandatory contract management plan). Each country's legislation needs to be adapted to the new provisions regarding possibility of contract modification from the Directive 2014/24/EU.

8.3. Recommendations related to the e-Procurement

- In order to reduce irregularities, increase the efficiency and transparency, as well as enhance the possibilities of EO to participate in public procurement procedures across the internal market, electronic means of information and communication should be introduced in all countries and gradually become mandatory and standard means of communication. Learning and exchanging the experience from Albania and Macedonia, which are leading countries from this Study in e-procurement will facilitate the achievement of this objective.

- A strong, clear and mandatory legal framework for e-procurement is one of the main preconditions for the implementation of e-procurements. It will not be enough to change the PPL but also to review and possibly modify the legislation on e-data, e-signature, e-archiving, etc. Additionally, secondary legislation on more technical issues should be adopted to wrap-up the e-procurement legal framework.
- Electronic means of communication cannot be discriminatory, must be generally available and interoperable with the ICT products in general use and should not restrict EO's access to the procurement procedure. It is advisable that the country has only one centralized web-based e-procurement platform managed by PPA. PPAs should own the IT infrastructure used for e-procurement, and be responsible for maintenance and upgrade of the system. The use of the system should not be dependable on installation of any additional software and should be accessed and used through the most popular web browsers. Use of advanced e-signatures might be necessary for the legal validity and increased security.
- In case the e-procurements are made possible but not mandatory, the Governments and PPAs should take intensive actions to promote them with the aim to increase their usage. Additionally, regular trainings should be organized, which should be as practical and interactive as possible (demonstration of the functionalities and exercise for the trainees). Development of guidance and manuals and functional have phone and e-mail user support is also necessary for smooth functioning of the e-procurements.
- Prepare feasibility study with options for development, maintenance and upgrade of the system - roles and responsibilities of the Public Procurement Authorities and providers of IT services such as software developers, HW platforms, cloud, etc. Due to the lack of human resources and especially IT staff in each PPA, a good solution would be multi-year contracts for maintenance and upgrade of the software and hosting of the servers to be signed with the IT companies.
- Techniques and instruments such as the Dynamic Purchasing Systems, e-auctions and e-catalogues should be introduced, but as optional. Introduction of these techniques should come as the second phase of development of the e-procurement system and should be based on prior sound analysis. In that respect, countries should learn from the experiences of other countries that already implemented such techniques. Macedonia, being the only country in the region and probably globally that made the e-auctions mandatory in all procurement procedures and for all procurement subjects, should change this rule, so that the shortcomings that are now present are corrected.
- Countries should make effort to legally allow and then to practically implement e-ordering, e-invoicing and e-payment. Public institutions lag behind the private sector, because such systems exist and are used for the business transactions. Furthermore, the countries have obligation to transpose the Directive 2014/55/EU on e-invoicing in public procurement. Implementation of these post-award procurement sub-phases will contribute to rectify the deficiencies that are present in the contract management phase and increase the efficiency and transparency within this phase.

- Prepare study / guidance for transposition of the EU e-IDAS Regulation (e-Identity and e-Signatures) in the national legislation and for facilitation of the cross-border (ReSPA members and Kosovo*) recognition of e-signatures.
- Implement activities aiming to make the present and the new e-procurement platforms as “open data” (data automatically readable and re-usable by other IT systems) and interoperable with other government IT systems (e-services), with focus on creating "regional standard that is based on EU TED information exchange format.

Publisher

ReSPA – Regional School of Public Administration
Branelovica, 81410
Danilovgrad Montenegro
Phone: +382(0)20817200
Fax: +382(0)20817238
Email: respa-info@respaweb.eu
www.respaweb.eu

For the Publisher


Ratka Sekulović

Responsible Manager

Ranka Bartula-Mušikić

CIP - Каталогизација у публикацији
Национална библиотека Црне Горе, Цетиње

ISBN 978-9940-37-015-2
COBISS.CG-ID 33803792



ReSPA is an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans. As such, ReSPA is a unique historical endeavour, established to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession.

ReSPA seeks to achieve this mission through the organisation and delivery of training activities, high level conferences, networking events and publications, the overall objectives of which are to transfer new knowledge and skills as well as to facilitate the exchange of experiences both within the region and between the region and the EU Member States.

Contact

Regional School of Public Administration
Branelovica
P.O. Box 31, 81410
Danilovgrad, Montenegro

Telephone: +382 (0)20 817 200
Internet: www.respaweb.eu
E-mail: respa-info@respaweb.eu